



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: July 28, 2017

Title	Agenda Item Type
Judicial Council Administration: Rule for the Advisory Committee on Audits and Financial Accountability for the Judicial Branch	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 10.63	July 28, 2017
Recommended by	Date of Report
Executive and Planning Committee	July 6, 2017
Hon. Douglas P. Miller, Chair	Contact
Rules and Projects Committee	Patrick O'Donnell, 415-865-7665
Hon. Harry E. Hull, Jr., Chair	patrick.o'donnell@jud.ca.gov
Judicial Branch Budget Committee and Litigation Management Committee	
Hon. David M. Rubin, Chair	
Technology Committee	
Hon. Marsha G. Slough, Chair	
Policy Coordination and Liaison Committee	
Hon. Kenneth K. So, Chair	

Executive Summary

The internal chairs of the Judicial Council recommend that rule 10.63, on an advisory committee on fiscal affairs, be amended to rename the committee the “Advisory Committee on Audits and Financial Accountability for the Judicial Branch.” An important function of government is to ensure that public funds are properly spent and accounted for. Rule 10.63 would be amended to more clearly prescribe the duties of the committee. The amendments to the rule would also expand the membership of the committee to include at least one appellate clerk/executive officer and at least one nonvoting advisory member who has significant governmental auditing experience.

Recommendation

The internal chairs of the Judicial Council recommend that the council amend California Rules of Court, rule 10.63, effective July 28, 2017, to:

1. Rename the committee the “Advisory Committee on Audits and Financial Accountability for the Judicial Branch”;
2. Prescribe the committee’s duties more clearly; and
3. Expand the membership to include at least one appellate clerk/executive officer and at least one nonvoting advisory member who has significant governmental auditing experience.

The text of amended rule 10.63 is attached at pages 6–8.

Previous Council Action

The Judicial Council adopted rule 10.63, effective February 20, 2014, establishing the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch. Since then, it has had no amendments.

Rationale for Recommendation

This proposal amends rule 10.63 so that the advisory committee can assist the council more effectively in implementing the goals of the judicial branch and in carrying out responsibilities under Government Code sections 77009 and 77206, part 2.5 of the Public Contract Code, and other applicable law.¹ The main proposed changes to the rule are described below.

Change in the title of the rule

Rule 10.63 presently defines the title of the rule and the name of the committee as the “Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch.” Under this proposal, the name is changed to the “Advisory Committee on Audits and Financial Accountability for the Judicial Branch.” Although the committee has the responsibility for reviewing and making recommendations regarding audits under the current rule (see Cal. Rules of Court, rule 10.63(b)(2)), the change of the committee’s name to include “Audits” in the title highlights this function.

Purpose of the rule

New subdivision (a) on the purpose of the rule is added. This subdivision emphasizes that one of the most important functions of government is to ensure that public funds are properly spent and

¹ As discussed further below, the committee’s duty to assist the council in performing its responsibilities under these Government and Public Contract Codes sections is specified in new subdivision (c)(2) of the rule; other applicable law relating to the management of fiscal affairs and audits is identified in the expanded Advisory Committee Comment.

accounted for. It explains how the rule, as amended, will assist the council in performing its responsibilities in carrying out this function.

Area of focus

Similar to the change to the title, subdivision (b)—formerly (a)—on the “areas of focus” of the committee is modified to emphasize that the committee will make recommendations to the council on *audits*.

Additional duties

Subdivision (c)—formerly (b)—on the additional duties of the committee is modified in several respects. For the most part, the committee’s duties are expanded, though in a few instances they are reduced (for example, where another body has assumed responsibility for the task).

Former (b)(1) is deleted in part and relocated in part. The rule currently provides that the committee must “[m]ake recommendations annually to the council concerning any budget change proposals for funding of the Administrative Office of the Courts (AOC).” This provision is obsolete: the name “Administrative Office of the Courts” or “AOC” has been eliminated, and in 2016 the responsibility for making recommendations on budget change proposals (BCPs) was moved to the new Judicial Council–level Judicial Branch Budget Committee (JBBC). Because the committee governed by rule 10.63 no longer has a role in the BCP process, the provision in rule 10.63 relating to BCPs is deleted.

Another provision in former (b)(1) provides that the committee must make recommendations concerning “any proposed changes to the annual compensation plan for the AOC.” This provision has been updated to refer to “Judicial Council staff” and has been relocated to new subdivision (c)(4).

