

Item 1

New Proposed Rule Change – Amend rule 10.620.
Trial Court Management: Public Access to Administrative
Decisions of Trial Courts

- Draft Invitation to Comment to Amend Rule 10.620
- Judicial Council's Office of the General Counsel Memo to Presiding Judges and Court Executive Officers re: Court Closures and Reducing Hours: New Amendments to Government Code, Section 68106 (Effective January 1, 2012)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

DRAFT INVITATION TO COMMENT [ITC prefix as assigned]-__

Title	Action Requested
Trial Court Management: Public Access to Administrative Decisions of Trial Courts	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 10.620	January 1, 2016
Proposed by	Contact
Trial Court Presiding Judges Advisory Committee	Claudia Ortega, 415-865-7623 claudia.ortega@jud.ca.gov
Hon. Marsha G. Slough, Chair	Katherine Sher, 415-865-8031 katherine.sher@jud.ca.gov
Court Executives Advisory Committee	
Ms. Mary Beth Todd, Chair	

Executive Summary and Origin

Rule 10.620 addresses public access to certain administrative decisions made by trial courts. It sets forth requirements for trial courts to provide public notice, and seek public input, regarding budget recommendations made by trial courts to Judicial Council and specified administrative decisions. The decisions subject to public notice and comment requirements include any decision to close or reduce the hours of a court location. (Cal. Rules of Court, rule 10.620(d)(3).) When notice is required, the rule specifies the ways in which it must be given, including a requirement that notice be posted at all court locations that accept papers for filing. (Cal. Rules of Court, rule 10.620(g)(3).)

Amendments to Government Code section 68106, which took effect on January 1, 2012, created new requirements for public notice and comment when trial courts decide to close court facilities or reduce hours. These requirements are inconsistent with the requirements of rule 10.620, and trial courts have faced confusion in determining how notice is to be provided. The Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) jointly propose amending the rule to repeal those provisions that are inconsistent with Gov. Code section 68106, leaving the statute as the sole governing authority regarding notice where it is applicable, and to make the language of the rule regarding posting of notice at court facilities consistent with section 68106.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee.

Background

Rule 10.620 was adopted in 2004 (as Rule 6.620) pursuant to Government Code section 68511.6, which requires that Judicial Council adopt rules providing for public notice and an opportunity to comment regarding trial court administrative and financial decisions. Government Code section 68106 then took effect in 2010, putting in place specific requirements for public notice and opportunity to comment on decisions to close courtrooms, or to close or reduce the hours of clerks' offices.

Under the previous language of section 68106, subsection (b), sixty day advance written public notice was required before closing any courtroom or closing or reducing the hours of a clerks' office. To reconcile the requirements of the statute and of the rule, some courts used a two-step notice procedure. A first notice would be issued, pursuant to the rule, fifteen court days before the decision was made, with public comment invited. Then, pursuant to the statute, another notice would be provided sixty days before the decision was implemented, but no further public comment would be solicited.

Section 68106 was amended effective January 1, 2012, to add the following requirements: 1) that notice be given "by electronic distribution to individuals who have subscribed to the court's electronic distribution service" (subd. (b)(1)); 2) that the notice include "information on how the public may provide written comments during the 60-day period on the court's plan" (subd. (b)(2)(A)); 3) that the court "review and consider all public comments received" (*ibid.*); and 4) that the court "immediately provide notice to the public," if it changes its plans during the comment period (*ibid.*).

The existing notice requirements of rule 10.620, as applied to court closures and reduction of hours, are inconsistent with these new provisions of section 68106. In particular, rule 10.620 requires that public notice be given at least fifteen court days before a decision is made, including a decision to close or significantly reduce the hours of a court location, and that public comment be allowed within that notice period. The rule further requires that a second public notice be given of such closures or service reductions within fifteen court days after the action is taken. By contrast, Government Code section 68106 now requires public notice to be provided no less than sixty days before a courtroom is closed or a clerks' office closed or its hours reduced, with the public comment period running concurrent with the notice period.

Courts have continued to struggle with the question of how to provide notice due to the inconsistency of rule 10.620 with the new statutory requirements.

The Proposal

Subdivision (d)(3) and (f)(5) of rule 10.620 would be repealed to eliminate the application of the rule's notice requirements to decisions to close court locations or significantly reduce the hours of a court location. In addition, the proposed amendments conform the language of rule 10.620 (g)(3) regarding the posting of notice at court locations to the language of Government Code section 68106.

Currently, rule 10.620 requires a trial court to seek input from the public regarding specified decisions by providing public notice at least fifteen court days before the date on which the decision is to be made or the action is to be taken. (Cal. Rules of Court, rule 10.620(e).) The rule further requires that public notice be given of specified actions not later than fifteen court days after the event. (Cal. Rules of Court, rule 10.620(f).)

