



## 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

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Title	Agenda Item Type
Judicial Branch Administration: Rule for Public Access to Meetings of Judicial Council Advisory Bodies	Action Required
	Effective Date
	July 1, 2014
Rules, Forms, Standards, or Statutes Affected	Date of Report
Adopt Cal. Rules of Court, rule 10.75	April 16, 2014
Recommended by	Contact
Hon. Douglas P. Miller, Chair, Executive and Planning Committee	Hon. Douglas P. Miller, 951-782-2660
Hon. Harry E. Hull, Jr., Chair, Rules and Projects Committee	<a href="mailto:douglasp.miller@jud.ca.gov">douglasp.miller@jud.ca.gov</a>
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.

## Recommendations

The chairs of the Judicial Council’s five internal committees recommend that the council adopt rule 10.75, effective July 1, 2014, to provide greater public access to the meetings of internal and advisory committees and similar multimember bodies that the council creates to review issues and report to it.

The text of rule 10.75 is attached at pages 52–60.

## General Background

### Judicial Council governance structure

The Judicial Council is the policymaking body of the California courts. Created by the state Constitution, its members include justices, judges, court administrators, legislators, and attorneys, all of whom serve as volunteers.<sup>1</sup> As a body, the council “sets the direction for improving the quality of justice and advancing the consistent, independent, impartial, and accessible administration of justice.”<sup>2</sup>

To perform its constitutional functions and statutory responsibilities, the Judicial Council relies in part upon advice and recommendations from its internal and advisory committees and similar multimember bodies that it creates to review issues and report to it (collectively referred to in this report and in rule 10.75 as “advisory bodies”).<sup>3</sup> Internal committees are composed entirely of council members. They provide recommendations in assigned areas (e.g., planning, rules and projects, policy coordination and legislation, litigation, and technology) and perform duties delegated by the council.<sup>4</sup> Advisory committees and other similar multimember bodies, in contrast, draw their membership from a wide cross-section of stakeholder groups (e.g., justices and judges, court administrators, public and private attorneys, law enforcement, probation officers, interpreters, mediators, professors, treatment providers, advocates, and members of the public).<sup>5</sup> All advisory body members volunteer their time, knowledge, and experience to developing recommendations for the council that will advance the goals stated above. Because of their specialized knowledge and experience, members are actively involved in the work of their advisory bodies, often performing functions that other governmental bodies might delegate to staff (e.g., fact-finding, data analysis, and drafting).

Currently there are more than 30 such advisory bodies, many of which have multiple subcommittees. Collectively they comprise more than 400 members. These bodies perform many functions for the Judicial Council, including proposing necessary changes to rules, forms, standards of judicial administration, and jury instructions; reviewing and commenting on pending legislation; recommending new legislation, pilot projects, and programs; identifying

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<sup>1</sup> Cal. Const., art. VI, § 6(a); see also [www.courts.ca.gov/4645.htm](http://www.courts.ca.gov/4645.htm).

<sup>2</sup> Cal. Rules of Court, rule 10.1(a). All references to “rules,” below are to the California Rules of Court.

<sup>3</sup> As noted in footnote 16, below, the term “advisory body” is used more broadly in this report and in rule 10.75 than elsewhere in the rules of court.

<sup>4</sup> Rules 10.10–10.14, 10.16.

<sup>5</sup> See rules 10.30–10.64.

issues and concerns affecting court administration and recommending solutions; developing quality education and training for branch officers and personnel; providing a forum for members' education and training; and acting as liaisons to facilitate communication and information-sharing among members and between the council and the courts on an array of issues, including budget, resource requirements, technology, and facilities.<sup>6</sup> As the list demonstrates, some of these charges do not involve reporting to the Judicial Council.

Advisory bodies vary in their size and scope. Some have broad subject matter jurisdiction (e.g., the Trial Court Presiding Judges and Court Executives Advisory Committees), while others have more limited jurisdiction, focusing on specific issues or areas of the law (e.g., the Court-Ordered Debt Collection Task Force and the Traffic Advisory Committee). To perform their designated functions, advisory bodies meet regularly and, if circumstances demand, frequently. They also work collaboratively, signifying that many proposals ultimately presented to the Judicial Council may be submitted first to multiple advisory bodies for comment, with members at each stage gathering stakeholder perspectives from their constituent groups.<sup>7</sup> This consultation process, which is work-intensive and time-consuming, often must be completed within tight deadlines, imposed, for example, by statute or legislative calendar. The work is necessary to ensure that the council has the advice and input it requires on the significant issues confronting the courts, and that the people of California have fair and equal access to justice statewide.

### **Existing public access to Judicial Council advisory bodies**

The Judicial Council's rules and procedures already provide for substantial openness and transparency. Advisory body proposals regarding rules, forms, standards, and jury instructions typically are circulated for public comment for several weeks before they are submitted to the Judicial Council.<sup>8</sup> After that public "invitation to comment" period concludes,<sup>9</sup> advisory bodies consider all comments received in finalizing their proposals. The reports that they submit to the Judicial Council presenting final proposals discuss and respond to each of the public comments received. Those reports, with attachments listing and responding to each public comment, are posted on the California Courts website ([www.courts.ca.gov](http://www.courts.ca.gov)) about one week before the meeting at which the Judicial Council will consider and decide on the proposals.<sup>10</sup>

The public may attend Judicial Council meetings in person or listen to real-time audiocasts of the meetings with simultaneous live captioning, may submit written comments on agenda items to the council before a meeting, and may submit comments orally during council meetings. Internal committee chairs report during open council meetings on the activities of the internal committees in the period since the last council meeting, and minutes of those internal committee meetings are posted on the California Courts website. Recorded audio and text from the captured live

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<sup>6</sup> Rule 10.34; see also rules 10.10–10.14, 10.16, 10.30–10.64.

<sup>7</sup> See rule 10.30(b)(5).

<sup>8</sup> See rule 10.22(d)(1).

<sup>9</sup> Proposals that are open for comment are posted in a special section of the California Courts website: [www.courts.ca.gov/policyadmin-invitationstocomment.htm](http://www.courts.ca.gov/policyadmin-invitationstocomment.htm).

<sup>10</sup> See rule 10.5(c); see also [www.courts.ca.gov/jcmeetings.htm](http://www.courts.ca.gov/jcmeetings.htm).

captioning during council meetings are posted on the specific meeting page after each council meeting, and the minutes of council meetings are posted after the council has approved them. A number of council advisory committees already hold public meetings, including, for example, the Court Facilities Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Trial Court Budget Advisory Committee. Public access to judicial administrative records prepared, owned, used, or retained by a judicial branch entity also is affirmed in a rule of court.<sup>11</sup>

### **Recent actions by the Legislature, the Governor, and the judicial branch**

On June 11, 2013, the Legislature passed the Budget Act of 2013 (Assembly Bill 110). As part of Item 0250-101-0932, the Legislature added Provision 15, directing that, by October 1, 2013, the Judicial Council adopt a rule “regarding open meeting requirements” for committees and similar multimember bodies reporting to the council.<sup>12</sup> On June 20, 2013, Governor Brown vetoed Provision 15, but, in his veto message, “urg[ed] the Judicial Council to continue efforts to provide greater public access to Judicial Branch committee activities.”<sup>13</sup>

The supplemental report language that the Legislature adopted for the budget package also included reference to the Judicial Council’s adoption of an open meeting rule for its committees. The supplemental report language includes statements of legislative intent and requests studies and follow-up reporting. It does not go to the Governor for review and, therefore, is not subject to veto. The supplemental report for the budget package effectively restated Provision 15, providing:

1. Open Working Groups. Not later than January 1, 2014, the Judicial Council shall submit to the Joint Legislative Budget Committee a report on the implementation of an open meetings rule in accordance with the following:
  - a. The rule shall apply to any committee, subcommittee, advisory group, working group, task force, or similar multimember body that reviews issues and reports to the Judicial Council.
  - b. The rule shall provide for telephone access for requesting persons.
  - c. The rule shall establish public notice requirements for any meeting of a body described above.
2. For each fiscal year beginning with 2014–2015, the report shall include the rule for that fiscal year and specific detail on amendments to the rule adopted in the prior fiscal year.<sup>[14]</sup>

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<sup>11</sup> Rule 10.500(c)(2).

<sup>12</sup> Assem. Bill 110 (2013–2014 Reg. Sess.) § 2.00, item 0250-101-0932, Provision 15.

<sup>13</sup> Governor’s veto message to Assem. on Assem. Bill 110 (June 27, 2013) Assem. J. (2013–2014 Reg. Sess.) p. 2219.

<sup>14</sup> Legis. Analyst, Supplemental Report of the 2013-14 Budget Package, Assem. Bill 110 (2013–2014 Reg. Sess.) (Supplemental Rep.), p. 3, item Item 0250-101-0932, [www.lao.ca.gov/reports/2013/supp\\_report/Supplemental-Report-1314.pdf](http://www.lao.ca.gov/reports/2013/supp_report/Supplemental-Report-1314.pdf).

Following passage of the Budget Act, at the Chief Justice’s request, the chairs of the Judicial Council’s five internal committees (the internal chairs) began a comprehensive review to develop a rule of court extending public access to appropriate council advisory body meetings.

### **Previous Council Action**

At present, rules 10.10(d) and 10.33 address meetings of Judicial Council internal and advisory committees. Rule 10.10(d) directs that internal committees meet “as often as necessary to perform [their] responsibilities,” with meetings “closed to the public” absent contrary direction from the chair. Rule 10.33 provides that advisory committees may meet as often as their chairs deem necessary, within available resources, and specifies that meetings may be “in person or by telephone.” It does not address public attendance at such meetings.

### **Preliminary circulation**

The internal chairs developed a preliminary draft of the proposed rule by early November 2013. Because of the importance of the issue of open meetings and the significant impact that the rule would have, the chairs decided to increase opportunities for input. Accordingly, they released the preliminary draft of the rule and sought input within the branch, as well as from the Legislature, stakeholders, and the public, effectively adding a step to the ordinary comment process.<sup>15</sup>

During this early comment process, the internal chairs provided the preliminary draft rule to Judicial Council advisory committee chairs, appellate court administrative presiding justices and clerks/administrators, and superior court presiding judges and executive officers, meeting with those groups personally to receive their input. They also provided copies to branch partners, conducting two briefings for the Legislature and stakeholders, and a separate briefing for the news media. And they posted the preliminary draft rule on the California Courts website, for early public comment from November 14, 2013, to November 20, 2013.

### **Formal circulation**

Many thoughtful and helpful comments were received through the preliminary circulation. Based on this input, the internal chairs revised the draft rule. With the approval of the Judicial Council’s Rules and Projects Committee, the revised rule was formally circulated for public comment from December 20, 2013 through February 7, 2014. A total of 17 comments were received. The comments and the internal chairs’ responses are discussed in detail later in this report.

### **Rationale for Recommendation**

The internal chairs recommend that the Judicial Council adopt rule 10.75 to expand public access to the meetings of the advisory bodies that it creates to review issues and report to it.

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<sup>15</sup> See rule 10.22(d).

## **Intent**

Rule 10.75 is intended to supplement and expand on existing rules and procedures so that the public will have even greater access to the Judicial Council and its advisory bodies. (Rule 10.75(a).)

## **Definition of “advisory bodies”**

“Advisory bodies,” as used in rule 10.75, means any multimember body created by the Judicial Council to review issues and report to the council. (Rule 10.75(b).) The rule’s broad definition of advisory body is consistent with the supplemental report language discussed above. Intended exclusively for rule 10.75, this definition includes internal committees, advisory committees, task forces, and other similar multimember bodies. (Rule 10.75(b)(1), advis. com. comment.)<sup>16</sup> Subcommittees composed of less than a majority of the members of an advisory body are not advisory bodies for purposes of the rule. Standing subcommittees that are charged with addressing a subject as a continuing matter are advisory bodies for purposes of this rule, however, irrespective of their composition.

Stated a different way, large subcommittees (i.e., those comprising a majority of the members of an advisory body) and standing subcommittees charged with addressing a subject as a continuing matter are treated under the rule the same as the advisory bodies that form them. Small limited-term subcommittees created on an ad hoc basis to perform a specific task are not included, however, in the definition of “advisory bodies” under the rule. This distinction is consistent with analogous provisions of the Ralph M. Brown Act (Brown Act),<sup>17</sup> which grants public access to the meetings of legislative bodies of local agencies.<sup>18</sup>

## **Open advisory body meetings**

Under rule 10.75, meetings to review issues that the advisory body will report to the Judicial Council are open to the public, except as otherwise provided in the rule. The scope of the rule is consistent with the supplemental report language.<sup>19</sup> Meetings that do not involve review of issues to be reported to the council, such as meetings providing education or training for members, exchanges concerning best practices, or sharing of information of general interest unrelated to issues that the advisory body will report to the council, are not subject to rule 10.75.

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<sup>16</sup> Cf. rule 10.30(a) (“Judicial Council advisory bodies are typically advisory committees and task forces”).

<sup>17</sup> Gov. Code, § 54950 et seq.

<sup>18</sup> See *id.*, § 54952(b) (“[A]dvisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies” for purposes of this act); Cal. Atty. Gen., Div. of Civ. Law, *The Brown Act: Open Meetings for Local Legislative Bodies* (2003), pp. 5–6 (An advisory committee created by a local legislative body, a city council, to produce a report in six months on downtown traffic congestion, was exempt from the open meeting requirements of the Brown Act because it (1) did not include a quorum of the members of the legislative body, and (2) was “a limited term ad hoc committee” rather than a standing committee).

<sup>19</sup> Supplemental Rep., *supra*, ¶ 1(a) (calling for reporting on implementation of an open meeting rule for any multimember body “that reviews issues and reports to the Judicial Council”).

Meetings open to the public include budget meetings, which are meetings or portions of meetings of an advisory body to discuss a proposed recommendation of the advisory body that the Judicial Council approve an allocation or direct the expenditure of public funds. The rule also precludes a majority of advisory body members from deciding a matter included on a posted agenda for an upcoming meeting in advance of the meeting. (Rule 10.75(c)(1).)

***Exempt advisory bodies.*** Under rule 10.75(c)(2), the Judicial Council’s Litigation Management Committee, and the Advisory Committees on Civil and Criminal Jury Instructions are exempt from the rule’s requirements. As with all advisory bodies, those committees include many judges as members. They also exclusively consider topics that are uniquely difficult or impossible for judges to address while adhering to the detailed ethics standards governing the judiciary.<sup>20</sup> For example, in performing the functions required by the rule of court creating it,<sup>21</sup> the Litigation Management Committee discusses pending or anticipated claims and litigation against judicial officers, courts, and court employees. Jury instruction committees also may discuss decisions or rulings issued in cases that have not reached final resolution through the appellate process. Judges are ethically prohibited, however, from making public comment about pending or anticipated litigation.<sup>22</sup>

The canons of judicial ethics further require that judges adhere at all times to high standards of conduct, promoting public confidence in the impartiality of the judiciary.<sup>23</sup> Among other things, this means avoiding comments that could be misheard or misunderstood as reflecting a commitment on issues likely to come before a judge as an adjudicator in individual cases. Such comments could create doubts about the judge’s impartiality, and thus “do injury to the system of government under law,” which relies on “[d]eference to the judgments and rulings of courts.”<sup>24</sup>

Opening the meetings of these three committees would preclude judges, who are specially learned in the law, from meaningful participation on those committees.<sup>25</sup> As open meeting requirements applicable to other government entities permit closed session discussion of pending litigation,<sup>26</sup> and as these three advisory bodies focus entirely, or to a significant extent, on the same topic, the proposed rule would exempt their meetings from its requirements.

***Meetings of rule committees.*** Under rule 10.75(c)(3), the meetings of the six advisory bodies charged primarily with developing rules proposals to improve the administration of justice in

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<sup>20</sup> See Cal. Code of Judicial Ethics, [www.courts.ca.gov/documents/ca\\_code\\_judicial\\_ethics.pdf](http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf).

<sup>21</sup> See rule 10.14.

<sup>22</sup> Cal. Code of Judicial Ethics, canon 3B(9).

<sup>23</sup> *Id.*, canons 1, 2A.

<sup>24</sup> *Id.*, canon 1, advis. com. comment; see also *id.*, canon 2A & advis. com. comment.

<sup>25</sup> See *id.*, canon 4B, advis. com. comment. (“As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice”).

<sup>26</sup> See Gov. Code, §§ 9029(a)(3), 9029.5(a) (Legislature open meeting laws); *id.*, § 11126(e) (Bagley-Keene Open Meeting Act (BKA), applicable to state bodies); *id.*, § 54956.9 (Brown Act, applicable to local legislative bodies).

specific types of proceedings, and of their subcommittees, ordinarily are closed.<sup>27</sup> The exception would be if a chair concludes that a particular agenda item may be addressed in open session. Any budget meeting also must be open to the public.

As explained in the proposed advisory committee comment to subdivision (c)(3), the work of the six rule committees and their subcommittees will present many of the same ethics challenges and obstacles for judges who are committee members as for judges who are members of the bodies covered by subdivision (c)(2). The six committees and their subcommittees focus primarily on analyzing, developing, and providing input concerning proposed legislation, rules, forms, and standards of administration. That work necessarily entails a complex interchange of views, consideration of multiple perspectives, and the vetting of opposing legal arguments, which judges cannot undertake in public without risk that their comments will be misunderstood or used as a basis for disqualification or challenge.<sup>28</sup>

Disqualifications and challenges may create significant practical issues for courts related to judicial workloads, and concerns about that potential may deter judges from serving on these advisory bodies, in turn depriving the public of the benefit of their training and expertise in crafting procedures for the effective and efficient administration of justice. Subdivision (c)(3) is intended to prevent such deleterious results by clarifying that meetings of the six rule committees and their subcommittees ordinarily are closed, although any budget meetings must be open.<sup>29</sup> The listed committees are subject to the rule's requirements, for example, concerning the posting of notice and agendas. As noted above, the public also will have the existing opportunities to comment on proposals that these committees develop both before and during meetings at which those proposals are presented to the Judicial Council.<sup>30</sup>

### **Closed meetings**

Open meetings laws applicable to all branches and levels of government include specified exceptions, recognizing that covered bodies must meet in private under limited circumstances to carry out their responsibilities in the best interests of the public. Similarly, rule 10.75 recognizes that there are legitimate reasons to close some meetings. Based on the generally accepted

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<sup>27</sup> The six rule committees are the (1) Appellate Advisory Committee, (2) Civil and Small Claims Advisory Committee, (3) Criminal Law Advisory Committee, (4) Family and Juvenile Law Advisory Committee, (5) Probate and Mental Health Advisory Committee, and (6) Traffic Advisory Committee.

<sup>28</sup> See Code Civ. Proc., §§ 170.1, 170.6.

<sup>29</sup> It may be noted that Connecticut, which has one of the most expansive state open meeting requirements in terms of the judiciary, explicitly limits the scope of those requirements for judicial bodies and committees to meetings concerning "administrative functions." (See Conn. Gen. Stats. Ann. § 1-200(1)(A) (West).) The Connecticut Supreme Court has interpreted the law as exempting a judicial branch rules committee similar to those described in subdivision (c)(3) of the proposed rule. (See *Rules Com. of the Superior Court v. Freedom of Information Commission* (1984) 192 Conn. 234 [472 A.2d 9].) More recently, the Connecticut Supreme Court narrowly interpreted the term "administrative" in the same law as covering only the following topics: "budget, personnel, facilities, and physical operations." (*Clerk of the Superior Court v. Freedom of Information Commission* (2006) 278 Conn. 28 [895 A.2d 743].) Judicial branch committee meetings in Connecticut, therefore, are open to the public only to the extent that they concern those specific topics.

<sup>30</sup> See page 3, "Existing public access to Judicial Council advisory bodies," *supra*.

grounds for closure of meetings and some specific needs of the judiciary and of the judicial officers who serve on Judicial Council advisory bodies, the rule recognizes 10 bases for closing a meeting. (Rule 10.75(d)(1)–(10).) As some advisory bodies have narrow subject matter jurisdictions and primarily cover topics appropriate for closed meetings (e.g., the Court Security Advisory Committee), it is anticipated that the majority of the meetings of those bodies may be closed.

The 10 provisions authorizing closure of a meeting are summarized below, noting the provisions that would differ substantively from the provisions of other open meeting laws and explaining the reasoning behind each difference.

***Discussion of individuals.*** Rule 10.75(d)(1) allows the chair of an advisory body or subcommittee to close a meeting to discuss the appointment, qualifications, performance, or health of an individual, or other information that, if discussed in public, would constitute an unwarranted invasion of personal privacy. The provision is comparable to provisions in existing open meeting laws, although the discussions of bodies covered under existing laws typically may involve the bodies' own employees.<sup>31</sup>

Judicial Council advisory bodies do not themselves employ staff, but rather rely on personnel of the Administrative Office of the Courts (AOC), the council's staff agency.<sup>32</sup> The need to protect discussions about individuals arises because advisory bodies sometimes review the qualifications or performance of individuals as it relates to their subject matter jurisdiction. For example, the Governing Committee of the Center for Judicial Education and Research may evaluate the performance of course instructors,<sup>33</sup> and the council's internal Executive and Planning Committee considers the qualifications of individual applicants in developing recommendations to the Chief Justice for appointments to advisory bodies.<sup>34</sup> This exception protects the privacy of individuals whose work or qualifications are being scrutinized by an advisory body, and allows the advisory body members to speak candidly about such individuals, facilitating the highest performance in accomplishing these public functions.

***Litigation, privilege.*** Rule 10.75(d)(2) allows the closure a meeting to discuss 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. A comparable exception is found in other California open meeting laws and its purpose is to permit a covered body to confer with its attorney in circumstances where, if that conversation were to occur in open session, it would prejudice the position of the

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<sup>31</sup> See Gov. Code, § 9029(a)(1) (Legislature open meeting law); *id.*, § 11126(a), (c)(2), (c)(8), (c)(9), (c)(19), (f)(2), (f)(3), (f)(7), (g)(1), (g)(2) (BKA, state bodies); *id.*, §§ 54956.7, 54957, 54956.86, 54957.10 (Brown Act, local government).

<sup>32</sup> See *id.*, § 68500; rules 10.80–10.81.

<sup>33</sup> See rule 10.50(c)(3).

<sup>34</sup> Rule 10.11(h).

covered body in the litigation.<sup>35</sup> Subdivision (d)(2) varies from comparable provisions in other California open meeting laws in that it applies to discussion of claims, administrative claims, and litigation against parties other than the advisory body or the Judicial Council.<sup>36</sup> The difference is appropriate because the council's Litigation Management Committee oversees such activities statewide for all judicial branch entities and their officers and employees.<sup>37</sup> Other advisory bodies also may have an interest in such claims, administrative claims, or litigation, for example, because a ruling may create new law applicable to them. Subdivision (d)(2) permits advisory bodies to discuss such matters without exposing themselves to litigation or prejudicing another judicial branch entity or individual. It also allows discussions regardless of whether counsel is present, to ensure the continued participation of judges as members of those advisory bodies, because the California Code of Judicial Ethics broadly prohibits judges from discussing pending or anticipated litigation in public in any case.<sup>38</sup>

***Negotiations on contracts, labor issues, legislation.*** Rule 10.75(d)(3) allows the chair of an advisory body or subcommittee to close a meeting to discuss negotiations concerning a contract, labor issue or legislation. Similar exceptions for contract and labor negotiations are found in the Bagley-Keene Opening Meeting Act (BKA)<sup>39</sup> (applicable to state bodies) and the Brown Act (applicable to local legislative bodies).<sup>40</sup> Additionally, under the Legislature's open meeting laws, political party caucuses may meet in closed session without limit.<sup>41</sup> The purpose of subdivision (d)(3)'s exception is to prevent disclosure of information that could adversely affect the Judicial Council, or another judicial branch entity, in its negotiations with either a vendor, labor organization, or a political or governmental organization. For example, if a vendor is allowed to attend a meeting where the maximum price for a contract is set, the vendor could use that information in its proposal or negotiations to ensure that the Judicial Council pays maximum price. Similarly, open discussions of legislative strategy may compromise the council's legislative priorities. In addition, discussion of proposed legislation may include consideration of non-final case law, a subject that judges who are advisory body members may not publicly address.

***Real estate transactions.*** Rule 10.75(d)(4), like comparable provisions in other California open meeting laws, allows the chair of an advisory body or subcommittee to close a meeting for discussion of the price and terms of payment for a purchase, sale, exchange, or lease of real property for a judicial branch facility before the property has been acquired or the relevant contracts executed.<sup>42</sup> The purpose of this provision is to avoid requiring the public discussion of

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<sup>35</sup> See Gov. Code, § 11126(e)(1) (BKA, state bodies); *id.*, § 54956.9(a) (Brown Act, local government).

<sup>36</sup> *Id.*, §§ 9029(a)(3), 9029.5(a) (Legislature open meeting laws); *id.*, § 11126(e) (BKA, state bodies); *id.*, § 54956.9 (Brown Act, local government).

<sup>37</sup> See *id.*, § 912.7; rule 10.14.

<sup>38</sup> See Cal. Code of Judicial Ethics, canon 3B(9).

<sup>39</sup> Gov. Code, § 11120 et seq.

<sup>40</sup> See *id.*, § 11126(c)(17) (BKA, state bodies); *id.*, § 54957 (Brown Act, local government).

<sup>41</sup> *Id.*, § 9029(b).

<sup>42</sup> See *id.*, § 9029.5(a)(4) (Legislative open meeting law); *id.*, § 11126(c)(7) (BKA, state bodies); *id.*, § 54956.8 (Brown Act, local government).

potential terms for such a transaction, which could adversely impact the price, unnecessarily increasing the costs of publicly funded projects. No purchase would ever be made for less than the maximum amount the Judicial Council could pay, for example, if the public (including a potential seller) was able to attend and gather information at a meeting in which payment authorization is set.

**Security matters.** Rule 10.75(d)(5), like comparable provisions in other California open meeting laws, allows the closure of a meeting if public discussion of a matter might compromise public safety, the safety of judicial branch officers or personnel, or the security of judicial branch facilities and equipment, including electronic data.<sup>43</sup> Because of the judicial branch’s central role in the justice system, security concerns constitute a significant consideration in court operations. Underscoring the importance and necessity of court security is the existence of the Court Security Advisory Committee, which discusses facility and personal security matters, such as recommendations for security procedures and assessments of existing security resources.<sup>44</sup> Other committees such as the Court Executives Advisory Committee and the Court Facilities Advisory Committee also discuss security matters as a part of their respective subject matter jurisdictions. This exception is necessary to maintain the safety of individuals who are a part of or interact with the courts.

**Non-final audit reports or proposed responses to such reports.** Rule 10.75(d)(6) permits a chair to close a meeting to discuss audit reports that are not yet final and responses to such non-final reports. The provision is consistent with existing law regarding pending or non-final audit reports. The State Auditor, for example, is statutorily precluded from publicly releasing written material “or substantive information pertaining to any audit not completed.”<sup>45</sup> Similarly, state and local governmental entities are authorized to meet in closed session to discuss a confidential draft audit report from the State Auditor and responses to the same.<sup>46</sup>

Subdivision (d)(6) covers, for example, discussion of non-final audit reports by the AOC’s Internal Audit Services (IAS). IAS assists in meeting branch fiscal oversight responsibilities by performing audits of all judicial branch entities and recommending improvements based on results.<sup>47</sup> Once formally accepted by the Judicial Council, audit reports are considered final and are posted on the California Courts website to facilitate public access.<sup>48</sup>

Before an audit report is made final by the Judicial Council’s action, however—for example, when the Advisory Committee on Financial Accountability and Efficiency for the Judicial

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<sup>43</sup> See *id.*, § 9029(a)(2) (Legislative open meeting law); *id.*, § 11126(c)(18) (BKA, state bodies); *id.*, § 54957(a) (Brown Act, local government).

<sup>44</sup> See rule 10.61(a).

<sup>45</sup> Gov. Code, § 8545(b).

<sup>46</sup> *Id.*, § 11126.2 (BKA, state bodies); *id.*, § 54956.75(a) (Brown Act, local government).

<sup>47</sup> See [www.courts.ca.gov/12926.htm](http://www.courts.ca.gov/12926.htm).

<sup>48</sup> See [www.courts.ca.gov/12050.htm](http://www.courts.ca.gov/12050.htm) (containing final audit reports for the past 3 years). See also rule 10.500(e)(2) (listing final audit reports as an example of a category of judicial administrative records subject to public inspection and copying under the rule).

Branch reviews a non-final audit report—the information is kept confidential and meetings involving discussions of such reports would be closed under the rule.<sup>49</sup> Confidentiality is maintained until an audit is completed and the auditor’s report becomes final, to ensure that the auditor’s investigation is conducted as efficiently and effectively as possible. If non-final reports and supporting documentation were available before an audit was completed, mistakes and misinformation could be made public. This would be harmful both to the public who may receive inaccurate information and to entities being audited that ultimately are found in compliance.

***Trade secrets or privileged or confidential commercial and financial information.***

Rule 10.75 (d)(7) allows a chair to close a meeting of an advisory body or subcommittee to discuss trade secrets or privileged or confidential commercial and financial information. The provision is consistent with existing open meeting laws applicable to state and local government entities,<sup>50</sup> and with other authorities protecting such information generally.<sup>51</sup> It permits the Judicial Council Technology Committee, for example, to meet in closed session to discuss a vendor proposal or consider a vendor demonstration (e.g., related to computer applications, networking, or telecommunications systems) submitted during the solicitation process or as part of a contractual relationship with a judicial branch entity, to the extent trade secrets or privileged or confidential commercial and financial information is included. Absent such a provision, vendors might not submit bids for judicial branch projects, interfering with effective competitive bidding and the ability to secure favorable pricing for goods and services.

***Licensing or other professional examinations.*** Rule 10.75(d)(8), like BKA, which covers non-judicial state bodies, permits the chair of an advisory body or subcommittee to close a meeting for certain discussions related to examinations.<sup>52</sup> Specifically, subdivision (d)(8) allows a closed meeting to discuss development, modification, or approval of any licensing or other professional examination or examination procedure. The provision is needed, for example, to allow the Judicial Council’s Court Interpreter Advisory Panel to consider issues related to certification and other examinations for interpreters of court proceedings.<sup>53</sup> To protect the integrity of those examinations and, by extension, the quality of interpretation in the courts, those topics must be discussed in a nonpublic setting.

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<sup>49</sup> See rule 10.63(b)(2) (confirming that the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch reviews all audit reports of the judicial branch). The advisory committee also, among other things, makes recommendations to improve judicial branch financial accountability and efficiency. (Rule 10.63(a).)

<sup>50</sup> See Gov. Code, § 11126(c)(13), (c)(15), (j)(3), *id.*, § 11126.4(a) (BKA, state bodies); *id.*, § 54956.87(b), (c) (Brown Act, local government).

<sup>51</sup> See, e.g., Civ. Code, § 3426 et seq. (California Uniform Trade Secrets Act); Evid. Code, § 1060 et seq. (trade secret privilege); Pub. Contract Code, § 19206 (requiring the Judicial Council to adopt and publish a Judicial Branch Contracting Manual); Jud. Branch Contracting Manual (JBCM), Judicial Council (Aug. 2012), ch. 4A, step 7 (confidentiality of bids); *id.*, ch. 4B, step 9 (same); *id.*, ch. 4C, step 10 (same); rule 10.500(f)(10) (exempting from public disclosure judicial administrative records containing trade secrets and specified other privileged or confidential information).

<sup>52</sup> See Gov. Code, § 11126(c)(3) (BKA, state bodies).

<sup>53</sup> See rule 10.51(a)(2) (the Court Interpreters Advisory Panel, among other things, makes recommendations to the Judicial Council on certification, testing, recruiting, training, and continuing education of court interpreters). See also [www.courts.ca.gov/2695.htm](http://www.courts.ca.gov/2695.htm) (information about court interpreter examinations).

***Evaluation of individual grant applications.*** Rule 10.75(d)(9) allows the chair of an advisory body or subcommittee to close a meeting or a portion of a meeting evaluating individual grant applications. For example, the Judicial Council’s Sargent Shriver Civil Counsel Act Implementation Committee<sup>54</sup> reviews grant applications to develop funding recommendations for the council. Under rule 10.75, the committee’s discussions of the criteria to be applied in awarding grants and the evaluation procedures to be used would occur in open session. However, consideration of the individual grant applications could occur in closed session to permit a full and candid evaluation of the applications, including assessment of the quality of an applicant’s staff and its likely performance, and to avoid deterring applications.

***Topics presenting ethical and related practical issues for judges.*** Rule (d)(10) permits closure of an advisory body or subcommittee meeting on ethical grounds. As noted, judicial officers who are members of advisory bodies and their subcommittees are uniquely constrained by detailed ethics standards, limiting their public comments.<sup>55</sup> These constraints are particularly relevant for judges who volunteer to serve on advisory bodies that develop or provide input on proposed legislation, rules, forms, or standards—a group that is not limited to those named in subdivision (c)(3).<sup>56</sup> Judicial officers serving on other advisory bodies, however, also may have occasion to discuss or refer to active cases, non-final decisions, or opposing interpretations of statute or case law in reviewing issues for report to the Judicial Council. The rule permits advisory bodies to discuss such matters in closed meetings, to ensure that judicial officers, who are specially learned in the law, may continue to meaningfully participate without risk of committing an ethics violation, necessitating recusal, or encouraging disqualification motions or peremptory challenges that may distort court workloads and impede the efficient administration of justice. (Rule 10.75(d)(10).)

### **Notice of meetings**

Rule 10.75(e)(1) provides that public notice must be given of the date and agenda of each regular meeting that is subject to this rule, whether open or closed, at least five business days before the meeting.

***Urgent Circumstances.*** Rule 10.75(e)(2) provides that a meeting subject to the rule may be conducted on 24 hours’ notice in case of urgent circumstances requiring prompt action. The minutes of such meetings must briefly state the facts creating the urgent circumstances requiring prompt action and the action taken.

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<sup>54</sup> See [www.courts.ca.gov/documents/AB-590.pdf](http://www.courts.ca.gov/documents/AB-590.pdf) at pp. 2–3 (information about the Sargent Shriver Civil Counsel Act Implementation Committee).

<sup>55</sup> See, e.g., Cal. Code of Judicial Ethics, canon 1 (Judges must personally observe high standards of conduct to preserve the integrity and independence of the judiciary); *id.*, canon 2A (Judges must “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”).

<sup>56</sup> The advisory bodies named in rule 10.75(c)(3) are included there because their work focuses almost exclusively on the described rule-development functions. Other advisory bodies may perform similar functions, although less frequently.

**Form of notice.** Rule 10.75(f)(1)–(f)(2) provide that the notice and agenda for a meeting subject to the rule, whether open or closed, must be posted on the California Courts website. The notice must state whether the meeting is open or closed. If it is closed or partially closed, the notice must identify the closed agenda items and the specific subdivision of rule 10.75 authorizing the closure.

For meetings that are open in part or in full, the notice must provide (1) the telephone number or other electronic means that a member of the public may use to attend the meeting; (2) the time of the meeting, whether the public may attend in person, and, if so, the meeting location; and (3) the e-mail address or other electronic means that the public may use to submit written comments on agenda items or requests to make an audiorecording of a meeting. (Rule 10.75(f)(3).)

### **Meeting agendas and materials**

Under rule 10.75(g), the agendas of meetings subject to the rule, whether open or closed, must briefly describe each item to be considered. If a meeting is closed or partially closed, the agenda must identify the specific rule subdivision authorizing the closure.

Subdivision (h) provides that materials for an open meeting must be posted on the California Courts website at least three business days before the date of the meeting, except in extraordinary circumstances.

### **Public attendance and required conduct**

For budgetary and other practical reasons, most advisory bodies and their subcommittees meet primarily by telephone or other electronic means, rather than in person. Advisory bodies perform a high volume of work, meet regularly, and may have as many as 18 members located throughout the state who have full-time competing professional obligations. Many members are superior court judicial officers who must hear a daily calendar of cases from specific court locations, or attorneys who must appear at multiple court locations daily. Members typically join advisory body meetings by telephone from private locations (e.g., their chambers or their offices), rather than from a single location that is accessible to the public. Rule 10.75(i) provides that the public may attend all open meetings of advisory bodies by telephone or other electronic means, as members do.

In addition, if the members of an advisory body gather in person at a single location for a meeting, the rule permits the public also to attend in person at that location if the chair concludes security measures permit. (Rule 10.75(i).) Security concerns necessarily are a significant consideration, particularly for judicial officers, who are exposed to special risks as a result of their adjudicative responsibilities.<sup>57</sup>

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<sup>57</sup> See, e.g., Fautsko, *Courthouse Security Incidents Trending Upward: The Challenges Facing State Courts Today*, Nat. Center for State Cts. (2012), <http://ncsc.contentdm.oclc.org/cdm/ref/collection/facilities/id/163> (“The number of threats and violent incidents targeting the judiciary has increased dramatically”; citing data spanning more than 30 years).

Rule 10.75(j) provides that members of the public who attend open meetings in person must remain orderly and that chairs may order the removal of any disorderly person.

### **Public comment**

Rule 10.75(k) provides for public comment, which may be submitted in writing and, if public in-person attendance at a meeting is an option, orally.

**Written comment.** Rule 10.75(k)(1) allows the public to submit written comments for any agenda item of a regularly noticed open meeting up to one complete business day before the meeting. Written comments received closer to the meeting time will be accepted, but time constraints may preclude advisory body members from reviewing them for the meeting.

Only written comments are accepted for meetings that the public attends by telephone. As noted, most advisory body meetings are conducted by telephone or other electronic means. Often meetings are scheduled for times that judges, attorneys, and other members with ties to the courts can attend, before or after a court's daily calendar of cases is heard, or during lunch breaks. The agendas for such meetings may be long, with up to 18 advisory body members attending. Adding time for the public to provide spoken comments during such meetings would make it difficult to conclude business in the limited time available. Doing so also would significantly increase costs, as multiple telephone lines and additional staff would be needed to manage the calls to ensure comment time limits are observed and avoid improper disruptions. Thus, in such instances, public comments are accepted in written form.

**In-person attendance—spoken comment.** Rule 10.75(k)(2) provides that, if security measures permit the public to attend an open advisory body meeting in person, the meeting must include an opportunity for the public to provide spoken comments about each agenda item before the advisory body considers the item. The reference to agenda items is intended to clarify that comments pertaining to a specific court case will not be received, as judicial officers are ethically prohibited from engaging in ex parte communications with members of the public who are parties to cases before them.<sup>58</sup>

Anyone wishing to speak during the public comment portion of an in-person meeting must submit a request before the meeting begins, indicating the speaker's name, the name of the organization that the speaker represents if any, and the agenda item that the comment will address. The advisory body chair may grant a request to comment that is received after a meeting has begun.

**Reasonable limits and timing for public comment.** Rule 10.75(k)(3) gives the advisory body chair the discretion to establish reasonable limits on the length of time for each speaker and the

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<sup>58</sup> See Cal. Code of Judicial Ethics, canon 3B(7) ("A judge shall not initiate, permit, or consider ex parte communications").

total amount of time permitted for public comment. The chair may also decide whether public comments will be heard at the beginning of the meeting or in advance of related agenda items.

### **Making an audiorecording of a meeting**

Rule 10.75(l) allows the chair of an advisory body to permit a member of the public to make an audiorecording of an open meeting, or the open portion of a meeting, if a written request is submitted at least two business days before the meeting.

### **Minutes as official records**

Rule 10.75(m) provides that the minutes of each meeting subject to the rule must be prepared for approval at a future meeting. When approved by the advisory body, the minutes will constitute the official record of the meeting. Approved minutes for open meetings, or the open portion of a meeting, must be posted on the California Courts website.

### **Adjourned meetings**

Rule 10.75(n) allows an advisory body chair to adjourn a meeting to reconvene at a specified time without issuing a new notice, provided that, if open agenda items remain for discussion, notice of the adjourned meeting is posted on the California Courts website 24 hours before the meeting reconvenes. The notice must identify any remaining open agenda items to be discussed, the time that the meeting will reconvene, the telephone number or other electronic means that the public may use to attend the meeting, and if the public may attend the reconvened meeting in person, the location. The advisory body may not consider new agenda items when the meeting reconvenes unless the exception for urgent circumstances in subdivision (e)(2) applies.

### **Action by e-mail between meetings**

For advisory bodies to perform their duties and responsibilities, it is essential that they have the means to conduct business in a timely and effective manner. Because it is not always feasible for them to conduct or conclude all their business through in-person or telephonic meetings, they need the ability to be able to take action by e-mail between meetings in certain circumstances. The rule provides for this situation in a way that ensures openness and public access. (Rule 10.75(o).)

**Circumstances.** Rule 10.75(o)(1) allows an advisory body chair to distribute a proposal by e-mail to all advisory body members for action between meetings if (1) the advisory body discussed and considered the proposal at a previous meeting, but concluded more information was needed; or (2) the chair concludes that prompt action is needed.

**Notice.** Rule 10.75(o)(2) provides that, if an e-mail proposal concerns a matter that otherwise must be discussed in an open meeting, the advisory body must provide public notice and allow one complete business day for public comment on the proposal, before acting on it. The notice must be posted on the California Courts website and must provide an e-mail address to which the public may submit written comments. The advisory body may forego public comment if the chair concludes that prompt action is required.

***Communications about e-mail proposals.*** If an e-mail proposal concerns a matter that otherwise must be discussed in an open meeting, after distribution of the proposal and until the advisory body has acted, advisory body members must restrict their communications with each other about the proposal to e-mail. This restriction only applies to proposals distributed under subdivision (o). (Rule 10.75(o)(3).)

***Official record.*** Written minutes describing the action taken on an e-mail proposal that otherwise must be discussed in an open meeting must be prepared for approval at a future meeting. The minutes must attach any public comments received. When approved by the advisory body, the minutes constitute the official record of the proposal. Approved minutes for such a proposal must be posted to the California Courts website. The e-mails exchanged concerning a proposal that otherwise would have been considered in a closed meeting will constitute the official record of the proposal. (Rule 10.75(o)(4).)

### **Review requirement**

Rule 10.75(p) provides that the Judicial Council will review the impact of the rule within one year of the rule's adoption and periodically afterward to determine whether amendments are needed. In conducting this review, the council will consider, among other factors, the public interest in access to meetings of advisory bodies, the obligation of the judiciary to comply with judicial ethics standards, and the public interest in the ability of advisory bodies to effectively assist the council by offering policy recommendations and alternatives for the administration of justice.

### **Comments, Alternatives Considered, and Policy Implications**

Seventeen comments were submitted concerning rule 10.75 during the formal public comment period. The commentators included three leaders of the California State Assembly (Assembly leaders);<sup>59</sup> the California Newspaper Publishers Association (CNPA); Courthouse News Service (CNS); two labor unions, SEIU California State Council (SEIU) and Councils 36 and 57 of the American Federation of State, County, and Municipal Employees (AFSCME, Councils 36 and 57); Californians Aware; the First Amendment Coalition; Public Counsel, a non-profit law firm; three superior courts; three Judicial Council advisory committees; one superior court judge; and two members of the public.<sup>60</sup>

Three commentators agreed with the proposal, 13 commentators agreed with the proposal if modified, and 1 commentator did not agree with the proposal. A chart containing the full text of

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<sup>59</sup> The following three Assembly leaders signed a joint letter submitting comments: John A. Pérez, Speaker of the Assembly; Bob Wieckowski, Chair of the Assembly Judiciary Committee; and Reginald Jones-Sawyer, Sr., Chair of the Assembly Budget Committee's Subcommittee No. 5 on Public Safety.

<sup>60</sup> Californians Aware endorsed the views stated in comments submitted by California Newspaper Publishers Association (CNPA) and Courthouse News Service, while also specifically recording four objections to the rule described below. The First Amendment Coalition also generally endorsed CNPA's comments, without submitting further remarks.

the comments received and the internal chairs' responses to the comments is attached beginning on page 61. The comments are extensive, with a few commentators offering suggested line-by-line revisions. To make them easier to understand, in this report and the accompanying chart, general and specific comments are grouped together, with the specific comments then being divided into categories according to the subdivision of the rule that they addressed.

### **General comments**

Below is a summary of the general comments received regarding the rule and related responses. In instances where changes to the rule made after the end of the comment period have changed the letter or number of a specific rule provision, we refer to the numbering used in the final version of the rule that is attached to this report.

