JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-021
For business meeting on January 20, 2023

Title
Report to the Legislature: Report on California Rules of Court, Rule 10.75 (Meetings of Advisory Bodies)

Submitted by
Judicial Council staff
Millicent Tidwell, Acting Administrative Director

Agenda Item Type
Information Only

Date of Report
January 3, 2023

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Executive Summary

Supplemental Report of the 2013–2014 Budget Package requires that the Judicial Council report to the Joint Legislative Budget Committee on implementation of the open meetings rule, rule 10.75, of the California Rules of Court. Under subdivision (p) of the rule, the Judicial Council must review the rule's impact periodically to determine whether amendments are needed. No amendments are needed at this time.

Relevant Previous Council Action

These reports have been submitted to the Legislature annually. Previous reports can be found at *www.courts.ca.gov/7466.htm*.

The initial report on the steps to developing and implementing an open meetings rule was submitted to the Legislature by the Judicial Council on January 1, 2014, as required by *Supplemental Report of the 2013–2014 Budget Package*. The Judicial Council approved rule 10.75 (Meetings of advisory bodies) at its meeting on April 24, 2014, and the rule became effective July 1, 2014.

Under rule 10.75(p), the council was required to review the rule's impact within one year of its adoption to determine whether amendments were needed. The chairs of the Judicial Council's internal committees reported that no amendments were needed. They recommended that the

council accept the report and direct that it be sent to the Joint Legislative Budget Committee, as required by *Supplemental Report of the 2013–2014 Budget Package*. The council, effective August 20, 2015, accepted *Report on California Rules of Court, Rule 10.75 (Meetings of advisory bodies)*, dated August 11, 2015, and directed council staff to submit it, as required.

Analysis/Rationale

Rule 10.75(p) requires the Judicial Council to review the impact of the rule periodically to determine whether amendments are needed. None are recommended at this time.

Fiscal Impact and Policy Implications

Submission of this mandated report to the Legislature has no requirements of, costs to, or operational impacts on the courts.

Attachments and Links

1. Attachment A: *Report on California Rules of Court, Rule 10.75 (Meetings of advisory bodies)* (Dec. 19, 2022)

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Chief Justice of California
Chair of the Judicial Council

HON. MARSHA G. SLOUGH
Chair, Executive and Planning Committee

HON. DAVID M. RUBIN
Chair, Judicial Branch Budget Committee
Chair, Litigation Management Committee

HON. MARLA O. ANDERSON
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Administrative Director
Judicial Council

December 19, 2022

Hon. Nancy Skinner
Chair, Senate Committee on Budget and Fiscal Review
Chair, Joint Legislative Budget Committee
Legislative Office Building
1020 N Street, Room 502
Sacramento, California 95814

Hon. Philip Y. Ting
Chair, Assembly Committee on Budget
Vice-Chair, Joint Legislative Budget Committee
1021 O Street, Suite 8230
Sacramento, California 95814

Re: Report on California Rules of Court, rule 10.75 (Meetings of advisory bodies), as required by *Supplemental Report of the 2013–2014 Budget Package*

Dear Senator Skinner and Assembly Member Ting:

Supplemental Report of the 2013–2014 Budget Package directed the Judicial Council, beginning with the 2014–15 fiscal year, to report annually on the status of the open meetings rule that the council adopted for its advisory bodies. The annual report must include specific details on any amendments adopted in the prior fiscal year.

California Rules of Court, rule 10.75 (Meetings of advisory bodies), was adopted by the Judicial Council and became effective on July 1, 2014. No amendments have been made to rule 10.75 since its adoption. The full text of the rule is attached.

If you have any questions related to this report, please contact Ms. Millicent Tidwell, Chief Deputy Director, Judicial Council, at 916-643-7030 or millicent.tidwell@jud.ca.gov.