Under rule 10.620, subdivision (d)(3), the pre-decision notice requirement is applicable to “[t]he planned, permanent closure of any court location for an entire day or for more than one-third of the hours the court location was previously open for either court sessions or filing of papers.” Under subdivision (f)(5), the post-implementation notice requirement is applicable to “[a] significant permanent decrease in the number of hours that a court location is open during any day for either court sessions or filing of papers, except those governed by (d)(3).” (Closures and reductions governed by (d)(3) are subject to the post-implementation notice requirement under subdivision (f)(6), which applies to any action for which public input was required under any part of subsection (d).)

Finally, Rule 10.620 (g)(3) currently requires that notice be posted “at all locations of the court that accept papers for filing.” The amended provision would require notice to be posted “within or about court facilities.”

Trial court leadership have conveyed to members of both the TCPJAC and CEAC that the existing inconsistency between the rule and the statute has led to difficulty in determining how to provide notice and an opportunity to comment on court closures or reductions in service. A number of trial courts have asked Judicial Council’s Legal Services Office for guidance regarding the notice requirements. Other courts, unaware of the statutory changes and resulting conflict, have mistakenly followed the now superseded requirements of the rule rather than the new statutory requirements.

With the repeal of subdivisions (d)(3) and (f)(5), rule 10.620 would no longer apply to notice of court closures or reductions in service. Notice of such decisions would be subject solely to the statutory requirements of Government Code section 68106, eliminating any confusion over how to provide for public notice and comment.

Alternatives Considered

No change to rule 10.620

The committees considered not recommending the repeal of subdivisions (d)(3) and (f)(5), but concluded that inaction would leave in place rule requirements that are incompatible with the statutory requirements under Government Code section 68106, resulting in continued confusion.

Conform rule 10.620 to Government Code section 68106

The committees considered amending the rule to conform the notice and comment requirements regarding court closures and service reductions to the requirements of Government Code section 68106. The committees concluded that such amendment would require significant revision of the rule to leave existing notice and comment requirements in place for the other types of decisions covered under the rule while creating new specially applicable provisions for court closures and service reductions. The end result, however, would be the same as is accomplished by the simpler alternative of repealing subdivisions (d)(3) and (f)(5). Moreover, rewriting the rule to conform to the statute runs the risk of the statute once again being amended, leaving courts facing inconsistent requirements yet again.

Implementation Requirements, Costs, and Operational Impacts

The repeal of subdivisions (d)(3) and (f)(5) should have a positive operational impact on the trial courts, as they will no longer face conflicting requirements for public notice and comment regarding court closures and service reductions. There is a potential cost savings as courts will no longer have to give the two-step notification previously required to comply with both the statute and the rule.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- [Include any other specific issues for which the proponent seeks comments.]

The advisory committee [or other proponent] also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 10.620, at pages 5-8.

Rule 10.620 of the California Rules of Court would be amended, effective____, 2015, to read:

1 **Rule 10.620. Public access to administrative decisions of trial courts**

2

3 **(a) Interpretation**

4

5 The provisions of this rule concern public access to administrative decisions by trial courts
6 as provided in this rule. This rule does not modify existing law regarding public access to
7 the judicial deliberative process and does not apply to the adjudicative functions of the trial
8 courts or the assignment of judges.

9

10 **(b) Budget priorities**

11

12 The ~~Administrative-Director-Office-of-the-Courts~~ may request, on 30 court days' notice,
13 recommendations from the trial courts concerning judicial branch budget priorities. The
14 notice must state that if a trial court is to make recommendations, the trial court must also
15 give notice, as provided in (g), that interested members of the public may send input to the
16 Judicial Council~~Administrative Office of the Courts~~.

17

18 **(c) Budget requests**

19

20 Before making recommendations, if any, to the Judicial Council on items to be included in
21 the judicial branch budget that is submitted annually to the Governor and the Legislature, a
22 trial court must seek input from the public, as provided in (e), on what should be included
23 in the recommendations.

24

25 **(d) Other decisions requiring public input**

26

27 Each trial court must seek input from the public, as provided in (e), before making the
28 following decisions:

29

30 (1) A request for permission from the Judicial Council ~~Administrative Office of the~~
31 ~~Courts~~ to reallocate budget funds from one program component to another in an
32 amount greater than \$400,000 or 10 percent of the total trial court budget, whichever
33 is greater.

34

35 (2) The execution of a contract without competitive bidding in an amount greater than
36 \$400,000 or 10 percent of the total trial court budget, whichever is greater. This
37 subdivision does not apply to a contract entered into between a court and a county
38 that is provided for by statute.

39

40 (3) ~~The planned, permanent closure of any court location for an entire day or for more~~
41 ~~than one-third of the hours the court location was previously open for either court~~
42 ~~sessions or filing of papers. As used in this subdivision, planned closure does not~~

Rule 10.620 of the California Rules of Court would be amended, effective____, 2015, to read:

~~include closure of a location on a temporary basis for reasons including holidays, illness, or other unforeseen lack of personnel, or public safety.~~

(4) —The cessation of any of the following services at a court location:

(A) The Family Law Facilitator; or

(B) The Family Law Information Center.