***General judicial branch support.*** Although not unanimous, most judicial branch commentators generally supported the rule, noting that it appeared to strike the proper balance between transparency and public access on the one hand and, on the other hand, the unique ethical and practical dilemmas that may arise for judicial officers and other advisory body members if meetings are opened to the public. As discussed more fully, below, in describing specific comments on the open meetings provision (subd. (c)), the Superior Court of Los Angeles County suggested the rule should apply only to meetings of advisory bodies that expressly are charged with budget and spending responsibilities. Another commentator, a superior court judge, suggested that the rule was dissatisfactory because it included too many exceptions.

***Departures from BKA and the Brown Act.*** Although some acknowledged the increase in public access that the rule would create, external commentators generally expressed concern that the rule did not track closely enough to BKA and the Brown Act. Most did not agree that the differences between the rule and those acts were justified by factors unique to the judicial branch. They urged that the rule be amended to more broadly expand public access to advisory body meetings and provide greater transparency and accountability. One commentator expressed concern that few meetings would be open under the rule.

The internal chairs appreciate and agree with the concerns for public access, transparency, and accountability that the commentators raised, and the final version of the rule presented with this report includes modifications intended to address commentator concerns where feasible to do so. Although informed by existing open meeting laws that apply to other government entities, including the laws referenced above, the final version of the rule necessarily also is tailored to protect the independence and integrity of the judicial branch, public confidence in the impartiality of judicial officers, and the ability of courts to effectively discharge their core mission of adjudicating disputes.

The internal chairs respectfully disagree with the one comment that few meetings would be open under the rule. Rule 10.75 will require that more than 20 advisory bodies and many more subcommittees regularly hold open meetings, on a broad range of topics, including, for example, court facilities and technology, court-ordered debt, court interpreters, tribal-state court issues,

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.

Regarding the first point, the internal chairs do not agree that it is necessary to specifically list in the rule all of the various types of multimember bodies that would be subject to it. The general description in (b)(1) adequately encompasses them. In the interests of ensuring clarity, however, the internal chairs have added an advisory committee comment for that subdivision, confirming that the definition applies to internal committees, advisory committees, task forces, and other multimember bodies that the council creates to review issues and report to it. On the second point, they agreed that the language might be simplified to cover advisory bodies “created by the Judicial Council,” removing the reference to “formal action.”

The internal chairs do not agree with the commentator’s final point—that the rule should apply to advisory bodies created by entities or individuals other than the Judicial Council. They conclude the rule is properly focused on bodies that the council creates to assist it. By way of comparison, the Brown Act only purports to cover multimember bodies that are created by statute or by the “formal action” of the legislative body that they serve. That act does not apply to multi-member bodies created by an individual decision-maker.<sup>61</sup>

As written, the rule will significantly expand public access to the work of the Judicial Council and its advisory bodies. If adopted, it will require the council to review the impact of the rule within a year and periodically afterward. In conducting such reviews, the council may assess whether the balance of public interests favors additional expansions in access. In the interim, the public has significant access to the workings of the council and its advisory bodies, including considerable information about the work of advisory bodies available on the California Courts website in their reports to the council and other material posted there.

***Meetings (subd. (c)(1)).*** Many commentators submitted views about subdivision (c)(1), which states the open meeting requirement.

***Breadth of the open meeting requirement.*** Four commentators—the Assembly leaders, the CNPA, CNS, and SEIU—noted that the open meetings requirement stated in the rule is limited in its breadth. A fifth commentator, AFSCME, Councils 36 and 57, questioned whether this was intended. The first sentence of subdivision (c)(1) limits the requirement to “meetings to review issues that the advisory body will report to the Judicial Council.” The five commentators suggested that the wording should be changed to provide public access to all meetings of advisory bodies, regardless of whether discussion concerns a matter that will be reported to the council. Two of the commentators, CNS and SEIU, suggested that limiting language was inconsistent with the supplemental report language from the Legislature. They observed that the supplemental report language described the types of multimember bodies that should be subject to the open meetings rule, not the types of meetings to be covered by it.

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<sup>61</sup> Cal. Atty. Gen. off, *The Brown Act, Open Meetings for Local Legislative Bodies* (2003), p. 2, <http://oag.ca.gov/sites/all/files/agweb/pdfs/publications/brownAct2003.pdf>

Regarding the supplemental report language, the chairs have carefully reviewed that language. It calls for a report from the Judicial Council on implementation of an open meetings rule and supplies guidance on content. The internal committee chairs also considered the Governor’s veto message, urging the council to “provide greater public access to Judicial Branch committee activities.” After considerable review and consideration, they have developed a detailed rule, which they are confident will significantly expand public access. The rule would open a broad range of meetings to the public in which proposals to be presented to the council are developed. This will facilitate public understanding of the factors involved and alternatives considered, while maximizing the contributions that advisory bodies receive.

Other advisory body meetings, in contrast, provide a forum in which colleagues from diverse locations and backgrounds can meet to receive education or training or engage in an unfiltered exchange concerning best practices. Such exchanges foster statewide connections among colleagues, providing additional resources to assist court leaders in performing their jobs, and are vital to collaboration and effective leadership within the judicial branch. Interjecting an audience for those meetings, however, would undercut their value, chilling dialogue, without providing sufficient countervailing benefit to the Judicial Council or the public that it serves. The chairs conclude the balance accomplished by the current wording of subdivision (c)(1) is appropriately tailored to the specific needs of the judicial branch.

*Workability of the provision.* Two commentators questioned whether the language included in the first sentence of subdivision (c)(1) establishes a workable standard for advisory bodies. They expressed concern that advisory bodies may not know in advance whether they “will report” to the Judicial Council on an issue discussed in a meeting. The internal chairs considered the comment but do not agree that the language establishes an unworkable standard. Most work of the council advisory bodies is focused on reviewing issues for report to the council. Advisory bodies receive direction from the council and are assigned annual charges, identifying topics for their review and reports. Their work typically is planned well in advance, with an identified outcome, commonly reports presenting proposals and products to the council. They know, therefore, when their discussions concern a matter for report to the council.

*Budget meetings.* A fifth commentator, the Superior Court of Los Angeles County, offered remarks that appeared supportive of the second sentence of subdivision (c)(1), which identifies budget meetings as one category of meeting that must be open to the public. The commentator noted the importance of public access for transparency and accountability concerning budgeting and use of public funds committed to the judicial branch. The internal chairs agree and have retained this provision.

*Defining the term “meeting” and including a fuller serial meeting prohibition.* Although, as circulated for comment, the third sentence of subdivision (c)(1) prohibited a majority of advisory body members from deciding a matter included on a posted agenda for the open portion of an upcoming meeting in advance of the meeting, two commentators expressed concern that the provision did not go far enough. They urged the Judicial Council to revise the provision to

(1) proscribe advisory body members from using a series of communications of any kind, directly or through intermediaries, to discuss a matter within the advisory body's subject area outside of a meeting that the public may attend, and (2) include a definition of "meeting" to clarify the contexts in which communication is permitted and public access required. The commentators observed that such provisions are key components of other open meeting laws, which provide public access during deliberations as well as decision-making. They urged that the provisions are needed for transparency and expressed concern that excluding the provisions would encourage discussions and decision-making behind closed doors.

The internal chairs respectfully note, in reply, that the open meeting laws applicable to the Legislature neither define the term "meeting" nor contain a serial meeting prohibition.<sup>62</sup> The omission in that instance may be a recognition of that body's volume of business, of its members' many and overlapping obligations, and of the need for broad communication to identify areas of shared interest and develop effective legislative solutions. Similar considerations apply for Judicial Council advisory bodies, whose members simultaneously share interests as court leaders tasked with managing day-to-day administration of justice locally, and as participants often on multiple committees at once working to develop effective approaches to the myriad of issues confronting the judicial branch statewide.

After considering the issue at length, both before formal public circulation of the rule and in response to comments received, the internal chairs have concluded that adding a fuller serial meeting prohibition in the rule would have the effect of requiring more and longer meetings. This would significantly increase branch costs and the time demands for Judicial Council advisory body members. It also would limit the effectiveness of those bodies by making it difficult for members to communicate with colleagues throughout the branch on topics of shared concern, a process that advisory bodies currently draw upon to identify issues and vet proposals. By increasing time demands and limiting member communications with colleagues, a fuller serial meeting prohibition would deter volunteers from serving on advisory bodies, and limit the volume of work that can be accomplished. Given the many existing opportunities for public observation and contribution to the work of the Judicial Council and its advisory bodies and the additional opportunities that the proposed rule would afford, the chairs do not think adding a fuller serial meeting prohibition is necessary or that such an addition would further the administration of justice statewide.

The chairs did agree, however, that the word "open" should be removed from the third sentence of subdivision (c)(1), so that the prohibition against deciding issues included on a posted agenda for an upcoming meeting would apply equally for open and closed meetings. The final version of the rule attached to this report reflects that change. The chairs also made a technical change to the first sentence of (c)(1) for clarity, at the suggestion of the Judicial Council's Civil and Small Claims Advisory Committee. Rather than stating that advisory body meetings are open to the

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<sup>62</sup> See Gov. Code, § 9027 et seq.

public “unless they are closed under (d),” the rule now states that they are open “except as otherwise provided in this rule” to avoid confusion for bodies listed in subdivision (c)(3).

***Exempt bodies and rules committees (subds. (c)(2)–(c)(3)).*** As circulated for public comment, rule (c)(2) exempted three advisory bodies from rule requirements entirely. Subdivision (c)(3) listed seven other advisory bodies that, although subject to certain rule requirements and required to hold any budget meetings in public, generally were expected to hold closed meetings, unless the chair decided an agenda item might be addressed in open session. Three external commentators suggested the two provisions be removed: the California Newspaper Publishers Association; Courthouse News Service; and the Assembly leaders. A fourth, Californians Aware, affirmed the reactions of CNPA and CNS generally, and specifically objected that the “highly influential” rule committees had been “exempted from the openness presumption.” Four judicial branch commentators urged that the provisions be kept. Three of those are advisory bodies listed in subdivision (c)(3), specifically the Civil and Small Claims Advisory Committee, the Criminal Law Advisory Committee, and the Probate and Mental Health Advisory Committee. The fourth, the Superior Court of Los Angeles County, recommended that the provisions be kept and more advisory bodies added.

*Striking the proper balance.* Although recognizing that judges who are members of advisory bodies must comply with the canons of the California Code of Judicial Ethics, CNPA suggested the rule failed to strike a proper balance between those considerations and public access to meetings. It suggested the rule should be more narrowly tailored, should identify the public interest in closing a meeting, and should provide clearer standards for advisory body chairs when deciding whether to close a meeting based on judicial ethics concerns.

The three Judicial Council advisory bodies and the Los Angeles court disagreed. They concluded the rule struck the proper balance and urged that the provisions are necessary so that advisory bodies may complete their work. The Los Angeles court also observed that the rule appropriately differs from other open meeting laws because, unlike most public agencies, the mission of the judicial branch is “to provide a solemn forum for the impartial resolution of disputes.”

The internal chairs have considered the issue and conclude that the rule strikes the proper balance among competing concerns and provides adequate standards. The rule would open to the public the meetings of most advisory bodies and their subcommittees. Only three committees (of more than 30) are exempt, and those only because their work cannot ethically be conducted in public. Although the rule committees also may hold closed meetings, the public is afforded an opportunity to observe their work and provide input at multiple junctures.<sup>63</sup> The rule committees listed in subdivision (c)(3) generally circulate proposals broadly for public comment, review and consider each comment received, post public reports a week before the Judicial Council meeting at which their proposals will be considered, summarize all comments received and all responses,

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<sup>63</sup> See Existing Public Access to Judicial Council Advisory Bodies, above, at pp. 3-4.

and present their reports at public council meetings, during which the public again may offer comment.<sup>64</sup>

Rule 10.75 would require the rule committees listed in subdivision (c)(3) to hold any budget meetings in public and to publicly post notice and agendas of their meetings, both open and closed. If the chair concludes that members may publicly discuss agenda items without violating the canons of judicial ethics, and the issues described in subdivision (d) are not implicated, other meetings also may be held in public. The California Code of Judicial Ethics provides guiding standards for judges who are members of the referenced committees. The internal committee chairs are satisfied that those standards and the considerations described in subdivisions (a), (c), and (d) together provide proper guidance and strike the proper balance.

*Relying instead on subdivision (d).* CNPA, CNS, and the Assembly leaders suggested the rule be revised to remove subdivisions (c)(2) and (c)(3), observing that the listed advisory bodies might rely instead on subdivision (d) to close meetings as needed. Subdivision (d) permits a chair to close a meeting to discuss listed topics. The internal chairs note, however, that eliminating subdivisions (c)(2) and (c)(3) would create public expectations about access to the meetings of the listed bodies that could not be met. This would be an undesirable result on its own and also likely would mean that the bodies repeatedly would have to defend decisions to close meetings, creating further demands at a time when the volume of advisory body work is already great and staff resources overcommitted.

*Limits imposed by judicial ethics and related deterrence concerns.* While acknowledging that legitimate reasons might justify closing some, or even most, of the meetings of the three advisory bodies listed in subdivisions (c)(2), CNS suggested that exempting them completely was inappropriate as the bodies occasionally may address issues that could be covered in public without raising judicial ethics concerns. CNS also suggested that the limits imposed by judicial ethics are not so extensive or difficult to resolve as has been proposed. On the latter point, CNS observed that judges are equally precluded from making statements in private that commit themselves on issues, that disqualification is only required if a reasonable person knowing all of the facts would question a judge's impartiality, and that a judge may not be disqualified simply for expressing a view on an issue presented in a proceeding.<sup>65</sup>

Regarding the first point, CNS suggested that the Litigation Management Committee (LMC), for example, should be subject to the rule (and not exempt under subd. (c)(2)), because it conceivably might perform one of its functions in public, namely, recommending policies governing litigation. The chairs do not agree. They observe that, in the past 12 years, LMC has only presented recommendations concerning litigation management policies on three occasions, most recently in December 2008, more than five years ago.<sup>66</sup> The history demonstrates that

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<sup>64</sup> Rules 10.5(c), (g)(1), 10.22(d).

<sup>65</sup> The commentator cited the California Code of Judicial Ethics, canons 2A and 3E(3)(a), and Code of Civil Procedure, section 170.2(b).

<sup>66</sup> LMC also recommended a change in 2004 and 2002, respectively.

existing policies in this area are stable and the committee only relatively rarely has the need to consider proposing changes. It would not make sense for the committee to be subject to the rule if it could only arguably perform one of its functions in public and is likely to perform that function only at intervals of several years. The chairs reach the same conclusion regarding related arguments about the other two bodies listed in subdivision (c)(2), the Advisory Committees on Civil and Criminal Jury Instructions.

Regarding the second point, although CNS's references to canons and statute are accurate, it would not be simple for judges who are members of the advisory bodies listed in subdivisions (c)(2) and (c)(3) to participate fully in the work of those bodies if the meetings were public. As noted, judges are ethically prohibited from discussing in public cases that have not reached final appellate disposition,<sup>67</sup> a topic required for their advisory bodies. If the meetings of those bodies were open, therefore, before engaging in any discussion, a judge in each instance would have to consider, for example, whether the discussion concerned a case that had not reached final disposition through the appellate process;<sup>68</sup> whether his or her words might be misunderstood by the listening public as indication of having prejudged an issue that could come before the judge in litigation; and whether, even when entirely circumspect, the contemplated comment could provoke litigation challenges that automatically will require reassignment of cases to other judges,<sup>69</sup> creating potentially significant workload issues for courts.

The internal chairs have concluded that it is necessary to retain subdivisions (c)(2) and (c)(3) to ensure the continued participation of judicial officers as members on those bodies. Membership on those bodies is voluntary, and judges who are members have considerable work to do at their courts, hearing cases<sup>70</sup> and assisting with court management and administration.<sup>71</sup> The work of individual advisory bodies frequently is also demanding, involving regular meetings and review of large quantities of materials. In light of these facts, if the two provisions are removed from the rule, many judges may decide to abstain from further participation on the listed advisory bodies. By doing so, they would avoid the ethical conundrums involved, allowing them to focus their energies without interruption on the work of their courts. As judges are uniquely skilled and experienced in the areas that their advisory bodies address, the result would be the loss of an essential resource in performing the critical work of the advisory bodies, i.e., presenting fair, innovative, workable, and fully conceived proposals to the Judicial Council, to further the efficient and effective administration of justice statewide.

The comments received from the three Judicial Council advisory committees underscored these points. The Criminal Law Advisory Committee also observed that members who are *not* judges,

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<sup>67</sup> Cal. Code of Judicial Ethics, canon 3B(9).

<sup>68</sup> See *id.*, canon 3B(9), advis. com. comment. ("A judge shall make reasonable efforts to ascertain whether a case is pending or impending before commenting on it").

<sup>69</sup> See Code Civ. Proc., § 170.6(a)(2).

<sup>70</sup> See, e.g., Judicial Council of Cal., 2013 Court Statistics Report, p. 84, [www.courts.ca.gov/documents/2013-Court-Statistics-Report.pdf](http://www.courts.ca.gov/documents/2013-Court-Statistics-Report.pdf) (on average, judges statewide each handle more than 4,000 cases per year).

<sup>71</sup> See, e.g., rules 10.603, 10.608, 10.613.

some of them elected officials, also may be deterred from participation if the meetings are opened. The committee noted that objectivity and collaboration—factors essential to the success of its work—might be replaced in such case by partisanship dictated by the members’ public offices.

For the reasons above, the internal chairs decided to keep subdivisions (c)(2) and (c)(3), with one caveat. After further review and consideration, the chairs conclude that discussion in meetings of the Judicial Council’s Rules and Projects Committee, an internal committee that establishes and maintains the rule-making process,<sup>72</sup> primarily occurs at a policy level, and that members, including judges, are not frequently required to discuss pending cases or specific legal issues that would raise ethical concerns if done in public. Accordingly, the chairs have revised rule 10.75 to remove the Rules and Projects Committee from the list of rule committees in subdivision (c)(3).

*Discretion questions.* One commenter, the Probate and Mental Health Advisory Committee, also sought clarification on the extent of the discretion afforded to advisory body chairs under subdivision (c)(3). The internal chairs have revised the provision to further clarify that the listed advisory bodies must open any budget meeting they may hold, and that the chairs have discretion to open other meetings if they conclude a particular agenda item may be addressed in open session. With these exceptions, the rule provides that the meetings of the listed bodies are closed, although the advisory bodies must comply with other rule provisions, for example, by posting meeting notices and agendas.

*Adding restrictions to the rule.* As noted above, the Superior Court of Los Angeles County suggested that the chairs revise the rule to restrict the topics that must be discussed in open meetings. Specifically, the court recommended that only meetings of advisory bodies expressly charged with budget and spending responsibilities be open. The court expressed the view that existing opportunities for stakeholder and public participation in recommendations to the Judicial Council in other areas are effective and sufficient, noting that advisory body members are drawn from a wide array of stakeholder groups and advisory bodies circulate most other types of proposals for public comment, even holding public hearings on occasion.<sup>73</sup> In light of the judicial branch’s unique mission as an impartial adjudicator of disputes and the resulting substantial ethics constraints on judges’ public comments, the court reasoned that the rule should be restricted to focus on providing public access only to discussions of judicial branch budget and spending.

Alternatively, the Los Angeles court recommended that three additional advisory bodies be added to the list in subdivision (c)(3), specifically, the Administrative Presiding Justices Advisory Committee, the Trial Court Presiding Judges Advisory Committee, and the Court Executives Advisory Committee. The court reasoned that the members of those bodies need

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<sup>72</sup> See rule 10.13.

<sup>73</sup> The court notes, for example, that the Elkins Family Law Task Force held public hearings. (See [www.courts.ca.gov/4269.htm](http://www.courts.ca.gov/4269.htm).)

opportunities to privately interact, exchange ideas, and engage in candid discussion on topics of mutual interest, including ideas that may result in report to the council, just as AOC staff may do.

The internal chairs agree that (1) substantial opportunities for public input exist at present even without rule 10.75, (2) interaction and exchange of ideas among court leaders is critical, and (3) judges who are members of advisory committees may be constrained in their public discussion of issues by ethics concerns. They think, however, that subdivisions (c) and (d)(10) adequately provide for the latter two concerns. Although staff meetings are not subject to the rule, this is consistent with all other meeting laws, which focus on opening to the public the meetings of multi-member bodies formally created to reach collaborative decisions through a consensus building process.<sup>74</sup> The chairs conclude that opening a broader spectrum of advisory body meetings beyond budget meetings, and allowing public access to discussions concerning the development of reports to the council, will benefit the public by contributing to a greater understanding of the work of the judicial branch. It will allow the public to remain informed about issues of importance to court leaders and the judiciary, and will provide greater opportunities for public input, in turn advancing the fair and effective administration of justice.

***Closed sessions (subd. (d)).*** Below we relay the general comments received on subdivision (d) as a whole, and then specific comments on subdivisions (d)(1)–(d)(10), with responses to those comments. As an initial matter, the California Newspaper Publishers Association, Courthouse News Service, Californians Aware, and the Assembly leaders observed that the exceptions listed in subdivision (d) are written more broadly than those in BKA or the Brown Act, and suggested that they should be more narrowly tailored. The internal chairs respond that they carefully considered the example afforded by the referenced open meeting laws, and also the open meeting laws applicable to the Legislature,<sup>75</sup> and are necessarily guided as well by considerations specific to the judicial branch, discussed above. Based on all of those factors, the chairs did make several changes to specific provisions in subdivision (d), as described further below.

CNPA also noted that some of the exceptions appeared to be intended for specific advisory bodies. It suggested the rule be revised to make clear that such exceptions may only be used by those specific advisory bodies. The internal chairs considered the suggestion but could not be certain whether any other advisory bodies would need to invoke particular provisions. Judicial Council advisory bodies perform a high volume of work and regularly are asked to provide input on new and unanticipated issues. The considerations supporting each closed session topic would apply regardless of the body invoking the provision. Accordingly, the chairs declined to limit application of particular subdivisions in (d) to particular bodies.

CNPA also recommended that the rule be revised to clarify that only advisory body members may be present during a closed session. The internal chairs are not aware of any comparable

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<sup>74</sup> See, e.g., Cal. Atty. Gen. off, *A Handy Guide to The Bagley-Keene Open Meeting Act 2004*, p. 2, [http://ag.ca.gov/publications/bagleykeene2004\\_ada.pdf](http://ag.ca.gov/publications/bagleykeene2004_ada.pdf).

<sup>75</sup> See Gov. Code, § 9027 et seq.

provision in existing open meeting laws.<sup>76</sup> Given this fact, and to avoid constraints on advisory body information gathering, the internal chairs decline to add the suggested provision.

Finally, CNPA and CNS observed that BKA and the Brown Act require a public report of actions taken following a closed session, and suggested a comparable provision be added to the rule. The internal chairs observe, however, that BKA, which applies to state bodies, only requires subsequent public reporting if, in closed session, a state body acts to “appoint, employ, or dismiss a public employee.”<sup>77</sup> Even in that limited context, the required subsequent reporting may be exceedingly narrow.<sup>78</sup> The chairs are not persuaded, therefore, that a subsequent reporting requirement is a critical part of an open meeting rule. That said, however, the Judicial Council and its advisory bodies already make regular public reports on activities, including appointments, the award of branch contracts and grants, and final audit reports.<sup>79</sup>

*Discussion of individuals (subd. (d)(1)).* While acknowledging the need for closed session discussions of certain employment or personnel matters, the California Newspaper Publishers Association, Courthouse News Service, and the Assembly leaders commented that the exception stated in subdivision (d)(1) was broader than its BKA or Brown Act counterparts, allowing, for example, closed discussions of individuals who are not judicial branch employees. CNS observed that the rule could be read as allowing a closed session advisory body discussion of virtually anybody, irrespective of their relationship to the judiciary or whether public discussion would constitute an unwarranted invasion of privacy. To discourage abuse of the exception, CNS suggested the exception be replaced with one or more specific provisions identifying the particular person or categories of people to whom the exceptions would apply, and the specific types of discussions permitted.

The internal chairs have considered the issue and understand the concern. They note, however, preliminarily, that Judicial Council advisory bodies do not themselves employ staff, but rather rely on AOC personnel. The need to protect discussions concerning individuals arises because advisory bodies sometimes review the qualifications or performance of individuals as it relates to their area of focus. For example, as noted, the Governing Committee of the Center for Judicial Education and Research may evaluate the performance of course instructors. The council’s internal Executive and Planning Committee also considers the qualifications of individual applicants in developing recommendations to the Chief Justice for appointments to advisory bodies, including judges and others members of the public (e.g., public and private attorneys, law

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<sup>76</sup> See e.g., *id.*, § 9027 et seq. (open meeting laws for the Legislature); *id.*, § 11120 et seq. (BKA).

<sup>77</sup> *Id.*, §§ 11125.2, 11126.3(f).

<sup>78</sup> See *id.*, § 11126.3(e) (Subsequent reporting need not disclose names “or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session . . . .”); see also, e.g., *Versaci v. Superior Court* (2005) 127 Cal.App.4th 805, 819 (work performance evaluations “fall within the ambit” of public records act exemptions on privacy grounds).

<sup>79</sup> See, e.g., [www.courts.ca.gov/newsroom.htm](http://www.courts.ca.gov/newsroom.htm) (press releases, including concerning appointments); [www.courts.ca.gov/7466.htm](http://www.courts.ca.gov/7466.htm) (Judicial Council reports to the Legislature, including concerning grants and contracts); [www.courts.ca.gov/12050.htm](http://www.courts.ca.gov/12050.htm) (branch audit reports).

enforcement, probation officers, professors, treatment providers, and advocates)<sup>80</sup> who are not captured by the commentator’s suggested language.

The purpose of this exception is to protect the privacy of individuals whose work or qualifications, for example, are being scrutinized by an advisory body and to allow advisory body members to speak candidly about such individuals. Although the chairs have eliminated unnecessary or redundant terms in the provision, the changes do not limit its application to discussions of employees. Given the volume of advisory body work, including a multitude of statutorily mandated work, they are confident that advisory bodies have no inclination or time to expend on discussion of individuals who are unconnected to the judicial branch or to the significant work before them.

*Litigation (subd. (d)(2))*. The California Newspaper Publishers Association noted that the language of this exception is written so broadly that it would permit a body to discuss “anything that remotely affects claims, pending or anticipated litigation, whether or not it would prejudice the Judicial Council’s position if it is disclosed.” The Assembly leaders and Courthouse News Service agreed that the scope was too broad, comparing the language to that in BKA and the Brown Act, and also objected that the provision did not limit closed session discussion of litigation to those involving counsel. On the other hand, all three commentators observed that the provision also was too broad in allowing a closed session on any topic if the advisory body was consulting with legal counsel and invoked the attorney-client privilege.

The chairs do not agree that the provision is too broad, extending to matters only remotely affecting claims or litigation. To the contrary, it is limited to closed session discussions of actual or anticipated claims or litigation. Although the language is broader than that contained in the referenced open meeting laws, this is necessary because advisory bodies may be asked to consider the potential branchwide implications of pending or anticipated litigation, and judges who are advisory body members could not participate in a public discussion on that topic. As observed above, they are broadly prohibited by binding ethics rules from all public discussion of pending or anticipated claims or litigation. Legal counsel need not be present for this limit to apply. The chairs did agree with the final point, however, and have revised subdivision (d)(2) to remove the general provision that had broadly allowed closure of an advisory body meeting to consult with legal counsel on any topic. Accordingly, the final version of the rule does not include broad authorization to close meetings based on attorney-client privilege.

The Assembly leaders also suggested that subdivision (d)(2)’s use of the term “anticipated claim” seemed to more broadly allow closed meetings than a corresponding phrase, “significant exposure to litigation,” contained in BKA and the Brown Act. The internal chairs respectfully disagree. BKA defines “litigation” as including “any adjudicatory proceeding,” “before [an] . . . administrative body.”<sup>81</sup> In authorizing a closed session to discuss a “significant exposure

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<sup>80</sup> See rules 10.40–10.44, 10.53–10.64.

<sup>81</sup> Gov. Code, § 11126(e)(2)(C)(iii).

to litigation,” therefore, the act includes discussion of anticipated administrative claims. The chairs have revised rule 10.75’s provision, however, to add a requirement that there be a reasonable likelihood of a claim or litigation.

CNS notes that other open meetings laws specifically define the situations in which litigation would be considered pending or reasonably anticipated and suggests that the rule should do so also. The chairs agree that definitions are helpful and observe that the California Code of Judicial Ethics contains comparable definitions, which will provide the needed guidance for judges who are chairs of advisory bodies.<sup>82</sup>

Finally, CNS suggests that the language of the provision be amended to specify that authorized closed sessions must concern a claim or litigation naming a judicial branch representative in his or her “official capacity,” to ensure that advisory bodies do not rely upon it to discuss matters having no bearing on the judicial branch, e.g., litigation involving a judicial employee’s personal property line dispute with a neighbor. Specific ethical rules dictate, however, that judges avoid public comment concerning pending or anticipated litigation of any kind, regardless of who is named in such matters, and also dictate that judges require similar abstention from their court staff.<sup>83</sup> In addition, the chairs observe, advisory bodies may have need to discuss whether a pending case names a judicial branch representative in an individual capacity as a strategy to avoid defenses that otherwise might apply. Accordingly, the chairs have not made the requested change. They are confident, however, that advisory body members are dedicated to improving the administration of justice and have no inclination or time to expend on discussion of claims or litigation unconnected to the work of the judicial branch.

*Negotiations on contracts, labor issues, legislation (subd. (d)(3)).* Three commentators—the Assembly leaders, the California Newspaper Publishers Association, and Courthouse News Service—expressed concern that this subdivision was much broader than corresponding provisions of BKA or the Brown Act. CNPA, while recognizing the need for advisory bodies to discuss certain labor and legislative items in closed session, urged the chairs to strike the provision allowing closed session discussion of contract negotiations generally, as it would preclude the public from having knowledge about contracts before they are done. CNPA suggested revising the provision instead to limit closed session discussions to instruction of labor negotiators or negotiators involved in development of the courts’ legislative agenda.

The internal chairs conclude, however, that the broader language is necessary due to the Judicial Council’s governance structure, which involves considerable consultation and communication among advisory bodies, to ensure full consideration of issues before action is taken, for example, providing instructions to a negotiator concerning a contract or legislation. The purpose of the provision is to prevent disclosure of information that would adversely affect the council or another judicial branch entity in negotiations with a vendor, labor organization, or political or

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<sup>82</sup> See Cal. Code of Judicial Ethics, Terminology (defining “pending” and “impending” litigation).

<sup>83</sup> *Id.*, canon 3B(9).

governmental organization. The internal chairs note that the California Judicial Branch Contract Law enacted in 2011<sup>84</sup> and the Judicial Branch Contracting Manual<sup>85</sup> together contain numerous requirements for judicial branch contracting and procurement, designed to protect the public interest (e.g., by requiring competitive bidding, complete documentation, executive branch review of certain large contracts, and semiannual Judicial Council reporting to the Joint Legislative Budget Committee and State Auditor concerning all vendor contracts).<sup>86</sup> The chairs note also that records created for the purpose of procuring goods and services are generally available to the public, including, for example, executed contracts and other fiscal information related to contract administration.<sup>87</sup>

The Assembly leaders and CNS would go further than CNPA, suggesting that subdivision (d)(3) be revised to also remove authority for closed session discussions of negotiations concerning legislation. CNS observed that, although the Legislature may meet in closed session in political caucuses,<sup>88</sup> no comparable provision exists in open meeting laws applicable to other government entities. CNS contends there is a high level of public interest in discussions concerning legislation, noting as an example budget trailer language “offered by the AOC in 2013” that would have imposed a \$10 fee to look at a court file, which CNS notes was a subject of concern for media outlets and open government advocates.

The internal chairs declined, however, to make the requested change, noting that, as the policy-making body for the state judicial branch, the Judicial Council is not properly compared to executive branch agencies, counties, or city government. The council regularly represents and advocates for the branch on legislative matters, drawing on input from its advisory bodies to develop positions on bills and legislative priorities. Subdivision (d)(3) will afford council advisory bodies an alternative available to political caucuses in the Legislature,<sup>89</sup> to consider in closed session the most effective strategy for negotiations concerning legislation affecting the branch and the public whom it serves. Without the provision, advisory bodies would be compelled to formulate a negotiating strategy in public, a requirement that necessarily would undercut the effectiveness of the strategy and may compromise the council’s legislative priorities.

A correction is needed also regarding the 2013 legislation referenced by CNS. The Judicial Council’s Policy Coordination and Liaison Committee, an internal committee composed entirely of council members, recommended seeking the legislation, not the AOC. The recommendation was presented to the council, and endorsed, at a public meeting in December 2012.<sup>90</sup> The report

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<sup>84</sup> Pub. Contract Code, § 19201 et seq.

<sup>85</sup> [www.courts.ca.gov/documents/jbcl-manual.pdf](http://www.courts.ca.gov/documents/jbcl-manual.pdf).

<sup>86</sup> See, e.g., Pub. Contract Code, § 19209; JBCM, chs. 1, 4, 12.

<sup>87</sup> See JBCM, ch. 11, p. 20, § 11.13, citing rule 10.500.

<sup>88</sup> Gov. Code, § 9029(b).

<sup>89</sup> See *ibid.*.

<sup>90</sup> See Judicial Council of Cal., Judicial Council Legislative Priorities: 2013 (Oct. 26, 2012), item R, at p. 12, [www.courts.ca.gov/documents/jc-20121214-agenda.pdf](http://www.courts.ca.gov/documents/jc-20121214-agenda.pdf); Judicial Council of Cal. (Dec. 13–14, 2012) Minutes, item R, at p. 18, [www.courts.ca.gov/documents/jc-20121214-minutes.pdf](http://www.courts.ca.gov/documents/jc-20121214-minutes.pdf).

recommending the action, including the actual language of the proposed statutory change, was publicly posted a week before the council meeting and the public had opportunity to comment concerning it at the council meeting. The chairs observe as well that a considerable amount of information about the content and status of legislation affecting the courts regularly is available on the California Courts website,<sup>91</sup> including annual summaries of Judicial Council legislative policies and branch legislative priorities.

*Real estate transactions (subd. (d)(4)).* The Assembly leaders, the California Newspaper Publishers Association, Courthouse News Service, and SEIU objected to this provision on grounds that it is broader than corresponding provisions of other open meeting laws. Other laws, they observed, limit closed sessions about real estate transactions to meetings with the negotiators for instruction on price and terms of payment, and require government entities to identify negotiators and the property under consideration. Commentators observed that affected communities and the public generally have an interest in decisions about the location of courthouses and should be provided access before action is taken. Although none disputed that identifying a location in advance could increase the resulting purchase price, requiring a greater commitment of public funds, CNS observed that the concern would be the same for any other government body.

The internal chairs are persuaded and have revised the provision, removing “selection of a location” as a topic for closed session discussion. As modified, the final version of subdivision (d)(4) would only permit closed session discussion of price and terms of payment for the purchase, sale, exchange, or lease of real property for judicial branch facilities. Regarding concerns for public access in this area, the chairs also observe that considerable information on the background and status of individual courthouse construction projects—including reports submitted at critical junctures, press releases updating the public on specific projects, and announcements concerning procurement—is available on the California Courts website.<sup>92</sup>

*Security (subd. (d)(5)).* The Assembly leaders noted that subdivision (d)(5) was broader than corresponding provisions in BKA and the Brown Act. In particular, they expressed concern about the “open-ended” reference to discussion of “*other matters* related to the safety of the public or of judicial branch officers or personnel or the security of judicial branch facilities or equipment, including electronic data.” (Italics added.) The Assembly leaders would strike “other matters,” while still allowing closed session discussion of “security plans or procedures” involving the same safety and security considerations, and would add security threats as a sanctioned closed session topic.

The rule language is not broader in scope, however, than the corresponding provision of the law authorizing closed session discussions concerning safety and security in the Legislature. That law refers without qualification to “matters affecting the safety and security” of legislators and

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<sup>91</sup> see [www.courts.ca.gov/4121.htm#activeleg](http://www.courts.ca.gov/4121.htm#activeleg).

<sup>92</sup> See [www.courts.ca.gov/2559.htm](http://www.courts.ca.gov/2559.htm); [www.courts.ca.gov/2155.htm#tab2558](http://www.courts.ca.gov/2155.htm#tab2558); [www.courts.ca.gov/2155.htm#tab2557](http://www.courts.ca.gov/2155.htm#tab2557).

their staff or legislative facilities.<sup>93</sup> Although the language of subdivision (d)(5) circulated for comment is comparable, the chairs have modified it to specify that closed session discussion is permitted concerning “other matters that if discussed in public would compromise” safety or security for the public, or branch representatives, facilities, or equipment.

The California Newspaper Publishers Association also submitted a comment on the provision. While recognizing the need for bodies to discuss *security* issues in closed session, it expressed concern that subdivision (d)(5) could be read as allowing closed sessions more broadly to discuss “other matters related to electronic data.” The chairs observe that such a reading would not be justified by the rule language. The term “electronic data” is included in the provision as one example of issues related to *security* of branch *equipment* that might be discussed in closed session. It would allow an advisory body to discuss in closed session the security of branch equipment and of electronic data that may be stored on it. The provision was not intended to broadly allow closed session discussion of electronic data generally, unrelated to security concerns. The chairs have modified the provision as noted above to clarify that closed session discussion of “other matters” is permitted to the extent public discussion would compromise safety or security.

Finally, the Superior Court of Los Angeles County agreed with the policy decision reflected in subdivision (d)(5) to permit closed session discussion of issues related to security and safety for court users and judges. It suggested the same considerations supported including the Court Security Advisory Committee as one of the bodies listed in subdivision (c)(2) (i.e., exempt from rule requirements), or in subdivision (c)(3) (presumed to hold closed meetings, with exception of any budget meetings). The internal chairs have decided, however, that the change is not needed. They think it unlikely that a CSAC decision to hold a closed meeting for reasons described in subdivision (d)(5) would be challenged, as the safety and security considerations at issue are most likely well understood. In contrast, committees listed in subdivisions (c)(2) and (c)(3) are charged with performing work presenting unique ethics issues for judges who are members, an area that is less well understood outside the judicial branch. Those bodies are listed in subdivisions (c)(2) and (c)(3) to avoid creating unrealistic public expectations concerning access to their meetings, and to avoid the burden for those bodies of frequently defending decisions to close their meetings.

*Non-final audit reports (subd. (d)(6)).* The California Newspaper Publishers Association and Courthouse News Service suggested that subdivision (d)(6) be modified to permit closed discussions of *final* audit reports, rather than non-final audit reports. CNPA observed that existing open meeting laws authorize the former, not the latter, and it suggested that closed session discussion of a draft audit would allow an advisory body to shape the analysis or conclusions stated in the final audit report out of public view.

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<sup>93</sup> Gov. Code, § 9029(a) provides in relevant part: “A house of the Legislature or a committee thereof may hold a closed session solely for any of the following purposes: [¶] . . . [¶] (2) To consider matters affecting the safety and security of Members of the Legislature or its employees or the safety and security of any buildings and grounds used by the Legislature.”

The internal chairs must respectfully disagree. BKA and the Brown Act both authorize closed sessions to discuss confidential *draft* audit reports from the State Auditor.<sup>94</sup> In addition, statute also precludes the State Auditor from publicly releasing written material “or substantive information pertaining to any audit that is not completed.”<sup>95</sup> The concern presumably is to preclude the finalization and public distribution of a final audit report containing errors. Similarly, by allowing an advisory body to consider a draft audit report in closed session, subdivision (d)(6) would permit the advisory body to identify any factual errors and to submit any further information necessary to correct them before the audit is finalized and distributed. The chairs therefore declined to revise the provision as suggested, although they agree that final audit reports appropriately are subject to public release and discussion, and observe that final branch audits are posted on the California Courts website.<sup>96</sup>

CNS also suggested subdivision (d)(6) be revised to apply only for discussion of final audit reports from the Bureau of State Audits (now known as the California State Auditor).<sup>97</sup> The chairs declined to make that change, concluding that the same principles apply to audits conducted by other entities, internal or external to the judicial branch.<sup>98</sup>

*Trade secrets or privileged or confidential commercial and financial information (subd. (d)(7)).* The Assembly leaders, the California Newspaper Publishers Association, and Courthouse News Service raised concerns about subdivision (d)(7), contending that the corresponding provisions of BKA and the Brown Act, permitting closed session discussions of trade secret or confidential information, included greater restrictions. CNS noted that subdivision (d)(7) could be used to support closing a meeting to discuss vendor proposals on technology issues, a possibility that it deemed “troubling” in light of the branch’s experience with the California Court Case Management System, a project that the Judicial Council terminated in March 2012, for funding reasons.<sup>99</sup>

The internal chairs understand the concern but note that subdivision (d)(7), as circulated for public comment, would only have allowed an advisory body to meet in a closed session to discuss a vendor’s proposal to the extent such discussion included trade secret or privileged or confidential information. The provision would not have allowed an advisory body to meet in a closed session broadly to discuss any vendor proposal generally.<sup>100</sup> The chairs note and agree with the Assembly leaders’ suggestion, however, that the provision be consistent with the parallel rule of court providing public access to judicial administrative records. The Assembly

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<sup>94</sup> *Id.*, §§ 11126.2, 54956.75(a).

<sup>95</sup> *Id.*, § 8545(b).

<sup>96</sup> See, e.g., [www.courts.ca.gov/12050.htm](http://www.courts.ca.gov/12050.htm) (containing publicly posted final audit reports prepared by the AOC’s Internal Audit Services from August 2010 through the present).

<sup>97</sup> See Gov Code, § 8543.

<sup>98</sup> See, e.g., *id.*, § 77206(h)–(j).

<sup>99</sup> See [www.courts.ca.gov/17397.htm](http://www.courts.ca.gov/17397.htm).

<sup>100</sup> See also Gov. Code, § 68511.9 (requiring review by the State Chief Information Officer of judicial branch technology projects with costs above a specified threshold, and report to the Joint Legislative Budget Committee).

leaders recommended incorporating the language of that rule, which would mean revising subdivision (d)(7) to allow closed session discussion of “trade secrets or confidential *or privileged commercial and financial* information.”<sup>101</sup> The chairs concur and the final version of the rule reflects the modification. Rather than incorporate the definitions of the key terms into rule 10.75 as the commentator suggested, however, the chairs have added an advisory committee comment to the rule, directing the reader to the companion rule for the definitions. This will simplify rule 10.75 and assist in ensuring consistency of the definitions in the rules over time.

*Unverified data or draft reports (subd. (d)(8) as circulated for public comment).* The Assembly leaders, the California Newspaper Publishers Association, Courthouse News Service, and SEIU took issue with subdivision (d)(8) in the version of the rule that was circulated for public comment. That provision would have allowed closed session discussion of “unverified data or draft reports, except those for consideration in a budget meeting.” The commentators observed that the provision had no precedent in other open meeting laws, and they variously expressed concern that it was vague, lacked defined standards, or might “swallow” the rule. CNPA suggested that advisory body chairs might avoid any public confusion by simply announcing in their meetings if data to be discussed is unverified or a report to be discussed remains in draft form. CNS urged that the public and the media be permitted to observe the entire process leading up to presentation and approval of proposals, even if some initial data or other information discussed in meetings later may be determined to have been inaccurate. It reasoned that such access would allow greater public understanding of decision-making, increasing the legitimacy of the policies ultimately adopted. Finally, SEIU observed that the public can understand the difference between draft and final reports, and that its input may be the most valuable before a report is finalized. The internal chairs are persuaded and have removed the provision from the final version of the rule presented with this report.

*Licensing or other professional examinations (subd. (d)(8) in the final version of the rule, (d)(9) as circulated for public comment).* The Assembly leaders and Courthouse News Service objected to this provision. The former suggested that discussion of examination procedures had no precedent in BKA or the Brown Act and should be stricken. CNS suggested without comment that the entire provision be stricken.

The chairs declined to adopt either suggestion. BKA allows state bodies to close meetings for discussions related to examinations.<sup>102</sup> They note the provision is needed, for example, to allow the Judicial Council’s Court Interpreter Advisory Panel to consider issues related to certification and other examinations for interpreters who interpret court proceedings, while protecting the integrity of the examination and by extension the quality of interpretation in courts. Examination procedures also may include security measures taken to protect the integrity of examination results, which could be compromised if discussed in public. Accordingly the subdivision is unchanged.

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<sup>101</sup> See rule 10.500(f)(10) (exempting records covering the same topic from public access).

<sup>102</sup> See, e.g., Gov. Code, § 11126(c)(1)–(c)(2).

*Evaluation of individual grant applications (subd. (d)(9) in the final version of the rule, (d)(10) as circulated for public comment).* No substantive comments were received on this subdivision.