Former subdivision (b)(2), on audits, has been renumbered as (c)(1) and modified. The former version gave the committee the responsibility to review audit reports, recommend council acceptance of those reports, and make recommendations on systematic issues. The amended rule gives the committee the responsibility to “[r]eview and approve a yearly audit plan for the judicial branch that will ensure the adequacy and effectiveness of the judicial branch’s accounting, financial reporting, compliance, and internal control system; review all audit reports of the judicial branch; recommend council action on audit reports that identify substantial issues; approve all other audit reports and post them publicly; and, where appropriate, make recommendations to the council on individual or systemic issues identified in audit reports.”

New subdivision (c)(2) is added, giving the committee the additional duty to advise and assist the council in performing its responsibilities and exercising its authority under sections 77009 and 77206 of the Government Code and under part 2.5 of the Public Contract Code (the California Judicial Branch Contract Law). The narrower responsibility under former subdivision (b)(3) of the rule only to report on AOC contracts is eliminated.

Finally, the responsibility of the committee under former subdivision (b)(4) to review updates and revisions to the *Judicial Branch Contracting Manual* is retained in relettered subdivision (c)(3), with the addition of a responsibility to “recommend” as well as “review” updates and revisions.

Membership

To enable the committee to perform its responsibilities better, the rule is amended to provide that the committee “may include members with experience in public or judicial branch finance.” (Amended rule 10.63(d).) The membership requirements are also modified to add at least one appellate clerk/executive officer to the membership. (*Id.*) And the proposal would add “at least one nonvoting advisory member who has significant governmental auditing experience.” (*Id.*) These amendments are consistent with a recommendation by the California State Auditor that the committee should have more expertise in public judicial branch finance.

Advisory Committee Comment

To provide the public and persons affected by the rule with a clear understanding of the purpose of the rule, the Advisory Committee Comment on the rule has been expanded. It explains that the purpose of the Advisory Committee on Audits and Financial Accountability for the Judicial Branch is to advise and assist the council in performing its constitutional and statutory responsibilities relating to the fiscal affairs of the judicial branch.

As indicated in the Advisory Committee Comment, “[t]o improve the administration of the courts, article VI, section 6 of the California Constitution requires the council to survey judicial business and make recommendations. To ensure that the fiscal affairs of the courts are managed efficiently, effectively, and responsibly, Government Code section 77206 authorizes the council to regulate the fiscal management of the courts and provides for audits of the courts and the Judicial Council staff by the council, its representatives, and other entities. Government Code section 77009(h) provides that the ‘Judicial Council or its representatives may perform audits, reviews, and investigations of superior court operations and records wherever they may be located.’”

The Advisory Committee Comment also references the section of the Public Contract Code that provides that the council shall publish a Judicial Branch Contracting Manual (Pub. Contract Code, section 19206). It further explains that the Public Contract Code also provides that the California State Auditor, subject to appropriations, shall biennially identify and audit five or more judicial branch entities to assess the implementation of the California Judicial Branch Contract Law (JBCL) (Pub. Contract Code, section 19210(a)–(b)) and shall biennially conduct audits of the Judicial Council staff to assess the implementation of, and compliance with, the JBCL (Pub. Contract Code, section 19210(c)).

Comments, Alternatives Considered, and Policy Implications

The proposal to amend rule 10.63 circulated for public comment from April 4 through May 19, 2017. Two comments were received; both were favorable. A chart of comments and the

committee's responses is attached at page 9. One of the comments was submitted by Marita Ford, Chief Financial Officer, Superior Court of Riverside County, on behalf of the court. She agreed with the proposal without any specific comment. The second comment was submitted by Kevin Lane, Appellate Clerk/Executive Officer of the Court of Appeal, Fourth Appellate District, on his own behalf. He commented: "[The amended rule] appears to more clearly reflect the duties of the committee and the expanded membership to the appellate court would be more inclusive to ensure a broader perspective since the appellate courts would also be a court that would be audited."

Rule 10.63 could have be left unchanged or amended to make only necessary technical corrections. But because of the high priority that the Judicial Council gives to protecting public funds and to exercising its fiscal responsibilities over judicial branch financial affairs, the amendments to the rule described in this invitation to comment are being recommended. These changes will make the committee more effective and help the council to have a structured approach to meeting its fiscal responsibilities.

Implementation Requirements, Costs, and Operational Impacts

Amended rule 10.63 will go into effect immediately upon approval by the Judicial Council. As soon as the rule is amended, a solicitation for membership will occur for a period of approximately two to three weeks. This timing will allow for the appointment of more members with experience in public or judicial branch finance and new members who will fill the newly created positions for at least one appellate clerk/executive officer and one nonvoting advisory member with significant governmental auditing experience. Member appointments will likely be made by September 1, 2017, so that the revised committee will have its new membership in place for the coming committee year. After the members are appointed, they will promptly begin working on the business of the committee.

