



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 25, 2014

Title	Agenda Item Type
Judicial Administration: Membership of Appellate Advisory Committee	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 10.40	July 1, 2014
Recommended by	Date of Report
Appellate Advisory Committee Hon. Raymond J. Ikola, Chair	February 24, 2014
	Contact
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Executive Summary

The Appellate Advisory Committee recommends amending the rule that establishes the membership of the committee to add a new membership category for an appellate lawyer of the Court of Appeal or Supreme Court.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective July 1, 2014, amend rule 10.40 of the California Rules of Court to add a new membership category for an appellate lawyer of the Court of Appeal or Supreme Court.

The text of the proposed rule amendment is attached at page 4.

Previous Council Action

The predecessor to rule 10.40 was adopted by the Judicial Council effective January 1, 1999. Effective January 1, 2002, this rule was amended to create a position for the State Public Defender and to clarify that the committee member from the Attorney General's Office must be

an appellate attorney. The rule was renumbered as rule 10.40 on January 1, 2007, but not substantively changed.

Rationale for Recommendation

Rule 10.40 of the California Rules of Court establishes the charge and membership of the Judicial Council's Appellate Advisory Committee. Subdivision (c) of this rule currently establishes the categories of members on the committee to include at least one member from each of the following categories:

- Justice of the Supreme Court;
- Justice of the Court of Appeal;
- Trial court judicial officer with experience in the appellate division;
- Clerk/administrator of the Supreme Court;
- Appellate court administrator;
- Trial court judicial administrator;
- Civil appellate lawyer;
- Criminal defense appellate lawyer;
- State Public Defender; and
- Appellate lawyer of the Attorney General's Office.

The committee believes it would be helpful to the committee if the current membership were expanded to include a category for an appellate lawyer of the Court of Appeal or Supreme Court. The committee's view is that an individual from this background would provide a unique perspective on appellate procedure and appellate court administration, one that differs from that of the appellate justices, clerk/administrators, and attorneys that represent parties in appellate proceedings. The committee is therefore proposing to amend rule 10.40 to add a new membership category for an appellate lawyer of the Court of Appeal or Supreme Court.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was circulated between January 13 and February 14, 2014. Eleven individuals or organizations submitted comments on this proposal. All the commentators agreed with the proposal. The full text of the comments received is set out in the attached comment chart. Based on these comments, the committee recommends that the proposal be adopted as circulated for public comment.

Other alternatives considered

The committee considered not recommending this rule amendment on the basis that an appellate court attorney could, in theory, be appointed under the category of "civil appellate lawyer." However, the committee's experience is that appellate court attorneys have rarely applied for the committee under that category. The committee's view is that appropriate candidates are much

more likely to apply for appointment to the committee if they see an opening in a membership category that is specifically designated for individuals in their position.

Implementation Requirements, Costs, and Operational Impacts

Adding an additional member to the Appellate Advisory Committee will result in a small increase in meeting costs of approximately \$265 per year. There is also likely to be a very small increase in workload for the Administrative Office of the Courts staff associated with the nominations and appointment process.

Attachments

1. Cal. Rules of Court, rules 10.40, at page 4
2. Comment chart at pages 5–7

Rule 10.40 of the California Rules of Court is amended, effective July 1, 2014, to read:

1 **Rule 10.40. Appellate Advisory Committee**

2
3 **(a)–(b) * * ***

4
5 **(c) Membership**

6
7 The committee must include at least one member from each of the following categories:

- 8
9 (1) Supreme Court justice;
- 10
11 (2) Court of Appeal justice;
- 12
13 (3) Trial court judicial officer with experience in the appellate division;
- 14
15 (4) Supreme Court clerk administrator;
- 16
17 (5) Appellate court administrator;
- 18
19 (6) Trial court judicial administrator;
- 20
21 (7) Civil appellate lawyer;
- 22
23 (8) Criminal defense appellate lawyer;
- 24
25 (9) State Public Defender; ~~and~~
- 26
27 (10) Appellate lawyer of the Attorney General’s Office; and
- 28
29 (11) Appellate lawyer of the Court of Appeal or Supreme Court.
- 30
31

