



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: January 12, 2018

Title	Agenda Item Type
Judicial Council: Advisory Committee Membership and Terms	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 10.31, 10.42, 10.43, 10.44, and 10.60	February 1, 2018
Recommended by	Date of Report
Rules and Projects Committee Hon. Harry E. Hull, Chair	January 3, 2018
	Contact
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Executive Summary

The Judicial Council's Rules and Projects Committee recommends the amendment of several rules in the California Rules of Court relating to membership on advisory committees. The amendments modify rule 10.31, the general rule on membership, to clarify the terms of the chairs, members, and advisory members. In addition, the rules relating to four specific advisory committees are amended to add new or to modify existing categories of membership.

Recommendation

The Judicial Council's Rules and Projects Committee recommends¹ that the council, effective February 1, 2018:

1. Amend rule 10.31, on advisory committee membership and terms, to clarify the terms of the chairs, members, and advisory members;

¹ A number of the specific recommendations were originally made by the specific advisory committees affected, as described further below.

2. Amend rule 10.42, on the Criminal Law Advisory Committee, to add, as an additional category of membership, a mental health professional with experience in criminal law issues;
3. Amend rule 10.43, on the Family and Juvenile Law Advisory Committee, to add, as an additional category of membership, a mental health professional with experience in family and children’s issues;
4. Amend rule 10.44, on the Probate and Mental Health Advisory Committee, to add, as an additional category of membership, a lawyer working for a public interest organization or court self-help center whose practice focuses on guardianships or conservatorships; and
5. Amend rule 10.60, on the Tribal Court–State Court Forum, to provide that, as a category of membership, the forum must have at least one, but no more than three, California executive branch officials responsible for tribal-related work.

The text of the amended rules is attached at pages 7–11.

Previous Council Action

The Judicial Council has adopted an extensive set of rules relating to its advisory bodies. (See Cal. Rules of Court, title 10, division 1, chapter 2, rules 10.30–10.70.) Rule 10.31 is the general rule concerning advisory committee membership and terms. Rules 10.42, 10.43, 10.44, and 10.60 specifically relate to the Criminal Law Advisory Committee, the Family and Juvenile Law Advisory Committee, the Probate and Mental Health Advisory Committee, and the Tribal Court–State Court Forum, respectively; each of these rules prescribes the categories of membership for that particular committee. Members are recruited and appointed based on the categories prescribed in the rules.

Rationale for Recommendation

This report recommends amending five rules relating to the membership of advisory committees. The amendments clarify the rule on the general conditions of membership and the terms of the chairs, members, and advisory members. The amendments also change the rules of four specific advisory committees to add new or to modify existing categories of membership. As a result, these committees will be able to recruit—as regular members—persons from more diverse backgrounds and areas of expertise who will be able assist the committees to more effectively perform their functions and responsibilities.

Amendments to rule 10.31, advisory committee membership and terms

Rule 10.31, the general rule on committee membership and terms, is amended in several respects. Subdivision (b) on terms would be modified to state that the Chief Justice appoints advisory committee members to three-year terms unless another term is specified in the rules “or

in the order appointing a member” (new text in quotation marks). This change gives the Chief Justice more flexibility in establishing the terms of members. Also, for the sake of clarity, the following sentences are added to (b): “Members may apply for reappointment but there is no presumption of reappointment. All appointments are at the sole discretion of the Chief Justice.” The final sentence in (b) providing for one-year appointments of judges who have served less than two years on the bench is deleted; the program for one-year appointments of new judges was discontinued a number of years ago.

In subdivision (c) of rule 10.31 on chairs and vice-chairs, a new sentence is added: “Except for the Court Executives Advisory Committee, when a member’s term as chair ends, the chair’s membership on the advisory committee also ends, unless the Chief Justice orders otherwise.”