*Topics presenting ethical and related practical issues for judges (subd. (d)(10) in the final version of the rule, (d)(11) as circulated for public comment).* The Assembly leaders, the California Newspaper Publishers Association, Courthouse News Service, and Californians Aware objected to this provision, respectively contending that it was “too open-ended”; had “no outer boundary,” thus inviting potential abuse; or was “unnecessarily vague and overly broad.” The first two commentators recommended striking the provision entirely.

The Assembly leaders argued that the provision was unnecessary and that the remaining provisions of subdivision (d) adequately protect advisory body members who are judges. They suggested that judges might “simply decline to speak on a matter” during an advisory body’s public meeting if necessary to avoid violation of the canons of judicial ethics. CNS was willing to accept a narrower provision and observed that judges may not be disqualified for expressing “a view on a legal or factual issue presented in [a] proceeding,” so long as they do not commit themselves to particular results, either privately or in public.<sup>103</sup> It recommended that the word “risk” be removed from the provision (i.e., “risking [an ethical] violation”) as interjecting too much uncertainty.

The internal chairs observe that the Assembly leaders’ suggested approach, in at least some instances, would have the effect of precluding meaningful participation by judges on Judicial Council advisory bodies, which in turn would deprive the public of the benefit of their special knowledge and experience in crafting proposals to improve the administration of justice statewide. Regarding CNS’s point, the chairs agree that judges simultaneously (1) may express a view on a legal or factual issue presented in a proceeding without disqualification, except in specified instances, and (2) are prohibited from making any statements, publicly or privately, committing themselves on issues “likely to come before the courts or that are inconsistent with the impartial performance” of their adjudicative duties.<sup>104</sup>

Although CNS suggested that a bright line easily delineates the demarcation between the permitted expression of “a view” on an issue presented in a proceeding and a prohibited “commitment” on an issue that could “come before the courts,” in the collective experience of the internal chairs, this is not always true. In some cases, reasonable minds may differ over whether an “expression of a view” is actually a commitment. It is also possible that members of the public may mishear or misunderstand a judge’s comments, particularly if heard without context, for example, due to late arrival at a meeting.

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<sup>103</sup> The commentator quoted Code of Civil Procedure, section 170.2(b), while also referencing the California Code of Judicial Ethics, canons 2A and 3E(3)(a).

<sup>104</sup> Cal. Code of Judicial Ethics, canon 2A.

In light of these risks, the possibility that judges' public discussion of some issues likely to "come before the courts" for adjudication may spark high volumes of disqualification motions or complaints of misconduct, and the fact that judges also typically err on the side of caution to protect public confidence in the impartiality of the judiciary,<sup>105</sup> the chairs understand that many judges may decline to participate further in the critical work of the advisory bodies if the provision in question is not included in the proposed rule. As judges are the largest and an essential constituency from which members are drawn, this would gravely hinder the advisory bodies' ability to complete their work, with a negative impact for the Judicial Council, court users, and the public generally. Accordingly, the chairs have retained the language of the provision as circulated without change. They do not agree that the provision has no outer boundary. Judicial officers serving on advisory bodies will be guided by the California Code of Judicial Ethics and advisory bodies generally will be guided as well by principles stated in rule 10.75.

**Notice of meetings (subd. (e)).** The Assembly leaders objected to the five-day notice period that the rule specifies for regular meetings, contending that it does not conform to standards set in BKA and the Brown Act. They suggested revisions to (1) require 10 days' advance public notice of such meetings, (2) restrict meetings on shortened notice to circumstances in which "immediate action is required to protect the public interest," and (3) require that minutes of meetings held on shortened notice state the facts supporting the conclusion that immediate action was required. The California Newspaper Publishers Association concurred on the last point. It also recommended that subdivision (e)(2) be modified to specify a deadline—for example, 24 hours—for the posting of notices of meetings called on shortened time, and to limit discussion in such meetings to agenda items.

The internal chairs agreed with CNPA's suggestion a deadline be added to subdivision (e)(2), and have added a requirement for 24-hours' notice to the final version of the rule. They declined to make the other changes the commentators recommended. Respectfully, they observe as a preliminary matter that the Assembly leaders are mistaken in suggesting that the Brown Act requires greater public notice of meetings. Although BKA does require 10 days' notice,<sup>106</sup> the Brown Act only requires 72 hours' notice.<sup>107</sup> Five days is sufficient for meaningful advance notice, the chairs conclude, while a longer period could create obstacles for advisory bodies that must consult with multiple groups in developing proposals for presentation to the Judicial Council.

The chairs also conclude that the Assembly leaders' recommended threshold for meetings on shortened notice would not afford sufficient flexibility. The work of the advisory bodies, although serving and protecting the public interest, is incremental. Because many issues are complex, and input from multiple stakeholders desirable to develop a successful proposal, time

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<sup>105</sup> *Ibid.*

<sup>106</sup> Gov. Code, § 11125(a).

<sup>107</sup> *Id.*, § 54954.2(a)(1).

constraints may dictate that a meeting occur on shortened notice to ensure full consultation, address an unanticipated issue, or close the circle on a question before the proposal can be advanced to the Judicial Council, particularly in instances involving statutorily imposed timelines for branch action.

Given the demands on advisory bodies, their limited staffing following successive years of reduced branch funding, and the short time that would be available to prepare and post notices on the occasions that subdivision (e)(2) is invoked, the chairs also have not added the requirement that the commentators suggested concerning notice content. They observe that the provision does require meeting *minutes* to include a statement of the facts creating the urgency.

Finally, the internal chairs did not agree that it was necessary to add CNPA's suggested language regarding discussion at meetings held on shortened notice. Subdivision (g) of the rule already requires that meeting agendas include "a brief description of *each item* to be considered in the meeting." (Italics added.) Read together with the notice requirements stated in subdivision (e), it is evident that an item that is not included on the posted agenda may not be considered during a meeting subject to the rule.

***Form of notice (subd. (f)).*** The California Newspaper Publishers Association urged that subdivision (f) be modified to include a provision comparable to that in the Brown Act, allowing those lacking access to a computer or the Internet to receive mailed notice of meetings and materials on request. The internal chairs understand the concern, but observe that current staffing and financial resources do not make it feasible to add such a requirement. The volume of advisory body meetings is significant and the staff time that would be required to track and respond to such requests would be considerable. Advisory staff already are fully committed and are unable to absorb this significant additional responsibility.

The Assembly leaders noted the need for a technical correction to subdivision (f)(2), to clarify that meeting notices must state the agenda items that are closed if a meeting is entirely closed, just as they would if meetings are only partially closed. The internal chairs concur and the final version of the rule reflects that correction, providing "[i]f a meeting is closed or partially closed, the notice must identify the closed agenda items." The chairs have also added a requirement that the notice cite the provision of the rule authorizing the closure.

The Assembly leaders and Courthouse News Service both suggested changes to subdivision (f)'s notice requirements that appear intended to ensure the public may attend all advisory body meetings in person. The Assembly leaders suggested that the public might attend telephone meetings from the location where AOC staff attend, and recommended that all meeting notices, therefore, identify a location. They would strike the qualification in subdivision (f)(3)(B), that notices must state "[t]he time of the meeting, *whether the public may attend in person, and if so, the meeting location.*" (Italics added.) Courthouse News Service alternatively suggested that all meeting notices provide "the location of meetings that two or more advisory body members will attend in person," evidently anticipating that those locations also would accommodate public

attendees. The internal chairs conclude that the suggested changes are not feasible, due to existing financial, space, and staffing constraints, and for security reasons discussed below for subdivision (i). Accordingly, the final version of the rule does not incorporate those suggested changes.

The internal chairs do agree with the separate suggestions of the Assembly leaders that the public should be permitted to speak about agenda items when they attend advisory body meetings in person, without requesting permission to do so before the day of the meeting. The internal chairs have modified subdivision (f)(3)(C) accordingly, removing language that had required meeting notices to include information about the method by which the public might ask permission to speak *before* the day of a meeting. They have not added further language suggested by the commentator, however, about advance permission *not* being required. They think the language, as modified, is sufficiently clear. The commentator's final suggestion concerning notice provisions, related to requests to record meetings, is discussed below in connection with subdivision (l).

Finally, CNS suggested that subdivision (f) be modified to require that notices include specific factual findings if the public is not permitted to attend a meeting in person due to security concerns. The chairs decline to add such a requirement as the information is likely to be largely the same or identical in every notice and is unlikely to be helpful to the public.<sup>108</sup> They also have not adopted CNS's suggestion that subdivision (f) and other provisions of the rule be modified to include a requirement that the Judicial Council designate pages on the California Courts website, with links from the home page, for advisory body meeting information. The website already contains a page listing council advisory bodies. Further information concerning the meetings of bodies subject to the rule will be added in a fashion designed for ease of public use, a guiding principle in organizing all existing information available on that website. A rule provision is not needed to accomplish this result.

***Contents of agenda (subd. (g)).*** The California Newspaper Publishers Association and Courthouse News Service both suggested that subdivision (g) be revised to add a prohibition against discussion at meetings of items not appearing on the posted agendas. The internal chairs do not think such clarification is necessary. As written, the rule (1) requires the public posting of notice with the meeting agenda five business days in advance of a regular meeting subject to the rule (subd. (e)(1)), and (2) directs that the agenda contain "a brief description of each item to be considered during the meeting" (subd. (g)). The intent is evident that advance public notice is to be provided of all items to be considered at such meetings and, by extension, that items not included in the posted agenda may not be considered at such meetings. The only exception to the five-day notice requirement would be if an agenda item were added on shortened notice consistent with subdivision (e)(2). Even then, as noted above, 24 hours' notice is required for consideration of an item at the meeting.

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<sup>108</sup> For further information about security considerations, see discussion of comments about subdivision (i) below.

**Meeting materials (subd. (h)).** The California Newspaper Publishers Association asked that subdivision (h) be revised to provide a method by which those lacking access to a computer or the Internet might obtain meeting materials. Given the lack of staffing and financial resources, as described above, however, and the volume of meetings and materials at issue, it is not possible to grant this request at this time. The chairs observe that many libraries afford the public the free use of computers and Internet, and that many businesses also provide free wireless Internet access to customers.

**Public attendance (subd. (i)).** The Assembly leaders, the California Newspaper Publishers Association and Courthouse News Service urged that the rule be revised to expand opportunities for the public to attend advisory body meetings in person. The Assembly leaders recommended that subdivision (i) be revised to track the requirements of BKA and the Brown Act, essentially requiring that advisory body members join telephone meetings from locations where the public also may attend, and that roll call voting be required. CNPA suggested revisions requiring that meetings be held in locations providing adequate security to permit the public's in-person attendance. CNS proposed, at a minimum, that the chair be required to make specific determinations that public attendance in person would create "unwarranted security risks and that no alternative venues" are available that would eliminate such risks.

The internal chairs observe, however, that financial, space, and staffing constraints, and security requirements, limit their options in providing locations for the public to gather, either to hear a telephone meeting or to attend other advisory body meetings in person. Advisory bodies perform a high volume of work, meeting regularly by telephone from locations throughout the state, with meetings scheduled for times that judges, attorneys, and other members with ties to the courts are able to attend, before or after a court's daily calendar of cases is heard, or during lunch breaks. There are more than 30 such bodies and many more subcommittees.

Available meeting space in the Judicial Council/AOC San Francisco headquarters is limited. It is not always sufficient to meet existing needs, and the larger rooms must be shared with many other building tenants. The other three Judicial Council/AOC offices are small, have little meeting space, and no security entrance screening equipment or personnel, so do not provide an alternative. Nor would it work for the public to attend from locations where two or three advisory body members may join for a telephone meeting, as those locations typically are both small and private, for example, attorney offices or judges' chambers. There is no reliable space in which the public might gather to listen to a telephone meeting, particularly if most meetings would occur in the same time intervals.

Judicial Council advisory bodies also do not have adequate staff to assist if a public gathering were added for each telephone meeting. Additional staff would be needed to post notices and directions to meeting space, greet and direct the public to meeting rooms, facilitate the public comment process, and respond to requests for materials. No funds presently exist to resolve these space and staffing issues.

In addition, as the rule recognizes, adequate security measures are a necessary prerequisite to the public's in-person attendance at any advisory body meeting, given the special security threats that advisory body members who are judges confront. In their adjudicative roles, judges routinely must issue orders that may provoke strong emotional reactions, including, for example, issuing lengthy prison sentences in cases involving violent crimes, deciding child custody questions in family law cases, and directing the removal of children from family homes in cases of abuse or neglect. Adequate security is important to the safety of all who attend advisory body meetings and to ensure that judges, court personnel, and other members feel safe participating on such bodies.<sup>109</sup>

The internal chairs observe that security for meetings of the Legislature and its committees is provided by the sergeant-at-arms, with support from the California Highway Patrol, and that members of the public attending hearings and meetings in the State Capitol must pass through security entrance screening equipment staffed by trained security personnel.<sup>110</sup> Unfortunately, existing Judicial Council meeting space providing the requisite security is not sufficient to accommodate public gatherings for all, or any significant portion, of the meetings of advisory bodies and their subcommittees. Accordingly, the internal chairs have not modified subdivision (i) as requested and also have not added any requirement that specific findings about security be included in notices, as doing so would serve no purpose given the uniformity of the constraints.

The internal chairs also have not added the requested rollcall voting requirement for telephone meetings. The agendas for such meetings may contain a number of items, often statutorily mandated work with specified deadlines, and as many as 18 members may join any call. As noted, meetings typically are scheduled in relatively short increments to allow judges, attorneys, and other members with ties to the courts to attend, before or after a court's daily calendar of cases is heard, or during lunch breaks. Requiring that a rollcall vote be taken on each agenda item, in the cumulative, would greatly impede the ability of the advisory bodies and their subcommittees to complete their work in the allotted time, potentially requiring more meetings with increased costs and time delays resulting. The internal chairs are confident that meetings will be conducted in a way that allows the public to follow discussions, for example, by asking speakers to identify themselves and using rollcall voting where a voice vote does not provide clarity concerning the result. As noted above, the internal chairs are also working with staff to develop guidelines to assist advisory body chairs and staff, and those guidelines may include recommendations in this area.

Finally, the internal chairs note the comment submitted by the Superior Court of San Diego County, asking that provision be made to ensure telephone meetings can proceed without disruption if public attendance is added. The commentator observed that such meetings can be

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<sup>109</sup> See, e.g., fn. 57, *supra* (citing an article discussing the increase in violent incidents against the judiciary nationwide over the past 30 years).

<sup>110</sup> See, e.g., <http://sergeant.assembly.ca.gov>; <http://sergeant.senate.ca.gov/responsibilities>.

“difficult” even when only advisory body members are joining, for example, if background noise from a member’s location intrudes disrupting a call. The chairs note that staff are exploring technical alternatives to ensure telephone meetings are audible for all who attend and that the meetings may proceed in an orderly fashion without disruption.

***Conduct at meeting (subd. (j)).*** The California Newspaper Publishers Association suggested that the language used in this subdivision (requiring the public to “remain orderly” during meetings) was vague, lacked measureable standards, and lent itself to potential abuse by a chair. CNPA suggested incorporating instead the detailed requirements included in the Brown Act.<sup>111</sup> The internal chairs do not agree, however, that it is necessary to add greater detail (e.g., establishing a “willfulness” standard for removal from meetings, provisions for clearing meeting rooms, or the continued presence of the media in case of disturbances). Although security measures must be in place to deter and respond to any isolated instances of individual misconduct posing threats to safety, the chairs expect that most members of the public will comport themselves well at such meetings and will refrain from disorderly conduct. If on review, as provided in subdivision (p) of the rule discussed below, experience suggests to the contrary, the chairs may consider then whether to recommend rule amendments providing greater detail. Generally the policy in drafting rules of court is to favor plain language, avoiding unnecessary detail.

***Public comment (subd. (k)).*** Rule 10.75(k) ensures that the public has opportunity to comment about agenda items for open advisory body meetings. The public may submit written comments for any such meeting and may speak at such meetings if security measures permit the public’s in-person attendance.

*Written comments—permitted for open meetings (subd. (k)(1)).* The Assembly leaders submitted that subdivision (k)(1) should be revised to allow the public to submit written comments on the day of, and during, an advisory body meeting, rather than one complete business day beforehand. As noted above, however, members typically join advisory body meetings during their busy work days, the meetings include full agendas, and require the attention of all to follow discussion and reach consensus. To be thoughtfully considered, therefore, written comments must be received in time for distribution and review before a meeting commences. That is the purpose of the one-day requirement. As advisory body work is incremental, however, and many meetings may be required to finalize proposals, written comments received after a meeting may still be meaningful. The public also may submit written comments on a final proposal in advance of the Judicial Council meeting at which the proposal will be presented and considered.

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<sup>111</sup> The Brown Act provision reads as follows: “In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.” (Gov. Code, § 54957.9.)

The Superior Court of San Mateo County separately commented that the one-day requirement stated in subdivision (k)(1) may not allow enough time for staff to assemble and present materials to advisory bodies or subcommittees for review before a meeting. The internal chairs appreciate the time constraints under which such bodies and staff operate. As meeting materials would be posted just three days before a regularly noticed meeting under the rule, however, requiring earlier submission of written comments may make it overly difficult for interested members of the public to review and absorb the information, and prepare and submit any comments. The chairs conclude that the provision struck the right balance as circulated for comment and have not revised it.

*Spoken comments—permitted for open meetings that the public may attend in person (subd. (k)(2)).* As noted above, the Assembly leaders, the California Newspaper Publishers Association, and Courthouse News Service urged modifications to the rule to allow the public’s in-person attendance at all meetings. They renewed those comments with respect to subdivision (k)(2), contending that the public should be afforded the opportunity to speak about agenda items during any open meeting. CNPA observed that members of the public who have relevant expertise on a topic being discussed, although initially not inclined to speak, may change their minds during a meeting based on the discussion, and should have opportunity to provide information that could be critical to the body’s final decision. The Assembly leaders contended that opportunities for public comment under the rule should match those under BKA and the Brown Act, that access should not be limited based on security concerns, and the public should have an opportunity to address the advisory body before or during the body’s consideration of agenda items.

The internal chairs agree that public input is valuable in shaping recommendations that advisory bodies will present to the Judicial Council. They conclude, however, that subdivision (k) strikes the best balance in light of existing realities. Subdivision (k)(1) ensures that the public may submit written comments for any agenda item of a regularly noticed open meeting as discussed above. Subdivision (k)(2) ensures that the public also may speak about agenda items when attending meetings in person. The rule does not require, however, that spoken comments be accepted during telephone meetings.

As noted above, agendas for advisory body telephone meetings may contain a number of items, the time available to complete discussion may be relatively short, and many members may be joining such calls. Requiring that a public comment period be added for each such meeting will make it exceedingly difficult to complete business in the time available. Doing so often would mean holding longer meetings, something that frequently is not an option for members, given their other professional obligations. In addition, more staff and more costly technology would be needed, for example, to monitor the length of public comments and avoid improper disruptions, and the funding is not available. Written comments are the best option, therefore, if the public is not attending a meeting in person.

When members of the public are able to attend a meeting in person, on the other hand, the internal chairs agree they should be permitted to speak without having to request permission before the day of the meeting. Corresponding changes have been made to subdivision (k)(2), and those changes also limit the information that will be requested of the public at the time. A member of the public wishing to speak need only alert staff before a meeting commences, so that the chair may assess the time that may be allotted each speaker and determine the point at which comments will be heard (whether at the beginning of the meeting or before agenda items are considered), as described in subdivision (k)(3). Providing notice of a desire to speak before a meeting starts is necessary because there generally is only one staff person present and that person is seated near the chair, with other responsibilities during the meeting. No staff is available to monitor late arrivals, for example, inquiring whether they wish to speak at the meeting after it has begun.

The internal chairs note the comment of the Superior Court of San Mateo County recommending, for consistency, that subdivision (k)(2) mirror the requirements stated in rules governing public comment at Judicial Council meetings, which include advance notice. The internal chairs agree that consistency is desirable. As discussed in council meetings, however, in the interest of expanding public access, the council modified its public comment procedures in 2011. The procedures described in subdivision (k) are closer to those currently in place for council meetings. Consequently, the chairs concluded it was appropriate to retain the procedures in that subdivision as modified following circulation for public comment.

Finally, the chairs observe that one member of the public suggested subdivision (k)(2) be modified to permit the public to voice concerns to the Judicial Council and its advisory bodies beyond agenda items. Of course, rule 10.75 on advisory bodies does not address public comment at council meetings, as existing rules already do so.<sup>112</sup> In addition, as observed above, spoken public comments are not feasible during advisory body telephone meetings. Although welcome during meetings when the public's in-person attendance is an option, such comments should be focused on the specific matters that the advisory body is reviewing for report to the council. Given the volume of advisory body work, it would not be a productive use of members' time to accept comments on other topics. Advisory body members are not intended to be generalists, but rather are purposefully drawn from a wide cross-section of stakeholder groups based on their shared knowledge and expertise in a specific area of law. Public comments concerning broader judicial branch policy concerns, therefore, are best directed to the Judicial Council itself, either through spoken comments at council meetings, or in writing so that staff may refer the comments to those charged with addressing the specific concerns.

***Making an audiorecording of a meeting (subd. (l)).*** The Assembly leaders and the California Newspaper Publishers Association suggested that subdivision (l) be modified to track corresponding provisions of BKA and the Brown Act, allowing the audio- and video-recording of meetings as a right, without the need to seek prior permission and subject to limitation only in

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<sup>112</sup> See rules 10.5–10.6.

specified instances. CNPA specifically objected that subdivision (*l*), as circulated for comment, only allowed requests to make audiorecordings and not requests to video record or photograph, included no standards for chairs to use in deciding requests, and in requiring that requests be submitted three days before a meeting, effectively precluded recordings or photography at meetings called on shorter notice. In contrast, the Superior Court of Los Angeles County strongly suggested the rule be revised to expressly preclude even audiorecordings absent advance request and approval.

The internal chairs understand the concerns expressed by the Assembly leaders and CNPA, but must consider also the concerns of advisory members who are judges, evidenced in part by the comment from the Los Angeles court. As noted above, judges confront heightened security concerns and also are held to high ethics standards. They must “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary,” avoiding even the appearance of impropriety.<sup>113</sup> Many judges who are advisory body members, therefore, may be concerned both about the risks inherent in having their images broadly circulated, and about the potential for their recorded remarks to be manipulated or taken out of context in a manner that might erode public confidence in the judiciary.

For these reasons, the rule as circulated only permitted requests to make audiorecordings of meetings, vesting the discretion to grant such requests with individual advisory body chairs, as they are best able to evaluate the risks above in each instance. The chairs decline to revise this provision. Under subdivision (*p*) of the rule, the Judicial Council will review the impact of the rule within one year of its adoption (and periodically thereafter) and may consider again at that time whether requests to make video recordings or take photographs might be permitted. The chairs have, however, reduced the advance notice required in subdivision (*l*) for requests to make audiorecordings of meetings, from three to two business days before a meeting.

The internal chairs observe, as noted above, that the work of the advisory bodies is incremental and that meetings on 24-hours’ notice ordinarily would not signal an emergency, for example, in terms of public safety. Rather such a meeting might be necessary to permit full consultation, address an unanticipated issue, or close the circle on a question before a proposal can be advanced to the Judicial Council, particularly if statutory timelines are involved. The fact that a meeting is called on shortened notice does not mean that the topic to be discussed will be of heightened interest to the media or the public. Accordingly, the internal chairs decline to make further changes to subdivision (*l*).

Although understanding the concerns expressed by the Superior Court of Los Angeles County, the chairs respectfully conclude that it is not necessary to provide in the rule that no recording or photography is permitted without the chair’s approval. Existing language is sufficiently clear that such conduct is contingent on approval of the advisory body chair, i.e., the activity is not authorized absent approval.

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<sup>113</sup> Cal. Code of Judicial Ethics, canon 2A & advis. com. comment.

Finally, the internal chairs note comments received from the Superior Court of San Mateo County. That court suggested subdivision (l) include requirements that the Judicial Council establish guidelines regulating equipment and procedures for recording advisory body meetings, and that special attention be paid to establishing the recording of telephone meetings. The internal chairs have not included a requirement in the rule. As noted, however, they are working with staff to develop guidelines for the rule's proper and consistent implementation and application, and those guidelines may address recording, including the recording of telephone meetings.

***Minutes (subd. (m)).*** The California Newspaper Publishers Association suggested that any recording of an advisory body meeting used in preparing minutes should be made available to the public. The internal chairs agree and note that, for open meetings, both any recording that staff may make and meeting minutes would qualify as judicial administrative records, so they would be available to the public consistent with rule 10.500 of the California Rules of Court.

***Adjourned meetings (subd. (n) in the final version of the rule, (o) as circulated for public comment).*** No substantive comments were received on this subdivision.

***Action by e-mail between meetings (subd. (o) in the final version of the rule, (n) as circulated for public comment).*** Comments received concerning subdivision (o) reflected some confusion regarding the underlying intent and disagreement. External commentators suggested modifications to increase information for the public, or requested that it be stricken entirely. Judicial branch commentators sought clarification and also expressed concern about the potential burden. The chairs discuss these comments in turn below and the modifications made to the rule as a result.

***External commentators.*** The California Newspaper Publishers Association, Courthouse News Service, Assembly leaders, and Public Counsel offered comments on subdivision (o). CNPA and CNS expressed concern that the provision encouraged or permitted serial communications that should be prohibited. The Assembly leaders agreed that advisory bodies properly might obtain and review written materials between meetings, but suggested this should only occur with five days' advance notice and opportunity for public comment specified for regular meetings under subdivision (e)(1).

The internal chairs respectfully do not agree that action on e-mail proposals as described in subdivision (o) should be precluded, or permitted only on five days' advance notice. Advisory bodies occasionally have need to take quick action, for example, to comply with an existing schedule (e.g., if the schedule requires consultation with multiple groups and delivery to the council at a specified meeting to comply with statutory deadlines). The chairs concluded that preservation of that option is important to the ability of the advisory bodies to keep abreast of their work, particularly as it is not always a simple matter to schedule a meeting on short notice that a majority of advisory body members are able to join. They did agree with the Assembly

leaders that subdivisions (o)(1) and (o)(3) should be modified to clarify that proposals must be in writing and communications exchanged concerning them also must be in written form. Rather than insert the words “writing” or “written,” as the Assembly leaders suggested, reference to “other electronic means” was removed, clarifying that subdivision (o) refers to e-mail proposals, i.e., written communications.

CNPS also objected that the provision did not require public disclosure of member communications concerning the proposal. The chairs observe, however, that subdivision (o)(4) requires the public posting on the California Courts website of minutes reflecting actions taken on e-mail proposals about matters that otherwise must be discussed in an open meeting. The chairs do not agree with CNPS’s further comments advocating inclusion of a fuller serial meeting prohibition for reasons stated above, in discussing subdivision (c)(1).

CNS also contended that subdivision (o) would not require any notice of the distribution of an e-mail proposal until after the body has considered and acted on it. The chairs observe, however, that, under subdivision (o)(2), if an e-mail proposal concerns a matter that otherwise must be discussed in an open meeting, and is distributed after a related discussion at an earlier open meeting, public notice must be posted and opportunity for comment provided *before* an advisory body may act on the e-mail proposal, absent a need for prompt action.

The chairs note CNS’s concern that subdivision (o) will allow potentially controversial proposals to be developed out of public view, and disagree. Advisory body members are drawn from a broad cross section of stakeholder groups, including many private citizens, and members may discuss issues that the advisory bodies consider with colleagues in their respective fields. They also generally must circulate their proposals for public input by posting them with an “invitation to comment” on the California Courts website, carefully reviewing, considering, and responding to all comments received. If complex issues arise through that process, the advisory body may revise the proposal and circulate it to the public again to obtain further input. Their reports to the council are publicly posted, attaching summaries of all comments received with responses. As noted, council meetings can be heard live over the Internet. The public may attend in person, may submit written comments in advance of the meeting, and may appear and speak at the meeting regarding a proposal. The public has and will retain a seat at the table and public input is considered with care.

Finally, the chairs note CNS’s recommendation that the subdivision (o), if retained, be modified to require that public notice of e-mail proposals be provided at the same time an e-mail proposal is circulated to members, that member communications concerning the e-mail proposal be posted on the California Courts website within one court day of their transmission, and that no action be taken on the matter until at least one court day after the last communication has been posted. The chairs did not agree and have not added the requested provisions to the final version of the rule, as doing so would defeat the purpose of the provision. Although subdivision (o) does require posting of public notice and an opportunity for comment, absent a need for prompt action, before a body acts on a proposal that otherwise must be discussed in an open meeting, and also requires

the public posting of minutes recording the action taken on those e-mail proposals, requiring the precise sequence and timing that the commentator suggests would create greater burdens for advisory bodies and their staff, precluding their use of the procedure.

The chairs also received two comments from Public Counsel about subdivision (o). In the first, Public Counsel suggested subdivision (o)(1) be modified. Observing that paragraph (B) of that provision required that there be a need for prompt action in order for a chair to distribute an e-mail proposal appropriate for a closed meeting, the commentator suggested adding a new paragraph (C). The new paragraph would have allowed a rule committee listed in subdivision (c)(3), whose meetings generally are closed, to distribute e-mail proposals on a closed session topic generally. The chairs appreciate the suggestion but anticipate that rules committees primarily would be distributing e-mail proposals as follow up to earlier meetings if further information is required. Accordingly, rather than add a new paragraph, they have revised paragraph (o)(1)(A), removing the qualifier that it applies only to e-mail proposals appropriate for an open meeting. Public Counsel also recommended modifying subdivision (o)(4) to include provision requiring that any public comments received about an e-mail proposal be attached to the minutes. The internal chairs agreed and have revised the provision to incorporate the suggestion.

*Judicial branch commentators.* The chairs received comments concerning subdivision (o) also from the Judicial Council's Civil and Small Claims Advisory Committee, Criminal Law Advisory Committee, and Probate and Mental Health Advisory Committee, as well as from the Superior Courts of Los Angeles and San Mateo Counties. The three advisory committees' comments concerned the applicability of requirements stated in subdivision (o)(1), (o)(3), and (o)(4) to proposals concerning closed meeting topics. The Probate and Mental Health Advisory Committee sought clarification about whether all three applied to proposals on closed session topics. The Criminal Law Advisory Committee suggested amendments to clarify that the latter two did *not* apply.

The Civil and Small Claims Advisory Committee expressed concern that rule 10.75(o)(3) and (o)(4) appeared intended to apply to e-mail proposals on open and closed session topics alike, and questioned the logic, observing the burden involved, particularly for subcommittees and ad hoc working groups, which frequently circulate modified material following their meetings for later discussion by e-mail. The committee questioned the need to limit communications in such instances to e-mail or prepare minutes attaching such communications if their normal meetings ordinarily will be closed from public view. The internal chairs appreciate the input and have revised subdivisions (o)(3) and (o)(4) to clarify that the restriction on communications and need to prepare minutes apply only for e-mail proposals on matters that otherwise must be addressed in open meetings. E-mails exchanged concerning a proposal about a matter that otherwise may be addressed in a closed meeting will constitute the official record of the proposal.

The Superior Court of Los Angeles County offered three comments on rule 10.75(o). First, the court suggested the provision be modified to clarify its purpose, which the court thought was to

allow advisory bodies to vote on proposals electronically. The chairs agreed and have modified the title and language of the provision to clarify that it refers to advisory body actions by e-mail between meetings, rather than circulation of proposals. The chairs acknowledge that the latter description may have caused confusion with the procedure by which rule proposals are circulated for public comment.<sup>114</sup>

The Los Angeles court also questioned whether subdivision (o)(3) was intended to apply to proposals concerning closed session topics, a point clarified above and in the final version of the rule that is attached. Finally the court observed that subdivisions (o)(3) and (o)(4) seem more restrictive regarding “pre-decision communications than (c)(1),” a result that the court deemed both “unnecessary and undesirable.” Following the modifications discussed above, however, the chairs think subdivision (o) is properly balanced with subdivision (c)(1).

Finally the Superior Court of San Mateo County suggested subdivision (o)(3) be modified to clarify the *types* of acceptable communication other than e-mail and, specifically, whether “electronic means” included telephone communications. It also inquired whether the limit on communications stated in that provision extended to preclude even “casual in person conversations in a non-meeting situation.” The chairs appreciate the questions and have modified the provision as noted above, removing the reference to “electronic means” and adding other language clarifying that communications must be by e-mail. They confirm that the limit stated in the provision does preclude all spoken communications among advisory body members until the body has acted on the proposal as described.

***Enforcement.*** Five commentators objected that the rule did not include an enforcement mechanism, providing a procedure for challenges in the event that concerns arise about compliance: AFSCME, Councils 36 and 57, the California Newspaper Publishers Association, Californians Aware, Courthouse News Service and SEIU. AFSCME, Councils 36 and 57, and SEIU recommended that such a provision include the potential for an award of costs and fees to prevailing parties, and SEIU observed that BKA contains a comparable provision. CNPA suggested that the procedure provide for a neutral third party with ability to gather information and authority to resolve disputes. CNPA, and CNS suggested the enforcement procedure mirror that provided under rule 10.500 of the California Rules of Court, which concerns access to judicial administrative records.

The Assembly leaders took a different view. Observing the absence of an enforcement mechanism, they recommended instead that a reporting requirement be added, allowing the Legislature to track Judicial Council advisory bodies’ compliance with the rule. Their suggested language would direct the council to report annually to the judiciary and budget committees of both houses of the Legislature, relaying specified information regarding complaints about compliance received in the prior calendar year.

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<sup>114</sup> Rule 10.22(d).

The internal chairs ultimately agreed with the Legislature's suggestion that they add a provision requiring periodic review following the rule's implementation. They concluded, however, that the Judicial Council, as the policymaking body for the judicial branch of state government and the entity that creates and receives reports from the bodies in question, is the appropriate entity to conduct such review. The final version of the rule that is attached includes a new subdivision (p), added after the circulation of the rule for comment. The new provision will require the council to review the rule's impact within one year of the rule's adoption and periodically thereafter to determine whether amendments are needed. In conducting this review, the council will consider, among other factors, the public interest in access to meetings of advisory bodies, the obligation of the judiciary to comply with judicial ethics standards, and the public interest in the ability of advisory bodies to effectively assist the council by offering policy recommendations and alternatives for improving the administration of justice.

The provision will give the Judicial Council an opportunity to consider issues that may arise related to public access. The council is not an enforcement agency. It does not track compliance with its rules, forms, or standards. Nor does it have authority to impose penalties for noncompliance or create a cause of action. All existing legal remedies would remain available to anyone alleging the rule's violation, once adopted

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

Implementation of rule 10.75 will require a significant commitment of time, funding, and staff resources. As noted above, almost 30 advisory bodies, a greater number of subcommittees, and more than 400 volunteer members would be affected. Following successive years of significant state budget cuts to the judicial branch, all of these advisory bodies have been operating with reduced budgets, sharing overlapping staff, meeting primarily by telephone, and restricting their work to essential or mandated projects. Existing resources are fully committed.

Consistent and effective implementation of rule 10.75's meeting requirements, however, will entail considerable member and staff time for planning, communication, and training; development of new document templates; and consideration of attendant technology, meeting space, security, and accommodation requirements and resources. Web materials will need to be created and posted. More meeting space and additional security will be needed. As noted above, at present, the Judicial Council's San Francisco headquarters provide the primary meeting location. It is the only office possessing both entrance security screening equipment and personnel and conference rooms capable of accommodating public meetings, although the council must share the larger meeting rooms at that location with many other building tenants. Managing the space to permit more large meetings will be a significant challenge.

More advisory body staff will be needed to handle the increased work of advisory bodies and subcommittees. In addition to communications with members, scheduling meetings, conducting research, preparing analyses, and developing other materials, staff now also will have to prepare public notices, agendas, and minutes; receive and distribute public comments before meetings; respond to meeting-related inquiries and requests from the public and the media; post meeting

materials; schedule and manage telephone and in-person meetings to facilitate public attendance; receive, respond to, and plan accommodations for disabled attendees; and handle the electronic distribution of any proposals between meetings, preparing and posting notices and minutes, and gathering and attaching to minutes any public comments. The possibility that automated solutions might assist staff to effectively and efficiently manage the additional workload is being evaluated, although any such solutions would require expenditure of funds and significant staff training.

In the meantime, the added responsibilities noted above necessarily will have an impact on the speed with which the advisory bodies' work can be completed and the volume of work that can be accomplished. The added demands on staff and the new notice requirements also will make it more difficult for advisory bodies to seek input from each other regarding proposals before they are presented to the Judicial Council for consideration and approval.

The consultation process is critical because it ensures proposals are considered in advance from multiple perspectives and their potential practical ramifications identified. This in turn permits advisory bodies to forge consensus within the branch and among stakeholders concerning the proposals, and permits smooth implementation of proposals, if approved. Given that advisory bodies often are developing statutorily mandated proposals or are responding to external events and must comply with deadlines set by law or imposed by others, however, the new notice requirements that the proposed rule will impose will make it more difficult for advisory bodies to consult with each other. This may have an impact on the quality of proposals, relationships within the branch and with stakeholders, and the administration of justice generally, if implementation of proposals becomes an issue.

These additional challenges, their impact on communication, and concerns about the professional risks for members and chairs in attempting to meet rule requirements, may reduce the willingness of branch representatives and justice partners to continue volunteering their time, performing the critical work of the advisory bodies. Advisory body members all have separate, demanding professional obligations, and the work of the advisory bodies also can be consuming, requiring significant dedication of time, thought, and energy. As noted, at present, there are more than 400 volunteer members. Each of these individuals is a necessary part of the work that must be done to present fair, innovative, workable, and fully conceived proposals to the Judicial Council, permitting it, in turn, to take the action needed for all Californians to have equal access to an efficient and effective, independent, and impartial system of justice.

## **Attachments**

1. California Rules of Court, rule 10.75, at pages 52–60.
2. Comment chart at pages 61–209.

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

1 **Title 10. Judicial Administration Rules**

2  
3 **Division 1. Judicial Council**

4  
5 **Chapter 3. ~~Administrative Office of the Courts~~ Judicial Council Advisory Body**  
6 **Meetings**

7  
8 **Rule 10.75. Meetings of advisory bodies**

9  
10 **(a) Intent**

11  
12 The Judicial Council intends by this rule to supplement and expand on existing  
13 rules and procedures providing public access to the council and its advisory bodies.  
14 Existing rules and procedures provide for circulation of advisory body proposals  
15 regarding rules, forms, standards, and jury instructions for public comment, posting  
16 of written reports for the council on the California Courts website  
17 ([www.courts.ca.gov](http://www.courts.ca.gov)), public attendance and comment during council meetings, real  
18 time audio casts of council meetings, and public posting of council meeting  
19 minutes. This rule expands public access to advisory body meetings.

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

22  
23 (1) “Advisory bodies,” as used in this rule, means any multimember body created  
24 by the Judicial Council to review issues and report to the council. For  
25 purposes of this rule, subcommittees that are composed of less than a  
26 majority of the members of the advisory body are not advisory bodies.  
27 However, standing subcommittees that are charged with addressing a topic as  
28 a continuing matter are advisory bodies for purposes of this rule irrespective  
29 of their composition.

30  
31 (2) “Chair,” as used in this rule, includes a chair’s designee.

32  
33 **(c) Open meetings**

34  
35 (1) Meetings

36  
37 Advisory body meetings to review issues that the advisory body will report to  
38 the Judicial Council are open to the public, except as otherwise provided in  
39 this rule. A meeting open to the public includes a budget meeting, which is a  
40 meeting or portion of a meeting to discuss a proposed recommendation of the  
41 advisory body that the Judicial Council approve an allocation or direct an  
42 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

- 1           (2) Claims, administrative claims, agency investigations, or pending or  
2           reasonably anticipated litigation naming, or reasonably anticipated to name, a  
3           judicial branch entity or a member, officer, or employee of such an entity;  
4
- 5           (3) Negotiations concerning a contract, a labor issue, or legislation;  
6
- 7           (4) The price and terms of payment for the purchase, sale, exchange, or lease of  
8           real property for a judicial branch facility before the property has been  
9           acquired or the relevant contracts have been executed;  
10
- 11          (5) Security plans or procedures or other matters that if discussed in public  
12          would compromise the safety of the public or of judicial branch officers or  
13          personnel or the security of judicial branch facilities or equipment, including  
14          electronic data;  
15
- 16          (6) Non-final audit reports or proposed responses to such reports;  
17
- 18          (7) Trade secrets or privileged or confidential commercial and financial  
19          information;  
20
- 21          (8) Development, modification, or approval of any licensing or other  
22          professional examination or examination procedure;  
23
- 24          (9) Evaluation of individual grant applications; or  
25
- 26          (10) Topics that judicial officers may not discuss in public without risking a  
27          violation of the California Code of Judicial Ethics, necessitating recusal, or  
28          encouraging disqualification motions or peremptory challenges against them,  
29          including proposed legislation, rules, forms, standards of judicial  
30          administration, or jury instructions.  
31

32   **(e) Notice of meetings**  
33

34    (1) Regular meetings  
35

36           Public notice must be given of the date and agenda of each meeting that is  
37           subject to this rule, whether open or closed, at least five business days before  
38           the meeting.  
39

40    (2) Urgent circumstances  
41

42           A meeting that is subject to this rule may be conducted on 24 hours notice in  
43           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  
19 The Judicial Council will review the impact of this rule within one year of the  
20 rule's adoption and periodically thereafter to determine whether amendments are  
21 needed. In conducting its review, the council will consider, among other factors,  
22 the public interest in access to meetings of the council's advisory bodies, the  
23 obligation of the judiciary to comply with judicial ethics standards, and the public  
24 interest in the ability of advisory bodies to effectively assist the Judicial Council by  
25 offering policy recommendations and alternatives for improving the administration  
26 of justice.

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](http://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**

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**Judicial Administration: Meetings of Judicial Council Advisory Bodies (Adopt Cal. Rules of Court, rule 10.75)**

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<b>List of All Commentators and Overall Positions on the Proposal</b>				
	<b>Commentator</b>	<b>Position</b>		
1.	American Federation of State, County and Municipal Employees, Councils 36 and 57 by Anthony R. Segall, Attorney Rothner, Segall & Greenstone Pasadena	AM		
2.	California Newspaper Publishers Association by James W. Ewert, General Counsel Sacramento	AM		
3.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	AM		
4.	Californians Aware by Terry Francke, General Counsel Carmichael	AM		
5.	Civil and Small Claims Advisory Committee by Hon. Patricia M. Lucas, Chair San Francisco	AM		

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**Judicial Administration: Meetings of Judicial Council Advisory Bodies (Adopt Cal. Rules of Court, rule 10.75)**

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<b>List of All Commentators and Overall Positions on the Proposal</b>			
	<b>Commentator</b>	<b>Position</b>	
6.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	AM	
7.	Criminal Law Advisory Committee by Hon. Tricia Ann Bigelow, Chair San Francisco	AM	
8.	First Amendment Coalition by Peter Scheer, Executive Director San Rafael	AM	
9.	Sharon Noonan Kramer Escondido	AM	
10.	Hon. Runston G. Maino Judge Superior Court of San Diego County	N	
11.	Probate and Mental Health Advisory Committee by Hon. Mitchell L. Beckloff, Chair Los Angeles	A	
12.	Public Counsel Appellate Law Program by Lisa Jaskol Directing Attorney	A	

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<b>List of All Commentators and Overall Positions on the Proposal</b>			
	<b>Commentator</b>	<b>Position</b>	
	Los Angeles		
13.	SEIU California State Council by Scott A. Kronland, Attorney Altshuler Berzon LLP San Francisco	AM	
14.	Superior Court of Los Angeles County	AM	
15.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	A	
16.	Superior Court of San Mateo County	AM	
17.	Your Moral Compass Counts, LLC by Michele F. Forer, Founder Los Angeles	AM	

<b>General Comments</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
18.	American Federation of State, County and Municipal Employees, Councils 36 and 57 by Anthony R. Segall, Attorney Rothner, Segall & Greenstone Pasadena	. . . . To begin, AFSCME supports the Chief Justice and chairs of the Judicial Council's five internal committees in their comprehensive review to develop a rule of court providing greater public access to appropriate advisory bodies, including council committee, group, or multi- member body meetings. In reviewing Proposed Rule of	The commentator's support is noted.