(e) Manner of seeking public input

When a trial court is required to seek public input under this rule, it must provide public notice of the request at least 15 court days before the date on which the decision is to be made or the action is to be taken. Notice must be given as provided in (g). Any interested person or entity who wishes to comment must send the comment to the court in writing or electronically unless the court requires that all public comment be sent either by e-mail or through a response system on the court’s Web site. For good cause, in the event an urgent action is required, a trial court may take immediate action if it (1) gives notice of the action as provided in (f), (2) states the reasons for urgency, and (3) gives any public input received to the person or entity making the decision.

(f) Information about other trial court administrative matters

A trial court must provide notice, not later than 15 court days after the event, of the following:

- (1) Receipt of the annual allocation of the trial court budget from the Judicial Council after enactment of the Budget Act.
- (2) The awarding of a grant to the trial court that exceeds the greater of \$400,000 or 10 percent of the total trial court budget.
- (3) The solicitation of proposals or the execution of a contract that exceeds the greater of \$400,000 or 10 percent of the trial court budget.
- (4) A significant permanent increase in the number of hours that a court location is open during any day for either court sessions or filing of papers. As used in this paragraph, a significant increase does not include an emergency or one-time need to increase hours.
- (5) ~~A significant permanent decrease in the number of hours that a court location is open during any day for either court sessions or filing of papers, except those governed by~~

Rule 10.620 of the California Rules of Court would be amended, effective____, 2015, to read:

1 ~~(d)(3). As used in this paragraph, a significant decrease does not include a decrease~~
2 ~~in response to an emergency need to close a location on a temporary basis for~~
3 ~~reasons including illness or other unforeseen lack of personnel or public safety.~~
4

5 (6)—The action taken on any item for which input from the public was required under (d).
6 The notice must show the person or persons who made the decision and a summary
7 of the written and e-mail input received.
8

9 **(g) Notice**

10 When notice is required to be given by this rule, it must be given in the following ways:

- 11
- 12
- 13 (1) Posted on the trial court’s Web site, if any.
- 14
- 15 (2) Sent to any of the following persons or entities—subject to the requirements of (h)—
- 16 who have requested in writing or by electronic mail to the court executive officer to
- 17 receive such notice:
- 18
- 19 (A) A newspaper, radio station, and television station in the county;
- 20
- 21 (B) The president of a local or specialty bar association in the county;
- 22
- 23 (C) Representatives of a trial court employees organization;
- 24
- 25 (D) The district attorney, public defender, and county counsel;
- 26
- 27 (E) The county administrative officer; and
- 28
- 29 (F) If the court is sending notice electronically using the provisions of (h), any
- 30 other person or entity that submits an electronic mail address to which the
- 31 notice will be sent.

32

33 (3) ~~Posted at all locations of the~~ within or about court facilities~~that accept papers for~~
34 ~~filing.~~

35

36 **(h) Electronic notice**

37

38 A trial court may require a person or entity that is otherwise entitled to receive notice under

39 (g)(2) to submit an electronic mail address to which the notice will be sent.

40

41 **(i) Materials**

42

Rule 10.620 of the California Rules of Court would be amended, effective____, 2015, to read:

1 When a trial court is required to seek public input under (b), (c), or (d), it must also provide
2 for public viewing at one or more locations in the county of any written factual materials
3 that have been specifically gathered or prepared for the review at the time of making the
4 decision of the person or entity making the decision. This subdivision does not require the
5 disclosure of materials that are otherwise exempt from disclosure or would be exempt from
6 disclosure under the state Public Records Act (beginning with Government Code section
7 6250). The materials must be mailed or otherwise be made available not less than five
8 court days before the decision is to be made except if the request is made within the five
9 court days before the decision is to be made, the materials must be mailed or otherwise be
10 made available the next court day after the request is made. A court must either (1) provide
11 copies to a person or entity that requests copies of these materials in writing or by
12 electronic mail to the executive officer of the court or other person designated by the
13 executive office in the notice, if the requesting person or entity pays all mailing and
14 copying costs as determined by any mailing and copy cost recovery policies established by
15 the trial court, or (2) make all materials available electronically either on its Web site or by
16 e-mail. This subdivision does not require the trial court to prepare reports. A person
17 seeking documents may request the court to hold the material for pickup by that person
18 instead of mailing.

19
20 **(j) Other requirements**

21
22 This rule does not affect any other obligations of the trial court including any obligation to
23 meet and confer with designated employee representatives. This rule does not change the
24 procedures a court must otherwise follow in entering into a contract or change the types of
25 matters for which a court may contract.