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

Amendments to rule 10.42, Criminal Law Advisory Committee

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

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

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

Amendments to rule 10.43, Family and Juvenile Law Advisory Committee

Rule 10.43, on the Family and Juvenile Law Advisory Committee, is amended to include, as an additional category of membership, a mental health professional with experience in family and children’s issues. The addition of this new membership category for mental health professionals will enable the committee to more effectively carry out the responsibilities recently given to it to address mental health issues and to more effectively carry out its responsibilities in making

recommendations to the Judicial Council for improving the administration of justice in family and juvenile proceedings.

The Family and Juvenile Law Advisory Committee, like the Criminal Law Advisory Committee, previously recognized the importance of mental health issues and is committed to assisting the Judicial Council in addressing those issues in family and juvenile proceedings. In addition, the council's Executive and Planning Committee and Rules and Projects Committee have made express referrals to the Family and Juvenile Law Advisory Committee to follow up on implementing recommendations from two former advisory bodies: the Task Force for Criminal Justice Collaboration on Mental Health Issues that was established in 2008 and the Mental Health Issues Implementation Task Force that was formed in 2012. The final report of the implementation task force recommended that the work on mental health be transitioned to the appropriate committees.

This transition was accomplished by the referral of various task force recommendations to six advisory committees and by the appointment of persons with expertise in mental health to several of those committees. As one of the committees to which referrals were made, the Family and Juvenile Law Advisory Committee has determined that being able to recruit and regularly include as a member a person knowledgeable in mental health would significantly assist it in performing its new responsibilities. Hence, it recommends amending rule 10.43 to include the new membership category.

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

Amendments to rule 10.44, Probate and Mental Health Advisory Committee

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

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

- Judicial officer with experience in probate;
- Lawyer whose primary practice involves decedents' estates, trusts, guardianships, conservatorships, or elder abuse law;
- Lawyer or examiner who works for the court on probate or mental health matters;
- Investigator who works for the court to investigate probate guardianships or conservatorships;
- Person knowledgeable in mental health or developmental disability law;

- Person knowledgeable in private management of probate matters in a fiduciary capacity; and
- County counsel, public guardian, or other similar public officer familiar with guardianship and conservatorship issues.

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

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

Amendments to rule 10.60, Tribal Court–State Court Forum

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

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

This provision has become outdated and its ex officio language is problematic. The Director of the California Attorney General's Office of Native American Affairs retired in September 2017, and the Governor's Tribal Advisor retired in October 2017. It is unclear whether either of them will be replaced. In addition, the California Department of Social Services recently created an Office of Tribal Affairs, which is charged with serving as a hub for all tribal-related work at the Department of Social Services.

The cochairs of the Tribal Court–State Court Forum recommend that rule 10.60(c)(5) be amended to reflect the recent changes in the structure and personnel conducting tribal work on behalf of the executive branch, and to allow flexibility in appointments to the forum that support members working on issues of importance to the forum. Specifically, they recommend that subdivision (c)(5) be amended as follows:

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

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

Comments and Alternatives Considered

This rules proposal was circulated for public comment on a special cycle between December 8, 2017, and January 2, 2018. Information about the proposal was sent to the California courts and posted on the California Courts website. One comment was received on the proposal. It was from Bet Tzedek Legal Services, a public interest organization that has been providing free and comprehensive legal services for low-income families in Los Angeles for 40 years. It strongly supports the proposal to amend rule 10.44 to include an additional category of membership for a lawyer working for a public interest organization or court self-help center whose practice focuses on guardianships or conservatorships.

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

Implementation Requirements, Costs, and Operational Impacts

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

Attachments

1. Cal. Rules of Court, rules 10.31, 10.42, 10.43, 10.44, and 10.60, at pages 7–11
2. Chart of comments, at pages 12–16

Rules 10. 31, 10.42, 10.43, 10.44, and 10.60 of the California Rules of Court are amended, effective February 1, 2018, to read:

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

2
3 (a) * * *

4
5 (b) **Terms**

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

14
15 (c) **Chair and vice-chair**

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

23
24 (d) **Advisory members**

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

31
32 (e) **Termination of membership**

33
34 Committee membership terminates if a member leaves the position that qualified
35 the member for the advisory committee unless (g) applies or the Chief Justice
36 determines that the individual may complete the current term.