Attachments

1. Cal. Rules of Court, rule 10.63, at pages 6–8
2. Comment chart, at page 9

Rule 10.63 of the California Rules of Court is amended, effective July 28, 2017, to read:

**Rule 10.63. Advisory Committee on Audits and Financial Accountability ~~and Efficiency~~
for the Judicial Branch**

(a) Purpose of the rule

One of the most important functions of government is to ensure that public funds are properly spent and accounted for. This committee is charged with advising and assisting the council in performing its responsibilities to ensure that the fiscal affairs of the judicial branch are managed efficiently, effectively, and transparently, and in performing its specific responsibilities relating to audits and contracting, as required by law and good public policy.

(~~a~~)(b) Area of focus

The committee makes recommendations to the council on audits and practices that will promote financial accountability and efficiency in the judicial branch.

(~~b~~)(c) Additional duties

In addition to the duties specified in rule 10.34, the committee must:

- ~~(1)~~ Make recommendations annually to the council concerning any budget change proposals for funding of the Administrative Office of the Courts (AOC) and any proposed changes to the annual compensation plan for the AOC staff;
- ~~(2)~~(1) Review and approve a yearly audit plan for the judicial branch that will ensure the adequacy and effectiveness of the judicial branch's accounting, financial reporting, compliance, and internal control system; review all audit reports of the judicial branch; recommend council acceptance of action on audit reports that identify substantial issues; approve all other audit reports and have them posted publicly; and, where appropriate, make recommendations to the council on individual or systemic issues identified in audit reports;
- (2) Advise and assist the council in performing its responsibilities and exercising its authority under sections 77009 and 77206 of the Government Code and under part 2.5 of the Public Contract Code (the California Judicial Branch Contract Law);
- ~~(3)~~ Report to the council on AOC contracts that meet established criteria to ensure that he contracts are in support of judicial branch policy; and
- ~~(4)~~(3) Review and recommend to the council proposed updates and revisions to the *Judicial Branch Contracting Manual*; and

- (4) Make recommendations concerning any proposed changes to the annual compensation plan for the Judicial Council staff.

(e)(d) Membership

The committee may include members with experience in public or judicial branch finance and must include at least one members in from each of the following categories:

- (1) Justices of the Courts of Appeal Appellate court justices;
- (2) Superior court judges; and
- (3) Clerk/executive officers of the Courts of Appeal; and
- ~~(3)~~(4) Court executive officers of the superior court.

The committee membership must also include at least one nonvoting advisory member who has significant governmental auditing experience.

The California Judges Association will recommend three nominees for a superior court judge position and submit its recommendations to the Executive and Planning Committee of the Judicial Council.

Advisory Committee Comment

The purpose of the Advisory Committee on Audits and Financial Accountability and Efficiency for the Judicial Branch is to advise and assist the council in performing its constitutional and statutory responsibilities relating to the fiscal affairs of the judicial branch. To improve the administration of the courts, article VI, section 6 of the California Constitution requires the council to survey judicial business and make recommendations. To ensure that the fiscal affairs of the courts are managed efficiently, effectively, and responsibly, Government Code section 77206 authorizes the council to regulate the fiscal management of the courts and provides for audits of the courts and the Judicial Council staff by the council, its representatives, and other entities. Government Code section 77009(h) provides that the “Judicial Council or its representatives may perform audits, reviews, and investigations of superior court operations and records wherever they may be located.” The Public Contract Code provides that the council shall publish a *Judicial Branch Contracting Manual* (Pub. Contract Code, § 19206). It also provides that the California State Auditor, subject to appropriations, shall biennially identify and audit five or more judicial branch entities to assess the implementation of the California Judicial Branch Contract Law (JBCL) (Pub. Contract Code, § 19210(a)–(b)) and shall biennially conduct audits of the Judicial Council staff to assess the implementation of, and compliance with, the JBCL (Pub. Contract Code, § 19210(c)). ~~promote transparency, accountability, efficiency, and understanding of the AOC and the judicial branch. The advisory committee fosters the best use of the work, information, and~~

recommendations provided by the AOC, and it promotes increased understanding of the AOC's mission, responsibilities, accomplishments, and challenges.

ITC SP17-02

Title of proposal (Judicial Council Administration: Rule for the Advisory Committee on Audits and Financial Accountability for the Judicial Branch)

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

	Commentator	Position	Comment	[Proposed] Committee Response
1.	Kevin Lane Appellate Clerk/Executive Officer San Diego, CA	A	It appears to more clearly reflect the duties of the committee and the expanded membership to appellate courts would be more inclusive to ensure a broader perspective since the appellate courts would also be a court that would be audited.	Agree with the comment.
2.	Superior Court of California Riverside County by Marita Ford	A	No specific comment.	No response required.