26
27 **(k) Enforcement**

28
29 This rule may be enforced under Code of Civil Procedure section 1085.
30
31



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

Date	Action Requested
January 11, 2012	Please Review
To	Deadline
Presiding Judges of the Superior Courts Executive Officers of the Superior Courts	N/A
From	Contact
Mary M. Roberts, General Counsel Rebecca Cenicerros, Supervising Attorney Debora Morrison Senior Attorney Office of the General Counsel	Debora Morrison 415-865-8713 phone 415-865-7664 fax debora.morrison@jud.ca.gov
Subject	
<i>Court Closures and Reducing Hours:</i> New Amendments to Government Code, Section 68106 (Effective January 1, 2012)	

Last year the Legislature enacted Assembly Bill 973, amending Government Code, section 68106, effective January 1, 2012.¹ The amendments add public notice requirements, prospectively, that apply when superior courts decide to close courtrooms or clerks' offices or reduce clerks' office hours. We provide this memorandum to alert you to the new requirements and to explain the interaction between statutory public notice requirements and rule 10.620 of the

¹ Stats. 2011, ch. 687, § 1. The full text of Government Code section 68106 is set forth at the end of this memorandum, with text added by the recent amendment underscored. All further references to code sections in this memorandum are to the Government Code; all references to rules are to the California Rules of Court.

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California Rules of Court, which contains related public notice requirements.² At the conclusion of the memorandum, we also provide a complete list of the current requirements.

Summary of Key Statutory Changes

The amendments to section 68106 add a requirement that a superior court's public notice advising of the closure of courtrooms or clerks' offices or of reduced clerks' office hours must invite public comment. The change most likely has the effect of amending rule 10.620, deleting subdivisions (d)(3) and (f)(5), substituting section 68106's public notice and comment provisions in this area where the law and the rule overlap. For the future, therefore, as described below, if a court plans to close one or more courtrooms or clerks' offices or to reduce clerks' office hours, it most likely need only comply with the public notice requirements of section 68106.

Discussion

A. The amendments to section 68106 add public comment and electronic distribution requirements.

The amendments to section 68106 do not change its core requirements. Section 61806 still:

- (*Legislative intent*) States the Legislature's "intent" that:
 - (1) "to the extent practicable, access to court services for civil litigants be preserved in the allocation of resources by and for trial courts" and
 - (2) "trial courts remain open to the public on all days except judicial holidays, Saturdays, and Sundays," absent specified emergency circumstances (subd. (a));
- (*Covered decisions*) Requires courts to provide 60-day advance written notice to the public before "closing any courtroom, or closing or reducing the hours of clerks' offices . . . on any day except judicial holidays, Saturdays, and Sundays," absent specified emergency circumstances (previously subd. (b), now subd. (b)(1)); and
- (*Notice requirements*) Directs courts to "conspicuous[ly]" post their public notices "within or about" their facilities and on their public Internet Web sites, and to forward

² AB 973 also added section 68511.7, which directs superior courts to "provide public notice of, and an opportunity for input on," their proposed budget plans. See 2011 New Laws Workshop material available at www2.courtinfo.ca.gov/comet/html/broadcasts/oga/2011-t1-ab973.pdf (providing a summary of AB 973).

them to the Judicial Council for posting on its Internet Web Site and distribution to specified legislative leaders (previously subd. (b), now subd. (b)(3)).³

Effective January 1, 2012, however, section 68106 also requires courts to:

- (*Electronic distribution of notice*) Provide notice of a covered decision to offer reduced services “by electronic distribution to individuals who have subscribed to the court’s electronic distribution service” (subd. (b)(1));
- (*Seek public comment*) Include in the notice “information on how the public may provide written comments during the 60-day period on the court’s plan” (subd. (b)(2)(A));
- (*Review public comment*) “[R]eview and consider all public comments received” (*ibid.*); and
- (*Second public notice if plans change*) “[I]mmediately provide notice to the public,” if a court changes its plan “as a result of the comments received or for any other reason” during the 60-day period, using the notice procedure prescribed by section 68106 as amended, i.e., by “posting a revised notice within or about” court facilities and on the court’s public Internet Web site, electronically distributing it to subscribers, and forwarding a copy to the Judicial Council for further posting and distribution (*ibid.*).

Notably, the amendments to section 68106 expressly confirm that courts are *not* obligated to provide responses to comments received from the public.⁴ Nor does the 60-day public notice period re-start if a court changes its plans after issuing a public notice of reduced services.⁵

B. The legislation amending section 68106 most likely impliedly amends rule 10.620, eliminating overlapping rule provisions covering decisions to close courtrooms or clerks’ offices or reduce clerks’ office hours.

The Legislature originally added section 68106 in October 2010 as part of a Judiciary Budget Trailer Bill.⁶ The entire text of the bill was added on one day, was approved by both houses without change by the following day, and was signed into law less than two weeks later, as immediately effective urgency legislation. At the time, rule 10.620 had been in existence for

³ Past notices that courts forwarded for posting on the Judicial Council’s California Courts Web site and distribution to legislative leaders can be found at www.courts.ca.gov/12973.htm. The notices can also be found from the home page of that site by clicking on “Limited Court Service Days” under “Quick Links.”