37
38 (f) * * *

39
40 (g) **Retired judges**

1 A judge's retirement does not cause a vacancy on the committee if the judge is
2 eligible for assignment. A retired judge who is eligible for assignment may hold a
3 committee position based on his or her last judicial position.
4

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

7 (a) * * *

8
9 (b) **Membership**

10
11 The committee must include at least one member from each of the following
12 categories:

- 13
14 (1) Appellate court justice;
15
16 (2) Trial court judicial officer;
17
18 (3) Judicial administrator;
19
20 (4) Prosecutor;
21
22 (5) Criminal defense lawyer; ~~and~~
23
24 (6) Probation officer; and
25
26 (7) Mental health professional with experience in criminal law issues.
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28 **Rule 10.43. Family and Juvenile Law Advisory Committee**
29

30 (a) * * *

31
32 (b) **Membership**

33
34 The committee must include at least one member from each of the following
35 categories:

- 36
37 (1) Appellate court justice;
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39 (2) Trial court judicial officer;
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41 (3) Judicial administrator;
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43 (4) Child custody mediator;

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

Rule 10.44. Probate and Mental Health Advisory Committee

(a)–(b) * * *

(c) Membership

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

- (1) Judicial officer with experience in probate;
- (2) Lawyer whose primary practice involves decedents’ estates, trusts, guardianships, conservatorships, or elder abuse law;
- (3) Lawyer or examiner who works for the court on probate or mental health matters;

1 (4) Lawyer working for a public interest organization or a court self-help center
2 whose practice focuses on guardianships or conservatorships;

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4 ~~(4)~~(5) Investigator who works for the court to investigate probate guardianships or
5 conservatorships;

6
7 ~~(5)~~(6) Person knowledgeable in mental health or developmental disability law;

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9 ~~(6)~~(7) Person knowledgeable in private management of probate matters in a
10 fiduciary capacity; and

11
12 ~~(7)~~(8) County counsel, public guardian, or other similar public officer familiar with
13 guardianship and conservatorship issues.

14
15 **Rule 10.60. Tribal Court–State Court Forum**

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17 **(a)–(b) * * ***

18
19 **(c) Membership**

20
21 The forum must include the following members:

22
23 (1) Tribal court judges or justices selected by tribes in California, as described in
24 (d), but no more than one tribal court judge or justice from each tribe;

25
26 (2) At least three trial court judges from counties in which a tribal court is
27 located;

28
29 (3) At least one appellate justice of the California Courts of Appeal;

30
31 (4) At least one member from each of the following committees: the Access and
32 Fairness Advisory Committee, Civil and Small Claims Advisory Committee,
33 Criminal Law Advisory Committee, Family and Juvenile Law Advisory
34 Committee, Governing Committee of the Center for Judicial Education and
35 Research, Probate and Mental Health Advisory Committee, and Traffic
36 Advisory Committee; and

37
38 (5) ~~As ex officio members, the Director of the California Attorney General’s~~
39 ~~Office of Native American Affairs and the Governor’s Tribal Advisor~~ At
40 least one, but no more than three, California executive branch officials
41 responsible for tribal-related work.
42

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

3

4 **(d)–(e) * * ***

SP17-07

Amend Rules on Advisory Committee Memberships and Terms (amend Cal. Rules of Court, rules 10.31, 10.42, 10.43, 10.44, and 10.60)