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**Judicial Administration: Meetings of Judicial Council Advisory Bodies** (Adopt Cal. Rules of Court, rule 10.75)

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<b>General Comments</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p>Court 10.75, AFSCME is mindful of the guidance provided by the Bagley-Keene Open Meetings Act, which begins with the following statement of public policy:</p> <p style="padding-left: 40px;">The people of this state do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.</p> <p>Cal. Gov. Code § 11120.                      . . . .</p> <p>(See the commentator's specific comments 32 and 117 below.)</p>	<p>(See responses to specific comments 32 and 117 below.)</p>
19.	<p>California Newspaper Publishers Association                      by James W. Ewert                      General Counsel                      Sacramento</p>	<p style="text-align: center;">. . . .</p> <p>The laws that have been enacted to provide effective public access to the meetings of government bodies contain three key principals: 1) Meetings are presumed to be open; 2) Notice must be provided to the public in advance of the meeting; and 3) To overcome the presumption of openness, any closure must be narrowly tailored to serve an identifiably greater public interest.</p> <p>This model has served the public and government agencies well and it preserves the integrity of the decision-making process of public bodies. It also protects against suspicion and mistrust which are natural</p>	<p>No response required.</p>

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<p>reactions when the public is denied access to the discussions, deliberations and actions of officials who serve on its behalf.</p> <p>. . . .</p> <p>The proposed rules also vest a tremendous amount of discretion in the Chairs of the advisory bodies without providing any standards for applying the rules. For example, Rule 10.75(c)(3) provides that the chair <u>may</u> allow the discussion of an item before a rule committee in open session if he or she concludes that a particular agenda item <u>may</u> be addressed in open session or that a portion of a meeting qualifies as a budget meeting (as defined).</p> <p>The lack of any standard in this provision allows a chair to use his or her discretion on a whim. The lack of standards combined with a complete absence of an enforcement mechanism threatens to make the proposed rules meaningless.</p> <p>CNPA urges the Judicial Council to apply the rules directly to the conduct of the body rather than the chair and create clear standards for the chair or presiding officer to apply when making a decision about whether the discussion, deliberation or action of the body must be done in open or closed session. This would be consistent with the Brown Act and the Bagley-Keene Act.</p> <p>. . . .</p> <p>CNPA appreciates the opportunity to comment on the</p>	<p>The rule applies to the advisory bodies, as led by their chairs. The internal committee chairs (internal chairs) 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.</p> <p>The internal committee chairs note the</p>

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<p>proposed rules. We urge the Judicial Council to invite stakeholders that have an interest in the proposed rules on open meetings of advisory bodies to take part in a process where they take an active role in the development of the rules in partnership with Judicial Council. There is precedent for bringing stakeholders together in this way: Judicial Council used this same process to draft California Rule of Court 10.500. CNPA was actively involved in that process and we stand ready to participate in a similar process to develop rules on open meetings of advisory bodies as well.</p> <p>(See the commentator's specific comments 33, 39, 46, 49, 52, 55, 58, 62, 66, 68, 71, 79, 82, 84, 87, 89, 91, 95, 96, 101, 105, 108, and 118 below.)</p>	<p>commentator's willingness to engage in a further exchange and appreciate the extensive input that CNPA and other stakeholders have supplied to date, through their comments on the preliminary draft of the rule, the formally circulated draft of the rule, and in attending the briefings for the Legislature and the news media.</p> <p>(See responses to comments 33, 39, 46, 49, 52, 55, 58, 62, 66, 68, 71, 79, 82, 84, 87, 89, 91, 95, 96, 101, 105, 108, and 118 below.)</p>
<p>20. California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento</p>	<p>While we applaud the proposed rule's push toward increased public access, we believe that, as drafted, the rule does not go far enough to increase needed transparency and improve public accountability. As a fundamental notion, we strongly believe that the rule should track the Bagley-Keene Open Meeting Act as closely as possible, absent compelling justification to the contrary. We believe that the proposed rule, in its current form, provides too many exceptions to public access, significantly above and beyond that provided by either the Bagley-Keene Open Meeting Act or the Brown Act, without compelling justification. We urge you to track</p>	<p>The internal committee chairs appreciate and agree with the concerns for public access, transparency, and accountability, and have modified the rule as described below where feasible to do so to further those interests, while also protecting the independence and integrity of the judicial branch, public confidence in the impartiality of judicial officers, and the ability of courts to effectively discharge their core mission of adjudicating disputes. Although the chairs did look for guidance to the referenced open meeting laws, and to the open meeting laws for the Legislature (see Gov. Code, § 9027 et seq.), they</p>

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<p>much more closely the language in the Bagley-Keene Act.</p> <p>.....</p> <p>(See commentator's specific comments 34, 40, 47, 50, 53, 56, 59, 63, 69, 72, 76, 80, 83, 85, 92, 97, 102, 109, and 119 below.)</p>	<p>conclude that the above considerations compel a modified approach, tailored to the specific considerations of the judicial branch.</p> <p>(See responses to comments 34, 40, 47, 50, 53, 56, 59, 63, 69, 72, 76, 80, 83, 85, 92, 97, 102, 109, and 119 below.)</p>
21.	<p>Californians Aware by Terry Francke, General Counsel Carmichael</p> <p>Californians Aware reiterates all its concerns—earlier expressed in our November 20, 2013, Comments on Preliminary Draft of Proposed Open Meeting Rule for Judicial Council Advisory Bodies—and affirms also the reactions most recently submitted by Courthouse News Service and the California Newspaper Publishers Association.</p> <p>In brief, the announcement of the Judicial Council's contemplation of open meeting rules for its advisory bodies raised expectations to a level that has been significantly unachieved.</p> <ul style="list-style-type: none"> <li>• Since the preliminary draft number of highly influential bodies have been exempted from the openness presumption altogether.</li> <li>• Those left with a putative presumption of openness are subject to closure at the discretion of the presiding officer or based on vague, expansive or undefined labels rather than clearly defined contours expressed in terms of harms to be avoided.</li> <li>• Avoiding perceived violations of judicial ethical</li> </ul>	<p>(See responses to comments 39 below.)</p> <p>(See responses to comments 49–81 below.)</p> <p>(See responses to comments 39 and 81 below.)</p>

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<p>restrictions is cited more than once as a basis for excluding the public, a rationale which could lead some to wonder what sort of statements are so common or likely that, publicly uttered, they could create the impression of judicial bias or prejudice.</p> <ul style="list-style-type: none"> <li>Finally, the absence of any enforcement mechanism threatens to expose the Judicial Council to controversies without any procedure for orderly resolution.</li> </ul> <p>We appreciate the opportunity to comment on the proposed Rule, and hope and trust that our and others' comments will have some salutary effect.</p>	(See responses to comment 117 below.)
22. Civil and Small Claims Advisory Committee by Hon. Patricia M. Lucas, Chair San Francisco	<p>The Civil and Small Claims Advisory Committee (C&amp;SCAC) welcomes this opportunity to comment on proposed Rule 10.75. C&amp;SCAC recognizes that the council is developing open meeting rules and is prepared to abide by all such rules once adopted. It makes the following comments in support of some parts of the rule, and to express some concerns about other parts.</p> <p>. . . .</p> <p>Third, C&amp;SCAC agrees with the drafters on the proposed rule on the issues regarding implementation of the rule, discussed at pages 18 and 19 of the Invitation to Comment, both as to the need for additional staff time and to the decrease in speed with which advisory committee work could be accomplished.</p> <p>. . . .</p> <p>(See commentator's specific comments 35, 41, and 110</p>	<p>No response required.</p> <p>(See responses to comments 35, 41, and 110</p>

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	below.)	below.)
23. Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p style="text-align: center;">. . . .</p> <p><b>I. Introduction</b></p> <p>As noted on pages 1–2 of the Invitation, Proposed Rule of Court 10.75 has its origins in the Budget Act of 2013, in which the Legislature directed the Judicial Council adopt a rule “regarding open meeting requirements” for committees and similar multimember bodies reporting to the Judicial Council. Governor Brown vetoed that provision, but “urg[ed] the Judicial Council to continue its efforts to provide greater access to Judicial Branch committees.” In its supplemental report language for the budget package (“Supplemental Report”), the Legislature reiterated its desire for an open meetings rule. That language states, in relevant part:</p> <p style="padding-left: 40px;">1. Open Working Groups. Not later than January 1, 2014, the Judicial Council shall submit to the Joint Legislative Budget Committee a report on the implementation of an open meetings rule in accordance with the following:</p> <p style="padding-left: 80px;">a. The rule shall apply to any committee, subcommittee, advisory group, working group, task force, or similar multimember body that reviews issues and reports to the Judicial Council</p> <p style="text-align: center;">* * *</p>	No response required.

**Judicial Administration: Meetings of Judicial Council Advisory Bodies (Adopt Cal. Rules of Court, rule 10.75)**

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<p>Regrettably, proposed Rule 10.75 falls well short of what was clearly envisioned by this language. In its current form, except for “budget meetings,” most meetings of the Judicial Council’s advisory bodies would remain closed. Respectfully, significant amendments are in order if 10.75 is to truly function as an open meetings rule.</p> <p><b>II. Overview</b></p> <p>While hardly a comprehensive list, the most problematic aspects of proposed Rule of Court 10.75 are as follows:</p> <ul style="list-style-type: none"> <li>• <b>The definition of an “advisory body” to which the rule would apply is too narrow</b>—As drafted, the proposed rule would exclude bodies not created “by formal Judicial Council action” from the open meetings requirement. Among other things, this means advisory bodies created by order of the Chief Justice would meet behind closed doors. The policy reason for this limitation is not clear, and does not appear to be consistent with the language of Supplemental Report.</li> </ul>	<p>The internal committee chairs respectfully disagree with the commentator’s statement about the likely effect of the rule. More than 20 advisory bodies and many more subcommittees will be required to hold open meetings under the rule on a broad range of topics, including, for example, court facilities and technology, court-ordered debt, court interpreters, tribal court issues, and collaborative justice. Although a number of 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 for public access for those and all similar advisory bodies and most subcommittees.</p> <p>(See response to comment 31 below.)</p>

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<ul style="list-style-type: none"> <li> <b>The lack of a definition for a “meeting” and the related “circulated proposals” procedure for bypassing the open meeting requirement</b> — Proposed Rule 10.75 is also fundamentally flawed in that it does not specify what constitutes a “meeting,” and, unlike the Brown and Bagley- Keene Acts, contains no prohibitions against so-called “serial meetings” (i.e., a series of communications outside a formal “meeting” involving a majority of members of a body on an issue within the body’s subject area). To the contrary, the current “circulated proposal” provision of subdivision [(o)] would effectively codify the serial meeting practice.                 </li> <li> <b>Only meetings “to review issues that the advisory body will report to the Judicial Council” would be open; all other meetings would remain closed</b> — This limitation is not consistent with the language in the Supplemental Report, is not found in California’s other open meetings laws, and does not appear to be warranted by policy considerations unique to the judiciary.                 </li> <li> <b>Many advisory bodies would be excluded from the open meetings requirement</b> —As noted in the Invitation, the Judicial Council has more than thirty advisory bodies. But under proposed Rule 10.75, ten of those bodies would either not be subject to the open meetings rule at all, or their meetings would                 </li> </ul>	<p>(See responses to comments 33 and 110 below.)</p> <p>(See responses to comment 34 below.)</p> <p>(See responses to comment 42 below.)</p>

**Judicial Administration: Meetings of Judicial Council Advisory Bodies** (Adopt Cal. Rules of Court, rule 10.75)

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<p>presumptively be closed. Rather than excluding them from the open meetings requirement entirely, concerns about opening the meetings of these bodies can and should be addressed by closed session exemptions.</p> <ul style="list-style-type: none"> <li>• <b>The exemptions allowing closed meetings threaten to swallow the rule</b>—The eleven exemptions that would allow closed meetings under Rule 10.75 are significantly broader than those found in California’s other open meetings laws. Except for budget meetings, it is hard to imagine how any meeting would not qualify for at least one of the closed session exemptions.</li> <li>• <b>In-person attendance would be presumptively prohibited</b>—Unless the chair concludes “security measures permit” personal attendance, the public and media would be relegated to observing even in-person meetings of an advisory body by telephone or video.</li> <li>• <b>No enforcement mechanism</b>—As drafted, Rule 10.75 stands alone among California’s open meetings and records laws in that it contains no enforcement mechanism. This omission could easily be remedied by borrowing from the enforcement provisions in Rule of Court 10.500 governing access to judicial administrative records.</li> </ul> <p>Courthouse News’ more detailed comments about these and other noteworthy provisions of proposed Rule 10.75</p>	<p>(See responses to comments 51, 54, 57, 60, 64, 67, 70, 73, 77, 78, and 81, below.)</p> <p>(See responses to comment 94 below.)</p> <p>(See responses to comment 117 below.)</p>

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<p>are discussed more fully below. In addition, Courthouse News' specific proposed changes to the rule are included in the redlined document attached as Exhibit A to these comments.</p> <p><b>III. <u>Full Analysis</u></b></p> <p>Parsing through proposed Rule 10.75 is a complicated process. A meaningful understanding of the rule requires not only examination of the proposed rule and accompanying comments in the Invitation, but also comparison with California's existing open meetings laws - the Ralph M. Brown Act, which governs the public's access to meetings of local government bodies; the Bagley-Keene Act, which applies to meetings of state bodies, and the Legislature open meeting laws, which applies to meetings of a Legislative house or committee. The following problems emerge from such an analysis:</p> <p>.....</p> <p><b>IV. <u>Conclusion</u></b></p> <p>Given the significant issues with the current version of Rule 10.75 outlined above and raised by other commentators, it is respectfully submitted that numerous and material amendments are needed to ensure that there is meaningful public and media access to Judicial Council advisory bodies. Unless this is done, proposed Rule 10.75 will do little to alter the status quo. Many, if not most, meetings of the judicial council's advisory bodies will continue to occur behind closed doors, contrary to what was clearly envisioned in the Legislature's Supplemental Report.</p>	<p>No response required.</p> <p>The internal committee chairs respectfully disagree with the commentator's statement about the likely effect of the rule. The rule will open the meetings of more than 20 advisory bodies and many more subcommittees to the public, including the media, as noted above.</p>

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<p>In its press release accompanying the November 2013 preliminary draft of proposed Rule 10.75, the Judicial Council noted that the chairs of the council's internal committees would be meeting with key stakeholders in the interim period between the release of the preliminary draft and the release of the current proposed version of the rule to get stakeholders' feedback on the proposed rule. In its November 20, 2013 comments to the preliminary draft Rule 2013, Courthouse News voiced its hope that these meetings would include several representatives from news media and open government community. It is not clear whether any such meetings ever occurred. If not, Courthouse News respectfully renews its suggestion, and urges the Judicial Council to seek further input from these important constituencies before any final version of Rule 10.75 is adopted.</p> <p>(See commentator's specific comments 31, 36, 42, 48, 51, 54, 57, 60, 64, 67, 70, 73, 77, 78, 81, 86, 88, 90, 93, 98, 106, 107, 111, and 120 below.)</p>	<p>The internal committee chairs appreciate the extensive input supplied by Courthouse News Service and other stakeholders to the preliminary draft and the formally circulated rule.</p> <p>(See responses to comments 31, 36, 42, 48, 51, 54, 57, 60, 64, 67, 70, 73, 77, 78, 81, 86, 88, 90, 93, 98, 106, 107, 111, and 120 below.)</p>
24.	<p>Criminal Law Advisory Committee by Hon. Tricia Ann Bigelow, Chair San Francisco</p> <p>The Criminal Law Advisory Committee agrees with the proposed rule, subject to the proposed clarifying amendments to subdivision [(o)], concerning circulated proposals, discussed below.</p> <p>. . . .</p> <p>For these reasons, the committee supports the current version of proposed rule 10.75.</p>	<p>The committee's support is noted.</p>

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General Comments			
	Commentator	Comment	Internal Committee Chairs' Response
		(See commentator's specific comments 43 and 112, below.)	(See responses to comment 43 and 112, below.)
25.	First Amendment Coalition by Peter Scheer, Executive Director San Rafael	On behalf of the First Amendment Coalition, nonprofit organization dedicated to government transparency and free speech, I am writing regarding proposed Rule of Court 10.75 concerning public access to meetings of the Judicial Council's Advisory Bodies.  The First Amendment Coalition subscribes to the views of the California Newspaper Publishers Association, as expressed in the nine-page Comment dated February 7 and submitted by CNPA General Counsel James Ewert.  . . . .	The commentator's views are noted.
26.	Hon. Runston G. Maino Judge Superior Court of San Diego County	If you fail to have more openness the result will be that the Legislature and the Governor will force openness upon us.  The proposed changes have too many exceptions to pass muster with the public, the media, the Legislature, the Governor and with a large number of judges.  You can and should do better.	The commentator's views are noted.
27.	Public Counsel Appellate Law Program by Lisa Jaskol Directing Attorney Los Angeles	I agree with the proposal. I also have three suggestions:  . . . . (See commentator's specific comments 74 and 114, below.)	The commentator's support is noted.  (See responses to comments 74 and 114, below.)

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<b>General Comments</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
28.	SEIU California State Council by Scott A. Kronland, Attorney Altshuler Berzon LLP San Francisco	<p style="text-align: center;">. . . .</p> <p>The SEIU California State Council supports the implementation of the open meetings requirements for Judicial Council advisory bodies. These advisory bodies are engaged in official government business and their operations are paid for with public funds. Their meetings should be open to public scrutiny to the same extent as meetings of State entities subject to the Bagley- Keene Open Meeting Act, except insofar as issues unique to the judiciary justify additional exceptions to the general rule of open government meetings. Our Legislature endorsed this principle in Provision 15 of the Budget Act of 2013 and in a supplemental report accompanying the Budget Act.</p> <p>In this regard, while the overall approach of proposed Rule 10.75 is consistent with the Legislature's intent and Bagley-Keene, there are several aspects of the proposed Rule that are not consistent with Bagley-Keene and that do not appear to be justified by the special needs of the judiciary.</p> <p style="text-align: center;">. . . .</p> <p>(See commentator's specific comments 37, 61, 75, and 121, below.)</p>	<p>The commentator's support is noted.</p> <p>The commentator's views are noted.</p> <p>(See responses to comments 37, 61, 75, and 121, below.)</p>
29.	Superior Court of Los Angeles County	The current version of proposed California Rule of Court 10.75 is significantly improved. It conforms more closely than the prior version to the three principles we believe should inform the scope of the rule: (1) the Judicial Branch	The commentator's support is noted.

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**Judicial Administration: Meetings of Judicial Council Advisory Bodies** (Adopt Cal. Rules of Court, rule 10.75)

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<p>has a duty to be accountable with respect to the fiscal resources that are provided to the Branch by the Legislature and by the Governor; (2) public access rules should be crafted in the context of already existing opportunities for stakeholder and public participation in the work of the Judicial Branch; (3) public access rules should respect the unique role of the judiciary and ethical restrictions that apply to judicial officers.</p> <p>In section I of the comments below we explain the reasons why we believe these three broad principles are central considerations that should guide the crafting of a public access rule for the judiciary. We urge that the recommendation to the Judicial Council recognize the importance of these principles, because they explain important choices made in this version of the proposed rule. In section II below, we add comments on specific portions of the draft rule that we believe should be further amended.</p> <p>(See commentator's specific comments 38, 45, 65, 103, and 115, below.)</p>	<p>No response required.</p> <p>(See responses to specific comments 38, 45, 65, 103, and 115, below.)</p>
30. Your Moral Compass Counts, LLC by Michele F. Forer, Founder Los Angeles	The chairs of the Judicial Council's five internal committees propose the adoption of a new rule of court that would provide greater public access to meetings of the council's advisory bodies. The proposed rule recognizes the importance of open public meetings, especially on matters concerning the judicial branch budget. The proposed rule is intended to balance the importance of open meetings with significant judicial branch concerns, including ethical	No response required.

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<p>constraints on the judicial officers who participate on advisory bodies, staffing and other resource limitations, and the need to maintain an effective rule-making process</p> <p>Horror stories experienced by the public and attorneys about the lack of access to justice for traffic and criminal matters in the courts since the budget cuts (aka a 'Broken Court System').</p> <p>IMPORTANT TO NOTE: The attorney who has supplied the information in the email timely sent on Friday, February 7, 2014 before 5:00pm (PST) has experienced all the reported factual scenarios first-hand. The sender of the information is not the attorney described but an objective interested third-party. The information has been provided for several reasons provided below. The attorney who experienced all of the situations contained within this email has many, many years of legal experience representing clients in traffic matters in different counties through the State of CA. Moreover, the attorney also has impeccable excellent legal and emotional credentials as an 'officer of the court.' The attorney also sits as a Judge Pro Tem.</p> <p>Reasons/Explanations:</p> <p>- One reason to share the information is to make visual the obvious need for public-originated comment information to be disseminated to as many individuals, within the purview of the Judicial Council, as soon as possible. A 'legal team posse' is needed to immediately visit and/or contact all the</p>	

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<b>General Comments</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
	<p>requisite Presiding Judges/ Supervising Judges and Court Clerk Supervisors in ALL the courthouses to amend/make the immediate changes 'to plug up the hole in the damn' to stop the incessant flow of water filling out into the streets with the lack of factually substantive justice and procedural inconsistencies currently now widespread.</p> <p>Another reason for this lengthy descriptive detailed email is to provide substantive proof that all is not well within the judicial system in the State of CA. There is a critical and immediate need (and importance) by the Judicial Council to move "with all deliberate speed" to rock the boat and rock it hard. Greater public access to meetings within the Council's advisory bodies and committees is needed for equanimity, 'public' information, and for the dissemination of current and up-to-date information about unlawful and procedurally infirm procedural and substantive habits by judicial officers and staff at all the courthouses.</p> <p>Moreover, there are growing underlying concerns that many of the committee members are not only complacent, but waste time in committee meetings by not resolving important and valuable suggestions communicated by public citizens.</p> <p>Of course, there are concerns that new and additional committee members need to be appointed for the committees. In fact, there are additional concerns, that many appointed members in many committees, have out-lived their tenancy in their committees and are just involved either</p>	

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**Judicial Administration: Meetings of Judicial Council Advisory Bodies** (Adopt Cal. Rules of Court, rule 10.75)

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General Comments		
Commentator	Comment	Internal Committee Chairs' Response
	<p>to make their C.V. or resumes look impressive and/or because there are inappropriate or no procedural rules to do a “Changing of the Guard.”</p> <p>In sum, there is a critical necessity for the new proposed Rule of Court to be adopted in order to balance and expand the current ‘scale of internal justice’ to the ‘scale of external justice.’ Many of the appointed board members and/or committee members that currently sit as committee members are complacent, out-of-touch and ‘clueless,’ as to the real factual scenarios which affect attorneys (‘officers of the court’) and citizens daily by the hundreds and millions. Many of these committee members are seriously out-of-touch to be truly aware of what is really happening to normal every-day citizens from Siskiyou County to San Diego County. In short, it is abominable as to what is happening by and within our courthouses. Of course, the lack of adequate funding for the judicial branch, is likely the underpinning of the reasons for many of what is going on. A sincere ‘thank you’ in advance to whoever reads this email for your respective time, energy and effort. [See attachment.]</p>	

Rule 10.75(b) – Advisory bodies and chairs		
Commentator	Comment	Internal Committee Chairs' Response
31. Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p>. . . .</p> <p><b>A. The Definition of “Advisory Bodies” In Proposed Rule 10.75(b) Should Be Amended To Eliminate Confusion About Which Bodies It Covers, And To Achieve Consistency With The Legislature’s</b></p>	

**Judicial Administration: Meetings of Judicial Council Advisory Bodies** (Adopt Cal. Rules of Court, rule 10.75)

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<b>Rule 10.75(b) – Advisory bodies and chairs</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p><b>Supplemental Report</b></p> <p>Subdivision (b) of Proposed Rule 10.75 sets forth the definition of an “advisory body” to which Rule 10.75 would apply. This provision should be amended, as suggested in [specific comments below], for two reasons.</p> <p>As a preliminary matter, amendments are needed to make it clear that the term includes all of the various categories of advisory bodies contemplated in Title 10 of the Rules of Court, including internal committees, advisory committees, task forces, and other similar multimember bodies.</p> <p>Invitation at 3. As drafted, subdivision (b) of the proposed rule is not clear on this point, and amending it to eliminate this ambiguity is a relatively easy matter.</p> <p>In addition, subdivision (b)’s definition of an advisory body is narrower than the Supplemental Report seems to contemplate. As currently drafted, an “advisory body” for the purposes of the open meetings rule would include only those bodies “created by formal Judicial Council action to review issues and report to the council.” Proposed Rule (“P. Rule”) 10.75(b). In contrast, the Supplemental Report calls for an open meetings rule that would apply to any body “that reviews issues and reports to the judicial council,” Invitation at 2, regardless of whether that advisory body was</p>	<p>The internal chairs do not agree that it is necessary to specifically list in the rule all of the various types of multimember bodies that would be subject to it. The general description in (b)(1) adequately encompasses them. In the interests of clarity, however, they have added an advisory committee comment for the subdivision, confirming that the definition applies to internal committees, advisory committees, task forces, and other multimember bodies that the council creates to review issues and report to it.</p> <p>The internal chairs have considered the issue and agree that the language of subdivision (b)(1) may be simplified to cover advisory bodies “created by the Judicial Council,” removing the reference to “formal action.”</p> <p>The internal chairs do not agree that the proposed rule should be written to apply to advisory bodies created by entities or individuals other than the Judicial Council. The rule is properly focused on</p>

**Judicial Administration: Meetings of Judicial Council Advisory Bodies (Adopt Cal. Rules of Court, rule 10.75)**

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<b>Rule 10.75(b) – Advisory bodies and chairs</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p>created by formal Judicial Council action and regardless of the original purpose for which the body was created.</p> <p>The differences between the definition of an advisory body in proposed subdivision (b) and the Supplemental Report language, while seemingly slight, would have significant consequences. First, it is not clear what would constitute “formal Judicial Council action.” Among other things, this language would appear to exclude advisory committees created by order of the Chief Justice pursuant to Rule of Court 10.30(g) (specifying that, in addition to the advisory committees established by Division 10 of the Rules of Court, “the Chief Justice may create additional advisory bodies by order.”). By way of example, the Technology Planning Task Force, which was authorized by the Chief Justice in February 2013 to address judicial branch technology governance and strategy, issued an important report in mid-January 2014 that provides a new technology roadmap for California’s courts in the wake of the March 2012 decision to stop the deployment of the much-criticized and costly California Case Management System (“CCMS”). As evidenced by the subject matter of that report, the Technology Planning Task Force is doing work that implicates critical public policy decisions. Yet because it was not created by “formal judicial council action,” under Rule 10.75 as currently written, its meetings would remain closed to the public.</p>	<p>bodies that the council creates to assist it. By way of comparison, the Brown Act only purports to cover multimember bodies that are created by statute or by the “formal action” of the legislative body that they serve. That act does not apply to multi-member bodies created by an individual decision-maker.</p> <p>As written, the proposed rule will significantly expand public access to the work of the council and its advisory bodies. If the rule is adopted, the Judicial Council would review its impact within a year of the rule’s adoption and periodically afterward. When it does so, the council may assess whether the balance of public interests favor further expanding access. In the interim, the public has significant access to the workings of the council and its advisory bodies, including the task force referenced by the commentator (which in any case is to conclude its work in June 2014). Information regarding that task force’s composition, the timeline for its work, and its charge are already available on the California Courts website (<a href="http://www.courts.ca.gov/24858.htm#tab24864">www.courts.ca.gov/24858.htm#tab24864</a>). The public may review on-line the task force’s report to the council and hear the council’s ensuing discussion. (<a href="http://www.courts.ca.gov/documents/jc-20140123-item1.pdf">www.courts.ca.gov/documents/jc-20140123-item1.pdf</a>.)</p>

**Judicial Administration: Meetings of Judicial Council Advisory Bodies** (Adopt Cal. Rules of Court, rule 10.75)

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<b>Rule 10.75(b) – Advisory bodies and chairs</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p>In addition, under the current language of subdivision (b), if an advisory body was not initially created for the particular purpose of reviewing issues and reporting to the Judicial Council but ended up doing so in practice, it would also be excluded from the open meetings rule, contrary to Supplemental Report language calling for an open meeting rule to apply to any multimember body that engages in the act of “review[ing] issues and report[ing] to the Judicial Council,” regardless of the body’s original mandate.</p> <p style="text-align: center;">. . . .</p> <p>[Suggested specific changes to subdivision (b).]</p> <p style="text-align: center;">. . . .</p> <p><b>(b) Advisory bodies and chairs-Definitions</b></p> <p>(1) “Advisory bodies,” as used in this rule, means any <u>committee, subcommittee, advisory group, working group, task force, or similar multimember body created by formal Judicial Council action to review that reviews issues and report reports to the council.</u> <u>Judicial Council or another advisory body.</u></p> <p>(2) “Chair,” as used in this rule, includes a chair’s designee.</p> <p>(3) “Meeting,” as used in this rule, includes any <u>congregation of a majority of the members of an advisory body – whether in person or through telephonic or other technological means – to hear, discuss, or deliberate upon any item that is within the subject matter area of the advisory body.</u></p>	<p>Advisory bodies are created by the Judicial Council for the purposes of reporting to the council. (See, e.g., Cal. Rules of Court, rule 10.34(a).) It would serve no purpose for the council to create a body to assist it, without including a reporting requirement, as advisory bodies have only the authority conferred by the council.</p> <p>The internal chairs recommend a different final version of subdivision (b) (post-circulation text underscored):</p> <p>“(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. <u>For purposes of this rule, subcommittees that are composed of less than a majority of 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.</u></p> <p>“(2) ‘Chair’ as used in this rule, includes a</p>

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<b>Rule 10.75(b) – Advisory bodies and chairs</b>			
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>	
	<p>(4) <u>“Budget meeting,” as used in this rule, means any meeting or portion of meeting to discuss a proposed recommendation that the Judicial Council approve an allocation or direct an expenditure of public funds.</u></p> <p>(5) <u>“Designated page,” as used in this rule, means a designated page on the California Courts website (www.courts.ca.gov) on which all notices and other communications required by this rule will be posted.</u></p> <p>. . . .</p>	<p>chair’s designee.”</p> <p>As explained in the report, this final version of subdivision (b) clarifies the definition of “advisory bodies”. It provides a clear definition of the term without attempting to specify all types of bodies. The new text in (b)(1) defining “advisory bodies” is similar to definition of “legislative body” in the Brown Act , which states:</p> <p>“ ‘[L]egislative body’ means:</p> <p>(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. <u>However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this</u></p>	

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<b>Rule 10.75(b) – Advisory bodies and chairs</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
			<p><u>chapter.</u></p> <p>(Gov. Code, § 65952(b), underscoring added.)</p> <p>Under the revised definition of “advisory bodies,” as under the Brown Act, it will be clear that ad hoc subcommittees composed of fewer than a majority of the members of the advisory body are not covered by the rule.</p> <p>Regarding the commentator’s other suggestions, meetings and budget meetings are described in subdivision (c)(1). The “designated [web] page” is identified in subdivision (a). Hence the commentator’s proposed revisions of subdivision (b) are not necessary.</p>

<b>Rule 10.75(c)(1) –Meetings</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
32.	American Federation of State, County and Municipal Employees, Councils 36 and 57 by Anthony R. Segall, Attorney Rothner, Segall & Greenstone Pasadena	<p>. . . .</p> <p>AFSCME wishes to focus its comments on two areas of concern. The first is with respect to the scope of meetings included within subsection (c)(1). That subsection states that advisory body meetings will be open where these meetings are to “review issues that the advisory body will report to the Judicial Council.” This subsection leaves ambiguous whether Rule 10.75 is intended to cover all meetings of “advisory bodies,” or just those meetings which include topics that it “will report.” AFSCME</p>	<p>The issue that the commentator raises is addressed in the proposed Advisory Committee Comment to subdivision (a) and (c)(1). That comment clarifies that the rule is intended to provide public access to advisory body meetings “to review issues that the advisory body will report to the council.” The rule would “not apply to meetings that do not involve review of issues to be reported to the council, such as meetings providing education and training of members,</p>

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<b>Rule 10.75(c)(1) –Meetings</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>recommends resolving this ambiguity by deleting any qualifying language exempting meetings of “advisory bodies” in subsection (c)(1), except as specifically stated elsewhere in the Rule.</p> <p style="text-align: center;">. . . .</p>	<p>discussion of best practices, or sharing of information of general interest unrelated to advice or reports to the council.”</p>
33.	<p>California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento</p>	<p style="text-align: center;">. . . .</p> <p><b>Rule 10.75(c)(1) Meetings</b> This section establishes that all meetings of the advisory bodies are open to the public unless a closed session exception applies. Most open meeting laws contain definitions that clearly establish what type of gathering triggers the open meeting requirements, e.g., a gathering of a majority of members at the same time and place to hear, discuss and deliberate upon any item that is within the subject matter jurisdiction of the body.</p> <p>The use of this type of definition makes it clear that if a majority of members of a committee gather at the same time and place and discuss an item that falls within the body’s subject matter jurisdiction that there is a violation. The proposed rules also contain a prohibition on members deciding “a matter included on a posted agenda for the open portion of an upcoming meeting in advance of the meeting.”</p> <p>The wording of this section would allow discussions outside of a meeting among a majority of members on matters not included on a posted agenda as well as matters included on a posted agenda for an open meeting but where no <u>decision</u> is reached. Similarly, discussions could occur</p>	<p>The internal chairs respectfully note that the open meeting laws applicable to the Legislature neither define the term “meeting” nor contain a serial meeting prohibition. (See Gov. Code, § 9027 et seq.) The omission in that instance may be a recognition of that body’s volume of business, of its members’ many and overlapping obligations, and of the need for broad communication to identify areas of shared interest and develop effective legislative solutions. Similar considerations apply for Judicial Council advisory bodies, whose members simultaneously share interests as court leaders tasked with managing day-to-day administration of justice locally, and as participants often on multiple committees at once working to develop effective approaches to the myriad of issues confronting the judicial branch statewide.</p> <p>The internal committee chairs have considered the issue at length, both before formal public circulation of the rule and in response to</p>

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<b>Rule 10.75(c)(1) –Meetings</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p>and decisions reached by a majority of members on items that are agendized for closed sessions without the public’s knowledge. And, of course, members of the three bodies that are entirely exempt and the Rules Committees that are presumptively exempt could talk about any item, anywhere, at any time in secret.</p> <p>Moreover, there is no prohibition of serial meetings in this section nor is there a prohibition on the use of intermediaries in a series of communications involving a quorum of a body to discuss or deliberate on any item in an open or closed session.</p> <p>The current language in this section serves to encourage discussions and decision-making behind closed doors, a result that undermines the stated objective of the proposed rules. To avoid this result, CNPA suggests the Judicial Council adopt language that prohibit discussion or action on any item not included on an agenda for an open or closed session that mirrors the meetings provision in the Brown Act which are found in California Government Code Section 54952.2.</p> <p>. . . .</p>	<p>comments received, and have concluded that adding a fuller serial meeting prohibition to the proposed rule would have the effect of requiring more and longer meetings. This would significantly increase branch costs and the time demands for Judicial Council advisory body members. It also would limit the effectiveness of those bodies by making it difficult for members to communicate with colleagues throughout the branch on topics of shared concern, a process that advisory bodies currently draw upon to identify issues and vet proposals. By increasing time demands and limiting member communications with colleagues, a serial meeting provision would deter volunteers from serving on advisory bodies, and limit the volume of work that can be accomplished. Given the many existing opportunities for public observation and contribution to the work of the Judicial Council and its advisory bodies and the additional opportunities that the proposed rule would afford, the chairs do not think adding a fuller serial meeting rule is necessary, or that the addition would further the administration of justice statewide. The chairs do agree, however, that the word “open” should be removed from the third sentence of subdivision (c)(1), so that the prohibition against deciding issues included on a posted agenda for an upcoming meeting would apply equally for open and closed</p>

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Rule 10.75(c)(1) –Meetings			
	Commentator	Comment	Internal Committee Chairs’ Response
			meetings.
34.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	<p>[Commentator’s specific suggestions]</p> <p>. . . .</p> <p><u>Comment:</u> The proposed rule appears to be unworkable because it may be impossible in many cases to know in advance whether an issue discussed in a meeting will or will not be reported to the Judicial Council. What may not be reported immediately may later be reported later or may help inform matters later reported to the Judicial Council. Moreover, there is no similar limitation in the Bagley-Keene or Brown acts. All of advisory body meetings should be open to the public, unless otherwise specifically allowed to be closed.</p> <p>. . . .</p> <p>(c) Open meeting policy</p> <p>(1) <i>Meetings</i> Advisory body meetings <del>to review issues that the advisory body will report to the Judicial Council</del> are open to the public, unless they are closed under (d). Meetings open to the public include budget meetings, which are meetings or portions of meetings to discuss a proposed recommendation that the Judicial Council approve an allocation or direct an expenditure of public funds. A majority of advisory body members must not decide a matter <u>that is required to be</u> included on a posted agenda for the open portion of an upcoming meeting in advance of the meeting.</p> <p>(2) <i>Subcommittees</i></p>	<p>The internal chairs respectfully do not agree that it is unworkable to require open meetings for advisory body (or subcommittee) discussions of issues that the “body will report to the Judicial Council.” (Rule 10.75(c)(1).) Most work of the advisory bodies is focused on reviewing issues for report to the Judicial Council. Advisory bodies receive direction from the council, and are assigned annual charges, identifying topics for their review and reports. Their work typically is planned well in advance, with an identified outcome, most commonly reports presenting proposals and products to the council for approval. Providing public access to meetings in which such reports are developed will facilitate public understanding of the factors involved and alternatives considered, while maximizing the contributions that advisory bodies receive.</p> <p>Other meetings, in contrast, provide a forum in which colleagues from diverse locations and backgrounds can meet to receive education or training or engage in an unfiltered exchange concerning best practices. Such exchanges foster statewide connections among colleagues, providing additional resources to assist court leaders in performing their jobs, and are vital to</p>

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Rule 10.75(c)(1) –Meetings			
	Commentator	Comment	Internal Committee Chairs’ Response
		<p>If an advisory body subcommittee is charged with addressing a subject <del>as a continuing matter</del> or includes a majority of the members of the advisory body, the subcommittee must meet in open session under this rule <del>when considering an issue that the advisory body will report to the Judicial Council</del>, unless the subcommittee meeting is closed under (d).</p> <p>. . . .</p>	<p>collaboration and effective leadership within the judicial branch. Interjecting an audience for those meetings, however, would undercut their value, chilling dialogue, without providing sufficient countervailing benefit to the Judicial Council or the public that it serves. The internal chairs conclude the balance accomplished by the wording of subdivision (c)(1) is appropriately tailored to the specific needs of the judicial branch, and have not made the requested change.</p>
35.	<p>Civil and Small Claims Advisory Committee by Hon. Patricia M. Lucas, Chair San Francisco</p>	<p>. . . .</p> <p>Fourth, a technical point: subdivision (c)(1) . . . include[s] references to meetings being open unless the meeting is “closed under (d)”. Because meetings may also be closed under [(c)(3)], C&amp;SCAC proposes that a reference to that subdivision should be added to (c)(1) (on line 33 of page 20)</p> <p>. . . .</p> <p>. . . .</p>	<p>The language has been amended to clarify that advisory body meetings “are open to the public, except as otherwise provided in the rule.”</p>
36.	<p>Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco</p>	<p>. . . .</p> <p><b>B. The Proposed Rule Provides Insufficient Guidance As To What Constitutes A Meeting And Inadequate Safeguards Against Extra-Meeting Deliberation; And The Highly Problematic “Circulated Proposals” Provision Should Be Eliminated</b></p> <p>Proposed Rule 10.75 is also fundamentally flawed in that it does not specify what constitutes a “meeting.” In keeping with California’s open meetings statutes, the heart of the</p>	<p>(See response to comment 33 above.)</p>

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Rule 10.75(c)(1) –Meetings		
Commentator	Comment	Internal Committee Chairs’ Response
	<p>rule should be the principle that any congregation of a majority of advisory body members to hear, discuss, or deliberate on a matter within the subject area of the body is a meeting for purposes of the rule. Otherwise, these activities can be freely undertaken by advisory bodies without notice or an opportunity for public and media observation as long as the body does so outside the context of whatever it may choose to label as a “meeting.” The necessary change can be easily made, borrowing from the relevant provisions of the Brown and Bagley-Keene Acts (Gov’t Code §§ 54952.2 &amp; 11122.5).</p> <p>In addition, the rule cannot be effective without an express prohibition against discussing, deliberating, and taking action on matters through a series of extra-meeting communications involving a majority of an advisory body. Again, such a provision is a key component of both the Brown and Bagley-Keene Acts. <i>See, e.g., Page v. MiraCosta Cmty. Coll. Dist.</i>, 180 Cal. App. 4th 471, 503-504 (2009) (“To prevent evasion of the Brown Act, a series of private meetings (known as serial meetings) by which a majority of the members of a legislative body commit themselves to a decision concerning public business or engage in collective deliberation on public business would violate the open meeting requirement.”) (citation omitted). The Legislature emphasized the importance of avoiding serial discussion and deliberation when, in 2008, it amended the Brown Act to clarify that the serial meeting prohibition is violated even if a series of communications does not result in a collective concurrence. <i>See</i> S.B. 1732, 2007-2008 Reg.</p>	<p>(See response to comment 33 above.)</p>

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<b>Rule 10.75(c)(1) –Meetings</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>Sess. (Cal. 2008).</p> <p>New provisions defining a meeting and prohibiting serial meetings should supplant the language in (c)(1) of the proposed rule providing that “[a] majority of advisory body members must not decide a matter included on a posted agenda for the open portion of an upcoming meeting in advance of the meeting.” This language is highly problematic for a number of reasons. First, meaningful transparency requires that prohibited extra-meeting activity go beyond “deciding” a matter and also include discussion and deliberation. <i>See, e.g., Epstein v. Hollywood Ent. Dist. II Bus. Improvement Dist.</i>, 87 Cal. App. 4<sup>th</sup> 862, 867 (2001) (“It is clearly the public policy of this state that . . . the deliberative process by which decisions related to the public’s business are made shall be conducted in full view of the public.”). Second, the prohibited topics of discussion, deliberation, and decision should not be limited to those on a posted agenda for an upcoming meeting but should instead include any matters within the subject area of the advisory body. The language in (c)(1) fatally undermines the goal of achieving transparency by permitting advisory bodies to privately discuss, deliberate on, and decide any matter that does not happen to be on a posted agenda for an upcoming meeting. Instead, the proposed rule should track the relevant provisions of California’s other open meetings laws, as reflected in Exhibit A.</p> <p style="text-align: center;">. . . .</p> <p><b>C. All Advisory Body Meetings Should Presumptively Be Open, Not Just Those “To Review Issues That</b></p>	<p>For the reasons discussed in response to comment 33 above, the internal chairs conclude that a fuller serial meeting rule would not be workable for Judicial Council advisory bodies, given their overlapping memberships and many communities of interest. The chairs are confident, however, that advisory body members will discuss the significant work of their advisory bodies in open meetings as necessary under the rule, and that the public, through attendance at such meetings, will be fully informed about the considerations shaping the proposals that advisory bodies present for council approval.</p>

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Rule 10.75(c)(1) –Meetings		
Commentator	Comment	Internal Committee Chairs’ Response
	<p><b>The Advisory Body Will Report To The Judicial Council”</b></p> <p>The proposed rule is also deficient in that not all meetings of advisory bodies would be open to the public and media. Rather, under subdivision (c)(1), <i>only</i> those meetings “to review issues that the advisory body will report to the Judicial Council” would be presumptively open. The Invitation asserts that “[t]his scope is consistent with the supplemental report language.” Invitation at 5. Courthouse News respectfully but strenuously disagrees.</p> <p>The Supplemental Report language calls for an open meetings rule that would “apply to any committee, subcommittee, advisory group, working group, task force, or similar multimember body that reviews issues and reports to the Judicial Council.” Invitation at 2. This language merely describes the types of multimember <i>bodies</i> that should be subject to the open meetings rule. Nothing in this language suggests that it was intended to limit the types of <i>meetings</i> to which the open meetings rule should apply.</p> <p>Several commentators have previously expressed serious practical and policy concerns about this limitation, and Courthouse News shares those concerns. How could it be known, <i>in advance</i>, that a discussion at a meeting might take a particular turn, or that an issue discussed at a meeting might be the subject of a report to the Judicial Council at some later date?</p>	<p>The supplemental report language calls for a report from the Judicial Council regarding implementation of an open meetings rule, supplying guidance concerning content. The internal chairs carefully considered the supplemental report language and also the Governor’s veto message, urging the council to “provide greater public access to Judicial Branch committee activities.” After considerable review and consideration, they have developed a detailed rule proposal, which they are confident will significantly expand public access. As proposed, the rule would open a broad range of meetings to the public, enhancing public understanding of the process by which proposals presented to the council are developed. For the reasons described in response to comment 34, however, the chairs have preserved a space as well for some nonpublic discussion among advisory body members on topics not related to planned council reports. The balance reflected in the rule is workable as discussed in response to comment 34, and is tailored to the specific needs of the judicial branch. The chairs decline to revise this provision.</p>