⁴ See Gov. Code, § 68106(b)(2)(B) (The new public comment provision “shall not be construed to obligate courts to provide responses to the comments received”).

⁵ *Id.*, § 68106(b)(2)(A) (“Any change in the court’s plan pursuant to this paragraph [directing courts to invite public comment] shall not require notification beyond the initial 60-day period”).

⁶ Sen. Bill 857; Stats. 2010, ch. 720, § 13.

almost seven years and covered some of the same ground. Both the law and the rule imposed public notice requirements related to superior court decisions that reduced services. The two also diverged, however, in important respects.

In December 2010, we issued a statewide memorandum providing guidance about the manner in which the law and the rule might be reconciled. Recent statutory changes require a revised interpretation. As explained below, the changes that became effective on January 1, 2012, most likely amend rule 10.620 in important respects, substituting the public notice requirements of section 68106 where the two overlap.

1. Read together, the original version of section 68106 and rule 10.620 imposed a two-step procedure requiring 75 days of advance public notice of certain service reductions.

As explained in our earlier memorandum, the Judicial Council adopted rule 10.620 effective January 1, 2004, pursuant to legislative direction contained in section 68511.6, enacted the preceding year. Section 68511.6 directed the council to “adopt appropriate rules providing for notice to the public *and for public input to decisions concerning administrative and financial functions of a trial court . . .*”⁷ Rule 10.620 met this requirement, among other things directing courts to provide notice and seek public input at least 15 court days *before making certain decisions*. For example, the rule directed courts to give notice and seek input before deciding to close a “location for an entire day or for more than one-third of the hours [that it] was previously open for either court sessions or filing of papers . . .”⁸ Thereafter, the rule requires a second notice, “not later than 15 court days *after* the event,” advising the public of the action taken, identifying the decision-makers, and summarizing written input received during the comment period.⁹ For “significant” but smaller reductions in a court location’s hours, the rule required only a single public notice of 15 court days, provided *after* the action.¹⁰

As noted, section 68106 covered some of the same ground. As originally enacted in October 2010, it directed courts to provide public notice about certain service reductions. But the statute’s requirements were different in key respects. While the rule directs courts to provide public notice

⁷ Italics added. Section 68511.6 provides in full as follows: “The Judicial Council shall adopt appropriate rules providing for notice to the public and for public input to decisions concerning administrative and financial functions of a trial court, including, but not limited to, decisions relating to the budget of the trial court prior to submittal to the Judicial Council and subsequent to budget approval. The Judicial Council shall also adopt appropriate rules requiring trial courts to give notice to the public of other appropriate decisions concerning the administrative and financial functions of the trial courts. The provisions of this section do not apply to the judicial or adjudicative functions of the trial courts or to the assignment of judges.”

⁸ Cal. Rules of Court, rule 10.620(d)(3), (e).

⁹ *Id.*, rule 10.620(f)(6), italics added.

¹⁰ *Id.*, rule 10.620(f)(5).

and seek input at least *15 court days before deciding* on certain service reductions, section 68106 directed courts to provide public notice at least *60 days before instituting* covered service reductions.¹¹ While the rule's public notice requirements apply to decisions affecting entire court *locations*, section 68106 applied to decisions affecting *individual courtrooms* and *clerks' offices*.¹² Finally, while the rule requires courts to issue two successive notices to the public for certain decisions (one before a decision is made and a second after the action is taken), section 68106 required only a single public notice (after the decision was made but before it was implemented).¹³

Although enacted almost seven years after the rule's adoption, neither section 68106 nor its legislative history referenced or acknowledged rule 10.620 or its parallel public notice procedures, perhaps due to the alacrity with which the bill including it moved through the Legislature. The rules of statutory interpretation nevertheless directed that we (1) assume the Legislature knew of the existing statute (section 68511.6) and the ensuing court rule when it added section 68106, intending "to maintain a consistent body of law," and (2) attempt to harmonize the potentially conflicting new and existing laws to the extent possible.¹⁴

Accordingly, our December 2010 memorandum to superior court leaders advised reading the rule and the law together as requiring a two-step public notice procedure before implementing a decision described in the rule, i.e., before closing an entire court *location* for an entire day or for more than one-third of the hours that it previously had been open for either court sessions or filing of papers. Practically, this meant, first, providing public notice and seeking input 15 court days before finalizing such a decision and then, if the decision was to proceed, issuing a second 60-day notice before taking the action. The result was a total waiting period of 75 days before a court could begin to recognize cost savings as a result of such actions. Decisions to close individual courtrooms or a single clerks' office at a location while keeping most other courtrooms or other clerks' offices at the location open, in contrast, only required compliance with section 68106, i.e., issuance of the single 60-day public notice before proceeding.