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

	Commentator	Position	Comment	Committee Response
1	Bet Tzedek Legal Services 3250 Wilshire Blvd. Suite 1300 Los Angeles, CA 90010-1577 Joyce Riley, Directing Attorney Erikson Albrecht, Directing Attorney	A	<p>Bet Tzedek Legal Services ("Bet Tzedek") strongly supports the proposed amendment to California Rule of Court 10.44, which adds "public interest or court self-help lawyer whose practice focuses on guardianships or conservatorship" to the existing categories of attorneys eligible to serve on the Judicial Council's Probate and Mental Health Advisory Committee ("the Committee").</p> <p>As a public interest organization, Bet Tzedek has provided free and comprehensive legal services for low-income individuals and families in Los Angeles for 40 years. In 2007, Bet Tzedek partnered with the Los Angeles Superior Court to create a self-help conservatorship clinic located in the court. Today, Bet Tzedek assists in over 70% of all new conservatorship filings in Los Angeles County, and more than 85% of those clinic litigants successfully obtain conservatorships. In October 2017, Bet Tzedek and Los Angeles Superior Court partnered to offer a self-help elder abuse</p>	The committee appreciates the comment and notes that the proposal that circulated and is recommended would amend rule 10.44 to include an additional category of membership for a lawyer working for a public interest organization or court self-help center whose practice focuses on guardianships or conservatorships.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SP17-07

Amend Rules on Advisory Committee Memberships and Terms (amend Cal. Rules of Court, rules 10.31, 10.42, 10.43, 10.44, and 10.60)

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			<p>restraining order clinic. These self-help services are in addition to the provision of direct representation services by multiple Bet Tzedek staff attorneys to clients filing Probate Guardianship, Probate Special Immigrant Juvenile Status, and Probate Conservatorship matters. Finally, Bet Tzedek runs other projects, such as our Advance Planning Clinic, focused on advanced planning and self-determination for adults with intellectual and developmental disabilities. Bet Tzedek also has experience working with the Los Angeles Superior Court on access to justice issues. Most recently, for example, Bet Tzedek, along with Public Counsel, held discussions with the Probate Court regarding the training and use of Minor's Counsel in Probate Guardianship proceedings. The litigants Bet Tzedek assists and the clients the agency represents through these various projects reflect a diverse cross-section of the population. They are low-income individuals facing economic realities which dramatically impact how they access the court system.</p>	
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SP17-07

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		<p>Their cultural backgrounds impact how they interact with Probate Investigators, PVP attorneys and the Court itself. The individuals we assist speak many different languages, with the majority of non-English speakers speaking Spanish, Mandarin, and Korean. Indeed, at some of our Self-Help Conservatorship Clinics, over 25% of the litigants assisted are monolingual Spanish-speakers. In short, public interest attorneys such as those at Bet Tzedek have extensive experience working with a wide swath of the individuals seen by the Probate Court. Unfortunately, despite this wealth of experience and knowledge, over the years Bet Tzedek attorneys, as well as attorneys from other public interest organizations that assist individuals seeking orders from the Probate Court, have not been adequately represented on the Committee under the broad category of "lawyer whose primary practice involves decedents' estates, trusts, guardianships, conservatorships, or elder abuse law". We believe that the addition of the public interest or court self-help lawyer as a category will further the Judicial</p>	
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SP17-07

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			<p>Council's goal of providing greater access to justice.</p> <p>Public interest and self-help lawyers are uniquely positioned to understand the needs of litigants who do not have the resources to hire a private attorney. For example, because self-represented litigants file the majority of conservatorship and guardianship cases in California, a public interest or self-help attorney's input will better inform the Committee in making recommendations to the Judicial Council. Public interest attorneys can provide insights regarding the experience of low-income individuals with varying levels of education and English-language proficiency engaging with the court: how their needs are being met and where they are still impediments to justice. The addition of the perspective and voice of public interest attorneys within the Probate and Mental Health Advisory Committee, therefore, will likely prove invaluable to the Council's efforts to ensure equal access and fairness within the court system. For example,</p>	
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SP17-07

Amend Rules on Advisory Committee Memberships and Terms (amend Cal. Rules of Court, rules 10.31, 10.42, 10.43, 10.44, and 10.60)

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

			public interest attorneys are well-positioned to speak to the impact on low income litigants created by decisions such as having the probate investigator meetings required in Probate Guardianship matters occur at the court rather than at the proposed guardian's home. Public interest attorneys can provide critical information on the impact of e-filing on such court users. These are just a few of the many issues public interest attorneys can and should comment on to ensure access to justice for all members of our community.	
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Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.