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<b>Rule 10.75(c)(1) –Meetings</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p>What kind of “report to the Judicial Council” – formal or informal, written or oral – would suffice?</p> <p>Wouldn’t most matters under an advisory body’s purview eventually be reported to the Judicial Council in one way or another?</p> <p>Even setting aside these serious practical questions, public policy weighs strongly against such a limitation on openness. In those instances when an advisory body meets to review issues that the advisory body will not report to the Judicial Council, public and media oversight would seem to be all the more important. Take, for example, the Executive and Planning Committee, an internal committee whose mandate is to “take action on behalf of the [Judicial Council] between council meetings.” If the Executive and Planning Committee takes up a matter that is not later reported to the Judicial Council, subdivision (c)(1) would allow that meeting to be held behind closed doors. But this would seem to be precisely the sort of meeting where public access would be most important.</p> <p>Although proposed (c)(1) does provide that budget meetings—defined as a “meeting[] or portion[] of meeting[] to discuss a proposed recommendation that the Judicial Council approve an allocation or direct expenditure of public funds”—would be open to the public, such access alone will not achieve the more broadly-based transparency that the Supplemental Report seems to contemplate or that Governor Brown noted when he “urg[ed] the Judicial</p>	<p>“Report to the Judicial Council,” as used in subdivision (c)(1) of the proposed rule includes information provided for an agenda item for a council meeting or for council action by means of a circulating order.</p> <p>As stated in response to comment 23, above, the internal committee chairs see the benefit of providing public access to a greater range of advisory body meetings, beyond the budget meetings described in subdivision (c)(1) of the proposed rule. Budget meetings are only one type of meeting that would be opened. In addition, the rule would open to the public the</p>

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<b>Rule 10.75(c)(1) –Meetings</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>Council to continue efforts to provide greater public access to Judicial Branch committee activities.” Invitation at 2. While discussions concerning the judiciary’s budget are certainly important, the Judicial Council’s advisory committees engage in many other activities that involve the expenditure of public funds and/or other matters of public policy that should be open to public and media view.</p> <p>Accordingly, the provision in Rule 10.75(c) that reserves the open meetings policy only for those meetings “to review issues that the advisory body will report to the Judicial Council” should be stricken. <i>See</i> Exhibit A.<sup>1</sup> ([<sup>1</sup>This similar language should also be stricken from the provision of the proposed rule governing access to subcommittees. P. Rule 10.75(c)(2)).</p> <p style="text-align: center;">. . . .</p> <p>[The commentator’s suggested specific changes to subdivision (c).]</p> <p><b>(c) Open meeting policy</b></p> <p>(1) <i>Meetings</i></p> <p>Advisory body meetings to review issues that the advisory body will report to the Judicial Council are open to the public, unless they are closed under (d). Meetings open to the public include budget meetings, which are meetings or portions of meetings to discuss a proposed recommendation that the Judicial Council</p>	<p>meetings of more than 20 Judicial Council advisory bodies and many more subcommittees. Collectively they review issues and report regarding a host of topics (e.g., court facilities, technology, court interpreters, court-ordered debt, tribal courts, and collaborative justice.)</p> <p>For the reasons discussed above, the internal chairs respectfully decline to adopt this suggestion.</p> <p>The final proposed version of rule 10.75(c) includes revisions to subdivision (c), although not those specifically proposed by the commentator. The final version of rule 10.75(c)(1)–(c)(2) states (with post-circulation changes indicated):</p> <p style="text-align: center;"><b>(c) Open meetings</b></p> <p><i>(1) Meetings.</i></p> <p>Advisory body meetings to review issues that the advisory body will report to the</p>

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Rule 10.75(c)(1) –Meetings		
Commentator	Comment	Internal Committee Chairs’ Response
	<p><del>approve an allocation or direct an expenditure of public funds. A majority of advisory body members must not decide a matter included on a posted agenda for the open portion of an upcoming meeting in advance of the meeting, outside of a meeting, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter area of the advisory body.</del></p> <p>(2) <i>Permitted Extra-Meeting Activities</i></p> <p>(A) <u>A judicial officer or employee may engage in separate conversations or communications with members of an advisory body outside of a meeting in order to answer questions or provide information regarding a matter that is within the subject matter area of the advisory body, provided that the officer or employee does not communicate to members of the advisory body the comments or position of any other member or members of the advisory body.</u></p> <p>(B) <u>A majority of the members of an advisory body may attend a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or the Judicial Council, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of</u></p>	<p>Judicial Council are open to the public, <del>unless they are closed under (d)</del><u>except as otherwise provided in this rule. A</u> <del>M</del><u>meetings open to the public includes a</u> budget meetings, which <del>are</del><u>is</u> a meetings or portions of a meetings 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 decide a matter included on a posted agenda for an upcoming meeting in advance of the meeting.”</p> <p><del>(e)(2) If an advisory body subcommittee is charged with addressing a subject as a continuing matter or includes a majority of the members of the advisory body, the subcommittee must meet in open session under this rule when considering an issue that the advisory body will report to the Judicial Council, except as otherwise provided in this rule unless the subcommittee meeting is closed under (d).</del></p> <p>For the reasons discussed above in response to comment 33, the final version of the rule does not include the fuller serial meeting prohibition that the commentator suggests or the related</p>

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<b>Rule 10.75(c)(1) –Meetings</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p><u>a specified nature that is within the subject matter area of the advisory body.</u></p> <p>(C) <u>A majority of the members of an advisory body may attend an open and publicized meeting organized to address a topic of public concern by a person or organization other than the Judicial Council or advisory body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter area of the advisory body.</u></p> <p>(D) <u>A majority of the members of an advisory body may attend an open and noticed meeting of another advisory body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter area of their advisory body.</u></p> <p>(E) <u>A majority of the members of an advisory body may attend a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter area of the advisory body.</u></p>	<p>provisions describing permitted extra-meeting activities. Following circulation of the rule for comment, however, the second sentence of the provision was revised to clarify that a budget meeting is one in which an advisory body will discuss a recommendation that it would propose to the Judicial Council. The change ensures consistency with the first sentence of the provision. In addition, as noted in response to comment 33 above, the words “open portion of” have been removed from the last sentence of the provision, so that the prohibition against deciding issues included on a posted agenda for an upcoming meeting would apply equally for open and closed meetings.</p>

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<b>Rule 10.75(c)(1) –Meetings</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p><u>(F) An advisory body may attend an open and noticed meeting of a standing committee of that body, provided that the members of the advisory body who are not members of the standing committee attend only as observers.</u></p> <p>(3) <u>Budget Meetings.</u></p> <p><u>Notwithstanding any other provision of this rule, budget meetings are open to the public.</u></p> <p><del>(2)</del> <u>(4) Subcommittees</u></p> <p>If an advisory body subcommittee is charged with addressing a subject as a continuing matter or includes a majority of the members of the advisory body, the subcommittee must meet in open session under this rule <del>when considering an issue that the advisory body will report to the Judicial Council</del>, unless the subcommittee meeting is closed under (d).</p> <p style="text-align: center;">. . . .</p>	
37.	SEIU California State Council by Scott A. Kronland, Attorney Altshuler Berzon LLP San Francisco	<p style="text-align: center;">. . . .</p> <p><i>First</i>, the proposed Rule would require open meetings only when the particular meeting is “to review issues that the advisory body will report to the Judicial Council.” The Background to the proposed Rule states that this “scope is consistent with the supplemental report language.” To the contrary, the Legislature’s supplemental report identifies the bodies whose meetings should be open – not the subset of those bodies’ meetings that should be open. The</p>	See responses to comment 36, above, at page 32.

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<b>Rule 10.75(c)(1) –Meetings</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>Legislature’s supplemental report states: “The rule shall apply to any committee, subcommittee, advisory group, working group, task force, or similar multimember body that reviews issues and reports to the Judicial Council.”</p> <p>The supplemental report does <i>not</i> state: “The rule shall apply to any committee, subcommittee, advisory group, working group, task force, or similar multimember body that reviews issues and reports to the Judicial Council, <i>but only if the particular meeting involves the review of an issue that will be reported to the Judicial Council.</i>“</p> <p>That being so, if an official, multi-member body created by the Judicial Council has the responsibility to review issues and report to the Judicial Council, then that body’s meetings to conduct official business all should be open to the public, unless they fall within an exception to the general rule of open meetings.</p>	
38.	Superior Court of Los Angeles County	<p>.....</p> <p><b>I.</b></p> <p><b>A. Accountability for fiscal resources.</b></p> <p>There have been well-publicized instances of failures of credibility and accountability by the Administrative Office of the Courts concerning the finances of the Branch, as detailed and analyzed in the Strategic Evaluation Committee (SEC) Report. The Legislative and Executive Branches have an understandable interest in ensuring that the Judicial Branch is accountable regarding public funds committed to the Branch.</p>	<p>The internal chairs agree that there is a significant public interest in the proper handling of state funds, and that transparency and accountability are important in this context. The chairs would note that, as policy-making body for the judicial branch, the Judicial Council is responsible and accountable for developing and overseeing the branch budget and for allocating funds in a manner that ensures equal access to justice for all citizens of the state and promotes</p>

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<b>Rule 10.75(c)(1) –Meetings</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	Public access is important to transparency and accountability of the Judicial Branch with respect to budgeting and use of funds. Those functions are reviewed in the Judicial Council, and the Council now provides for notice of its agenda items and for public comment. The Trial Court Budget Advisory Committee makes recommendations to the Judicial Council concerning budgeting and use of appropriated funds. Because of the importance of these functions, and the need for transparency and accountability with respect to use of appropriated funds, it is appropriate that a procedure for public comment increase accessibility of this process to the public. The Trial Court Budget Advisory Committee has already implemented procedures for public access to its meetings. The current proposed rule further refines and codifies these procedures.	implementation of statewide policies. (See Cal. Rules of Court, rule 10.101(b).) The Administrative Office of the Courts (AOC) is the staff agency to the council, responsible for effectively implementing council directives. Rule 10.75 is intended to provide greater public access to the Judicial Council’s advisory bodies, especially those involved in budget allocations or the direct expenditure of public funds.

<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
39. California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	..... CNPA is concerned that the proposed rules significantly deviate from the first key element of open meeting laws by establishing that all meetings of the Advisory Committees on Civil and Criminal Jury Instructions and Litigation Management are entirely exempt from the rules [subd. (c)(2)] and the meetings of seven Rule Committees are presumptively closed [subd. (c)(3)]. The justification for the exemption and presumed closure is the assertion that those serving on these committees might say something during these meetings that, if the public was present, could	The internal committee chairs have considered the issue and have concluded that it is necessary to retain the referenced provisions (subdivisions (c)(2) and (c)(3)), to ensure the continued participation of judicial officers as members on those committees. Judges are ethically prohibited from discussing in public cases that have not reached final appellate disposition, conduct that would be required of them if the referenced provisions are not included. Removing the

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p>constitute a potential violation of the California Code of Judicial Ethics.</p> <p>Moreover, with respect to the advisory bodies to which the presumption of access applies, the proposal would allow the chair of one of those bodies to unilaterally close an open session if there is discussion of a topic that members “cannot discuss in public without risking a violation of the California Code of Judicial Ethics . . .”</p> <p>CNPA recognizes it is important for judges to comply with the Code of Judicial Ethics to preserve the integrity of the judicial process but the proposal fails to achieve a balance between compliance with the Code of Judicial Ethics and the public’s role in the advisory body meeting process.</p> <p>We think the rule should provide clearer standards for using the Code of Judicial Ethics to close meetings of these bodies. Without clear standards in the proposed rule there is the danger that an advisory body might over rely on the Code of Judicial Ethics to prevent public access to a meeting when such closure might not be warranted.</p> <p>The need to revise this fundamental design flaw cannot be overstated. If the purpose of the proposed rules is to provide greater public access to the meetings of these bodies, the presumption of closure instead of openness guarantees little or no public access. This result would profoundly affect the objectives and the integrity of the proposed rules.</p>	<p>provisions also would deter judges from volunteering on such committees because their public discussion of existing or proposed laws, rules, or forms may be misunderstood or used as a basis to challenge them, precluding them from hearing cases, exacerbating workload issues as court, to detriment of the public they serve. If judges are deterred from participating, it would deprive those bodies of the benefit of the judicial officers’ specialized knowledge and experience in crafting procedures for the effective and efficient administration of justice.</p> <p>The internal committee chairs respectfully disagree that the proposed rule does not strike the proper balance among competing concerns and does not provide standards. The rule would open to the public the meetings of most advisory bodies and their subcommittees. Only three committees (of more than 30) are exempt, and those only because their work cannot ethically be conducted in public. Although the six rule committees also may hold closed meetings, the public is afforded an opportunity to observe their work and provide input at multiple junctures. Rule 10.75 would require them to hold any budget meetings in public and to publicly post notice and agendas of their meetings. If the chair concludes that members may publicly discuss agenda items without violating the canons of</p>

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p>.....</p> <p><b>Rule 10.75[(c)(2)and (3)] Exemptions and Presumed Closures</b></p> <p>In addition to our criticism of the wholesale and presumptive exemption of the ten (10) bodies identified above, the presumptive closure of the Rule Committees’ meetings also fails to identify the specific public interest in the presumptive closure of these committees. Furthermore, the proposed rules fail to narrowly tailor any closure of these meetings to serve that specific identifiable public interest.</p> <p>Other than the reference to the Judicial Code of Ethics as justification for the exemption and the presumptive closure of these bodies, the proposed rules fail to identify a particular reason for allowing these groups to meet in secret. CNPA urges the Judicial Council to amend the proposed rules to require these bodies to be presumptively open unless one of the closed session exceptions applies in a particular set of circumstances.</p> <p>.....</p>	<p>judicial ethics, and the issues described in subdivision (d) of the rule are not implicated, other meetings also may be held in public.</p> <p>The rule committees listed in subdivision (c)(3) and the jury instruction committees listed in subdivision (c)(2) generally circulate proposals broadly for public comment, review and consider each comment received, post public reports a week before the Judicial Council meeting at which their proposals will be considered, attaching all comments received and all responses, and present their reports at public council meetings, during which the public again may offer comment. (Cal. Rules of Court, rules 10.5(c), (g)(1), 10.22(d).) The California Code of Judicial Ethics provides guiding standards for judges who are members of the referenced committees. The internal chairs are satisfied that those standards and the considerations described in subdivisions (c) and (d) of the proposed rule together provide proper guidance and strike the proper balance.</p> <p>The internal chairs therefore decline to amend the referenced rule provisions, with one caveat. After further review and consideration, the chairs conclude that discussion in meetings of the Judicial Council’s Rules and Projects Committee, an internal committee that</p>

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
			establishes and maintains the rule making process (see Cal. Rules of Court, rule 10.13), primarily occurs at a policy level, and that members, including judges, are not frequently required to discuss pending cases or specific legal issues raising ethical concerns if done in public. Accordingly, the chairs have revised the proposed rule to remove the Rules and Projects Committee from the list of rule committees in subdivision (c)(3) (previously (c)(4)).
40.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	<p>. . . .</p> <p>In particular, we strongly recommend that you:</p> <ul style="list-style-type: none"> <li>• Open all meetings of all advisory groups unless specifically permitted to be closed under one of the enumerated exemptions listed in proposed rule subdivision (d).</li> </ul> <p>. . . .</p> <p>[Commentator’s specific suggestions]</p> <p><i>Comment: Wholesale exemption for any committee is unnecessarily broad and appears to be unprecedented under the Bagley-Keene or Brown acts. If there is a functional need to close a meeting, subdivision (d) would already allow the meeting to be closed. However, if the topics to be discussed do not warrant closure under subdivision (d), closure should not be allowed simply because of the name of the committee.</i></p> <p>. . . .</p> <p><del>(3)</del> <b><i>Exempt bodies</i></b></p>	See responses to comments 39 above. See also responses to comments 41, 43, and 44 below.

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<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p><del>The meetings of the following advisory bodies and their subcommittees are exempt from the requirements of this rule:</del></p> <p><del>(A) Advisory Committee on Civil Jury Instructions;</del></p> <p><del>(B) Advisory Committee on Criminal Jury Instructions;</del> <del>and</del></p> <p><del>(C) Litigation Management Committee.</del></p> <p><del>(4) — <i>Rule committees</i></del></p> <p><del>The meetings of the following rule committees and their subcommittees are closed unless the chair concludes that a particular agenda item may be addressed in open session or that a portion of the meeting qualifies as a budget meeting, as that term is defined in (e)(1):</del></p> <p><del>(A) Appellate Advisory Committee;</del></p> <p><del>(B) Civil and Small Claims Advisory Committee;</del></p> <p><del>(C) Criminal Law Advisory Committee;</del></p> <p><del>(D) Family and Juvenile Law Advisory Committee;</del></p> <p><del>(E) Probate and Mental Health Advisory Committee;</del></p>	

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p><del>(F) Rules and Projects Committee; and</del></p> <p><del>(G) Traffic Advisory Committee.</del></p> <p>. . . .</p>	
41.	Civil and Small Claims Advisory Committee by Hon. Patricia M. Lucas, Chair San Francisco	<p>. . . .</p> <p>First, C&amp;SCAC agrees with council’s proposal that most of the advisory committee’s meetings, like those of the two advisory committees on jury instructions, should be closed, for all the reasons set out in the proposed Advisory Committee Note, including all the ethical concerns discusses in that note. (See proposed rule 10.75[(c)(3)] and proposed Advisory Committee Note on Subdivisions [(c)(2), (c)(3), and (d)(10)].)</p> <p>The committee notes that the great bulk of its work is the development of recommendations to the Judicial Council for new or amended rules and forms, all of which, once adopted by the council, have the force of law. If the committee’s meetings were made public, statements made by a judicial officer on the committee, whether in favor or in opposition to particular proposals, would be available for parties appearing before that judge to comb through and use in arguments to the judicial officer at time of trial or other court proceedings, regarding how that judge should interpret the law.</p> <p>In addition, if the C&amp;SCAC meetings were all open to the public, statements made by the judicial officers in their efforts to further the public good could later be used to</p>	The commentator’s views are noted.

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>			
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		<p>challenge judges for frivolous reasons. The statements could well result in additional disqualification motions and peremptory challenges against members of the committee, which will not only create practical issues for courts related to judicial workloads, but could also result in undue delays and unfairness to other parties in an action.</p> <p>Opening all the C&amp;SCAC meeting to the public may also, for the reasons noted above, deter well-qualified judicial officers from being willing to take part in the advisory committee’s work.</p> <p style="text-align: center;">. . . .</p>	
42.	<p>Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco</p>	<p style="text-align: center;">. . . .</p> <p><b>D. Rather Than Carving Out Ten Advisory Bodies From The Open Meeting Requirements Entirely, Concerns About Open Meetings Of These Ten Bodies Should Be Dealt With Through Closed Session Exemptions</b></p> <p>Under the proposed rule, three advisory bodies (the Litigation Management Committee and two jury instruction committees) would be entirely exempt from the open meetings requirement, and the presumption of access for an additional seven “rule” committees would be reversed.<sup>2</sup> <sup>(2)</sup>The three bodies that would be excluded from 10.75 altogether are the Litigation Management Committee and the Advisory Committees on Civil and Criminal Jury instructions. P. Rule 10.75[(c)(2)]. The seven “rule” committees for which the presumption of access would be reversed are the Appellate Advisory Committee, Civil and</p>	<p>See responses to comment 39 above, and 41, 43, and 45, below. Note that the rule has been revised to omit from the list in subdivision (c)(3) the Rules and Projects Committee, an internal committee of the Judicial Council, for reasons discussed in the response to comment 39.</p> <p>The internal chairs considered the alternative that the commentator proposes (i.e., omitting subdivisions (c)(2) and (c)(3) from the proposed rule, relying instead on subdivision (d) as a basis</p>

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p>Small Claims Advisory Committee, Criminal Law Advisory Committee, Family and Juvenile Law Advisory Committee, Probate and Mental Health Advisory Committee, and Traffic Advisory Committee. P. Rule 10.75[(c)(3)]. P. Rule 10.75[(c)(2) and (3)]. Courthouse News understands there are legitimate reasons why some – or even most – of the meetings of these advisory bodies would properly be closed to the public. But rather than completely excluding these groups from the scope of Rule 10.75, the concerns that prompted their carve-out should instead be addressed under the closed session exemptions in subdivision (d), following the same structure as the state’s other open meetings laws.</p> <p>For example, take the Litigation Management Committee. As the Invitation notes, judges have an obligation not to publicly comment on pending or imminent litigation. The Litigation Management Committee is charged not only with discussing pending or anticipated claims and litigation against judicial officers, courts and court employees, but also with “mak[ing] recommendations to the Judicial Council for <i>policies</i> governing the management of litigation involving the courts.” Invitation at 6; Rule of Court 10.14(b). To the extent those policy discussions do not involve pending or anticipated claims in litigation, they should be open to the public. Meanwhile, discussions about pending or imminent litigation could be closed under proposed Rule 10.75(d)(11), which allows closure to discuss topics that judicial officers cannot discuss in public without violating judicial ethics, and/or proposed Rule 10.75(d)(2), which allows closure to discuss pending litigation.</p>	<p>for closing meetings of the listed advisory bodies). After careful review, they decided against this option because it would create public expectations concerning access to the meetings of those bodies that could not be met, an undesirable result on its own, and one that also likely would mean that the bodies repeatedly would have to defend decisions to close meetings, creating further demands at a time when the volume of work is already great and staff resources over-committed.</p> <p>The commentator’s example of one task that the Litigation Management Committee conceivably might perform in public does not convince the committee chairs of the need to remove subdivision (c)(2) from the proposed rule. In the past 12 years, the committee has only presented recommendations concerning litigation management policies on three occasions, most recently in December 2008, more than five years ago. The history demonstrates that existing policies in this area are stable and the committee only relatively rarely has the need to consider proposing changes. It would not make sense for the committee to be subject to the rule, if it could only arguably perform one of its functions in public and is likely to perform that function only at intervals of several years. (The internal chairs observe that public discussion may not be</p>

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Rule 10.75(c)(2)–(c)(3) Exempt bodies & Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]		
Commentator	Comment	Internal Committee Chairs’ Response
	<p>The same holds true for the two jury instruction committees. While these committees “may discuss decisions or rulings in cases that have not reached final resolution through the appellate process,” Invitation at 6, not all jury instruction committee work necessarily entails the discussion of active litigation. For example, the revisions to civil jury instructions recently proposed by the Advisory Committee on Civil Jury Instructions include the removal of statutory language to be replaced with a link to text on Lexis and Westlaw – an issue not only unrelated to pending litigation but also of potential interest to the many members of the public who use standard jury instructions.<sup>3</sup> (<sup>[3]</sup> See “Civil Jury Instructions (CACI) Revisions,” available at <a href="http://www.courts.ca.gov/documents/CACI14-01.pdf">http://www.courts.ca.gov/documents/CACI14-01.pdf</a>). To the extent a particular discussion requires comment on pending cases, it may be appropriate for the committee to go into closed session for that portion of the discussion. But the committees’ meetings should not be removed from the reach of Rule 10.75 altogether.</p> <p>Another basis offered for exempting these three bodies is concern about the ethical prohibition against a judge’s making statements “that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.” Code of Judicial Ethics, canon 2A. But since this obligation applies to both public and <i>nonpublic</i> statements, <i>id.</i>, it cannot be a basis for excluding the public.<sup>4</sup> (<sup>[4]</sup> Code of</p>	<p>possible in some instances even when the committee discusses possible policy recommendations, if discussion arises from events occurring in a pending case.)</p> <p>The internal chairs do not agree that it would be a simple matter for judges who are members of the advisory bodies listed subdivisions (c)(2) and (c)(3) of the proposed rule to participate fully in the work of those bodies if their meetings were required to be held in public. Before engaging in any public colloquy, a judge in each instance would have to consider, for example, whether discussion concerns a case that has not reached</p>

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	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>Judicial Ethics, canon 2A (“A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.”). Similarly, canon 3E(3)(a) provides for disqualification of a judge if he or she has made “a statement, other than in a court proceeding, judicial decision, or opinion, that a person aware of the facts might reasonably believe commits the judge to reach a particular result or rule in a particular way in a proceeding.”).</p> <p>With respect to the presumed closure of the seven “rules” committees, the Invitation suggests that discussing rules and legislation in public is problematic because it entails “a complex interchange of views, consideration of multiple perspectives, and the vetting of opposing legal arguments, which judges cannot undertake in public without risk that their comments will be misunderstood or used as a basis for disqualification or challenge.” Invitation at 7. But a statement that could be the basis for disqualification – one that “a person aware of the facts might reasonably believe commits the judge to reach a particular result or rule in a particular way in a proceeding” – is prohibited whether made in public or not. Code of Judicial Ethics, canon 3E(3)(a). And having “in any capacity expressed a view on a legal or factual issue presented in the proceeding” is <i>not</i> a grounds for disqualification. Code Civ. Proc. § 170.2(b). California’s judges are well-practiced in discussing complicated issues without violating ethical mandates,</p>	<p>final disposition through the appellate process; whether his or her words might be misunderstood by the listening public as indication of having prejudged an issue that could come before the judge in litigation; and whether, even when entirely circumspect, the contemplated comment could provoke challenges that automatically will require reassignment of cases to other judges (see Code Civ. Proc., § 170.6(a)(2)), creating potentially significant workload issues for courts. Given that membership on these advisory bodies is entirely voluntary, judges who are members have considerable work to do at their courts, hearing cases (see, e.g., Judicial Council of Cal., <i>2013 Court Statistics Report</i>, p. 84, <a href="http://www.courts.ca.gov/documents/2013-Court-Statistics-Report.pdf">www.courts.ca.gov/documents/2013-Court-Statistics-Report.pdf</a> [on average, judges statewide each handle more than 4,000 cases per year]), and assisting with court management and administration (see, e.g., Cal. Rules of Court, rules 10.603, 10.608, 10.613), and that the work of individual advisory bodies also may be demanding, involving frequent meetings and review of large quantities of materials, the internal chairs anticipate that many judges may discontinue their participation on such bodies, as doing so would permit them to entirely avoid such ethical conundrums, allowing them to focus their energies without interruption on the work of their courts. As judges are uniquely skilled and</p>

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Commentator	Comment	Internal Committee Chairs’ Response
	<p>which means disqualification motions based on these meetings would be devoid of merit and easily <b>denied</b>. A theoretical increase in groundless disqualification motions is an insufficient basis to close off the very interchange of views, consideration of perspectives, and vetting of arguments the public and media needs to witness in order to monitor and participate in the business of the courts in a meaningful way. The troubling implication is that the Proposed Rule is intended to open only those meetings where no substantive discussion takes place.</p> <p>. . . .</p> <p>(3) <i>Exempt bodies</i></p> <p>The meetings of the following advisory bodies and their subcommittees are exempt from the requirements of this rule:</p> <p>(A) — Advisory Committee on Civil Jury Instructions;</p> <p>(B) — Advisory Committee on Criminal Jury Instructions; and</p> <p>(C) — Litigation Management Committee.</p> <p>(4) — <i>Rule committees</i></p> <p>The meetings of the following rule committees and their subcommittees are closed unless the chair concludes that a particular agenda item may be addressed in open session or</p>	<p>experienced in the areas that their advisory bodies address, the result would be the loss of an essential resource in performing the critical work of the advisory bodies, i.e., presenting fair, innovative, workable, and fully conceived proposals to the Judicial Council, to further the efficient and effective administration of justice statewide.</p>

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	<p>that a portion of the meeting qualifies as a budget meeting, as that term is defined in (e)(1):</p> <p>(A) — Appellate Advisory Committee;</p> <p>(B) — Civil and Small Claims Advisory Committee;</p> <p>(C) — Criminal Law Advisory Committee;</p> <p>(D) — Family and Juvenile Law Advisory Committee;</p> <p>(E) — Probate and Mental Health Advisory Committee;</p> <p>(F) — Rules and Projects Committee; and</p> <p>(G) — Traffic Advisory Committee.</p>	
43. Criminal Law Advisory Committee by Hon. Tricia Ann Bigelow, Chair San Francisco	<p>It is imperative that the meetings of this committee remain presumptively closed as currently prescribed by subdivision [(c)(3)] of the proposed rule. This presumption is particularly critical for this committee because, as more fully explained in the proposed advisory committee comment to subdivision [(c)(3)], nearly all of our discussions involve matters that judicial officers are ethically proscribed from discussing in public, including pending legal issues, the validity of proposed criminal procedures, and court implementation of new legislation, including most notably, criminal justice realignment, which has drastically altered the criminal justice landscape.</p>	The commentator’s views are noted.

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		<p>Opening our discussions to public scrutiny would also subject our judge members to potential peremptory disqualifications.</p> <p>If our meetings were not presumptively closed, I also suspect that many of our other members, including elected district attorneys and appointed public defenders, would decline to participate in any discussions that are open to the public. Those members would be forced to replace objectivity and collaboration—postures that are essential to the success of our work—in favor of the partisanship dictated by their public offices.</p> <p>Unless our meetings remain presumptively closed, in other words, I fear that we will be unable to fulfill our obligation to serve the Judicial Council, thereby failing our courts at a time of unprecedented need.</p> <p>For these reasons, the committee supports the current version of proposed rule 10.75.</p>	The commentator’s support is noted.
44.	<p>Probate and Mental Health Advisory Committee by Hon. Mitchell L. Beckloff, Chair Los Angeles</p>	<p>The Probate and Mental Health Advisory Committee strongly supports proposed rule 10.75[(c)(3)], which defines “rule committees” and makes specific provisions concerning their meetings. This portion of the rule indicates that the sponsoring Judicial Council internal committees and their staff have a clear understanding of the nature of the work done by rule committees; the problems that they face generally; and the unique difficulties that their judicial-officer members face specifically, in accomplishing the</p>	The commentator’s support is noted.

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>tasks assigned to them by the council.</p> <p>Recommendations by a rule committee to the Judicial Council to adopt or approve new or amended rules of court or Judicial Council forms must discuss anticipated implementation costs, but the recommendations typically do not suggest or request allocation of specific amounts of money to meet these costs. Judicial Council resolutions adopting or approving these proposals do not include specific allocation of funds or directions for their expenditure. Would rule committee proposals that generally discuss anticipated costs be considered “budget matters” under the proposed rule?</p> <p>It is unclear under rule 10.75[(c)(3)], taken together with the Advisory Committee Comment on that section at page 27 of the Invitation to Comment, whether (1) the Chair of a rule committee has authority to conclude that any proposal may be considered in an open meeting or an open portion of a meeting, whether or not it is a budget item under the rule; (2) the Chair of a rule committee may conclude that a proposal is to be considered in an open meeting or an open portion of a meeting because the proposal is a budget item; or (3) a budget item under the rule must be considered in an open meeting or in an open portion of a meeting of a rule committee regardless of the conclusions of a Chair of a rule committee about the item.</p>	<p>Rule 10.75(c)(1) has been amended to clarify that “budget meeting” means 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.” If discussion does not concern the advisory body’s proposing that the council approve an allocation or direct an expenditure of public funds, then it would not be a budget meeting.</p> <p>The provision has been amended to clarify that rule committees must open to the public any budget meetings they hold, and that other meetings of those committees and their subcommittees are closed unless the chair concludes that a particular agenda item may be addressed in open session.</p>
45.	Superior Court of Los Angeles County	<p>. . . .</p> <p><b>B. Existing opportunities for stakeholder and public</b></p>	

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p><b>input</b></p> <p>Most of the Advisory Committees and other bodies created by the Judicial Council have members who are stakeholders in the work of the committees. For example, the Family and Juvenile Law Advisory Committee must include at least one member from each of the following categories (in addition to judicial and administrative representation from the courts): child custody mediator; lawyer whose primary practice area is family law; lawyer from a public or private defender’s office whose primary practice area is juvenile law; chief probation officer; child welfare director; Court Appointed Special Advocate (CASA) director; county counsel assigned to juvenile dependency cases; domestic violence prevention advocate; district attorney assigned to juvenile delinquency cases; lawyer from the California Department of Child Support Services or a local child support agency; and public-interest children’s rights lawyer. (California Rule of Court 10.43(b).)</p> <p>Thus, these committees are structured to ensure that the work of the court system is guided by input from those who are expert in a particular field of law and by those who are or who represent stakeholders in the justice system. Members of the public have direct input into the work of the Judicial Branch committees because stakeholder representatives are involved directly in the committee deliberations. This fact distinguishes the work of Judicial Branch committees from the work of most legislative bodies, city councils and school boards, which generally do</p>	<p>No response required.</p> <p>No response required.</p>

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p>not include stakeholders as part of the deliberative body itself.</p> <p>Moreover, insofar as the work of Judicial Council Advisory Committees (or other bodies created by the Judicial Council) results in Rules of Court proposed for adoption by the Judicial Council, those rules are subject to a very effective procedure for securing public comment. (California Rule of Court 10.22.) When the Judicial Council has studied and proposed recommended revisions in a particular area of law, (for example, the work of the Elkins Task Force), it typically has circulated a draft version of a proposed report for public comment. Indeed, in the case of the Elkins Task Force, public hearings were held to obtain input on the relevant issues. When the Judicial Council acts to effect or to recommend changed procedures in a specific subject area of the law, by rulemaking or otherwise, there are pathways to public input that have served the Judicial Branch and the public well.</p> <p>Existing opportunities for stakeholder and public participation in recommendations to the Judicial Council (outside of the area of budget and spending) are effective and sufficient. Subsection [(c)(3)] of the draft rule therefore properly exempts rules committees from the requirements of the rule except when the committee addresses budgetary items.</p> <p><b>C. Unique problems are presented by allowing the public to listen to judicial committee deliberations.</b></p>	<p>No response required.</p> <p>The commentator’s views are noted.</p>

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p>Judicial officers have ethical restrictions that apply to their public statements. These ethical restrictions have no counterpart in the work of the Legislative or Executive Branches, or in the work of county or municipal deliberative bodies.</p> <p>The draft rule under consideration states, in subpart [(d)(10)], that an advisory body may hold a closed session to discuss “[t]opics that judicial officers . . . cannot 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.” This exception recognizes the ethical dilemma posed when judicial officers participate in . . . public discussion of issues pertaining to the work of the Judicial Branch – but it is insufficient to address that dilemma.</p> <p>The court’s mission is fundamentally different from most public agencies that are subject to open meeting laws. The mission of the Judicial Branch is to provide a solemn forum for the impartial resolution of disputes. As to this main function, the court’s proceedings are fully open to the public. Unlike other public officials, however, judges are strictly ethically prohibited from publicly discussing or talking about pending cases, or expressing views on how they might decide a matter that may come before them, or receiving ex parte communications about a pending case</p>	No response required.

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p>from outside of a public trial. The administrative, rulemaking and procedural problems that come before Judicial Council Advisory Committees (and other bodies created by the Judicial Council) often warrant talking internally about the need for procedures and rulemaking in the context of litigation; discussing the implications of pending or impending litigation; or discussing legal issues that affect the operations of the judiciary in a way that may seem to suggest how a judge may rule on a matter that may come before him or her.</p> <p>Moreover, permitting public presence or the potential for two-way communication by telephone at open meetings involving judicial officers creates a high risk that litigants will inappropriately attempt to use that forum to have impermissible ex parte communications with the court and its judges. In addition, allowing the public to appear in person requires security that imposes substantial new costs on the Judicial Branch.</p> <p>Discussion with colleagues on our Court who have served on Judicial Council Advisory Committees (other than the Trial Court Budget Advisory Committee) leads to the clear conclusion that judges simply would feel they could not engage in a candid discussion of most matters that come before these committees if the discussion were public. They believe that most matters that come before Advisory Committees would implicate ethical restrictions on public comment. For these reasons, it is essential that the open meeting rule include subsections [(c)(2) and (c)(3)].</p>	<p>The commentator’s views are noted.</p>

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p><b>II.</b>                      Consistent with the principles outlined above, Los Angeles Superior Court urges that the following additional amendments be made to the current draft of rule 10.75.</p> <p>(1) In light of current policies that open the Judicial Council’s decision making to the public, the existing substantial opportunities for stakeholder and public input into the work of Judicial Council Advisory (and other) Committees, and the substantial restriction on judicial input that open meetings would impose, LASC recommends that the rule be further restricted so as to open to the public the meetings of only those Committees expressly charged with budget and spending responsibilities.</p> <p>(2) As an alternative to item (1), we recommend that meetings of the Administrative Presiding Justices Advisory Committee, the Trial Court Presiding Judges Advisory Committee, and the Court Executive Advisory Committee be closed unless the chair concludes that a portion of the meeting qualifies as a budget meeting, as defined in (c)(1). It is important to acknowledge that the discussions, research and deliberations of AOC staff in formulating recommendations to the Judicial Council are not subject to open meeting requirements under the current draft rule. When judicial officers join in discussion of these policy issues, the fact of judicial participation (through committees with judicial members) should not trigger an open meeting requirement.</p>	<p>The internal committee chairs agree that (1) substantial opportunities for public input exist at present without adoption of the rule, (2) interaction and exchange of ideas among court leaders is critical, and (3) judges who are members of advisory committees may be constrained in their public discussion of issues by ethics concerns. They think, however, that subdivisions (c) and (d)(10) adequately provide for the latter two concerns. Although staff meetings are not subject to the rule, this is consistent with all other open meeting laws, which focus on opening to the public the meetings of multi-member bodies formally created to reach collaborative decisions through a consensus building process. The chairs conclude that opening a broader spectrum of advisory body meetings beyond budget meetings, and allowing public access to discussions concerning the development of reports to the council, will benefit the public by contributing to a greater understanding of the work of the judicial branch. It will allow the public to remain informed about issues of importance to court leaders and the judiciary, and will provide greater opportunities for public input, advancing the administration of justice.</p>

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<b>Rule 10.75(c)(2)–(c)(3) Exempt bodies &amp; Rule committees [as circulated for public comment, subdivisions (c)(3)–(c)(4)]</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	Judges need to be provided with a mechanism to interact with each other and to share ideas, including ideas that may result in a report to the Judicial Council. Similarly, trial court Executive Officers should have an opportunity to meet for candid discussion of topics of mutual interest, just as AOC staff can have private meetings on topics that result in a recommendation to the Judicial Council. . . . . .	

<b>Rule 10.75(d) – Closed sessions</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
46. California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	Most of the exemptions to the presumption of access listed in this section are written quite broadly and fail to adhere to the third principle of narrowly tailoring exemptions for specific purposes discussed above.  Some of the proposed exceptions appear to be specific to only certain bodies. The rule should make clear that certain exceptions may be used by only those bodies where the exemption would apply. For example, the Licensing or Professional Examinations exception should only be used by a body that has jurisdiction over this subject matter. As currently drafted all of the exceptions could be used by any advisory body.	The commentator’s views are noted.  Although certain of the listed closed session topics included in subdivision (d) of the proposed rule are anticipated to be necessary for specific advisory bodies, the internal chairs cannot be certain that no other advisory bodies would have a need to invoke them. Judicial Council advisory bodies perform a high volume of work and regularly are asked to provide input on new and unanticipated issues. The considerations supporting each closed session topic would apply regardless of the body invoking the provision. Accordingly, the chairs decline to limit their application.

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Rule 10.75(d) – Closed sessions		
Commentator	Comment	Internal Committee Chairs’ Response
	<p>Also, the proposed rules should be amended to make it clear that only members of the advisory body asserting an exemption can be present during a closed session. This is to avoid semi-secret meetings in which some members of the public are allowed to be present in a closed session while others are excluded.</p> <p>. . . .</p> <p><b><i>No Requirement to Report Actions Taken in Closed Session</i></b></p> <p>A fundamental concept in other open meeting rules is glaringly absent in the proposed rules: the requirement that a body that meets in closed session is required to publicly report what action it took in closed session. CNPA urges the Judicial Council to amend the proposed rules to incorporate a methodology similar to that found in the Brown Act requiring advisory bodies to publicly report actions taken upon the occurrence of triggering events. Please see California Government Code Section 54957.1</p>	<p>The internal chairs are not aware of any comparable provision in existing open meeting laws. (See e.g., Gov. Code, § 9027 et seq. [open meeting laws for the Legislature]; <i>id.</i>, § 11120 [law for state bodies]). Given this fact, and to avoid constraints on advisory body information gathering, the internal chairs decline to add the suggested provision.</p> <p>The internal chairs observe that the Bagley-Keene Open Meetings Act (Gov. Code, § 11120 et seq.) (BKA), which applies to state bodies, only requires subsequent public reporting if, in closed session, a state body acts to “appoint, employ, or dismiss a public employee.” (<i>Id.</i>, §§ 11125.2, 11126.3(f).) Even in that limited context, the required subsequent reporting may be exceedingly narrow. (See <i>id.</i>, § 11126(e) [Subsequent reporting need not disclose names “or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session . . . .”]; see also, e.g., <i>Versaci v. Superior Court</i> (2005) 127 Cal.App.4th 805, 819 [work performance evaluations “fall within the ambit” of public records act exemptions on privacy grounds].) The chairs are not persuaded, therefore, that a subsequent reporting requirement is “a fundamental concept” of open</p>

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Rule 10.75(d) – Closed sessions			
	Commentator	Comment	Internal Committee Chairs’ Response
		(See also commentator’s specific comments 49, 52, 55, 58, 62, 66, 68, 71, and 79, below concerning subdivision (d).)	meeting laws generally. That said, however, the Judicial Council and its advisory bodies already make regular public reports regarding activities, including appointments, the award of branch contracts and grants, and final audit reports. (See, e.g., <a href="http://www.courts.ca.gov/newsroom.htm">www.courts.ca.gov/newsroom.htm</a> [press releases, including concerning appointments]; <a href="http://www.courts.ca.gov/7466.htm">www.courts.ca.gov/7466.htm</a> [legislative reports, including concerning grants and contracts]; <a href="http://www.courts.ca.gov/12050.htm">www.courts.ca.gov/12050.htm</a> [branch audit reports].)  (See also responses to comments 49, 52, 55, 58, 62, 66, 68, 71, and 79, below.)
47.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	<p>. . . .</p> <p>In particular, we strongly recommend that you:</p> <p>. . . .</p> <ul style="list-style-type: none"> <li>• Limit the enumerated exemptions under subdivision (d) to much more closely track the Bagley-Keene and Brown Acts, including narrowing exemptions for pending litigation and sale or lease of real property, and eliminating exemptions for contract or legislative negotiations, unverified data or draft reports and the broad catch-all exemption for any topic that could impact judicial officers’ ethics, which instead can be accomplished, if necessary, by a particular judge’s recusal from the discussion and vote.</li> </ul>	Although the internal committee chairs carefully considered the example afforded by the referenced open meeting laws, and also the open meeting law that applies to the Legislature (see Gov. Code, § 9027 et seq.), they were necessarily guided as well by considerations specific to the judicial branch, as noted in response to comment 20 above. Taking into account all of the foregoing, including the commentator’s suggestions, the chairs have modified subdivision (d) of the proposed rule as described

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Rule 10.75(d) – Closed sessions			
	Commentator	Comment	Internal Committee Chairs’ Response
		. . . .	in their responses to comments 49-81, below.
48.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p>. . . .</p> <p><b>E. The Closed Session Exemptions In Proposed Rule 10.75(d) Are Much Broader Than In Other Open Meetings Laws And Threaten To Swallow The Open Meetings Rule</b></p> <p>Although the current version of Proposed Rule 10.75 has only eleven exemptions allowing closed sessions – down from seventeen in the November 2013 draft version of the rule – those eleven exemptions are very broad and go well beyond similar exemptions found in California’s other open meeting laws. In many places, the exemptions also lack the bright lines that are needed to help the public and media – and the advisory bodies themselves – determine when a particular matter should or should not be discussed in closed session. This is a matter of significant concern. While not all of the exemptions are addressed here, some of the most notable examples are as follows: . . .</p> <p>[The commentator’s specific changes for subdivision (d).]</p> <p>The chair of an advisory body<del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del><u>do</u> any of the following:</p> <p>. . . .</p> <p><u>The advisory body shall publicly report any action taken</u></p>	See responses to comments 49-81 below.