¹¹ *Id.*, rule 10.620(e); Stats. 2010, ch. 720, § 13, Gov. Code, § 68106(b).

¹² Cal. Rules of Court, rule 10.620(d)(3); Stats. 2010, ch. 720, § 13, Gov. Code, § 68106(b).

¹³ Cal. Rules of Court, rule 10.620(d)(3), (e), (f)(6); Stats. 2010, ch. 720, § 13, Gov. Code, § 68106(b).

¹⁴ *People v. Reeder* (1984) 152 Cal.App.3d 900, 920.

2. We read the new version of section 61806 as amending rule 10.620, substituting statutory requirements for any overlapping rule requirements, so that courts now need only issue a single 60-day advance notice seeking public comment before closing courtrooms or clerks' offices or reducing clerks' office hours.

Given statutory amendments effective on January 1, 2012, we conclude it no longer is possible to harmonize the law and the rule. The best interpretation of the statutory changes is that they implicitly also amend rule 10.620, substituting section 68106's public notice and comment provisions for overlapping rule provisions related to closure of courtrooms or clerks' offices or reductions in clerks' office hours at individual court locations. Going forward, therefore, we think courts need only comply with the amended statute in this context. This means providing just one 60-day notice seeking public comment, with no attendant need to respond to or summarize comments received.

The conclusion that the amendments to section 68106 have the effect of implicitly amending rule 10.620 is unavoidable; the public notice requirements described in the amended statute and in the rule differ in significant respects that cannot be reconciled into a single workable procedure.¹⁵ Although an implied repeal or amendment is disfavored, it is found if two laws are "so inconsistent that there is no possibility of concurrent operation."¹⁶ "When a later statute supersedes or substantially modifies an earlier law but without expressly referring to it, the earlier law is repealed or partially repealed by implication."¹⁷

This occurs, for example, if a later-enacted statute constitutes "a revision of the entire subject, so that the court may say it was intended to be a substitute for the first."¹⁸ To illustrate, in *People v. Bustamante*, the Court of Appeal concluded that an initiative-based statute making it felony to commit a particular immigration-related offense impliedly repealed an earlier statute that made the same offense a misdemeanor. The two statutes could not be harmonized, the reviewing court reasoned, because the later-enacted statute prohibited a broader range of conduct and imposed a more severe sentence.¹⁹ It was not possible, therefore, to separate acts that could be characterized

¹⁵ See, e.g., Cal. Const., art. VI, § 6(d) (The rules of court "shall not be inconsistent with statute"); *Trans-Action Commercial Investors, Ltd. v. Jelinek* (1997) 60 Cal.App.4th 352, 365 ("[T]he constitutional requirement that rules of court be consistent with statutes includes subsequently enacted statutes as well as those in effect when a rule is adopted"); *id.* at p. 364 (The Legislature may "enact a statute that effectively amends the rules of court").

¹⁶ *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1038.

¹⁷ *People v. Bustamante* (1997) 57 Cal.App.4th 693, 699.

¹⁸ *Professional Engineers, supra*, 40 Cal.4th at p. 1038, internal quotation marks omitted, quoting, *inter alia*, *Board of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 868 and citing Sutherland, *Statutory Construction* (6th ed.2002) § 23.9, p. 461 (Courts "will infer the repeal of a statute only when . . . a subsequent act of the legislature clearly is intended to occupy the entire field covered by a prior enactment").

¹⁹ *Bustamante, supra*, 57 Cal.App.4th at p. 700.

as either a felony or a misdemeanor; one could not violate the misdemeanor statute without also running afoul of the felony statute.

Similarly, section 68106 is broader than rule 10.620, in that smaller service reductions (e.g., closure of a single courtroom) trigger its public notice requirement and, as amended, it now includes a public comment requirement co-extensive with the rule. The two provisions cover the same topic, but differ in their operation in critical respects as noted above; those differences are now heightened to an irreconcilable degree by legislation adding the public comment provision.

For example, because both direct courts to seek public comment during their respective notice periods, it is no longer possible to harmonize the rule and the law by interpreting them as requiring sequential compliance. Doing so would mean that a court would have to provide notice and seek comment, first, under the rule, for 15 court days about its plan to reduce services and a second time, under the law, for 60 days if it elects to proceed. Issuing successive public notices, however, both of which seek input about the same plan—one preliminary to, and one after, a decision is made—is likely to cause public confusion. The public also is likely to doubt the utility of offering input during the second comment period, *after* the court has announced its decision to proceed under the rule.