ITC SP14-01**Title of proposal:** Judicial Administration: Membership of Appellate Advisory Committee, Amend Cal. Rules of Court, rule 10.40

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Kris Burkes Senior Appellate Attorney California Court of Appeal Third Appellate District Sacramento	A	I frankly can't believe there isn't an appellate attorney member already.	The committee notes the commentator's support for the proposal.
2.	Rhonda Canby Appellate Judicial Attorney California Court of Appeal Third Appellate District Sacramento	A	Having been a civil appellate lawyer for about 20 years and being new on staff at the court of appeal, I can say with confidence that the perspective of a court attorney is unique. I think the judicial council (and those who work in and practice before the courts) would benefit from hearing that perspective.	The committee notes the commentator's support for the proposal.
	Committee on Appellate Courts State Bar of California By: Kiro Klatchko, Chair (2013-2014)	A	The Committee supports this proposal. The Committee, which often comments on and makes proposals to the Appellate Advisory Committee, seeks to include members who are appellate lawyers of the Court of Appeal or Supreme Court. We have found that those Committee members provide a unique and important perspective on the issues that are raised. Thank you for your consideration of our comments.	The committee notes the commentator's support for the proposal.
2.	Betsy Forbath Senior Appellate Attorney California Court of Appeal Fourth Appellate District Santa Ana	A	I agree with the proposal. It would be very useful to have input from a Supreme Court or Court of Appeal staff attorney on the appellate rules. I think it would be particularly useful if the attorney appointed is a managing or supervising attorney (as opposed to a chambers attorney) as they are usually the ones involved	The committee notes the commentator's support for the proposal.

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			in construing and applying the court rules in the first instance (e.g., in processing motions etc. before cases are fully briefed and assigned).	
3.	Donna R. Hecht Lead Appellate Court Attorney Riverside California Court of Appeal Fourth Appellate District	A	'Bout time.	The committee notes the commentator's support for the proposal.
4.	Brendon Ishikawa Lead Appellate Court Attorney California Court of Appeal Third Appellate District Sacramento	A	I support the proposal to include an appellate attorney from either the California Supreme Court or the Court of Appeal. As lead appellate attorney in the chambers of an associate justice on the Court of Appeal, I have occasion to learn of difficulties or ambiguities in applying appellate rules. Thus, I believe a full and fair consideration of rules and proposed changes will be enhanced by the participation of an appellate attorney from one of California's appellate courts.	The committee notes the commentator's support for the proposal.
5.	Nina Levin Senior Appellate Court Attorney California Court of Appeal Second Appellate District Los Angeles	A	An excellent idea, since we are on the front lines of appellate work and have to deal with any changes to the appellate rules.	The committee notes the commentator's support for the proposal.
6.	Lynn Loschin Senior Appellate Court Attorney California Court of Appeal Fourth Appellate District Santa Ana	A	Because appellate court lawyers are intimately familiar with issues such as briefing, the record on appeal, appellate motion practice, and other procedural and administrative aspects of the appellate courts, the inclusion of an appellate court attorney would be a worthy addition to the	The committee notes the commentator's support for the proposal.

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	Commentator	Position	Comment	Committee Response
			Appellate Advisory Committee. An appellate attorney would provide valuable insight that complements the perspective of the other members of the committee.	
7.	Justice Judith McConnell Administrative Presiding Justice California Court of Appeal Fourth Appellate District	A	I want you to know I am in full support of this proposal. The managing attorneys deal with procedural issues in the appellate courts—in addition to other matters—on a daily basis and would be very helpful to the committee. Their knowledge of the flow of cases and the effect of rule changes on our work would be invaluable.	The committee notes the commentator’s support for the proposal.
8.	William F. Rylaarsdam Associate Justice California Court of Appeal Fourth Appellate District Santa Ana	A	This is a long-needed improvement in the composition of the committee.	The committee notes the commentator’s support for the proposal.
9.	Matthew J. Smith Lead Appellate Court Attorney California Court of Appeal Third Appellate District Sacramento	A	A very good idea. The Committee is absolutely correct that this change “would provide a unique perspective on appellate procedure and appellate court administration.” And I’m not just saying that because I’m an appellate court attorney.	The committee notes the commentator’s support for the proposal.