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<b>Rule 10.75(d) – Closed sessions</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<u>in closed session and the vote or abstention on that action of every member present.</u> .....	See response to comment 46 above.

<b>Rule 10.75(d)(1)</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
49. California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	..... (1) Personnel – It is important that bodies that have a need to discuss personnel issues can do so in closed session to protect against the unwarranted invasion of personal privacy of employees. The language in the proposed exception, however, would allow the discussion of any individuals, including judges, vendors and members of the public.  To the extent that a body has jurisdiction over personnel issues involving employees, the exception should be limited to the appointment, employment, evaluation of performance, discipline, dismissal or release of an employee or to hear complaints or charges brought against the employee unless the employee requests an open session. Please see California Government Code Section 54957(b). .....	As explained in the invitation to comment, Judicial Council advisory bodies do not themselves employ staff, but rather rely on personnel of the AOC, the council’s staff agency. The need to protect discussions concerning individuals arises because advisory bodies sometimes review the qualifications or performance of individuals as it relates to their area of focus. For example, the Governing Committee of the Center for Judicial Education and Research may evaluate the performance of course instructors. The council’s internal Executive and Planning Committee also considers the qualifications of individual applicants in developing recommendations to the Chief Justice for appointments to advisory bodies, including judges and other members of the public (e.g., public and private attorneys, law enforcement, probation officers, professors, treatment providers, and advocates). The purpose of this exception is to protect the privacy of individuals whose work or qualifications, for example, are being scrutinized by an advisory



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<b>Rule 10.75(d)(1)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>individual misconduct”; <i>or</i> (3) “matters that if discussed in public would constitute an unwarranted invasion of personal privacy.” The Invitation states that this provision is comparable to other provisions in the Brown Act, Bagley-Keene Act and Legislature open meeting laws, Invitation at 8, and while that is correct to a certain degree, there is an important distinction: each of these other provisions is very specific in that they allow closed sessions only for certain specified kinds of discussions about particular individuals or defined categories of persons.<sup>5</sup> (<sup>[5]</sup> Government Code § 9029(a)(1) allows a house or committee of the Legislature to hold a closed session to “consider the appointment, employment, evaluation of performance, or dismissal of a public officer or employee, to consider or hear complaints or charges brought against a Member of the Legislature or other public officer or employee, or to establish the classification or compensation of an employee of the Legislature.” Government Code §§ 54957(b) and 11126(a), the so-called “personnel” exemptions of the Brown and Bagley-Keene Acts, allow for closed sessions to consider the appointment, evaluation, dismissal, or discipline of a public employee or officer. The remaining provisions cited in the Invitation are provisions of the Brown and Bagley-Keene Acts that allow closed sessions only for very specific purposes.). By contrast, subdivision (d)(1) of proposed Rule 10.75 tries to replace these specific provisions with a single broad provision that would encompass virtually any discussion about virtually anybody, irrespective of their relationship to the judiciary</p>	<p>reasons to evaluate the qualifications and performance of individuals. They may be called upon to evaluate candidates willing to serve on advisory bodies, for example, including judges and others members of the public (e.g., public and private attorneys, law enforcement, probation officers, professors, treatment providers, and advocates, see Cal. Rules of Court, rules 10.40–10.44, 10.53–10.62) who are not captured by the commentator’s suggested language. The chairs therefore do not agree to the proposed modification.</p> <p>The chairs have refined the language of this provision to eliminate unnecessary or redundant language. Given the volume of advisory body work, including a multitude of statutorily mandated work, they are confident that advisory bodies have no inclination or time to expend on discussion of individuals who are unconnected to the judicial branch or to the significant work before them.</p>

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<b>Rule 10.75(d)(1)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p>and irrespective of whether the public discussion of that topic would constitute an unwarranted invasion of personal privacy. Respectfully, the breadth of proposed (d)(1) makes it ripe for abuse, and Courthouse News suggests that it be replaced with one or more specific provisions that identify the particular person or categories of people to whom the exemption would pertain, and for what specific discussions about that person or persons closed sessions would be allowed.</p> <p style="text-align: center;">. . . .</p> <p>[The commentator's specific changes to subdivision (d)(1).]</p> <p style="text-align: center;">. . . .</p> <p><b>(d) Closed sessions</b></p> <p style="padding-left: 40px;">The chair of an advisory body <del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del><u>do</u> any of the following:</p> <p>(1) <del>The</del><u>Discuss the</u> character, qualifications, competence, performance, behavior, or health <del>of an individual</del> or allegations of individual misconduct <del>of a judicial branch employee or independent contractor</del> <u>or matters that</u>, if <del>discussed</del><u>discussion</u> in public would constitute an unwarranted invasion of personal privacy;</p> <p style="text-align: center;">. . . .</p>	<p>The internal committee chairs have revised subdivision (d)(1) but not as suggested by the commentator. The final version of the provision (with the changes indicated) is as follows:</p> <p style="padding-left: 40px;"><b>“(d) Closed Sessions.</b></p> <p style="padding-left: 40px;">The chair of an advisory body or an advisory body subcommittee may close a meeting, or portion of a meeting, to discuss any of the following:</p> <p style="padding-left: 40px;">(1) The <del>character</del><u>character</u>, appointment, qualifications, <del>competence</del><u>competence</u>, performance, <del>behavior</del><u>behavior</u>, or health of an individual, <del>or allegations of individual misconduct</del> <u>or other information matters that</u>, if discussed in public, would constitute an unwarranted invasion of personal privacy;”.</p>

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<b>Rule 10.75(d)(2)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
52.	California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	<p style="text-align: center;">. . . .</p> <p>2. <u>Litigation</u> - CNPA recognizes the public interest in the discussion of certain items in closed session that, if disclosed, could prejudice the Judicial Councils' position in litigation or anticipated litigation. The breadth of the proposed litigation exception, however, would permit a body to discuss anything that remotely affects claims, pending or anticipated litigation, whether or not it would prejudice the Judicial Councils' position if it is disclosed. This exemption would also permit a discussion of litigation to which the courts may not even be a party. The litigation exemption should be narrowed and the proposed rules should incorporate the particular facts and circumstances that need to be discussed in closed session by the members of a body to protect Judicial Council's position. Please see California Government Code Section 54956.9.</p> <p style="text-align: center;">. . . .</p>	<p>The internal committee chairs respectfully disagree that the proposed language would permit closed session discussion of "anything that <i>remotely affects</i> claims, pending or anticipated litigation. . . ." (Italics added.) The proposed subdivision is limited to discussion of actual or anticipated claims or litigation, including related investigations. The provision is necessary because advisory bodies may be asked to consider the potential branchwide implications of such matters, and judges who are members would not be able to participate in the discussion if held in public, regardless of whether legal counsel is present. (See Cal. Code of Judicial Ethics, canon 3B(9).)</p>
53.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	<p>[Commentator's specific suggestions]</p> <p style="text-align: center;">. . . .</p> <p><u>Comment:</u> The proposed exemption is much broader than the Bagley-Keene or Brown acts. The proposed revision [below] conforms the rule to that standard, which permits closure only when necessary to protect attorney-client privilege for existing claims or where there is a significant exposure to litigation against the entity. Although this proposed exemption regarding attorney-client privilege is consistent with the existing rule regarding Judicial Council meetings adopted in 1999, there appears to be no</p>	<p>The internal chairs respectfully direct the commentator's attention to canon 3B(9) of the California Code of Judicial Ethics, which prohibits judges, including those serving on advisory bodies, from publicly commenting regarding a "pending or impending proceeding in any court," and directs judges to "require similar abstention" from court staff. The code governs the conduct of judges and is binding upon them.</p>

**Judicial Administration: Meetings of Judicial Council Advisory Bodies** (Adopt Cal. Rules of Court, rule 10.75)

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<b>Rule 10.75(d)(2)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p>statutory support and no reasonable public policy rationale for the proposed level of secrecy. As written, this proposal expands the exemption in three significant ways. First, it allows for wholesale closure for pending or anticipated claims, regardless of whether attorney- client privilege is involved. Second, “anticipated claim” in this proposal appears to expand the “significant exposure to litigation” limitation in Bagley-Keene and Brown acts. Finally, this proposal allows a general exemption for matters protected by the attorney-client privilege, whether or not connected to a pending or “anticipated” claim. There is no justification given for these substantial expansions from Bagley-Keene and Brown acts. Moreover, they could be used to prevent public access to anything perceived as controversial by broadly protecting attorney-client privilege with regards to anything remotely controversial and by allowing for closure of <u>any</u> discussion related to pending or anticipated litigation.</p> <p style="text-align: center;">. . . .</p> <p><b><u>(2) Receive advice from counsel regarding claims, administrative claims, pending litigation or where there is a significant exposure to litigation, when discussion in open session would prejudice the Judicial Council or the courts in the litigation</u></b>  <del>Claims, administrative claims, or pending or anticipated litigation in which a judicial branch entity or a member, officer, or employee of such an entity has been, or is likely to be, named as a party, or other matters protected by attorney-client privilege;</del></p>	<p>(Cal. Code of Judicial Ethics, Preamble; see also Cal. Const., art. VI, § 18(d) [a judge may be disciplined for improper conduct].)</p> <p>Although the canon refers to proceedings “pending or impending in any court,” read in context, as is required (see Cal. Code of Judicial Ethics, Preamble), the prohibition applies equally to pending or anticipated administrative claims. As the advisory committee comment to the canon observes, a judge “must act at all times in a manner that promotes public confidence” in the impartiality of the judiciary. (<i>Id.</i>, canon 3B(9), advis. com. comment., citing <i>id.</i>, canon 2A.) A judge cannot, consistently with this mandate, publicly discuss the implications for the judicial branch of litigation or administrative claims naming a judicial branch entity or representative, whether pending or reasonably anticipated.</p> <p>Regarding the commentator’s observation that “anticipated claim” appears broader than the term “significant exposure to litigation” as used in BKA, the internal committee chairs respectfully disagree. The act defines “litigation” as including “any adjudicatory proceeding,” “before [an] . . . administrative body. . . .” (Gov. Code, § 11126(e)(2)(C)(iii).) Its provision for closed session discussion where there is “significant exposure to litigation,” therefore includes</p>

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<b>Rule 10.75(d)(2)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		. . . . .	<p>circumstances involving significant exposure to an administrative claim. The internal chairs have revised subdivision (d)(2) of the proposed rule to add a requirement that there be a reasonable likelihood of a claim or litigation.</p> <p>Regarding the commentator’s final point, after further consideration, the provision also has been revised to remove the general provision that broadly had allowed closure of an advisory body meeting to consult with legal counsel on any topic. Accordingly, the final version of the rule does not include broad authorization to close meetings based on the attorney-client privilege.</p>
54.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p style="text-align: center;">. . . . .</p> <p><b>Closed sessions to discuss litigation or other matters protected by attorney-client privilege (10.75(d)(2)) –</b> This provision would allow a closed session for any discussion concerning a claim, or pending or anticipated litigation, “in which a judicial branch entity or a member, officer, or employee of such an entity has been, or is likely to be, named as a party.” It is broader in scope than the litigation exemptions contained in other open meetings laws, which specifically define the situations in which litigation would be considered pending or reasonably anticipated, restrict closed sessions to only those in which the body is conferring with its legal counsel, and reserve application of the exception only to those cases where discussing the matter in open session would prejudice the</p>	<p>The commentator observes that the corresponding BKA provision defines circumstances in which litigation may be considered pending or reasonably anticipated. The internal chairs note in response that the California Code of Judicial Ethics contains comparable definitions, which are binding on judges. (See Cal. Code of Judicial Ethics, Terminology [defining “pending” and “impending” litigation].)</p> <p>Regarding the commentator’s second point,</p>

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<b>Rule 10.75(d)(2)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>position of the open body. <i>See</i> Gov’t Code § 54956.9 (Brown Act); § 11126 (Bagley-Keene); <i>see also</i> Gov’t Code § 9029(a)(3); 9029.5 (Legislature open meeting laws). Indeed, as (d)(2) is currently written, there is not even a requirement that the claim or litigation have any bearing on the judicial branch – under the current language, an advisory body could go into closed session to discuss a judicial employee’s property line dispute with a neighbor. Moreover, unlike these other open meetings laws, subdivision (d)(2) would allow a closed session for any discussion protected by the attorney client privilege, regardless of whether that discussion related to pending or anticipated litigation. <i>Compare</i> Proposed Rule 10.75(d)(2) with Gov’t Code §§ 54956.9; 11126(e)(2); 9029.5(e) (all specifying that pending litigation situation is the exclusive expression of the attorney-client privilege for the purposes of conducting closed-session meetings).<sup>6</sup> <sup>(6)</sup> There is nothing unusual about an attorney for a government body giving legal advice in open session. For example, the presence of the city attorney on the city council dais is a familiar sight, with the city attorney frequently called upon to provide advice throughout an open session meeting. <i>See also Bagley-Keene Guide</i>, at 13 (“What happens in a situation where a body desires legal advice from counsel, but the Act’s pending litigation exemption does not apply? In such a case, legal counsel can either (1) provide the legal advice orally and discuss it in open session; or (2) deliver a one-way legal advice memorandum to the board members. The memorandum would constitute a record containing an attorney-client</p>	<p>comparing the proposed rule to BKA, see the responses to comment 53, above, explaining specific standards for judges established in the California Code of Judicial Ethics, including limits on their public comments and a requirement that they demand similar abstention from court staff. Those limits apply equally regardless of whether a claim, administrative claim, or litigation names a judicial branch entity. Moreover, an advisory body may have need to discuss, for example, whether a pending case names a judicial branch representative in an individual capacity as a strategy to avoid defenses that otherwise might apply. Accordingly, the internal chairs do not agree with the comment or the suggested limitation to litigation against individuals in their “official capacity.” As noted previously, however, the chairs are confident that advisory body members are dedicated to improving the administration of justice and have no inclination or time to expend on discussion of claims or litigation unconnected to the work of the judicial branch.</p> <p>Regarding the commentator’s final point, after further consideration, the provision has been revised to remove the general provision allowing closed sessions for attorney-client privileged discussions.</p>

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<b>Rule 10.75(d)(2)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p>privileged communication and would be protected from disclosure under section 6254(k) of the Public Records Act. (111.25.1(a).). However, when the board members receive that memorandum, they may discuss it only in open session, unless there is a specific exception that applies which allows them to consider it in closed session.”).</p> <p style="text-align: center;">. . . .</p> <p>[The commentator’s specific changes to subdivision (d)(2).]</p> <p style="text-align: center;">. . . .</p> <p><b>(d) Closed sessions</b></p> <p>The chair of an advisory body <del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del><u>do</u> any of the following:</p> <p>(2) <del>Claims</del><u>Based on advice from legal counsel, confer with, or receive advice from, its legal counsel regarding claims</u>, administrative claims, or pending or anticipated litigation in which a judicial branch entity or a member, officer, or employee of such an entity has been, or is likely to be, named as a party, <del>or other matters protected by attorney-client privilege in his or her official capacity;</del></p> <p style="text-align: center;">. . . .</p>	<p>The internal committee chairs recommend changes to subdivision (d)(2), but not the specific changes suggested by the commentator. The final version of (d)(2) (with changes shown) is:</p> <p><b>(d) Closed sessions</b></p> <p>The chair of an advisory body or an advisory body subcommittee may close a meeting, or portion of a meeting, to discuss any of the following:</p> <p>(2) Claims, administrative claims, <u>agency investigations</u>, or pending or <u>reasonably</u> anticipated litigation <del>in which naming, or reasonably</del> <u>anticipated to name</u>, a judicial branch entity or a member, officer, or employee of such an entity <del>has been, or is likely to be, named as a party, or other matters protected by attorney-client privilege.</del></p>

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<b>Rule 10.75(d)(3)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
55.	California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	<p style="text-align: center;">. . . . .</p> <p>(3) <u>Contracts</u> -There is no similar exemption in other open meeting laws for closed session discussions involving contracts and such an open-ended rule prevents the public from obtaining any knowledge about a contract until the deal is done. This provision allowing for secret discussions of contracts should be stricken from the proposed rules</p> <p>CNPA recognizes the need for bodies to discuss certain items that pertain to labor issues and legislation in closed session. These discussions should be limited, however, to instructing negotiators involved in labor negotiations and developing the court's legislative agenda. Please see California Government Code Section 54957.6.</p> <p style="text-align: center;">. . . . .</p>	<p>The broader language is necessary due to the Judicial Council's governance structure, which involves considerable consultation and communication among advisory bodies, to ensure full consideration of issues before action is taken, for example, providing instructions to a negotiator concerning a contract or legislation. The purpose of the provision is to prevent disclosure of information that would adversely affect the council or another judicial branch entity in negotiations with a vendor, labor organization, or political or governmental organization.</p> <p>The internal committee chairs note that the California Judicial Branch Contracting Law enacted in 2011 (Pub. Contract Code, § 19201 et seq.) and the Judicial Branch Contracting Manual (JBCM) (<a href="http://www.courts.ca.gov/documents/jbcl-manual.pdf">www.courts.ca.gov/documents/jbcl-manual.pdf</a>) together contain numerous requirements for judicial branch contracting and procurement, designed to protect the public interest, e.g., by requiring competitive bidding, complete documentation, executive branch review of certain large contracts, and semiannual Judicial Council reporting to the Joint Legislative Budget Committee and State Auditor concerning all vendor contracts. (See, e.g., Pub. Contract Code, § 19209; JBCM, chs. 1, 4, 12.) The chairs</p>

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Rule 10.75(d)(3)			
	Commentator	Comment	Internal Committee Chairs' Response
			note also that records created for the purpose of procuring goods and services are generally available to the public, including, for example, executed contracts and other fiscal information related to contract administration. (See JBCM, ch. 11, p. 20, § 11.13, citing Cal. Rules of Court, rule 10.500.)
56.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	[Commentator's specific suggestions] <p>. . . .</p> <p><u>Comment:</u> The proposed exemption is much broader than the Bagley-Keene or Brown acts. The proposed revision conforms the rule to that standard. Although this proposal is consistent with the existing rule regarding Judicial Council meetings adopted in 1999, there is no statutory support and no reasonable public policy rationale for secrecy in the discussion of legislation. Additionally, allowing exemptions for contract negotiations in existing law is limited to one specific instance – governing boards of health plans when deciding on health plans. The wholesale exemption of all contracts is unwarranted.</p> <p>. . . .</p> <p>(3) Negotiations concerning <del>a contract</del>, a labor issue, <del>or legislation</del>;</p> <p>. . . .</p>	See response to comment 55, above. In addition, the internal committee chairs respectfully note that, as the policy-making body for the state judicial branch, the Judicial Council regularly represents and advocates for the branch on legislative matters, drawing on input from its advisory bodies to develop positions on bills and legislative priorities. Subdivision (d)(3) in the proposed rule would afford council advisory bodies an alternative available to political caucuses in the Legislature (see Gov. Code, § 9029(b)), to consider in closed session the most effective strategy for negotiations concerning legislation affecting the branch and the public whom it serves. Without the provision, advisory bodies would be compelled to formulate a negotiating strategy in public, a requirement that necessarily would undercut the effectiveness of the strategy and may compromise the council's legislative priorities.

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<b>Rule 10.75(d)(3)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
57.	<p>Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco</p>	<p style="text-align: center;">. . . .</p> <p><b>Closed session to discuss negotiations concerning contracts, labor issues or legislation (10.75(d)(3))</b> – Under the Brown and Bagley-Keene Acts, closed sessions are permitted for the purpose of allowing the legislative or state body to meet with its negotiator concerning certain specified matter relating to labor negotiations. <i>See</i> Gov’t Code §§ 54957.6(a), 11126(c)(17). In contrast, subdivision (d)(3) of the proposed rule goes much further, allowing closed sessions for any discussion of negotiations concerning a “contract” or “legislation” – extremely broad exemptions that are not found in any other open meeting law and that would keep discussions involving matter of enormous public significance behind closed doors. While other open meetings laws allow closed sessions to discuss contracts in certain specified situations, none of those provisions comes close to the across-the-board exemption for any contract negotiation contained in proposed (d)(3). And one need only look to the massive amounts of money spent on contracts associated with the failed CCMS project to appreciate the legitimate public interest in discussions about contract negotiations. With regard to legislation, while the Legislature open meeting laws allows a caucus composed of members of the same political party to meet in closed session, Government Code § 9029(b), no existing open meetings law allows closed sessions to discuss legislative negotiations for other bodies governed by those laws, and there is a high level of public interest in discussions concerning legislation.<sup>7</sup> (<sup>17</sup>) Indeed, although the Bagley-Keene Act contains a</p>	<p>See responses to comments 55 and 56, above. In addition, the internal chairs respectfully note that the commentator’s observation concerning the proposed \$10 fee legislation is not entirely accurate. The Political Coordination and Liaison Committee, an internal committee composed entirely of Judicial Council members, recommended seeking the legislation, not the AOC. The recommendation was presented to the council, and endorsed, at a public meeting in December 2012. (See Judicial Council of Cal., <i>Judicial Council Legislative Priorities: 2013</i> (Oct. 26, 2012), item R, at p. 12, <a href="http://www.courts.ca.gov/documents/jc-20121214-agenda.pdf">www.courts.ca.gov/documents/jc-20121214-agenda.pdf</a>; Judicial Council of Cal. (Dec. 13–14, 2012) Minutes, item R, at p. 18.) The report recommending the action, including the actual language of the proposed statutory change, was publicly posted a week before the council meeting and the public had opportunity to comment concerning it at the council meeting.</p> <p>The chairs also note that considerable information regarding content and status of legislation affecting the courts is available on the California Courts website (see <a href="http://www.courts.ca.gov/4121.htm#activeleg">www.courts.ca.gov/4121.htm#activeleg</a>) including annual summaries of Judicial Council</p>

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<b>Rule 10.75(d)(3)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p>provision that specifically allows state bodies to call a special meeting to consider proposed legislation, Gov't Code § 11125.4(a)(2), there is nothing in that provision or anywhere else in the Act that allows those meetings to be closed to the public.). For example, budget trailer language offered by the AOC in 2013 would have imposed a \$10 fee just to look at a court file, legislation that was roundly criticized by media outlets throughout the state, as well as by open government advocates. Subdivision [(d)](3) should be amended to reduce its reach only to labor negotiations, and only in a manner consistent with other open meetings laws.<sup>8</sup> <sup>[18]</sup> In addition, although the Invitation states that closed sessions to discuss contracts or labor agreements would only be authorized until the contract or labor agreement was executed, the actual proposed language for subdivision (d)(3) does not contain any such limitation. <i>Compare</i> Invitation at 10 with 22.). <i>See</i> Exhibit A.</p> <p style="text-align: center;">. . . .</p> <p>[The commentator's specific changes to subdivision (d)(3).]</p> <p style="text-align: center;">. . . .</p> <p><b>(d) Closed sessions</b></p> <p>The chair of an advisory body <del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del><u>do</u> any of the following:</p> <p>(3) <del>Negotiations concerning a contract, a labor issue, or legislation;</del> <u>Negotiate with designated</u></p>	<p>legislative policies and branch legislative priorities.</p>

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<b>Rule 10.75(d)(3)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p><u>labor representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation;</u></p> <p>(4) <u>Grant authority to the advisory body's or Judicial Council's negotiator regarding the price and terms of payment for a contract with an outside vendor, provided the advisory body has first identified in an open and public meeting its negotiators, the contract and vendor which the negotiations concern, and the person or persons with whom its negotiators may negotiate;</u></p> <p>. . . .</p>	

<b>Rule 10.75(d)(4)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
58.	<p>California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento</p>	<p>. . . .</p> <p>(4) <u>Real Property</u> -This proposed exception deviates significantly from the Brown Act and the Bagley-Keene Act regarding permissible closed discussions of real property purchases, sales, or leases. The proposal would allow a discussion by the members of a body of the location of the real property which is the subject of the negotiation to be done in secret.</p> <p>Communities most affected by the decision of where to</p>	<p>The internal chairs have revised subdivision (d)(4), removing “selection of a location” as a topic for closed session discussion. As modified, the provision would only permit closed session discussion of price and terms of payment for the purchase, sale, exchange, or lease of real property for judicial branch facilities.</p> <p>The chairs also note that considerable</p>

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<b>Rule 10.75(d)(4)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		locate a courthouse or other facility could be completely shut out of the process until the deal is done. This exemption should be narrowed to mirror the requirements of the Brown Act and the Bagley-Keene Act requiring the body to identify the location of the property that is the subject of the discussion as well as the negotiators for all of the parties involved in the transaction. The discussion should also be limited to instructing the Judicial Council's negotiator on price and terms of payment.  . . . .	information concerning the background and status of individual courthouse construction projects, including reports submitted at various critical junctures, press releases updating the public regarding specific projects, and announcements concerning procurement, is available to the public on the California Courts website. ( <a href="http://www.courts.ca.gov/2559.htm">www.courts.ca.gov/2559.htm</a> ).
59.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	[Commentator's specific suggestions]  . . . .  <u>Comment:</u> The proposed exemption is much broader than the Bagley-Keene or Brown acts. The proposed revision conforms the rule to that standard. Both Bagley-Keene and the Brown Act allow for closed sessions to discuss price, but not location of real property, and that prior to such a closed session the entity must identify the property in question. It is unclear why the judiciary should be able to shield the actual property location in question when state and local entities appropriately cannot. The public is not only paying for the property, it undoubtedly has a great interest in where a courthouse may be located.  . . . .  (4) The purchase, sale, or lease of real property <del>or selection of a location</del> for a judicial branch facility until the property has been acquired or the relevant contracts	The rule has been revised to eliminate "selection of a location." See also responses to comment 58 above.

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Rule 10.75(d)(4)			
	Commentator	Comment	Internal Committee Chairs' Response
		have been executed; . . . . .	
60.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p>. . . . .</p> <p><b>Real estate (10.75(d)(4))</b> – This provision would exclude the public from meetings to discuss “[t]he purchase, sale, or lease of real property or selection of a location for a judicial branch facility until the property has been acquired or the relevant contracts have been executed.” It would have the effect of shutting the public and media out of <i>all</i> meetings relating to the acquisition or disposition of property, including the “selection of the location for a judicial branch facility until the property has been acquired or the relevant contracts have been executed.” In contrast, although the Brown and Bagley-Keene Acts permit closed sessions so that the body may meet with its negotiator to give instructions regarding “price and terms of payment,” Gov’t Code §§ 54956.8, 11126(c)(7)(A), before going into such a closed session, those bodies must identify, among other things, the specific properties that the negotiations may concern. <i>Accord</i> Gov’t Code § 9029.5(a)(4) &amp; (b) (similar provision in Legislature open meeting laws). In the Invitation, concern is expressed that disclosure of judicial branch interest in a particular property “could negatively impact the price for the judicial branch and have other adverse consequences,” but to the extent this is a concern, it is a concern for every government body, and under other open meetings laws, such concerns have given way to competing concerns for government transparency. Similar changes should be made to subdivision (d)(4). <i>See</i> Exhibit A. Otherwise, as stated in a recent newspaper</p>	See responses to comments 58 and 59 above.

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<b>Rule 10.75(d)(4)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p>article regarding a controversial land acquisition deal by the state judiciary in Modesto, “the public won’t be told what the government is doing until it is too late to stop it.” <i>State Plans To Keep Stanislaus County Courthouse Land Deal in Modesto Secret Until Sale Is Complete</i>, Modesto Bee, December 12, 2013, available at <a href="http://www.modbee.com/2013/12/12/3085844/state-will-keep-modesto-courthouse.html">http://www.modbee.com/2013/12/12/3085844/state-will-keep-modesto-courthouse.html</a>.</p> <p style="text-align: center;">. . . .</p> <p>[The commentator’s specific changes to subdivision (d)(4).]</p> <p style="text-align: center;">. . . .</p> <p><b>(d) Closed sessions</b></p> <p>The chair of an advisory body <del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del><u>do</u> any of the following:</p> <p>(4) <del>_____</del><u>The</u> <u>5) Grant authority to the advisory body’s or Judicial Council’s negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease of real property or selection of a location</u> <del>state</del> for a judicial branch facility, <u>provided the advisory body has first identified in an open and public meeting its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate until the property has been acquired or</u></p>	<p>The internal committee chairs recommend changes to subdivision (d)(4) but not the specific revisions proposed by the commentator. The final version of (d)(2) (with changes shown) is:</p> <p><b>(d) Closed sessions</b></p> <p>The chair of an advisory body or an advisory body subcommittee may close a meeting, or portion of a meeting, to discuss any of the following:</p> <p>(4) <u>The price and terms of payment for</u> <del>The</del> purchase, sale, <u>exchange,</u> or lease of real property <del>or selection of a location</del> for a judicial branch facility <u>until before the property has been acquired or the relevant contracts executed;</u></p>

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<b>Rule 10.75(d)(4)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<del>the relevant contracts have been executed;</del> .....	
61.	SEIU California State Council by Scott A. Kronland, Attorney Altshuler Berzon LLP San Francisco	<p style="text-align: center;">.....</p> <p><i>Second</i>, with regard to the exemptions in subdivision (d) to the general rule that meetings will be open, there are two exemptions that do not appear to follow the guiding principle to treat the Judicial Council advisory committees like other State entities subject to the Bagley-Keene Open Meeting Act except insofar as there are issues unique to the judiciary, as follows:</p> <p>Exception (4) would permit closure of any meeting to discuss: ‘ The purchase, sale, or lease of real property or selection of a location for a judicial branch facility until the property has been acquired or the relevant contracts have been executed.’ Under Bagley-Keene, the analogous exemption is limited to the much narrower circumstances of meetings with or instructions to real estate negotiators. <i>See</i> Gov. Code §11126(c)(7). There does not appear to be anything unique to the judiciary that would justify a broader real estate exemption.</p> <p style="text-align: center;">.....</p> <p>The above exemption[] should be eliminated (or narrowed to be consistent with Bagley- Keene) so that the intent of the open meetings policy will be realized.</p> <p style="text-align: center;">.....</p> <p>(See also commentator’s comment 75 below.)</p>	<p>See responses to comments 58–60 above.</p> <p style="text-align: right;">(See also responses to comment 75 below.)</p>

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<b>Rule 10.75(d)(5)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
62.	California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	. . . . (5) <u>Security Issues</u> - CNPA recognizes the need for bodies to discuss security issues in closed session. A narrower definition of what constitutes “other matters related to electronic data” for purposes of permissible closed session discussions is necessary. Neither the public nor the Chair of a body would know and understand the parameters of what is permissible for a closed session discussion in the existing definition. The lack of a standard invites the arbitrary exercise of authority. . . . .	As circulated for public comment, subdivision (d)(5) of the proposed rule would have authorized closed session discussion, inter alia, of “other matters related to . . . the security of judicial branch facilities or equipment, including electronic data.” The term “electronic data” was included as one example of issues related to the security of branch equipment that might be discussed in closed session.  A qualifier has been added to subdivision (d)(5), specifying that closed session discussion is permitted concerning “other matters that if discussed in public would compromise” safety or security, e.g., the security of branch equipment, including electronic data.
63.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	[Commentator’s specific suggestions] . . . . <u>Comment:</u> The proposed exemption is broader than the Bagley-Keene or Brown acts. The Bagley-Keene and Brown acts allow for closed sessions to discuss security threats. Bagley-Keene also requires that information on the threat be shared with the Legislative Analyst and be reported generally once the meeting is open again. The proposed revision expands the rule to include security threats, while still allowing for closure of meetings discussing security plans and procedures. However, as proposed to be revised, it is not open-ended and is	The rule language is not broader in scope than the corresponding provision of the law authorizing closed session discussions concerning safety and security in the Legislature. That law refers without qualification to “matters affecting the safety and security” of legislators and their staff or to legislative facilities. (See Gov. Code, § 9029(a)(2).)  In the interests of transparency and public access,

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Rule 10.75(d)(5)			
	Commentator	Comment	Internal Committee Chairs' Response
		specifically limited to security and safety issues. . . . . . (5) Security <del>threats, plans or procedures or other matters</del> related to the safety of the public or of judicial branch officers or personnel or the security of judicial branch facilities or equipment, including electronic data; . . . . .	however, subdivision (d)(5) has been modified as noted in response to comment 62 above.
64.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	[Commentator's specific changes to subdivision (d)(5).] . . . . . <b>(d) Closed sessions</b> The chair of an advisory body <del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del> discuss any of the following: . . . . . <del>(5) Security</del> <u>(6)</u> Discuss security plans or procedures or other matters related to the safety of the public or of judicial branch officers or personnel or the security of judicial branch facilities or equipment, including electronic data; . . . . .	The internal chairs prefer the language contained in the rule as circulated for comment. As indicated above, however, subdivision (d)(5) has been modified to clarify that closed session discussion is permitted concerning "other matters that if discussed in public would compromise" safety or security. (See comments 62–63 and responses.)
65.	Superior Court of Los Angeles County	(3) Subsection (d)(5) of the current draft appropriately provides an exemption for discussion of security matters. Public discussion of issues concerning threats to court facilities, court users and judges would threaten the safety of the courts and of judicial officers, because security	The internal chairs concur that the topics described in subdivision (d)(5) properly are covered in closed session if their public discussion would compromise safety or security.

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<b>Rule 10.75(d)(5)</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
	<p>vulnerabilities will be publicly identified, and measures to provide protection will be made known. For this reason, the Court Security Advisory Committee either should be included in subsection [(c)(2)] as an exempt body, or its meetings should be closed unless a portion of the meeting qualifies as a budget meeting, as in subsection [(c)(3)].</p> <p>. . . .</p>	<p>The chairs respectfully do not think it necessary, however, to add the Court Security Advisory Committee to the list of committees included in subdivisions (c)(2) or (c)(3), as they anticipate that the described security considerations are fairly universally understood and accepted, signifying that the referenced committee is unlikely to be frequently challenged for closure of its meetings if necessary as authorized under the proposed rule. Committees listed in subdivisions (c)(2) and (c)(3) rather are those charged with performing work that presents unique ethics issues for judges who are members, an area that is not well-understood outside the judicial branch. As noted above in responses to comment 42, the purpose of separately addressing those bodies in subdivisions (c)(2) and (c)(3) is to avoid creating unrealistic public expectations concerning access to the meetings of those bodies, or the burden for those bodies of frequently defending decisions to close their meetings. The internal chairs do not anticipate that the Court Security Advisory Committee would confront the same issues.</p>

<b>Rule 10.75(d)(6)</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
66. California Newspaper Publishers Association by James W. Ewert	<p>. . . .</p> <p>(6) <u>Non-Final Audit Reports</u> - Existing open meeting laws recognize the need for government agencies to</p>	<p>The commentator is incorrect in suggesting that other open meeting laws require public</p>

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<b>Rule 10.75(d)(6)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
	General Counsel Sacramento	discuss their responses to final audit reports in closed session. A discussion of non- final audit reports in closed session is inappropriate as the drafts may change over time. This exception would permit an advisory body to fully participate in the analysis and conclusions of the audit report as it evolves outside of public view. This would defeat the purpose of an independent audit. CNPA suggests that this exception be narrowed to allow only a discussion of the body's response to a <u>final</u> audit report.  . . . .	discussion of non-final audit reports or responses to the same. To the contrary, other state and local governmental entities expressly are permitted to meet in closed session to discuss a confidential draft audit report from the State Auditor, and any response. (Gov. Code §§ 11126.2, 54956.75(a).) Similarly, the State Auditor is statutorily precluded from publicly releasing written material "or substantive information pertaining to any audit not completed." ( <i>Id.</i> , § 8545(b).) The chairs respectfully disagree that closed session discussion would permit an advisory body effectively to craft the analysis or conclusions stated in a final audit report. Rather, it would allow an advisory body to submit any further information for the auditor's consideration to correct factual errors before they may be more broadly circulated and presented as fact. For these reasons, the chairs decline to make the suggested revision. They concur, however, that final audit reports appropriately are subject to public release and discussion. (See, e.g., <a href="http://www.courts.ca.gov/12050.htm">www.courts.ca.gov/12050.htm</a> [containing publicly posted final audit reports prepared by the AOC's Internal Audit Services unit from August 2010 through the present].)
67.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	. . . . [The commentator's specific changes to subdivision (d)(6).]  . . . .	The internal chairs respectfully decline to make the suggested change because the same principles apply to audits conducted by other entities

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Rule 10.75(d)(6)		
Commentator	Comment	Internal Committee Chairs' Response
	<p><b>(d) Closed sessions</b></p> <p>The chair of an advisory body <del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del><u>do</u> any of the following:</p> <p><del>(6) Non-</del><u>7) Discuss confidential final draft audit reports from the Bureau of State Audits</u> or proposed responses to such reports;</p> <p>. . . .</p>	<p>internal or external to the judicial branch. (See, e.g., Gov. Code, § 77206(h)–(j).)</p>

Rule 10.75(d)(7)		
Commentator	Comment	Internal Committee Chairs' Response
<p>68. California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento</p>	<p>. . . .</p> <p><b>(7) Trade Secret, Confidential or Proprietary Information</b> - This exception goes well beyond what other open meeting laws permit. The Brown Act and Bagley-Keene Act allow particular bodies to discuss specific trade secret or confidential information and the parameters of these discussions are narrow and limited. This exemption should be narrowed and limited to allow a body to discuss particular types of information if there is specific, articulable need to do so.</p> <p>. . . .</p>	<p>The internal chairs have modified this provision for clarity and consistency to apply terms also used and defined in the rule governing public access to judicial administrative records, and have added an advisory committee comment directing readers to the definitions provided in the records rule. (See Cal. Rules of Court, rule 10.500(f)(10).)</p>
<p>69. California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee;</p>	<p>[Commentator's specific suggestions]</p> <p>. . . .</p> <p><u>Comment:</u> The proposed exemption is much broader than the Bagley-Keene or Brown acts. The proposed revision</p>	<p>The internal chairs agree with the suggestion that the rule should incorporate terms used in the rule</p>

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<b>Rule 10.75(d)(7)</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
<p>Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento</p>	<p>conforms the rule to the standards that currently govern the judicial branch with respect to related issue of public records.</p> <p style="text-align: center;">. . . . .</p> <p>(7) Trade secrets or confidential or privileged <b><u>commercial information submitted in response to a judicial branch entity's solicitation for goods or services or in the course of a judicial branch entity's contractual relationship with a commercial entity. For purposes of this rule:</u></b></p> <p style="padding-left: 40px;"><b><u>(A) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:</u></b></p> <p style="padding-left: 80px;"><b><u>(i) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and</u></b></p> <p style="padding-left: 80px;"><b><u>(ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;</u></b></p> <p style="padding-left: 40px;"><b><u>(B) "Privileged information" means material that falls within recognized</u></b></p>	<p>of court that provides public access to judicial administrative records (Cal. Rules of Court, rule 10.500). The rule has been modified accordingly, as noted above in response to comment 68.</p> <p>The final version of subdivision (d)(7) (with changes shown) reads as follows:</p> <p style="padding-left: 40px;"><b>"(d) Closed sessions</b></p> <p style="padding-left: 40px;">The chair of an advisory body or an advisory body subcommittee may close a meeting, or portion of a meeting, to discuss any of the following:</p> <p style="padding-left: 80px;">(7) Trade secrets <u>or privileged or confidential commercial and/or financial</u> <del>proprietary</del> information."</p> <p>Instead of including the suggested definitions in rule 10.75(d)(1), an advisory committee comment has been added, stating: "Definitions of the terms 'trade secret,' 'privileged information,' and 'confidential commercial and financial information,' are provided in rule 10.500(f)(10)." This approach will simplify rule 10.75 and assist in ensuring consistency of the definitions in the rules over time.</p>

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<b>Rule 10.75(d)(7)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p><b><u>constitutional, statutory, or common law privileges:</u></b></p> <p><b><u>(C) “Confidential commercial information” means information whose disclosure would:</u></b></p> <p style="padding-left: 40px;"><b><u>(i) Impair the judicial branch entity’s ability to obtain necessary information in the future;</u></b> <b><u>or</u></b></p> <p style="padding-left: 40px;"><b><u>(ii) Cause substantial harm to the competitive position of the person from whom the information was obtained.</u></b></p> <p style="text-align: center;">. . . .</p>	
70.	<p>Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco</p>	<p style="text-align: center;">. . . .</p> <p><b>Trade secrets or confidential or proprietary information (10.75(d)(7))</b> – Like the other exemptions, (d)(7) – which would allow advisory bodies to go into closed session to discuss “trade secrets or confidential or proprietary information” – goes well beyond what the Brown or Bagley-Keene Acts allow. While these other laws allow specific state and local bodies to hold closed sessions to discuss specific types of trade secrets or other confidential information, (d)(7) would allow closed sessions for a much wider range of discussions. The Invitation notes that proposed (d)(7) would, for example, allow the internal Judicial Council Technology Committee</p>	<p>See responses to comments 68 and 69 above. In addition, the internal chairs would clarify that subdivision (d)(7) of the proposed rule would only allow an advisory body to meet in a closed session to discuss a vendor’s proposal to the extent such discussion would include trade secret or privileged or confidential commercial and financial information. The provision would not allow an advisory body to meet in a closed session to discuss a vendor’s proposal generally. (See also information about existing</p>

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<b>Rule 10.75(d)(7)</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p>(which until recently was known as the CCMS Internal committee) to meet in closed session to “discuss a vendor proposal.” Given the recent history with CCMS contractor Deloitte on technology issues, it is troubling that under [(d)(7)], discussions concerning vendor proposals on technology issues would continue to be held behind closed doors. In addition, technology can have a major impact on the media and public’s ability to obtain timely access to information about the workings of the judicial branch, which is yet another reason why discussions concerning vendor proposals should not closed to the public, at least not as a general matter and not to a greater extent than would be allowed under California’s other open meetings laws.</p> <p style="text-align: center;">. . . .</p> <p>[The commentator’s specific changes to subdivision (d)(7).]</p> <p style="text-align: center;">. . . .</p> <p><b>(d) Closed sessions</b></p> <p style="padding-left: 40px;">The chair of an advisory body <del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del><u>do</u> any of the following:</p> <p style="padding-left: 40px;"><del>(7) Trade secrets or confidential or proprietary information;</del> <u>(8) Disclose third-party trade secrets to members of the advisory body;</u></p> <p style="text-align: center;">. . . .</p>	<p>requirements related to judicial branch contracting, incorporating greater protections, discussed in responses to comment 55, above.)</p> <p>See comment 69 and response, above, for final recommended version of subdivision (d)(7).</p>

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[As circulated for public comment] Rule 10.75(d)(8) [Omitted from Proposal]			
	Commentator	Comment	Internal Committee Chairs' Response
71.	California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	<p>. . . .</p> <p>(8) <u>Unverified Data or Draft Reports</u> - The justification for this exception is unclear and no similar exception exists in other open meeting laws for good reason. There is no more important function for the public to observe and participate in than the deliberative process of a body when it is using data (verified or unverified) in the development of a report that has not yet reached finality.</p> <p>A closed session that permits an advisory body to discuss, deliberate or act upon draft reports or unverified information would allow unfettered discussion of any subject without limitation and consensus to be reached wholly outside of public view. This is another example of an exception swallowing the rule and threatens the purpose and integrity of the proposed rules.</p> <p>This exemption should be stricken. The Chair of the body can make clear at the outset of deliberation on an item that the data being discussed is unverified or the report is a draft to alleviate any potential confusion.</p> <p>. . . .</p>	The internal chairs agree with the commentator that the provision should be removed. The final version of rule 10.75 does not include it. (Subsequent provisions in subdivision (d) of the proposed rule have been renumbered accordingly.)
72.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	<p>[Commentator's specific suggestions]</p> <p>. . . .</p> <p><u>Comment:</u> There is no similar protection in any other open meeting law and there appears to be no valid reason for having such a limit here.</p> <p>. . . .</p> <p><del>(8) Unverified data or draft reports, except those for</del></p>	See response to comment 71 above.

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[As circulated for public comment] Rule 10.75(d)(8) [Omitted from Proposal]			
	Commentator	Comment	Internal Committee Chairs' Response
		<del>consideration in a budget meeting as defined in (e)(2);</del> .....	
73.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	..... <b>Unverified data or draft reports (10.75(d)(8))</b> – Under proposed subdivision (d)(8), except for during budget meetings, advisory bodies would be permitted to go into closed session to discuss “[u]nverified data or draft reports.” No standards are provided for what would put data or reports into the “unverified” or “draft” category. The rationale for this exemption is that “requiring public discussion of unverified and potentially inaccurate information or analysis is likely to create unnecessary public confusion.” There is no similar exception in the Brown Act, Bagley-Keene Act, or Legislature open meeting laws, and for good reason. The mere fact that data discussed during a meeting is unverified or a report is still in draft form does not warrant excluding the public and media from the discussion. To the contrary, it is only when the public and media is able to observe an entire discussion, from beginning to end, that true government transparency is achieved. Conversely, if the public and media are shut out of the first part of a discussion, they cannot hope to truly understand the decision-making process; whatever action is taken by the body, it feels like a fait accompli. It is, in many ways, the functional equivalent of the current frustration members of the public and media feel when they sit through a series of unanimous votes at a Judicial Council meeting and realize that the substantive discussion took place at the advisory body level, whose meetings they were prohibited from	See response to comment 71 above.