Attempting to harmonize the amended law and the rule by interpreting both as remaining in effect simultaneously also leads to confusion about the required contents of the various public notices. If a court elects to proceed with service reductions covered by the rule (i.e., with closure of a location or a one-third reduction in the hours previously open for court sessions or filings), then rule 10.620(f)(6) directs that it issue a second notice within 15 days of the action—presumably, 15 days *after implementing the change*—identifying the individual court decision-makers and including a summary of the comments that the court received during the first, shorter comment period before the decision was final. In contrast, amended section 68106(b)(2)(B) does not require publicizing the identities of the decision-makers and expressly confirms that courts are *not* “obligate[d] . . . to provide responses to the comments received.”

The result, if a court were to attempt to comply with both the rule and the law, would mean issuing three notices (rather than the single notice required under the law). The first would seek comment *before* a decision, the second would seek comment *after* a decision, and the last would advise the public after an action is taken of the comments received in the first notice period without acknowledging comments received in the second notice period. While a court voluntarily might opt to summarize all comments received in the second period also, doing so would contradict the evident intent of the law to spare courts that burden and expense. The

alternative, however, is to leave those who commented in the second period to wonder whether the court received or considered their input.

When examining a statute, courts will “seek to interpret it in a manner that promotes wise policy, not absurdity.”²⁰ If there is uncertainty, “it is appropriate to consider the consequences that will flow from a particular interpretation.”²¹ In examining the consequences that would flow from efforts to comply with both the amended law and the rule, it is evident that the Legislature cannot have intended concurrent operation. Rather, it must have intended the amended law to supersede or amend the rule where the two overlap, i.e., for decisions involving the closure of court locations or significant reductions in the hours that a location is open for court sessions or the filing of papers. The effect, we think, is to implicitly amend rule 10.620 by deleting subdivisions (d)(3) and (f)(5), signifying that courts need only comply with section 68106 when they close courtrooms or clerks’ offices or reduce clerks’ office hours.²²

C. Summary of current public notice requirements for decisions to close courtrooms or clerks’ offices or reduce clerks’ office hours.

As section 68106 most likely now states all public notice requirements for courts related to the closure of courtrooms or clerks’ offices or the reduction of clerks’ office hours, we list those requirements here for convenience.

Required steps:

Before implementing a decision to reduce services by (1) regularly closing a courtroom or clerks’ office for an entire day that it previously had been open, or (2) reducing the hours of a clerks’ office hours, a court must:

- “*Conspicuously*” post a written notice of the change:
 - “within or about” court facilities, and
 - on the court’s “public Internet Web site; and
- Provide a copy of the notice:
 - “by electronic distribution to individuals who have subscribed to the court’s electronic distribution service,” and

²⁰ *A.M. v. Albertsons, LLC* (2009) 178 Cal.App.4th 455, 456, citing *Bonnell v. Medical Board* (2003) 31 Cal.4th 1255, 1260-1261, *McLaughlin v. State Bd. of Education* (1999) 75 Cal.App.4th 196, 211.

²¹ *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 290, internal quotation marks and citations omitted.

²² The above analysis does not extend to other provisions of rule 10.620. For example, a court must still seek public input and provide subsequent notice of the action taken when contemplating cessation of Family Law Facilitator services at a court location, or execution of a no-bid contract in an amount that is greater than \$400,000 or 10 percent of its total budget, whichever is greater. (See, e.g., Cal. Rules of Court, rule 10.620(d)(2), (d)(4)(A), (f)(6).)

- to the Judicial Council, via e-mail to the AOC's Regional Administrative Director Jody Patel. (Jody will circulate the notice to designated staff to ensure that it is "conspicuously" posted on the council's California Courts Web site and provided to specified legislative leaders as required by section 68106(b)(3).)

Notice contents:

The court's public notice must:

- include "*information on how the public may provide written comments during the 60-day period on the court's plan*";
- describe "*the scope of the closure or reduction in hours*" (i.e., the prior schedule and the new schedule once the change takes effect); and
- state the "*financial constraints or other reasons that make the closure or reduction necessary.*"

Subsequent court action

After posting the public notice of the change, the court must:

- "*review and consider all public comments received*; and
- *if it changes its plan* "as a result of the comments received or for any other reason" during the 60-day period, "immediately":
 - *post "a revised notice"*
 - within or about its facilities" and
 - "on its public Internet site"; and
 - *provide the revised notice*
 - "by electronic distribution to individuals who have subscribed to the court's electronic distribution service," and
 - to the Judicial Council, via e-mail to AOC Regional Administrative Director Jody Patel.

Unlike rule 10.620(f)(6), which we conclude, above, has been implicitly repealed, section 68106 does *not* require that courts (1) summarize or respond to public comments received, or (2) identify individual decision-makers in the covered notices.

We hope that this information is helpful. If we can clarify any point or if you have any questions related to compliance with section 68106, please contact Senior Attorney Debora Morrison, whose contact information is listed on page one of this memorandum.