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[As circulated for public comment] Rule 10.75(d)(8) [Omitted from Proposal]			
	Commentator	Comment	Internal Committee Chairs' Response
		<p>observing. Subdivision (d)(8) should be stricken. . . .</p> <p>[The commentator's specific changes to former subdivision (d)(8).]</p> <p>. . . .</p> <p><b>(d) Closed sessions</b></p> <p>The chair of an advisory body <del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del><u>do</u> any of the following:</p> <p><del>(8) Unverified data or draft reports, except those for consideration in a budget meeting as defined in (c)(2);</del></p> <p>. . . .</p>	
74.	Public Counsel Appellate Law Program by Lisa Jaskol Directing Attorney Los Angeles	<p>. . . .</p> <p>1. Subdivision (d)(8) should cross-reference (c)(1) (not (c)(2)).</p> <p>. . . .</p>	See response to comment 71 above.
75.	SEIU California State Council by Scott A. Kronland, Attorney Altshuler Berzon LLP San Francisco	<p>. . . .</p> <p>Exception (8) would cover "Unverified data or draft reports, except those for consideration in a budget meeting as defined in (c)(2)." There does not appear to be an analogous exception to Bagley-Keene, nor does there appear to be anything unique to the judiciary that justifies such a broad exemption.</p>	See response to comment 71 above.

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<b>[As circulated for public comment] Rule 10.75(d)(8) [Omitted from Proposal]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p>The Background to the proposed Rule asserts that the judiciary is unique in using advisory committee meetings for the evaluation of “draft reports,” rather than delegating such work to staff, and that closed meetings about draft reports are necessary to “avoid . . . misunderstandings.” That is not correct. Other public bodies often discuss “draft reports” at open meetings as part of their deliberations about what should be contained in the final report. The public can understand the difference between draft reports and final reports, and it is contrary to the policy of open meetings laws to close meetings on the theory that “some [members of the public] may mistakenly conclude” that a draft report is the final report. Moreover, public input and scrutiny often is most valuable before a draft report is finalized.</p> <p>With regard to “unverified data,” Bagley-Keene typically limits the data exemption to situations in which disclosure is prohibited by law. <i>See, e.g.</i>, Gov. Code §11126(c)(15). There does not appear to be any reason to treat the judiciary differently. Again, the public can understand that data has not been “verified.”</p>	

<b>[Current numbering] Rule 10.75(d)(8) [As circulated for public comment, subdivision (d)(9)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
76.	California State Assembly by John A. Perez, Speaker of the	[Commentator’s specific suggestions]	

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<b>[Current numbering] Rule 10.75(d)(8) [As circulated for public comment, subdivision (d)(9)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
	Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	<p><u>Comment:</u> The proposed exemption is much broader than the Bagley-Keene or Brown acts. The proposed revision conforms the rule to that standard. While there is a comparable provision under Bagley-Keene to protect licensing exams, it does not apply to examination procedures and there appears to be no justification to expand the exemption to cover procedures beyond the substance of the exams.</p> <p>. . . .</p> <p>(9) Development, modification, or approval of any licensing or other professional examination <del>or examination procedure;</del></p> <p>. . . .</p>	The internal chairs respectfully decline to make the suggested change because examination procedures may include security measures taken to protect the integrity of examination results, which could be compromised if discussed in public.
77.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p>. . . .</p> <p>[The commentator's specific changes to current subdivision (d)(8).]</p> <p>. . . .</p> <p><b>(d) Closed sessions</b></p> <p>The chair of an advisory body <del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del><u>do</u> any of the following:</p> <p>(9) <del>Development, modification, or approval of any licensing or other professional examination or examination procedure;</del> (10) <del>Evaluation of</del><u>Evaluate</u> individual grant applications; or</p> <p>. . . .</p>	The internal chairs respectfully disagree with the suggested change. BKA allows state bodies to close meetings for discussions related to examinations. The provision is needed, for example, to allow the Judicial Council's Court Interpreter Advisory Panel to consider issues related to certification and other examinations for interpreters who interpret court proceedings, while protecting the integrity of the examination and by extension the quality of interpretation in courts.

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<b>[Current numbering] Rule 10.75(d)(9) [As circulated for public comment, subdivision (d)(10)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
78.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p>.....</p> <p>[The commentator’s specific changes to subdivision (d)(9).]</p> <p>.....</p> <p><b>(d) Closed sessions</b></p> <p>The chair of an advisory body <del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del><u>do</u> any of the following:</p> <p>(9) <del>(10) — Evaluation of</del><u>Evaluate</u> individual grant applications; or</p> <p>.....</p>	The internal chairs respectfully prefer the language included in the version of the rule that was circulated for public comment.

<b>[Current numbering] Rule 10.75(d)(10) [As circulated for public comment, subdivision (d)(11)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
79.	California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	<p>.....</p> <p>[(10)] <u>Catch-All Exception</u> - CNPA, as previously noted believes this exception has the potential to swallow the rule that establishes open access to the meetings of these bodies. As currently written there is no outer boundary to this exception and it invites the potential abuse of discretion. It should be stricken from the proposed rules.</p> <p>.....</p>	<p>The internal chairs respectfully disagree that the provision has no outer boundary or “swallows” the rule. Judicial officers serving on advisory bodies will be guided by the referenced California Code of Judicial Ethics and advisory bodies generally will be guided as well by principles stated in the rule.</p> <p>See also responses to comment 42 above explaining the impact that ethical considerations may have on the ability of judges to meaningfully participate in advisory body</p>

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[Current numbering] Rule 10.75(d)(10) [As circulated for public comment, subdivision (d)(11)]			
	Commentator	Comment	Internal Committee Chairs' Response
			discussions, and responses to comment 20, above, noting considerations unique to judicial branch entities.
80.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	<p>[Commentator's specific suggestions]</p> <p>. . . .</p> <p><u>Comment:</u> This is simply too open-ended. While the judicial ethics code prohibits judges from making "any public comment about a pending or <u>impending</u> proceeding in any court," (emphasis added), the other exemptions under (d) and the ability of a judge to recuse himself or herself from any discussion that may involve a pending or impending case should ensure that both meetings are open to the maximum extent possible and judges are able to adhere to their ethical canons. In addition, a judicial officer may simply decline to speak on a matter when doing so would violate the code of ethics. These approaches better serve the interests of public transparency and access for an important branch of government.</p> <p>. . . .</p> <p><del>(11) Topics that judicial officers who are members of the advisory body or subcommittee cannot 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.</del></p>	<p>The suggested approach, in at least some instances, would have the effect of precluding meaningful participation by judges on Judicial Council advisory bodies, which in turn would deprive the public of the benefit of their special knowledge and experience in crafting proposals to improve the administration of justice statewide. See also responses to comment 42, above, discussing the likelihood that judges will be deterred from participating. The internal chairs therefore respectfully decline to make the suggested revision.</p>

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[Current numbering] Rule 10.75(d)(10) [As circulated for public comment, subdivision (d)(11)]			
	Commentator	Comment	Internal Committee Chairs' Response
		. . . .	
81.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p style="text-align: center;">. . . .</p> <p><b>Judicial ethics (10.75(d)(11))</b> – As currently drafted, subdivision (d)(11) would permit closure of a meeting to discuss “topics that judicial officers cannot 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.” This language is unnecessarily vague and overly broad. First, the word “risk” injects an unacceptable level of uncertainty as to the meaning of the provision.</p> <p>Second, the “express[i]on of a view on a legal or factual issue presented in [a] proceeding” is not a grounds for disqualification unless it can reasonably be construed as committing the judge to a particular result, in which case the statement could not be made in open or closed session. Code Civ. Proc. § 170.2(b); Code of Judicial Ethics, canon 2A &amp; 3E(3)(a).</p> <p>Third, there is no basis for a categorical presumption that proposed legislation, rules, forms, standards of judicial administration, and jury instructions will always be discussed behind closed doors. The legitimate goal of avoiding ethical conflicts would be solved by a much simpler provision allowing closure for discussion of</p>	<p>The internal chairs agree that statute does not provide for disqualification based on a judge’s expression of a view on a legal or factual issue presented in a proceeding except in specified instances. (Code Civ. Proc., § 170.2(b).) Binding rules of judicial ethics, however, simultaneously direct that judges “shall not” make statements committing themselves on issues “likely to come before the courts or that are inconsistent with the impartial performance” of their adjudicative duties (Cal. Code of Judicial Ethics, canon 2A), and judges deemed to have violated this edict may be subject to discipline. (See Cal. Const., art. VI, § 18; Rules of Com. on Jud. Performance, rule 120.) Although the commentator suggests that a bright line easily delineates the demarcation between the permitted expression of “a view” on an issue presented in a proceeding and a prohibited “commitment” on an issue that could come before “the courts,” in the collective experience of the internal committee chairs, this is not always true. In some cases, reasonable minds may differ regarding whether an “expression of a view” is actually a commitment. It is also possible that members of the public may mishear or misunderstand a</p>

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[Current numbering] Rule 10.75(d)(10) [As circulated for public comment, subdivision (d)(11)]		
Commentator	Comment	Internal Committee Chairs' Response
	<p>“topics that judicial officers cannot discuss in public without violating the California Code of Judicial Ethics.”  <i>See</i> Exh. A.</p> <p style="text-align: center;">. . . .</p> <p>[The commentator’s specific changes to subdivision (d)(10).]</p> <p style="text-align: center;">. . . .</p> <p><b>(d) Closed sessions</b></p> <p>The chair of an advisory body <del>or an advisory body subcommittee</del> may close a meeting, or portion of a meeting, to <del>discuss</del><u>do</u> any of the following:</p>	<p>judge’s comments, particularly if heard without context, for example, due to late arrival at a meeting. In light of these risks, the possibility that their public discussion of some issues likely to come before “the courts” for adjudication may spark high volumes of disqualification motions or complaints of misconduct, and given also that judges typically err on the side of caution to protect public confidence in the impartiality of the judiciary (Cal. Code of Judicial Ethics, canon 2A), the internal chairs understand that many judges may decline to participate further in the critical work of the advisory bodies if the provision in question is not included in the proposed rule. As judges are the largest and an essential constituency from which members are drawn, this would gravely hinder the advisory bodies’ ability to complete their work, with a negative impact for the Judicial Council, court users, and the public generally.</p> <p>For the reasons stated above, the internal chairs decline to make the requested changes.</p>

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<b>[Current numbering] Rule 10.75(d)(10) [As circulated for public comment, subdivision (d)(11)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p>(11)Topics10) _____ Discuss topics that judicial officers who are members of the advisory body or subcommittee cannot discuss in public without <del>risking a violation of</del>violating 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. . . .</p>	

<b>Rule 10.75(e) – Notice of meetings</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
82.	<p>California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento</p>	<p>. . . .</p> <p>CNPA commends the Judicial Council for requiring advisory bodies to provide five days' notice for regular meetings and for requiring an advisory body to identify in the minutes the urgent circumstances requiring shortened notice in urgent circumstances.</p> <p>CNPA suggests that the proposed rules be amended to provide a time certain for shortened notice, e.g., 24 hours and identify the urgent circumstances requiring the shortened notice in the notice itself. This would discourage bodies from providing the public with notice on a whim and it is rare that a body is unable to provide at least 24 hours' notice in most cases even under the most urgent circumstances. If less than 24 hours' notice is required to address an issue in extreme</p>	<p>The commentator's support is noted.</p> <p>The internal chairs agree with the suggestion and have modified subdivision (e) of the proposed rule to require that advisory bodies provide at least 24-hours' notice of a meeting held in a case of urgent circumstances. Given the demands on advisory bodies, their limited staffing following successive years of reduced branch funding, and the short time that would be available to prepare and post notices on the occasions that</p>

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Rule 10.75(e) – Notice of meetings			
	Commentator	Comment	Internal Committee Chairs’ Response
		<p>emergencies, the Judicial Council should add a provision that identifies the need to meet under emergency circumstances and allows the body to provide notice as soon as practicable to those requesting it and to news outlets that cover the Courts.</p> <p>For any meeting that provides less than 5 days’ notice, CNPA also recommends a provision be added that requires the advisory body to discuss, deliberate or take action only on those items listed on the agenda so that no surprise discussions or actions may occur.</p> <p>. . . .</p>	<p>subdivision (e)(2) is invoked, the chairs have not added the requirement that the commentator suggested concerning notice content. They observe that the provision does require meeting minutes to include a statement of the facts creating the urgency.</p> <p>The internal chairs do not agree that the proposed change is needed, as subdivision (g) already requires that an agenda for a meeting subject to the rule include “a brief description of <i>each item</i> to be considered in the meeting.” (Italics added.)</p>
83.	<p>California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento</p>	<p>[Commentator’s specific suggestions]</p> <p>. . . .</p> <p><u>Comment:</u> The proposed exemption is much broader than the Bagley-Keene or Brown acts. The proposed revision conforms the rule to that standard.</p> <p>. . . .</p> <p>(e) Notice of meetings</p> <p>(1) <i>Regular Meetings</i></p> <p>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 <del>five business ten</del> days before the meeting.</p> <p><u>Comment:</u> The proposed exemption is different than the Bagley-Keene or Brown acts. The proposed revision conforms the rule to Bagley-Keene.</p>	<p>The commentator is mistaken. Although BKA does require 10 days’ notice (Gov. Code, § 11125(a)), the Brown Act only requires 72 hours’ notice (<i>id.</i>, § 54954.2(a)(1)). The internal chairs conclude that five days’ notice is sufficient for meaningful advance notice, while also avoiding obstacles for advisory bodies who must consult with multiple groups in developing proposals for presentation to the Judicial Council.</p> <p>The internal chairs also respectfully decline to make the suggested change to subdivision (e)(2) because the recommended threshold would not afford sufficient flexibility. The work of the</p>

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Rule 10.75(e) – Notice of meetings		
Commentator	Comment	Internal Committee Chairs’ Response
	<p>(2) <i>Urgent Circumstances</i></p> <p>A meeting that is subject to this rule may be conducted on shortened notice only <b>when immediate action is required to protect the public interest in case of urgent circumstances requiring prompt action</b>. The minutes of such meetings must briefly state the facts <b>supporting why immediate action is required to protect the public interest creating the urgent circumstances requiring prompt action and the action taken</b>.</p> <p>. . . .</p>	<p>advisory bodies, although serving and protecting the public interest, is incremental. Because many issues are complex, and input from multiple stakeholders desirable to develop a successful proposal, time constraints may dictate that a meeting occur on shortened notice to ensure full consultation, address an unanticipated issue, or close the circle on a question before the proposal can be advanced to the Judicial Council, particularly in instances involving statutorily imposed timelines for branch action.</p>

Rule 10.75(f) – Form of notice		
Commentator	Comment	Internal Committee Chairs’ Response
<p>84. California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento</p>	<p>. . . .</p> <p>This subsection provides terrific, modern access for those who have an interest in the work of a particular advisory body. CNPA urges Judicial Council to add language that provides notice to those who lack access to a computer or the internet. This would be consistent with the Chief Justice’s concerns regarding access to justice and there are existing provisions in the Brown Act that can be easily adopted. Please see California Government Code Section 54954.1.</p> <p>. . . .</p>	<p>The internal chairs understand and appreciate the expressed concern, but observe that the Judicial Council’s reduced staffing and financial resources do not make it feasible to add a requirement that agendas and materials for all advisory body meetings be mailed to subscribers. The volume of meetings is significant and the staff time involved to compile and maintain subscriber lists, and to prepare such mailings would be considerable. Advisory staff already are fully committed, and are unable to absorb this significant additional responsibility.</p>
<p>85. California State Assembly by John A. Perez, Speaker of the</p>	<p>[Commentator’s specific suggestions]</p> <p>. . . .</p>	

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Rule 10.75(f) – Form of notice		
Commentator	Comment	Internal Committee Chairs’ Response
<p>Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento</p>	<p><u>Comment:</u> If the meeting is closed, whether in whole or in part, agenda items for the closed session must be posted.</p> <p>. . . .</p> <p>(f) Form of notice</p> <p>(1) The notice and agenda for a meeting subject to this rule, whether open or closed, must be posted on the California Courts website (<i>www.courts.ca.gov</i>).</p> <p>(2) The notice for meetings subject to this rule must state whether the meeting is open or closed and, if <b>closed or</b> partly closed, which agenda items are closed.</p> <p>. . . .</p> <p><u>Comment:</u> The proposed exemption is much broader than the Bagley-Keene or Brown acts. All meetings that are open to the public should allow for in person attendance. If the meeting is by teleconference, the public should still be permitted to gather at a minimum of one of the locations and listen to the telephone call there. Given that advisory bodies have staff from the Administrative Office of the Courts, teleconference physical meeting location could be where the AOC staff is located.</p> <p>. . . .</p> <p>(1) For meetings that are open in part or in full, the notice must provide:</p> <p>(A) The telephone number or other electronic means that a member of the public may use to attend the meeting;</p>	<p>The internal chairs agree with this suggestion and have revised subdivision (f)(2) to clarify that, if a meeting is closed or partially closed, the notice must identify the closed agenda items.</p> <p>The commentator’s other suggested changes—to require that the public be permitted to gather in person to attend and speak at all advisory body meetings, including telephone meetings—are not feasible due to existing financial, space, and staffing constraints, and security requirements. See responses to comment 91, below.</p> <p>The internal chairs agree that the public should be permitted to provide spoken comments concerning agenda items at advisory body meetings when they attend in person and need only submit their request to do so before a meeting begins. Subdivision (f)(3)(C) has been revised to remove the reference to seeking approval before the day of the meeting. (See also</p>

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Rule 10.75(f) – Form of notice		
Commentator	Comment	Internal Committee Chairs’ Response
	<p>(B) The time of the meeting, <del>whether the public may attend in person,</del> and, <del>if so,</del> the meeting location; and                      . . . .</p> <p><u>Comment:</u> The public should be able to request to speak during any meeting and should not be required to request to speak in advance of the meeting. Likewise the public should be permitted to make audio recordings without the need for permission. Neither Bagley- Keene nor the Brown Act requires such advance notice or requires permission.                      . . . .</p> <p>(C) The email address or other electronic means that the public may use to submit <u>advance</u> written Comment regarding agenda items, <del>requests to speak at a meeting, or requests to make an audio recording of a meeting.</del> <b>Requests to speak at a meeting shall not be required to be submitted in advance of the meeting.</b>                      . . . .</p>	<p>responses to comment 96, below, explaining the reasons that only written comments can be received for telephone meetings.) The chairs do not agree that clarity requires addition of the commentator’s other proposed text.</p> <p>Regarding provision for audiorecording of meetings under the rule, see responses to comments 101 and 102, below. For the reasons stated there, the chairs decline to revise subdivision (f)(3)(C) to remove provision for requests to record meetings.</p>
86. Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p>. . . .</p> <p>[The commentator’s specific changes to subdivision (f).]                      . . . .</p> <p><b>(f) Form of notice</b></p> <p>(1) The notice and agenda for a meeting subject to this rule, whether open or closed, must be posted on <u>the designated page</u> of the California Courts website. <u>A link to the designated page</u></p>	<p>The internal chairs do not think the commentator’s suggested changes necessary. As written, the rule identifies the website that will contain such notices. The website already contains a page listing Judicial Council advisory bodies. Further information concerning the meetings of bodies subject to the rule will be added in a fashion designed for ease of public use, a guiding principle in organizing all existing</p>

**Judicial Administration: Meetings of Judicial Council Advisory Bodies** (Adopt Cal. Rules of Court, rule 10.75)

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<b>Rule 10.75(f) – Form of notice</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p><u>must appear on the home page of the California Courts website (www.courts.ca.gov).</u></p> <p>(2) The notice for meetings subject to this rule must state whether the meeting is open or closed and, if partly closed, which agenda items are closed.</p> <p>(3) For meetings that are open in part or in full, the notice must provide:</p> <p>(A) The telephone number or other electronic means that a member of the 26 public may use to attend the meeting;</p> <p>(B) The time of the meeting, <del>whether the public may attend in person, and, if so, the meeting location; and;</del></p> <p>(C) <u>The location of meetings that two or more advisory body members will attend in person;</u></p> <p>(D) <u>For meetings where in-person attendance by the public is prohibited because of security risks, pursuant to subdivision (i) of this rule, a statement setting forth the security risks that justify the prohibition on public attendance and the reasons why alternative venues that would eliminate</u></p>	<p>information currently available on that website. A rule provision is not needed to accomplish this result.</p> <p>See responses to comment 85, above, and comments 91–93, below.</p> <p>See responses to comment 85, above, and comments 91–93, below.</p> <p>The internal committee chairs decline to require that such information be provided in meeting notices as the information is likely to be largely the same or identical in every notice and is unlikely to be helpful to the public. See responses to comments 91–93 below for further discussion of this issue.</p>

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<b>Rule 10.75(f) – Form of notice</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p style="text-align: center;"><u>such security risks are unavailable; and</u></p> <p>(<del>E</del>D) The email address or other electronic means that the public may use to submit written comments regarding agenda items, requests to speak at a meeting, or requests to make an audio recording of a meeting.</p> <p style="text-align: center;">. . . .</p>	

<b>Rule 10.75(g) – Contents of agenda</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
87.	<p>California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento</p>	<p style="text-align: center;">. . . .</p> <p>The requirement set forth in this subsection is consistent with other open meeting laws with a significant exception: there is no requirement that the body limit its discussion, deliberation or action to only those items appearing on the agenda. Without this limitation, the body could take up any item it wants to discuss or act upon and render the notice requirement meaningless. CNPA urges that the proposed rules be amended to incorporate this fundamental concept into this subsection. Please see California Government Code Section 54954.2(a)(2) and (b).</p> <p style="text-align: center;">. . . .</p>	<p>The internal chairs do not think the rule requires clarification on this point. As written, the rule (1) requires the public posting of notice with an agenda five business days in advance of a regular meeting subject to the rule (subd. (e)(1)), and (2) directs that the agenda contain “a brief description of each item to be considered during the meeting” (subd. (g)). The intent is evident that advance public notice is to be provided of all items to be considered at such meetings and, by extension, that items not included in the posted agenda may not be considered at such meetings. The only exception would be if an agenda item were added on shortened notice consistent with subdivision (e)(2). Even then, as noted above, 24 hours’ notice is required for consideration of an item at the meeting.</p>

**Judicial Administration: Meetings of Judicial Council Advisory Bodies** (Adopt Cal. Rules of Court, rule 10.75)

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<b>Rule 10.75(g) – Contents of agenda</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
88.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p>.....</p> <p>[The commentator’s specific changes to subdivision (g).]</p> <p>.....</p> <p><b>(g) Contents of a Agenda</b></p> <p>(1) The agenda must contain a brief description of each item to be considered during a meeting subject to this rule.</p> <p><u>(2) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of an advisory body may briefly respond to statements made or questions posed by persons exercising their public comment rights under subdivision (k)(2).</u> . . . .</p>	See response to comment 87, above.

<b>Rule 10.75(h) – Meeting materials</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
89.	California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	<p>.....</p> <p>The proposed rules should be amended to provide a method for those who lack access to a computer or the internet to obtain meeting materials.</p> <p>.....</p>	See responses to comment 84 above regarding the Judicial Council’s lack of staffing and financial resources. Given those facts and the volume of meetings and materials at issue, it is not possible to grant this request at this time. The internal committee chairs observe, however, that many libraries afford the public the free use of computers and Internet, and that many businesses also provide free wireless internet access to their customers.

**Judicial Administration: Meetings of Judicial Council Advisory Bodies (Adopt Cal. Rules of Court, rule 10.75)**

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<b>Rule 10.75(h) – Meeting materials</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
90.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p>. . . .</p> <p>[The commentator’s specific changes to subdivision (h).]</p> <p>. . . .</p> <p><b>(h) Meeting materials</b></p> <p>Materials for an open meeting must be posted on the <u>designated page of the California Courts website</u> (<i>www.courts.ca.gov</i>), at least three business days before the date of the meeting, except in extraordinary circumstances.</p> <p>. . . .</p>	<p>As noted in response to comment 86, above, the internal chairs do not think the commentator’s suggested change is needed. The rule identifies the website that will contain such materials. That website contains a page listing Judicial Council advisory bodies. Further information regarding the meetings of bodies subject to the rule will be added in a fashion designed for ease of public use, including public notices and materials as required under the rule.</p>

<b>Rule 10.75(i) – Public attendance</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
91.	California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	<p>. . . .</p> <p>This subsection should be amended to require meetings where the public may attend in person to be located where security measures will not obstruct public attendance.</p> <p>. . . .</p>	<p>Available meeting space in the Judicial Council/AOC San Francisco headquarters is limited. It is not always sufficient to meet existing needs, and the larger rooms must be shared with many other building tenants. The other three Judicial Council/AOC offices are small, have little meeting space, and no security entrance screening equipment or personnel.</p> <p>It would not be possible for the San Francisco location to accommodate every advisory body meeting that might include public attendance. Nor does the Judicial Council currently have the financial resources to secure additional meeting</p>

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<b>Rule 10.75(i) – Public attendance</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
			<p>space.</p> <p>Adequate security measures are a necessary prerequisite to public attendance, given the special security threats that advisory body members who are judges confront. In their adjudicative roles, judges routinely must issue orders that may provoke strong emotional reactions, including, for example, issuing lengthy prison sentences in cases involving violent crimes, deciding child custody questions in family law cases, and directing the removal of children from family homes in cases of abuse or neglect. Adequate security is important to the safety of all who attend advisory body meetings and to ensure that judges, court personnel, and other members feel safe participating on such bodies. (See, e.g., Fautsko, Courthouse Security Incidents Trending Upward: The Challenges Facing State Courts Today, Nat. Center for State Cts. (2012) [“The number of threats and violent incidents targeting the judiciary has increased dramatically”; citing data spanning more than 30 years]</p> <p><i>www.ncsc.org/sitecore/content/microsites/future-trends-2012/home/better-courts/1-1-courthouse-security-incidents.aspx.</i>)</p>
92.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair,	<p>. . . .</p> <p>[Commentator’s specific suggestions]</p> <p>. . . .</p>	

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<b>Rule 10.75(i) – Public attendance</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	<p><u>Comment:</u> The proposed exemption is much broader than the Bagley-Keene or Brown acts. The proposed revision conforms the rule to that standard. There is no broad security exception in any of the other open meeting statutes, and there is no rationale provided to explain why such a broad exemption is necessary for these advisory committee meetings. Security should be maintained as appropriate and disorderly individuals may be removed (see (j) below).</p> <p>. . . .</p> <p>(i) Public attendance</p> <p>The public may attend open sessions of advisory body meetings by telephone or other electronic means. If the</p>	<p>As noted in response to comment 91 above, advisory body members who are judges confront special security concerns due to their adjudicative responsibilities, which may require them, among other things, to issue lengthy prison sentences, resolve contentious child custody disputes, and order the removal of children from family homes. (See also reports discussing violence in courthouses and attacks against judges, cited in the Invitation to Comment at <a href="http://www.courts.ca.gov/documents/SP13-12.pdf">www.courts.ca.gov/documents/SP13-12.pdf</a>, p. 16, fn. 55.)</p> <p>Security for meetings of the Legislature and its committees is provided by the sergeant-at-arms, with support for the California Highway Patrol, and members of the public attending hearings and meetings in the State Capitol must pass through security entrance screening equipment staffed by trained security personnel. (see, e.g., <a href="http://sergeant.assembly.ca.gov">http://sergeant.assembly.ca.gov</a>; <a href="http://sergeant.senate.ca.gov/responsibilities">http://sergeant.senate.ca.gov/responsibilities</a>. Unfortunately, existing Judicial Council meeting space providing the requisite security is not sufficient to accommodate public gatherings for all, or any significant portion, of the meetings of advisory bodies and their subcommittees.</p> <p>Also as noted in response to comment 91 above, existing meeting space is insufficient to</p>

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<b>Rule 10.75(i) – Public attendance</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>members of an advisory body gather in person at a single location for a meeting, the public may attend in person at that location. <del>If the chair concludes security measures permit. This rule does not prohibit the advisory body from holding an open or closed meeting by teleconference for the benefit of the public and the advisory body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:</del></p> <p>(1) <u>The teleconferencing meeting shall comply with all requirements of this rule applicable to other meetings.</u></p> <p>(2) <u>The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.</u></p> <p>(3) <u>If the advisory body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the advisory body. Each teleconference</u></p>	<p>accommodate the public’s in-person attendance at all advisory body meetings, including the many conducted by telephone, with members joining from locations throughout the state. The alternative of having the public attend from locations where two or more advisory body members may join a telephone meeting will not work, as those locations typically are both small and private, for example, attorney offices or judges’ chambers.</p> <p>Judicial Council advisory bodies also do not have adequate staff to assist if a public gathering were added for each telephone meeting. Additional staff would be needed to post notices and directions to meeting space, greet and direct the public to meeting rooms, facilitate the public comment process, and respond to requests for materials. No funds presently exist to resolve the above space, staffing, and security issues.</p>

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<b>Rule 10.75(i) – Public attendance</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p><u>location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the advisory body directly.</u></p> <p>(4) <u>All votes taken during a teleconferenced meeting shall be by rollcall.</u></p> <p>. . . .</p>	<p>The internal chairs have not added the suggested rollcall voting requirement to the rule. Advisory body agendas for telephone meetings typically contain a number of items, often statutorily mandated work with specified deadlines, and as many as 18 members may join any call. Meetings are typically scheduled in shorter increments to permit judges, attorneys, and other members with ties to the courts to attend, before or after a court’s daily calendar of cases, or during the lunch hour. Requiring that a rollcall vote be taken on each agenda item in the cumulative will greatly impede the ability of the advisory bodies and their subcommittees to complete their work in the allotted time, potentially requiring more meetings with increased costs and time delays resulting. The internal chairs are confident that meetings will be conducted in a way that allows the public to follow discussions, for example, by asking speakers to identify themselves and using rollcall voting when a voice vote does not provide clarity concerning the result. As noted,</p>

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<b>Rule 10.75(i) – Public attendance</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
			the chairs also are working with staff to develop guidelines to assist advisory body chairs and staff, and those guidelines may include recommendations in this area.
93.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p><b>F. Proposed Rule 10.75(i) Should Be Amended To Allow In-Person Attendance At Meetings Where The Advisory Body Is Meeting In Person</b></p> <p>As noted in the Invitation, the geographic distances between the members of numerous advisory bodies results in many of those meetings being held via telephone or videoconference, and proposed Rule 10.75(i) contemplates public attendance at these meetings by similar means. Other commentators have noted the practical difficulties for a member of the public or media– especially one who is unfamiliar with the participants and their voices – to adequately observe these meetings, and Courthouse News shares these concerns, although it also understands the practical constraints.</p> <p>What is harder to understand, however, is the idea that even when an advisory body has an in-person meeting, the public would not have a right to attend in person, but would instead be relegated to listening and/or viewing these meetings by “telephone or other electronic means” unless the chair concludes “security measures permit” personal public attendance. P. Rule 10.75(i) &amp; (k)(2). Moreover, unless the public happens to be permitted to attend a particular meeting in person, the only means for</p>	<p>The commentator’s concerns and understanding are noted.</p> <p>See responses to comments 91–92 above, explaining existing space, staffing, and financial constraints, security requirements, and time demands for advisory body members. On the latter point, the internal chairs observe that there is a high volume of telephone meetings, which members join from private locations throughout the state, scheduled for times before or after daily court calendars and during the lunch hour, when</p>

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<b>Rule 10.75(i) – Public attendance</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>providing public comment would be in writing, with written comments due one complete business day before the meeting. P. Rule 10.75(k)(1).</p> <p>In-person attendance allows the public and media to match voices, names, and faces, and thus to better understand what is going on. It allows an interested person to observe body language and other non-verbal cues that would be invisible over the telephone and more difficult to see on video. Unless and until technology improves to the point where participants in a videoconference feel like they are sitting in the same room – and currently, that is not the case – when a government body meets in person, there is really no substitute for personal attendance. To the extent security concerns warrant exclusion of the public and media from in-person attendance in some instances, we respectfully suggest that such situations should be limited to only those situations where there is no alternate venue in which security concerns would not be a risk, and specific circumstances reasonably lead the meeting chair to conclude that a security risk exists. Suggested language for this change is included in the attached Exhibit A.</p> <p>. . . .</p> <p>[The commentator’s specific changes to subdivision (i).]</p> <p>. . . .</p> <p><b>(i) Public attendance</b></p> <p>The public may attend open sessions of advisory body meetings by telephone or other electronic</p>	<p>judges, attorneys, and other advisory body members with ties to the courts are able to attend.</p>

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<b>Rule 10.75(i) – Public attendance</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		means. If <del>the</del> <u>two or more</u> members of an advisory body gather in person at a single location for a meeting, the public may attend in person at that location, <del>if the chair concludes security measures permit</del> <u>unless the chair of the advisory body makes a specific determination that public attendance would create unwarranted security risks and that no alternative venues that would eliminate such security risks are available.</u> . . . .	
94.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	Our court’s comment relates to the public attendance paragraph on page 15 regarding phone calls. If the public is going to call-in, the AOC should set-up lines where the public cannot be disruptive with placing the call on hold or background noise from the public’s location. Our court’s representatives have been on a number of these calls and they are difficult to do with just the members present. . . .	The commentator’s concerns are noted and technical alternatives will be explored to ensure that telephone meetings are audible for all who attend and may proceed in an orderly fashion without disruption.

<b>Rule 10.75(j) – Conduct at meeting</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
95.	California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	This subsection is vague and based on a lack of measurable standards. The absence of a definition or standard lends itself to potential abuse by a Chair. To protect against the potential abuse, CNPA urges the Judicial Council to amend this subsection and incorporate the standard used in the Brown Act for controlling conduct at the meeting. Please see . . . .	The internal chairs respectfully do not think it necessary to add greater detail, e.g., establishing a willfulness standard for removal from meetings, provisions for clearing meeting rooms, or the continued presence of the media in case of disturbances. Although security measures must be in place to deter and respond to any isolated

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<b>Rule 10.75(j) – Conduct at meeting</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	California Government Code Section 54957.9. .....	instances of individual misconduct posing threats to safety, the chairs expect that most members of the public will comport themselves well at such meetings and will refrain from disorderly conduct. If on review, as provided in subdivision (p) of the rule, experience suggests to the contrary, the chairs may consider then whether greater detail should be added to this provision. Generally the policy in drafting rules of court is to favor plain language, avoiding unnecessary detail.

<b>Rule 10.75(k) – Public comment</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
96. California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	..... <b>Rule 10.75(k) Public Comment</b> The standards established in this subsection for public comment could operate to potentially deny the advisory body the opportunity to obtain information from the public before it makes a decision.  By requiring the public to submit written comments up to one complete business day before a meeting, this subsection does not allow the public the opportunity to comment on new information submitted to the advisory body for consideration within the three day posting window for meeting materials.  For example, an individual may not wish to comment on an item agendaized for discussion or action the day	The internal chairs understand the concern and agree that public input may be valuable in shaping the recommendations that advisory bodies present to the Judicial Council. They conclude, however, that subdivision (k) strikes the best balance in light of existing realities. Subdivision (k)(1) ensures that the public may submit written comments for any agenda item of a regularly noticed open meeting. Subdivision (k)(2) ensures that the public also may speak about agenda items when attending meetings in person. The rule does not, however, require that spoken comments be accepted during telephone meetings.

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<b>Rule 10.75(k) – Public comment</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>before the advisory body meets based on the information that is publicly available prior to the meeting. If, however, new information surfaces 24 hours prior to the meeting or new information is provided by a member of the body as a result of the body’s discussion of the item, that individual may change his or her mind about speaking, especially if he or she has specific expertise or can provide additional information that could critically impact the body’s final decision. The proposed rules as currently drafted would not permit the individual to comment or provide the information at the meeting before the body takes action.</p> <p>CNPA suggests the proposed rules be amended to allow the public to comment <u>at the time</u> the body is considering an item on the agenda.</p> <p style="text-align: center;">. . . .</p>	<p>As noted in responses to comments 92–93, above, many advisory body meetings currently are conducted by telephone, e.g., due to financial and staff constraints. Agendas for those meetings may contain a number of items, the time available to complete discussion may be relatively short, and many members may be joining such calls. Requiring that a public comment period be added during such calls would make it exceedingly difficult to complete business in the time available. Doing so would mean holding longer meetings, something that frequently is not an option for members, given their other professional obligations. In addition, more staff and more costly technology would be needed, for example, to monitor the length of public comments and avoid improper disruptions and the funding is not available. Written comments are the best option, therefore, if the public is not attending a meeting in person.</p>
97.	<p>California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento</p>	<p style="text-align: center;">. . . .</p> <p>In particular, we strongly recommend that you:</p> <ul style="list-style-type: none"> <li>• Allow public comment at all open meetings and do not require advance notice of a request to speak prior to the hearing.</li> </ul> <p style="text-align: center;">. . . .</p>	<p>The internal chairs agree that the public should be permitted to speak concerning agenda items at advisory body meetings that they attend in person without having to request permission before the day of a meeting. Subdivisions (f)(3)(C) and (k)(2) have been revised to remove the reference to seeking</p>

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Rule 10.75(k) – Public comment		
Commentator	Comment	Internal Committee Chairs’ Response
	<p>[Commentator’s specific exceptions]                      . . . .</p> <p><u>Comment:</u> The proposed exemption is much broader than the Bagley-Keene or Brown acts. The proposed revision conforms the rule to that standard. Written Comment should be able to be provided at the meeting.                      . . . .</p> <p>(k) Public comment</p> <p>(1) <i>Written comment</i></p> <p>The public may submit written Comment for any agenda item of a regularly noticed open meeting. <b><u>An advisory body may require that Comment submitted by email or other electronic means in advance of the meeting be received</u></b> up to one complete business day before the meeting.                      . . . .</p> <p><u>Comment:</u> Although this proposed exemption is</p>	<p>approval before the day of the meeting. (See also responses to comment 96, above, explaining the reasons that only written comments can be received for telephone meetings.)</p> <p>The differences between the rule and the referenced open meeting acts are dictated by the different circumstances that apply for Judicial Council advisory bodies. See responses to comments 91–93, and 96, above.</p> <p>As discussed above, in response to comment 96, members typically join advisory body meetings during their busy work days, the meetings include full agendas, and require the attention of all to follow discussion and reach consensus. To permit written comments to be gathered, distributed, and thoughtfully considered, therefore, they must be received one day in advance of the meeting. As this reality will be the same for all committees, the internal chairs conclude it is clearest and most helpful to state the requirement in the rule.</p> <p>As noted above, the internal chairs agree that the</p>

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Rule 10.75(k) – Public comment		
Commentator	Comment	Internal Committee Chairs’ Response
	<p>consistent with the existing rule regarding Judicial Council meetings adopted in 1999, there appears to be no statutory support and no reasonable public policy rationale for the requirement that members of the public must request to speak in advance of the meeting. The proposed exemption is much broader than the Bagley-Keene or Brown acts. The proposed revision conforms the rule to that standard. No advance notice of public comment should be required.</p> <p>Nor should access be limited to “if security measures permit.” (See Comment to (i), above.) Additionally, in order to conform to the Bagley-Keene and Brown acts, the proposed revision requires that the public be provided with an opportunity to address the advisory body either before or during the body’s consideration of the agenda item.</p> <p>. . . .</p> <p>(2) <i>In person comment</i></p> <p><del>If security measures permit public attendance at</del> <b>At</b> an open in-person advisory body meeting, the meeting must include an opportunity for public comment regarding agenda items <b><u>either before or during the advisory body’s discussion or consideration of the item.</u></b> Anyone wishing to speak during the public comment portion of the meeting must submit a request <del>at least one complete business day before the meeting</del> with the following information: the speaker’s name, the name and purpose of</p>	<p>public should be permitted to provide spoken comments concerning agenda items at advisory body meetings when they attend in person and need only submit their request to do so on the day of the meeting before it begins. Notice at that stage is needed so that the chair may assess the time available to accomplish the advisory body’s business, determine the amount of time that can be allotted to each speaker and decide the point at which comments will be heard (at the beginning of the meeting or before agenda items are considered, see subd. (k)(3)). Providing notice of a desire to speak before a meeting starts is necessary because there generally is only one staff person present and that person is seated near the chair, with other responsibilities during the meeting. No staff is available to monitor late arrivals, for example, inquiring whether they wish to speak at the meeting after it has begun.</p> <p>The internal chairs do not think it necessary to specify in subdivision (k)(2) the timing for spoken public comments, as the same topic is addressed below in subdivision (k)(3). The latter gives chairs discretion to hear public comments at the beginning of a meeting or before agenda items. As noted, above, however, the chairs concur that the public need only request leave to speak on the day of the meeting before it begins.</p>

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<b>Rule 10.75(k) – Public comment</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		the organization that the speaker represents if any, the speaker’s contact information, the agenda item that the public comment will address, and any written materials that the speaker proposes to distribute at the meeting. . . . .	
98.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	[The commentator’s specific changes to subdivision (k).] <b>(k) Public comment</b>  (1) <i>Written comment</i>  The public may submit written comments for any agenda item of a regularly noticed open meeting up to one complete business day before the meeting.  (2) <i>In person comment</i>  <del>If security measures permit public attendance at an open in person</del> <u>Meetings that two or more members of the advisory body meeting, the meeting attend in person</u> must include an opportunity for public comment regarding agenda items, <u>unless public attendance has been prohibited pursuant to subdivision (i) of this rule.</u> Anyone wishing to speak during the public comment portion of the meeting must submit a request at least one complete business day before the meeting with the following information: the speaker’s name, the name and	The internal chairs respectfully decline to accept this suggestion for reasons explained in responses to comments 91–93, above.