MMR/DM

cc: Ronald G. Overholt, Interim Administrative Director of the Courts
Christine Patton, Interim Chief Deputy Director
Jody Patel, AOC Regional Administrative Director

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Government Code, section 68106, as amended effective January 1, 2012:

(a) (1) In making appropriations for the support of the trial courts, the Legislature recognizes the importance of increased revenues from litigants and lawyers, including increased revenues from civil filing fees. It is therefore the intent of the Legislature that, to the extent practicable, access to court services for civil litigants be preserved in the allocation of resources by and for trial courts.

(2) Furthermore, it is the intent of the Legislature in enacting the Budget Act of 2010, which includes increases in civil and criminal court fees and penalties, that trial courts remain open to the public on all days except judicial holidays, Saturdays, and Sundays, and except as authorized pursuant to Section 68115.

(b) (1) A trial court shall provide written notification to the public by conspicuous posting within or about its facilities, on its public Internet Web site, and by electronic distribution to individuals who have subscribed to the court's electronic distribution service, and to the Judicial Council, not less than 60 days prior to closing any courtroom, or closing or reducing the hours of clerks' offices during regular business hours on any day except judicial holidays, Saturdays, and Sundays, and except as authorized pursuant to Section 68115. The notification shall include the scope of the closure or reduction in hours, and the financial constraints or other reasons that make the closure or reduction necessary.

(2) (A) The notification required pursuant to paragraph (1) shall include information on how the public may provide written comments during the 60-day period on the court's plan for closing a courtroom, or closing or reducing the hours of clerks' offices. The court shall review and consider all public comments received. If the court plan for closing a courtroom, or closing or reducing the hours of clerks' offices, changes as a result of the comments received or for any other reason, the court shall immediately provide notice to the public by posting a revised notice within or about its facilities, on its public Internet Web site, and by electronic distribution to individuals who have subscribed to the court's electronic distribution service, and to the Judicial Council. Any change in the court's plan pursuant to this paragraph shall not require notification beyond the initial 60-day period.

(B) This paragraph shall not be construed to obligate courts to provide responses to the comments received.

(3) Within 15 days of receipt of a notice from a trial court, the Judicial Council shall conspicuously post on its Internet Web site and provide the chairs and vice chairs of the Committees on Judiciary, the Chair of the Assembly Committee on Budget, and the Chair of the Senate Committee on Budget and Fiscal Review a copy of any notice received pursuant to this subdivision. The Legislature intends to review the information obtained pursuant to this section to ensure that California trial courts remain open and accessible to the public.

(c) Nothing in this section is intended to affect, limit, or otherwise interfere with regular court management decisionmaking, including calendar management and scheduling decisions.

Item 2

Discussion on Possible Amendments to Penal Code 808

- Pen. Code, § 808
- Pen. Code, §1523
- Fam. Code, § 6240 & §6241

PENAL CODE

SECTION 806-810

806. A proceeding for the examination before a magistrate of a person on a charge of a felony must be commenced by written complaint under oath subscribed by the complainant and filed with the magistrate. Such complaint may be verified on information and belief. When the complaint is used as a pleading to which the defendant pleads guilty under Section 859a of this code, the complaint shall contain the same allegations, including the charge of prior conviction or convictions of crime, as are required for indictments and informations and, wherever applicable, shall be construed and shall have substantially the same effect as provided in this code for indictments and informations.

807. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

808. The following persons are magistrates:

- (a) The judges of the Supreme Court.
- (b) The judges of the courts of appeal.
- (c) The judges of the superior courts.

PENAL CODE

SECTION 1523-1542.5

1523. A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, bring the same before the magistrate.

FAMILY.CODE

SECTION 6240-6241

6240. As used in this part:

(a) "Judicial officer" means a judge, commissioner, or referee designated under Section 6241.

(b) "Law enforcement officer" means one of the following officers who requests or enforces an emergency protective order under this part:

(1) A police officer.

(2) A sheriff's officer.

(3) A peace officer of the Department of the California Highway Patrol.

(4) A peace officer of the University of California Police Department.

(5) A peace officer of the California State University and College Police Departments.

(6) A peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2 of the Penal Code.

(7) A peace officer of the Department of General Services of the City of Los Angeles, as defined in subdivision (c) of Section 830.31 of the Penal Code.

(8) A housing authority patrol officer, as defined in subdivision (d) of Section 830.31 of the Penal Code.

(9) A peace officer for a district attorney, as defined in Section 830.1 or 830.35 of the Penal Code.

(10) A parole officer, probation officer, or deputy probation officer, as defined in Section 830.5 of the Penal Code.

(11) A peace officer of a California Community College police department, as defined in subdivision (a) of Section 830.32.

(12) A peace officer employed by a police department of a school district, as defined in subdivision (b) of Section 830.32.

(c) "Abduct" means take, entice away, keep, withhold, or conceal.

6241. The presiding judge of the superior court in each county shall designate at least one judge, commissioner, or referee to be reasonably available to issue orally, by telephone or otherwise, emergency protective orders at all times whether or not the court is in session...