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<b>Rule 10.75(k) – Public comment</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		purpose of the organization that the speaker represents if any, the speaker’s contact information, the agenda item that the public comment will address, and any written materials that the speaker proposes to distribute at the meeting.	
99.	Sharon Noonan Kramer Escondido	<p>Thank you for the opportunity to offer comment on the proposed open-meeting rules of the Judicial Council and its sub-committees. In the best interest of the public and the members of the judicial branch policy-writing body, there is an area in need of improvement in rule 10.75. The public needs the ability to bring judicial branch policy concerns that are not on a meeting agenda to the attention of the Judicial Council. There is public need to request changes or clarifications to current policies, or establishment of new ones, in an open and transparent manner.</p> <p>1. When meetings of government committees are open to the public they typically offer the opportunity for the public to voice concerns of relevant issues of which committee members may not be aware. Meetings which do not afford the ability for new items to be brought to the attention of decision makers are not comprehensively efficient problem solving meetings. Such restrictions make it difficult for committee members to be made aware of concerns of the public.</p>	<p>The internal chairs preliminarily note that the rule would apply to the meetings of Judicial Council advisory bodies and their subcommittees. It would not apply to council meetings, as existing rules already do so. (See Cal. Rules of Court, rules 10.5–10.6.) Regarding the commentator’s point about raising general policy concerns with the council, opportunities to do so already exist. Council meetings include public comment periods and the council also routinely receives correspondence from the public identifying issues and providing information.</p> <p>Given factors discussed in responses to comments 92–93, and 96 above, the internal chairs respectfully do not agree that the public interest is best served by opening public comment during advisory body meetings to matters beyond agenda items. Although welcome during meetings when the public’s in-person attendance is an option, such comments should be focused on the specific matters that advisory</p>

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<b>Rule 10.75(k) – Public comment</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	<p>2. The proposed rules in their current form do not afford the public the important opportunity to assist the Judicial Council committee members to determine problem areas in need of policy clarifications and/or changes if only predetermined agenda items that are designated by the members and their staff are permitted to be openly discussed and on the record of the meetings.</p> <p>3. Even if a sub-committee of the Judicial Council holds closed meetings, the public requires the opportunity to orally bring relevant matters to that sub-committee’s attention prior to the meeting being closed. Comments and questions on the record may cause solutions on the record, immediately or at a later date.</p> <p>4. The public’s ability to comment on relevant, yet non-agenda items, is necessary so that problem areas brought to the attention of the Judicial Council and any of its sub-committees may be on the record to be considered for future agenda items of the subject sub-committee and/or the Judicial Council as a whole. The ability to offer public comment on pertinent new items will aid to expedite establishment and clarification of sound policies concerning duties to the public of the judicial branch, the administrative offices of the courts and ancillary agencies.</p> <p>5. Rule 10.75(k)(2) is vague and ambiguous. The use of the phrase, “If security measures permit public attendance...” gives the committees the ability to deny the</p>	<p>bodies are reviewing for report to the council. Given the volume of advisory body work, it would not be a productive use of members’ time to accept comments on other topics. Advisory body members are not intended to be generalists, but rather are purposefully drawn from a wide cross section of stakeholder groups based on their shared knowledge and expertise in a specific area of law. Public comment concerning broader judicial branch policy concerns, therefore, are best directed instead to the Judicial Council itself, either through spoken comments at council meetings, or in writing so that staff may refer the comments to those charged with addressing the specific concerns.</p> <p>See responses to comments 91 and 92 above concerning the specific security concerns and needs of advisory bodies.</p>

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Rule 10.75(k) – Public comment		
Commentator	Comment	Internal Committee Chairs’ Response
	<p>public access to comment based on requirements unknown to the public. What security measures are required before the public may comment at a Judicial Council meeting? What security measures would preclude public comment?</p> <p><b>Accordingly, the following changes to rule 10.75(k)(1)(2)(3) are proposed to offer greater transparency and problem solving ability by the Judicial Council with the assistance of the public. Other aspects of rule 10.75 protect committee chairs and members from the noted ethics concerns.</b></p> <p>Rule 10.75(k) Public comment (1) <i>Written comment</i> The public may submit written comments relevant to any policy matter or any agenda item of a regularly noticed meeting up to one complete business day before the meeting.</p> <p>Changed from: (1) <i>Written comment</i> The public may submit written comments for any agenda item of a regularly noticed open meeting up to one complete business day before the meeting.</p> <p>(2) <i>In person comment</i> Regularly noticed in-person or</p>	<p>The internal chairs respectfully decline to make the requested change, while observing that nothing precludes members of the public from sending correspondence generally to advisory bodies or the Judicial Council on issues of broader concern. As the commentator appears most concerned with providing input concerning items not included on an agenda, there would be no need to ensure receipt and consideration before a meeting commences, and thus no need to include it in the rule provision (subd. (k)(1)) that establishes a timeline, as members would not be discussing or acting on such topics at their meetings.</p> <p>See responses above.</p>

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Rule 10.75(k) – Public comment		
Commentator	Comment	Internal Committee Chairs’ Response
	<p>telephonic Judicial Council or advisory body meetings must include an opportunity for public comment regarding relevant policy matters or agenda items. Anyone wishing to speak during the open and public comment portions of the meeting must submit a request at least one complete business day before the meeting with the following information: the speaker’s name, the name and purpose of the organization that the speaker represents if any, the speaker’s contact information, the policy matter or agenda item that the public comment will address, and any written materials that the speaker proposes to distribute at the meeting. Any speaker or attendee who, at the direction of the Chair, is escorted from the room of an in-person meeting will not be readmitted for the remainder of the day.<sup>1</sup> <sup>(1)</sup> See working link to public comment rules for the Regents of the University of California <a href="http://regents.universityofcalifornia.edu/meetings/public-comment.html">http://regents.universityofcalifornia.edu/meetings/public-comment.html</a>.)</p> <p>Changed from:</p> <p>(2) <i>In person comment</i> If security measures permit public attendance at an open in-person advisory body meeting, the meeting must include an opportunity for public comment regarding agenda items. Anyone wishing to speak during the public comment portion of the meeting must submit a request at least one complete business day before the meeting with the following information: the speaker’s name, the name and purpose of the organization that the speaker represents if any, the speaker’s contact</p>	

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<b>Rule 10.75(k) – Public comment</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>information, the agenda item that the public comment will address, and any written materials that the speaker proposes to distribute at the meeting.</p> <p>(3) <i>Reasonable limits</i> The advisory body chair has discretion to establish reasonable limits on the length of time for each speaker and the total amount of time permitted for public comment. The chair may also decide whether public comments will be heard at the beginning of the meeting and/or in advance of the agenda items.</p> <p>Changed from:</p> <p>(3) <i>Reasonable limits</i> The advisory body chair has discretion to establish reasonable limits on the length of time for each speaker and the total amount of time permitted for public comment. The chair may also decide whether public comments will be heard at the beginning of the meeting or in advance of the agenda items.</p> <p>. . . .</p>	<p>The internal chairs do not think it necessary to insert an “and” in the last sentence, as it may reasonably be inferred from the existing language.</p>
100.	Superior Court of San Mateo County	<p>. . . .</p> <p><b>3. Coordination of Speakers at a Public Meeting</b></p> <p>Section (k) of the Rule addresses the procedures for submitting comments to the body or subcommittee or arranging to appear in-person at a meeting whereby it requires either of the requests to be submitted to the body at least “one complete business day before the meeting.”</p> <p>Comment:</p>	

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<b>Rule 10.75(k) – Public comment</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p><i>1) This may not be sufficient time for an advisory body or subcommittee staff person to assemble the information and coordinate the presentation of the written materials to the advisory body or subcommittee for their review before the meeting. This may be more evident since, as mentioned in the proposal, many of the meetings may be held remotely.</i></p> <p><i>2) Section (k) should be consistent with the provision for speaking before the Judicial Council as set out in CRC 10.6(d) unless there is a justification to reduce the advance notice period for advisory bodies.</i></p>	<p>The internal chairs appreciate the time constraints under which advisory bodies and their staff operate. As meeting materials would be posted just three days before a regularly noticed meeting under the rule, however, requiring earlier submission of written comments may make it overly difficult for interested members of the public to review and absorb the information, and prepare and submit any comments. The chairs conclude the provision struck the right balance as circulated for comment and have not revised it.</p> <p>The internal chairs agree that consistency ordinarily is desirable. As discussed in Judicial Council meetings, however, in the interest of expanding public access, the council modified its procedures in this area in 2011. The procedures described in subdivisions (k)(2) and (k)(3) are closer to those currently in place for council meetings and the chairs think it appropriate to retain it in the rule.</p>

<b>Rule 10.75(l) – Making an audio recording of a meeting</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
101.	California Newspaper Publishers Association by James W. Ewert General Counsel	<p>. . . .</p> <p>The proposed rule requires anyone wanting to make an audio recording of the meeting of a body to submit a written request to the Chair of the body at least three</p>	<p>The internal chairs understand the commentator’s concerns but must consider also the concerns of advisory members who are judges. As noted</p>

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<b>Rule 10.75(l) – Making an audio recording of a meeting</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
Sacramento	<p>days prior to the meeting. There are no standards listed in this subsection for the Chair to use in making a determination whether to grant the request. The lack of standards would allow a chair to deny the request to record the meeting for any reason or no reason at all encouraging the abuse of discretion.</p> <p>Additionally, the subsection does not mention recordings of video or still cameras. The subsection’s silence on the use of cameras infers that still or video cameras would not be allowed.</p> <p>Moreover, by requiring a request to be submitted three days in advance of a meeting, no recordings could be made at a meeting that is noticed under urgent or emergency circumstances. This subsection would prevent a person from creating an independent record of what he or she observed during a public meeting.</p> <p>In both the Brown Act and the Bagley-Keene Act a member of the public has a <u>right</u> to make an audio or video recording in the absence of a reasonable finding that the recording cannot continue without noise, illumination or obstruction of view that constitutes a persistent disruption of the proceedings. It is illogical that a person in attendance at a <u>public</u> meeting should in any way be prevented from memorializing what occurred at that meeting by use of an audio, video or still image recording device.</p>	<p>above in responses to comments 42, 81, and 91–92, judges confront heightened security concerns and also are held to high ethics standards. They must “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary,” avoiding even the appearance of impropriety. (Cal. Code Judicial Ethics, canon 2A &amp; advis. com. comment.) Many judges who are advisory body members, therefore, may be concerned both about the risks inherent in having their images broadly circulated, and about the potential for their recorded remarks to be manipulated or taken out of context in a manner that might erode public confidence in the judiciary. For these reasons, the rule as circulated only permitted requests to make audiorecordings of meetings, vesting the discretion to grant such requests with individual advisory body chairs, as they are best able to evaluate the risks above in each instance. The chairs decline to revise this provision. Under subdivision (p) of the rule, the Judicial Council will have opportunity to review the impact of the rule within one year of its adoption (and periodically thereafter) and may consider again at that time whether requests to make video recordings or take photographs might be permitted. The chairs have, however, reduced the advance notice required in subdivision (l) for requests to make audiorecordings from three to</p>

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<b>Rule 10.75(l) – Making an audio recording of a meeting</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>CNPA urges the Judicial Council to adopt this model as it applies recordings of advisory body meetings. Please see California Government Code Section 54953.5.</p> <p>. . . .</p>	<p>two business days before a meeting.</p> <p>On the commentator’s point about meetings called on 24-hours’ notice, the internal chairs observe that the work of the advisory bodies is incremental and that meetings on such shortened notice ordinarily would not signal an emergency, for example, in terms of public safety. Rather such a meeting might be necessary to permit full consultation, address an unanticipated issue, or close the circle on a question before a proposal can be advanced to the Judicial Council, particularly if statutory timelines are involved. The fact that a meeting is called on 24-hours’ notice does not mean that the topic to be discussed will be of heightened interest to the news media or the public. Accordingly, the chairs decline to make further changes to subdivision (l).</p>
102.	<p>California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety</p>	<p>[Commentator’s specific suggestions]</p> <p>. . . .</p> <p><u>Comment:</u> Both the Bagley-Keene and the Brown acts permit audio and video recording of proceedings if not disruptive. The proposed revision conforms the rule to that standard.</p>	<p>See response to comment 101 above.</p>

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<b>Rule 10.75(l) – Making an audio recording of a meeting</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
	Sacramento	<p>.....</p> <p>(k) Making an audio <b>or video</b> recording of a meeting</p> <p>An advisory body chair may permit a member of the public to make an audio <b>or video</b> recording of an open meeting, or the open portion of a meeting <b>if the recording is made without disturbing the meeting, if a written request is submitted at least three business days before the meeting.</b></p> <p>.....</p>	
103.	Superior Court of Los Angeles County	<p>.....</p> <p>(4) The rule should say affirmatively that a meeting MAY NOT be recorded unless a request is made and approved pursuant to subdivision (l).</p> <p>.....</p>	While understanding the commentator’s concern, the internal chairs respectfully conclude that the suggested change is unnecessary. The existing language indicates that the described conduct is subject to approval of the advisory body chair, i.e., that the activity is not authorized absent approval.
104.	Superior Court of San Mateo County	<p>.....</p> <p>4. Audio Recording of a Meeting Section (l) allows for recording of meetings. <i>Comment</i></p> <p>1) <i>The section should include the requirements to establish guidelines by the Council that regulates allowable equipment and method to record the proceedings.</i></p> <p>2) <i>Special attention should be paid to establishing recording telephonic public meetings.</i></p>	The internal chairs do not think it necessary to include such provision in the rule. As noted, however, they are working with staff to develop guidelines for the rule’s proper and consistent implementation and application, and those guidelines may address recording, including telephone meetings

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<b>Rule 10.75(m) – Minutes</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
105.	California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento	. . . . To the extent that the minutes of an advisory body meeting are prepared from a recording of the meeting by the advisory body, similar to the requirement in current open meeting laws, the recording should be made available to the public. Please see California Government Code Section 54953.5(b). . . . .	The internal chairs agree and note that, for open meetings, both any recording that staff may make and meeting minutes would qualify as judicial administrative records, so would be available to the public consistent with rule 10.500 of the California Rules of Court.
106.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	[The commentator’s specific changes to subdivision (k).] . . . . <b>(k) Minutes as official records</b>  Minutes of each meeting subject to this rule must be prepared for approval at a future meeting. When approved by the advisory body, the minutes constitute the official record of the meeting. Approved minutes for the open portion of a meeting must be posted on the <u>designated page of the California Courts website (www.courts.ca.gov)</u> . . . . .	The internal chairs do not think the commentator’s suggested changes necessary. As written, the rule identifies the website that will contain such notices. The website already contains a page listing Judicial Council advisory bodies. Further information concerning the meetings of bodies subject to the rule will be added in a fashion designed for ease of public use, a guiding principle in organizing the information currently available there.

<b>[Current numbering] Rule 10.75(n) – Adjourned meetings [As circulated for public comment, subdivision (o)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
107.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	. . . . [The commentator’s specific changes to subdivision (n).] . . . . <b>(<del>o</del>) (n) Adjourned meetings</b>	The internal chairs agree that the provision should be designated subdivision (n) rather than (o). Regarding the remaining suggestions, please see response to comment 106 above.

**Judicial Administration: Meetings of Judicial Council Advisory Bodies** (Adopt Cal. Rules of Court, rule 10.75)

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<b>[Current numbering] Rule 10.75(n) – Adjourned meetings [As circulated for public comment, subdivision (o)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>An advisory body chair may adjourn a meeting to reconvene at a specified time without issuing a new notice under (e)(1), provided that, if open agenda items remain for discussion, notice of the adjourned meeting is posted <del>on</del> <u>to the designated page of</u> the California Courts website 24 hours before the meeting reconvenes. The notice must identify any remaining open agenda items to be discussed, the time that the meeting will reconvene, the telephone number or other electronic means that the public may use to attend the meeting and, if the public may attend the reconvened meeting in person, the location. The advisory body may not consider new agenda items when the meeting reconvenes except as permitted under (e)(2).</p>	

<b>[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
108.	<p>California Newspaper Publishers Association by James W. Ewert General Counsel Sacramento</p>	<p>Proposals that are circulated among the members of a body for consideration are an essential part of the decision-making process. There is a danger, however, that members of the body will begin to trade communications regarding a proposal that when exchanged by a majority of the members, constitute a meeting outside of public view and without the public’s knowledge.</p>	<p>The internal chairs note that the subdivision expressly restricts communications among advisory body members concerning an e-mail proposal that otherwise must be discussed in an open meeting, from the time that the chair distributes an e-mail proposal for consideration until the advisory body acts on it. The provision has been modified to clarify this intent. (See</p>

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<b>[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>The proposed rule attempts to limit this by requiring notice of a circulated proposal which allows for public comment one business day before the body can act on the proposal. The problem is that there is no requirement that the body publicly disclose all of the communication exchanges among the members of the body. This approach encourages serial meetings which are prohibited under current open meeting laws and should be prohibited in these rules as well.</p> <p>The Judicial Council should amend the rule to prohibit any communication among members on a proposal that is circulated to prevent the occurrence of a serial meeting. If prompt action is necessary, an urgent circumstances or emergency meeting can be scheduled, with appropriate notice to the public provided including a link to the proposal on the Court’s website. This subsection should also be amended to prohibit serial meetings of an advisory body. Please see California Government Code Section 54952.2(b).</p> <p>. . . .</p>	<p>comment 111, below, for the full text of the final version of subdivision (o)</p> <p>The internal chairs also observe that, under the rule, minutes must be prepared for action taken on an e-mail proposal concerning a matter that otherwise must be discussed in an open meeting, and that those minutes must be posted on the California Courts website, so will be available to the public.</p> <p>Regarding the commentator’s suggestion that a fuller serial meeting provision be added to the rule, see responses to comment 33 above.</p>
109.	California State Assembly by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair,	[Commentator’s specific suggestions]	The internal chairs note that the rule does

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[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]]		
Commentator	Comment	Internal Committee Chairs’ Response
<p>Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento</p>	<p><u>Comment:</u> While it is appropriate for advisory bodies to obtain and review written material between meetings, there should be an opportunity for public notice and comment, unless there is an allowable urgency under subdivision (e).</p> <p>. . . .</p> <p>[(o)] Circulated proposals</p> <p>(1) <i>Necessity</i></p> <p>An advisory body chair may circulate a <b>written</b> proposal by email or other electronic means to all advisory body members for consideration between meetings if:</p> <p>(A) The advisory body discussed and considered the proposal at a previous open meeting but concluded more information was needed; or</p> <p>(B) <del>The chair concludes that prompt action is needed.</del></p> <p>(2) <i>Notice</i></p> <p>If a circulated proposal concerns a matter appropriate for an open meeting, the advisory body must provide public notice <b>as provided by these rules</b> and allow <del>one</del> <b>complete at least five</b> business days for public comment concerning the proposal, before acting on the proposal. The notice must be posted on the California Courts website (<a href="http://www.courts.ca.gov">www.courts.ca.gov</a>) and must provide an email</p>	<p>provide for public notice and an opportunity to comment. (See subd. (o)(2), as numbered in the final version of the rule.)</p> <p>The chairs agree that the provision should be clarified to reflect that communications regarding proposals must be written. They have revised the provision to refer to distribution of e-mail proposals, removing reference to “other electronic means,” which some found confusing.</p> <p>The chairs respectfully do not agree with the remainder of commentator’s suggestions concerning this provision (now subd. (o)). Occasionally advisory bodies must take quick action on proposals that they are developing in order to comply with an existing schedule (e.g., if the schedule requires consultation with multiple groups and delivery to the council at a specified meeting to comply with statutory deadlines). The chairs conclude that preservation of this option is important to the ability of the</p>

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<b>[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>address or other electronic means by which the public may submit written Comment. <del>The advisory body may forego public comment if the chair concludes that prompt action is required.</del></p> <p>. . . .</p> <p><u>Comment:</u> The proposed revisions are clarifying.</p> <p>. . . .</p> <p>(3) <i>Communications concerning circulated proposals</i></p> <p>When the chair circulates a proposal under this subdivision, advisory body members must restrict their communications with each other regarding the proposal to email or other written means until the advisory body considers the proposal at a noticed meeting as provided by these rules.</p> <p>. . . .</p>	<p>advisory bodies to keep abreast of their work, particularly as it is not always a simple matter to schedule a meeting on short notice that a majority of advisory body members are able to join.</p>
110.	Civil and Small Claims Advisory Committee by Hon. Patricia M. Lucas, Chair San Francisco	<p>. . . .</p> <p>Second, C&amp;SCAC notes that, in light of the closed nature of its meetings to consider new and amended rules and forms under subdivision [(c)(3)], the proposed rule requiring the inclusion of all post-meeting emails about such proposals makes no sense. For this reason, C&amp;SCAC objects to proposed subdivision [(o)(3) and (4)] to the extent they apply to any proposal circulated following a closed meeting. If the committee members’ oral colloquy concerning such matters at meetings is, appropriately, to be closed, any written colloquy after such meetings should also be closed.</p> <p>As proposed, the process regarding post-meeting</p>	<p>The internal chairs have revised subdivision (o)(3) to clarify that it does not apply to proposals concerning matters that otherwise may be discussed in closed meetings. They have revised subdivision (o)(4) to clarify that the e-mails exchanged concerning such proposals will constitute the official record of the proposals.</p>

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<b>[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>distribution of proposals would be particularly burdensome when applied to C&amp;SCAC’s subcommittee process. Currently, the subcommittees and ad hoc working groups meet telephonically to develop and discuss proposed rules and forms that will eventually be recommended for consideration by the advisory committee as a whole. Frequently at such meetings, the members will direct staff to make modifications to material reviewed at the meeting, with the revised material later circulated to subcommittee members by e-mail. Further discussion of the items often takes place among members by e-mail, rather than in a further conference call, in part because it is hard to schedule additional calls for the full group to meet at the same time because of time commitments and work load of the members. Because the original meeting and any further telephonic meeting of the subcommittee (should one be scheduled) would be closed in any event, and the discussions at those meetings kept private, it is not clear why the e-mail discussions regarding the proposals should be treated any differently.</p> <p>The committee suggests that if the material circulated after a closed meeting is in furtherance of an item that was on the publicly-noticed agenda of that meeting, it should not be subject to subdivisions [(o)(3) and (4)].</p> <p>. . . .</p>	
111.	<p>Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco</p>	<p>. . . .</p> <p>Related to the changes needed for (c)(1), and starkly at odds with transparency, is the circulated proposal provision of subdivision [(o)]. This provision expressly</p>	<p>See responses to comments 108–109 above regarding the purpose and requirements of subdivision (o). See also responses to</p>

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<b>[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>allows advisory bodies to discuss and take action on matters between meetings, essentially codifying the serial meeting practice disallowed by the Brown and Bagley-Keene Acts. This bypass mechanism is not reserved for emergencies but comes into play whenever an advisory body has considered a proposal “but concluded more information was needed” or whenever the chair decides that “prompt action is needed.” P. Rule 10.75[(o)(1)(A)] &amp; (B). No standards are provided as to what may constitute the “need” for “prompt action.”</p> <p>Contrary to the assertion that “[t]he proposed rule would provide for [circulated proposals] in a way that ensures openness and public access,” Invitation at 17, subdivision [(o)] would provide a means to shut the public and media out of discussion, deliberation, and action on any circulated proposal.</p> <p>As currently written, the public and media need not be given any notice of the circulated proposal until after the body has completed its consideration of the matter and has decided what action to take. P. Rule 10.75[(o)(2)]. Only then must notice be given in the form of a web site posting and an opportunity to comment in writing.</p> <p>And if the proposal was circulated because “prompt action is needed,” subdivision [(o)(2)] would allow even ceremonial opportunity for written public comment to be dispensed with, clearing the way for action on the proposal without any public input. <i>Id.</i></p>	<p>comment 33 above, explaining the decision not to include a fuller serial meeting prohibition.</p> <p>The internal chairs respectfully disagree. As noted above in response to comment 108, the rule expressly requires that public notice be posted and an opportunity for comment provided before an advisory body may act on an e-mail proposal concerning a matter that otherwise must be discussed in an open meeting, absent a need for prompt action. (Subds. (o)(2)–(o)(3).)</p>

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	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>Disclosure of the advisory body’s communications concerning the circulated proposal after the fact, P. Rule 10.75[(o)(4)], does not cure the lack of transparency because the discussion, deliberation, and any resulting action will have already taken place, “allow[ing] a potentially controversial issue to be quietly proposed and decided without having to open the discussion to meaningful public input.” <i>San Joaquin Raptor Rescue Ctr. v. County of Merced</i>, 216 Cal. App. 4<sup>th</sup> 1167, 1178 (2013).</p> <p>The justification offered for the circulated proposal provision is that advisory bodies must have a means to “conduct business in a timely and effective manner.” Invitation at 17. But as the Attorney General’s Office explained in the context of the Bagley-Keene Act, while operating under the Act’s requirements “can sometimes be frustrating,” that frustration is a necessary by-product of both the policy decision to sacrifice a degree of efficiency in favor of consensus building and the value judgment that “when a body sits down to develop its consensus, there needs to be a seat at the table for the public. . . . If the body were permitted to meet in secret, the public’s role in the decision-making process would be negated.” California Attorney General’s Office, <i>A Handy Guide to the Bagley-Keene Open Meeting Act (“Bagley-Keene Guide”)</i>, at 2 (2004). Undermining these objectives requires a more compelling justification than convenience.</p> <p>Indeed, the fact that “more information” is needed to</p>	<p>See responses to comments 109–110 above.</p> <p>The internal chairs respectfully do not agree that subdivision (o) will allow potentially controversial proposals to be developed out of public view. Advisory body members are drawn from a broad cross section of stakeholder groups, including many private citizens, and members may discuss issues that the advisory bodies consider with colleagues in their respective fields. They also generally circulate their proposals for public input by posting an “Invitation to Comment” on the California Courts website (<a href="http://www.courts.ca.gov/policyadmin-invitationstocomment.htm">www.courts.ca.gov/policyadmin-invitationstocomment.htm</a>), carefully reviewing, considering, and responding to all comments received. If complex issues arise through that process, the advisory body may revise the proposal and post a new “Invitation to Comment” to obtain further input. Their reports to the council are posted publicly a week before council meetings, and attach all comments and</p>

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[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]		
Commentator	Comment	Internal Committee Chairs’ Response
	<p>decide a matter means that deliberation on that matter is not yet complete. The analysis of such additional information is a key element of transparency. <i>See, e.g., Bagley-Keene Guide</i>, at 5 (“To the extent that a body receives information under circumstances where the public is deprived of the opportunity to monitor the information provided, and either agree with it or challenge it, the open-meeting process is deficient.”).</p> <p>The circulated proposal provision should be eliminated in its entirety. To the extent Rule 10.75 retains any mechanism for extra-meeting deliberation and action, it must be reserved for extremely unusual circumstances. It should also provide, at a minimum, that the public be given notice of the proposal at the same time it is circulated to members of the advisory body; that subsequent communications related to the proposal be posted to the courts’ web site within one court day of their transmission; and that no action be taken on the matter until at least one court day after the last communication on the matter has been posted to the web site or otherwise made public. <i>See</i> Exhibit A.</p> <p>. . . .</p> <p>[The commentator’s specific changes to subdivision (o).]</p> <p>. . . .</p> <p><del>[(o)]</del> <i>Circulated proposals</i></p> <p>(1) <del>Necessity</del></p>	<p>all responses. As noted, council meetings can be heard live over the Internet. The public may attend in person, may submit written comments in advance of the meeting, and may appear and speak at the meeting regarding the proposal. The public has and will retain a seat at the table and public input is considered with care.</p> <p>See responses to this comment above. The internal chairs do not agree to add these requirements, as doing so would defeat the purpose of the provision. Although the provision does require posting of public notice and an opportunity for comment, absent a need for prompt action, before the body acts on an e-mail proposal, and also requires the posting of minutes reflecting action taken on e-mail proposals about matters that otherwise must be discussed in an open meeting, requiring the precise sequence and timing that the commentator suggests would create greater burdens for advisory bodies and their staff, precluding their use of the procedure.</p> <p>The internal chairs have revised subdivision (o), but not as suggested by the commentator. The final version of the provision (with the changes indicated) is as follows:</p>

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[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]			
Commentator	Comment	Internal Committee Chairs’ Response	
	<p><del>An advisory body chair may circulate a proposal by email or other electronic means to all advisory body members for consideration between meetings if:</del></p> <p><del>(A) The advisory body discussed and considered the proposal at a previous open meeting but concluded more information was needed; or</del></p> <p><del>(B) The chair concludes that prompt action is needed.</del></p> <p><del>(2) Notice</del></p> <p><del>If a circulated proposal concerns a matter appropriate for an open meeting, the advisory body must provide public notice and allow one complete business day for public comment concerning the proposal, before acting on the proposal. The notice must be posted on the California Courts website (www.courts.ca.gov) must provide an email address or other electronic means by which the public may submit written comments. The advisory body may forego public comment if the chair concludes that prompt action is required.</del></p> <p><del>(3) Communications concerning circulated proposals</del></p>	<p><b>(o) <u>Circulated Action by e-mail between meetings</u></b></p> <p><u>An advisory body may take action by e-mail between meetings in circumstances specified in this subdivision.</u></p> <p><i>(1) <u>Necessity Circumstances</u></i></p> <p>An advisory body chair may circulate a proposal by email or other electronic means to all advisory body members for consideration between meetings if:</p> <p>(A) The advisory body discussed and considered the proposal at a previous open meeting but concluded more information was needed; or</p> <p>(B) The chair concludes that prompt action is needed.</p> <p><i>(2) <u>Notice</u></i></p> <p>If an <u>e-mail circulated</u> proposal concerns a matter <u>appropriate for that otherwise must be discussed</u> in an open meeting, the advisory body must provide public notice and allow one complete business day for public comment concerning the proposal, before</p>	

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[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]			
	Commentator	Comment	Internal Committee Chairs’ Response
		<p><del>When the chair circulates a proposal under this subdivision, advisory body members must restrict their communications with each other regarding the proposal to email or other electronic means until the advisory body has acted on the proposal.</del></p> <p><del>(4) Official Record</del></p> <p><del>Written minutes describing the action taken regarding the circulated proposal must be prepared for approval at a future meeting. The minutes must include the text of all e-mails or electronic communications concerning the circulated proposal exchanged among advisory body members before the advisory body acts on the proposal. When approved by the advisory body, the minutes constitute the official record of the circulated proposal. Approved minutes for a circulated proposal on a matter appropriate for an open meeting must be posted to the California Courts website (www.courts.ca.gov).</del></p> <p>. . . .</p>	<p>acting on the proposal. The notice must be posted on the California Courts website (<a href="http://www.courts.ca.gov">www.courts.ca.gov</a>) and must provide an e-mail address or other electronic means by to which the public may submit written comments. The advisory body may forego public comment if the chair concludes that prompt action is required.</p> <p><del>(3) Communications concerning circulated proposals</del></p> <p><del>When the chair circulates a proposal under this subdivision If an e-mail proposal concerns a matter that otherwise must be discussed in an open meeting, after distribution of the proposal and until the advisory body has acted, advisory body members must restrict their communications with each other regarding about the proposal to email or other electronic means after the chair distributes the proposal until the advisory body has acted on it the proposal. This restriction only applies to proposals distributed under this subdivision.</del></p> <p><del>(4) Official <u>R</u>ecord</del></p> <p>Written minutes describing the action taken regarding the circulated on an e-mail proposal concerning a matter that otherwise must be</p>

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	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
			<p><u>discussed in an open meeting</u> must be prepared for approval at a future meeting. The minutes must <del>include the text of all e-mails or electronic communications concerning the circulated proposal exchanged among advisory body members before the advisory body acts on the proposal,</del> <u>attach any public comments received.</u> When approved by the advisory body, the minutes constitute the official record of the <del>circulated e-mail</del> proposal. Approved minutes for <u>such a circulated proposal on a matter appropriate for an open meeting</u> must be posted to the California Courts <del>website</del> (<a href="http://www.courts.ca.gov">www.courts.ca.gov</a>). <u>The e-mails exchanged concerning a proposal on a matter that otherwise might have been considered in a closed meeting will constitute the official record of the proposal.</u></p>
112.	Criminal Law Advisory Committee by Hon. Tricia Ann Bigelow, Chair San Francisco	<p>. . . .</p> <p>The committee proposes, however, the following amendments to subdivisions [(o)(3)] and [(o)(4)], to clarify that those provisions apply only to matters deemed appropriate for an open meeting under the rule.</p> <p>***</p> <p>[(o)] Circulated proposals</p> <p>***</p>	See responses to comment 110 above.

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<b>[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p>(3) Communications concerning circulated proposals</p> <p>When the chair circulates a proposal under this subdivision on a matter appropriate for an open meeting, advisory body members must restrict their communications with each other regarding the proposal to email or other electronic means until the advisory body has acted on the proposal.</p> <p>(4) Official Record</p> <p>If a circulated proposal concerns a matter appropriate for an open meeting, written minutes describing the action taken regarding the circulated proposal must be prepared for approval at a future meeting. The minutes must include the text of all e-mails or electronic communications concerning the circulated proposal exchanged among advisory body members before the advisory body acts on the proposal. When approved by the advisory body, the minutes constitute the official record of the circulated proposal. Approved minutes for a circulated proposal on a matter appropriate for an open meeting must be posted to the California Courts website (<a href="http://www.courts.ca.gov">www.courts.ca.gov</a>).</p>	
113.	<p>Probate and Mental Health Advisory Committee by Hon. Mitchell L. Beckloff, Chair Los Angeles</p>	<p>Rule 10.75[(o)(2)] concerns notice of circulated proposals. The introductory sentence of that paragraph appears to apply it only to circulated proposals that are to be considered at open meetings or open portions of meetings. Is that a correct interpretation? Do paragraphs</p>	<p>As noted in responses to comments 108–111, above, subdivision (o) has been modified to clarify the intent. Modifications are intended to clarify that subdivision (o)(1) applies equally for proposals that would be appropriate for open or</p>

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<b>[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		(1) (necessity), (3) (communications concerning circulated proposals), and (4) (Official Record concerning actions taken regarding circulated proposals) of rule 10.75[(o)] also apply only to proposals that are to be considered in an open meeting or in the open portion of a meeting under the rule?  . . . .	closed meetings. Subdivisions (o)(2) and (o)(3) only apply for proposals concerning matters that otherwise must be discussed in opened meetings. Subdivision (o)(4) contains provisions addressing both types of e-mail proposals (i.e., those that otherwise must be discussed in open meetings and those that otherwise might be discussed in closed meetings).
114.	Public Counsel Appellate Law Program by Lisa Jaskol Directing Attorney Los Angeles	. . . . 2. Subdivision [(o)(1)], which discusses circulating proposals by email, apparently would require the chair to conclude that “prompt action is needed” before emailing a proposal, even if the meeting is going to be closed. Instead, I’d suggest adding a new subdivision [(o)(1)(C)], which would allow circulation of a proposal by email if “The advisory body is a rules committee under (c)(4) and no agenda items are to be discussed in open session.”  3. Subdivision [(o)(4)], discussing the minutes when the proposal is circulated via email, doesn’t provide for inclusion in the minutes of comments that may have been submitted by members of the public. I’d suggest inserting the phrase “, and any public comments,” in the second sentence of [(o)(4)], after the phrase “exchanged among advisory body members,” so the sentence reads: “The minutes must include the text of all e-mails or electronic communications concerning the circulated proposal exchanged among advisory body members, and any public comments, before the advisory body acts on the proposal.”  . . . .	The internal chairs have revised the provision instead, removing the word “open” from subdivision (o)(1)(A) so that it applies whether the proposal involves a matter that otherwise must be discussed in an open meeting or might be discussed in a closed meeting. See response to comment 111, above.  The internal chairs have revised subdivision (o)(4) to require that any public comments be attached to minutes for e-mail proposals on topics that otherwise must be addressed in open meetings..

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<b>[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
115.	Superior Court of Los Angeles County	<p>.....</p> <p>(5) If subpart [(o)] applies only to a matter to be voted on electronically (as it seems to) then it should say so expressly.</p> <p>(6) Subpart [(o)(3)] may be read to apply to closed meetings and closed agenda items. It should say that it only applies to open meeting items.</p> <p>(7) Subparts [(o)(3)] and [(o)(4)] seem to be more restrictive regarding pre-decision communications than (c)(1). Making pre-decision communications more restrictive for circulated proposals than for items considered at open meetings is unnecessary and undesirable.</p> <p>.....</p>	<p>Subdivision (o) has been revised as reflected in response to comment 111, above, to clarify that it permits action by e-mail between meetings in specified circumstances with specified requirements.</p> <p>Subdivision (o)(3) has been revised to clarify that it only applies to proposals concerning matters that otherwise must be discussed in open meetings.</p> <p>As noted, subdivisions (o)(3) and (o)(4) have been modified. The internal chairs think the final text is properly balanced with subdivision (c)(1).</p>
116.	Superior Court of San Mateo County	<p>.....</p> <p><b>1. Permitted form of communication.</b></p> <p>Section [(o)(3)] sets forth the limitation on the type of communication method allowable to discuss a circulated proposal.</p> <p><i>Comment</i></p> <p>1) <i>The section is ambiguous as to allowable forms of communication other than e-mail.</i></p> <p>2) <i>A definition of “electronic means” should be included here or if otherwise defined in another</i></p>	<p>As noted above, in responses to comment 109, the chairs agree that the term “other electronic means” caused confusion. Rather than define it, the term has been removed. Subdivision (o)(3) has been modified as well to clarify the period during which advisory body members must restrict their communications with each other. During that period, advisory body members may</p>

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<b>[Current numbering Rule 10.75(o) – Action by e-mail between meetings [As circulated for public comment, subdivision (n)]</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
		<p><i>part of the CRCs, a reference to that site. Does this then restrict the use of telephone communications or is it included in the definition of “electronic means”?</i></p> <p>3) <i>Does this section also preclude a body member from discussing a circulated proposal even in the context of a casual in person conversation in a non-meeting situation?</i></p> <p><b>2. Text of Communications</b></p> <p>Section [(o)(4)] requires that “the text of all e-mails or electronic communications concerning the circulated proposal exchanged among advisory body members before the advisory acts on the proposal” be included in the written minutes of the advisory body’s meetings.</p> <p>Comment: This provision may create a logistical issue. It is unclear how text of other “electronic communications” can be provided unless they are e-documents that were transmitted between members. This issue may be clarified once “electronic communications” is further defined as pointed out in our comment # 1 above. The manner and means of transmitting text of such communications should be clarified here. . . .</p>	<p>only communicate with each other about an e-mail proposal by e-mail. They may not talk to each other about the e-mail proposal in a meeting or otherwise during that period until after the advisory body has acted on it.</p> <p>Subdivision (o) has been modified to clarify that the exchanges must be by e-mail. Reference to “electronic communications” has been removed.</p>

<b>Enforcement</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs’ Response</b>
117.	American Federation of State, County and Municipal Employees, Councils 36	. . . . AFSCME’s second area of concern is with respect to	The internal chairs understand the commentator’s

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<b>Enforcement</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
<p>and 57 by Anthony R. Segall, Attorney Rothner, Segall &amp; Greenstone Pasadena</p>	<p>enforcement of the Rule by private plaintiffs. Private citizens and groups should be granted the right to enforce Rule 10.75, consistent with other “sunshine” statutes such as the California Public Records Act, Ralph M. Brown Act, and Bagley-Keene Open Meeting Act. In addition, in those rare circumstances where a court determines that a private citizen or group has litigated in good faith to correct improper conduct taken under Rule 10.75, the court should have discretion to award costs and reasonable attorneys’ fees to the prevailing parties. . . .</p>	<p>point and have added subdivision (p) to the rule in response. It will require the Judicial Council to review the impact of the rule within a year of its adoption and periodically afterward to determine whether amendments are needed.</p> <p>As recommended in the final version of the rule, subdivision (p) states:</p> <p style="padding-left: 40px;"><b>“(p) Review requirement</b></p> <p style="padding-left: 40px;">The Judicial Council will review the impact of this rule within one year of the rule’s adoption and periodically thereafter to determine whether amendments are needed. In conducting its review, the council will consider, among other factors, the public interest in access to meetings of advisory bodies, the obligation of the judiciary to comply with judicial ethics standards, and the public interest in the ability of advisory bodies to effectively assist the Judicial Council by offering policy alternatives for improving the administration of justice.”</p> <p>The provision will give the Judicial Council an opportunity to consider issues that may arise related to public access.</p>

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<b>Enforcement</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
			The council is not an enforcement agency, however. It does not track compliance with its rules, forms, or standards. Nor does it have authority to impose penalties for noncompliance, or create a cause of action. All existing legal remedies would remain available to anyone alleging the rule's violation, once adopted.
118.	California Newspaper Publishers Association by James W. Ewert, General Counsel Sacramento	<p style="text-align: center;">. . . . .</p> <p>Another characteristic that affects the integrity of the proposed rules is that they lack an enforcement mechanism. There is no remedy available for a member of the public who is unable to access a meeting or comment on an item discussed by an advisory body or to challenge an advisory body Chair that decides it may be more convenient or it would better serve the Judicial Council to conduct a meeting in secret in violation of the proposed rules.</p> <p>It is essential that Judicial Council develop a procedure for an aggrieved individual to obtain a remedy for a violation. The procedure must include a neutral third party who has the ability to gather information to understand the context of the alleged violation and the authority to resolve the dispute after applying the appropriate sections of the proposed rules. Please see California Rule of Court 10.500 for guidance.</p>	See response to comment 117 above.
119.	California State Assembly	[Commentator's specific suggestions]	

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<b>Enforcement</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
	by John A. Perez, Speaker of the Assembly; Bob Wieckowski, Chair, Assembly Judiciary Committee; Reginald Jones-Sawyer, Sr., Chair, Subcommittee No. 5 on Public Safety Sacramento	<p style="text-align: center;">. . . .</p> <p><u>Comment:</u> While there is no enforcement mechanism provided in the proposed rule, this provision will allow the Legislature to track compliance issues.</p> <p style="text-align: center;">. . . .</p> <p><b><u>(p) The Judicial Council shall, by March 1 of each year, provide to the Judiciary Committees and the Budget Committees of the Senate and Assembly a report on any complaints received in the prior year for failure to comply with this rule. The report shall, at a minimum, include the number of complaints, the nature of each complaint, the advisory group to which each complaint was addressed and the resolution of the complaint, if any.</u></b></p>	The internal chairs agree with the suggestion that there be periodic review of the rule's impact and related issues that may arise. They respectfully conclude, however, that the Judicial Council, as the policy-making body for the judicial branch of state government, is the appropriate entity to conduct such review.
120.	Courthouse News Service by Rachel Matteo-Boehm, Attorney Bryan Cave LLP San Francisco	<p style="text-align: center;">. . . .</p> <p><b>G. Rule 10.75 Should Be Amended To Add An Enforcement Mechanism</b></p> <p>A rule that requires open meetings of the Judicial Council's advisory bodies is a logical extension of Rule of Court 10.500, which provides a public right of access to judicial administrative records. Like the California Public Records Act on which it was based, Rule 10.500 includes a detailed enforcement mechanism. See Rules of Court 10.5000(1)-(5); 10.803 (copies attached as Exhibit B). So do California's other open meetings laws. See Gov't Code §§ 54960-54960.5 (Brown Act), 11130.5 (Bagley-Keene); 9031 (Legislature open meeting laws).</p>	See responses to comment 117 above, providing subdivision (p), included in the final version of the rule, after circulation for public comment.

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<b>Enforcement</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p>In contrast, proposed Rule 10.75 contains no enforcement mechanism, leaving members of the public and media without guidance or recourse in the event of a dispute about any of its provisions. This should be corrected with appropriate amendments, such as adding an enforcement mechanism similar to what already exists for judicial administrative records in Rules 10.500(j) and 10.803.</p> <p style="text-align: center;">. . . . .</p> <p>[The commentator's specific changes creating an enforcement provision.]</p> <p style="text-align: center;">. . . . .</p> <p><b><u>(o) Meeting Access Disputes</u></b></p> <p style="padding-left: 40px;">(1) <u>Unless the petitioner elects to proceed under (2) below, disputes and appeals of decisions with respect to disputes with the Judicial Council, Administrative Office of the Courts, or a superior court regarding access to meetings under rule 10.75 are subject to the process described in rule 10.803.</u></p> <p style="padding-left: 40px;">(2) <u>Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction for the purpose of stopping or preventing violations or threatened violations of this rule by members of an advisory body or to determine the applicability of this rule to ongoing actions or threatened future actions of the advisory body, or to determine the</u></p>	<p>See response to comment 117 above, providing the final version of the rule, including subdivision p, added in after the rule was circulated for comment.</p>

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<b>Enforcement</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p><u>applicability of this rule to past actions of the advisory body.</u></p> <p>(3) <u>Whenever it is made to appear by verified petition that a meeting required to be open under this rule has been closed or that the opportunity for public attendance or comment permitted under this rule has been denied, the court with jurisdiction will declare action taken at the meeting to be null and void. The court will decide the case after examining the record (in camera if appropriate), papers filed by the parties, and any oral argument and additional evidence as the court may allow.</u></p> <p>(4) <u>An order of the court issued under this subdivision is not a final judgment or order within the meaning of Code of Civil Procedure section 904.1 from which an appeal may be taken, but will be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of an order under this subdivision, a party must, in order to obtain review of the order, file a petition within 20 days after service of a written notice of entry of the order or within such further time not exceeding an additional 20 days as the court may for good cause allow. If the notice is served by mail, the period within which to file the petition will be</u></p>	

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<b>Enforcement</b>			
	<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
		<p><u>extended by 5 days. A stay of an order or judgment will not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court will be cited to show cause why that is not in contempt of court.</u></p> <p><u>(5) The court will award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed under this subdivision. The costs and fees will be paid by the judicial branch entity and will not become a personal liability of any individual. If the court finds that the plaintiff's case is clearly frivolous, it will award court costs and reasonable attorney fees to the judicial branch entity.</u></p> <p><u>[Rule of Court 10.803 should also be amended as follows: "This rule applies to petitions filed under rule 10.75(p)(1), 10.500(j)(1), and Government Code section 71675(b).]</u></p>	
121.	SEIU California State Council by Scott A. Kronland Attorney Altshuler Berzon LLP San Francisco	<p style="text-align: center;">. . . .</p> <p><i>Third</i>, Bagley-Keene provides for enforcement of its provisions and attorneys' fees for prevailing plaintiffs. Gov. Code §§11130, 11130.3, 11130.5. The Judicial Council should provide for similar enforcement authority. Again, there is no reason the Judicial</p>	See response to comment 117 above.

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<b>Enforcement</b>		
<b>Commentator</b>	<b>Comment</b>	<b>Internal Committee Chairs' Response</b>
	Council's advisory bodies should be treated differently than other State bodies with respect to the enforceability of open meetings requirements. The Judicial Council previously recognized this in enacting Rule 10.500(j) of the California Rules of Court, which provides for enforcement of the public records provisions of the Rules of Court.	