Sincerely,

Martin Hoshino
Administrative Director
Judicial Council

MH/MT/JYF
Attachment
cc: Cara L. Jenkins, Legislative Counsel
Erika Contreras, Secretary of the Senate
Sue Parker, Chief Clerk of the Assembly
Eric Dang, Counsel, Office of Senate President pro Tempore Toni G. Atkins
Alf Brandt, General Counsel, Office of Assembly Speaker Anthony Rendon
Shaun Naidu, Policy Consultant, Office of Assembly Speaker Anthony Rendon
Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office
Gabriel Petek, Legislative Analyst, Legislative Analyst's Office
Jessie Romine, Budget Analyst, Department of Finance
Margie Estrada, Chief Counsel, Senate Judiciary Committee
Mary Kennedy, Chief Counsel, Senate Public Safety Committee
Nora Brackbill, Consultant, Senate Budget and Fiscal Review Committee
Matthew Fleming, Consultant, Senate Appropriations Committee
Hans Hemann, Principal Consultant, Joint Legislative Budget Committee
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Jennifer Kim, Consultant, Assembly Budget Committee
Jay Dickenson, Chief Consultant, Assembly Appropriations Committee
Kimberly Horiuchi, Principal Consultant, Assembly Appropriations Committee
Lyndsay Mitchell, Consultant, Assembly Republican Office of Policy & Budget
Gary Olson, Consultant, Assembly Republican Office of Policy & Budget

Daryl Thomas, Consultant, Assembly Republican Office of Policy & Budget
Amy Leach, Minute Clerk, Office of Assembly Chief Clerk
Cory T. Jasperson, Director, Governmental Affairs, Judicial Council
Zlatko Theodorovic, Director, Budget Services, Judicial Council
Fran Mueller, Deputy Director, Budget Services, Judicial Council
Jenniffer Herman, Administrative Coordinator, Governmental Affairs, Judicial Council

California Rules of Court

Rule 10.75. Meetings of advisory bodies

(a) Intent

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

(b) Advisory bodies and chairs

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

(2) "Chair," as used in this rule, includes a chair's designee.

(c) Open meetings

(1) *Meetings*

Advisory body meetings to review issues that the advisory body will report to the Judicial Council are open to the public, except as otherwise provided in this rule. A meeting open to the public includes a budget meeting, which is a meeting or portion of a meeting to discuss a proposed recommendation of the advisory body that the Judicial Council approve an allocation or direct an expenditure of public funds. A majority of advisory body members must not decide a matter included on a posted agenda for an upcoming meeting in advance of the meeting.

(2) *Exempt bodies*

The meetings of the following advisory bodies and their subcommittees are exempt from the requirements of this rule:

(A) Advisory Committee on Civil Jury Instructions;

(B) Advisory Committee on Criminal Jury Instructions; and

(C) Litigation Management Committee.

(3) *Rule committees*

With the exception of any budget meetings, the meetings of the rule committees listed in this subdivision and of their subcommittees are closed unless the chair concludes that a particular agenda item may be addressed in open session. Any budget meeting must be open to the public.

(A) Appellate Advisory Committee;

(B) Civil and Small Claims Advisory Committee;

(C) Criminal Law Advisory Committee;

(D) Family and Juvenile Law Advisory Committee;

(E) Probate and Mental Health Advisory Committee; and

(F) Traffic Advisory Committee.

(d) Closed sessions

The chair of an advisory body or an advisory body subcommittee may close a meeting, or portion of a meeting, to discuss any of the following:

(1) The appointment, qualifications, performance, or health of an individual, or other information that, if discussed in public, would constitute an unwarranted invasion of personal privacy;

(2) Claims, administrative claims, agency investigations, or pending or reasonably anticipated litigation naming, or reasonably anticipated to name, a judicial branch entity or a member, officer, or employee of such an entity;

(3) Negotiations concerning a contract, a labor issue, or legislation;

(4) The price and terms of payment for the purchase, sale, exchange, or lease of real property for a judicial branch facility before the property has been acquired or the relevant contracts have been executed;

(5) Security plans or procedures or other matters that if discussed in public would compromise the safety of the public or of judicial branch officers or personnel or the security of judicial branch facilities or equipment, including electronic data;

(6) Non-final audit reports or proposed responses to such reports;

(7) Trade secrets or privileged or confidential commercial and financial information;

(8) Development, modification, or approval of any licensing or other professional examination or examination procedure;

(9) Evaluation of individual grant applications; or

(10) Topics that judicial officers may not discuss in public without risking a violation of the California Code of Judicial Ethics, necessitating recusal, or encouraging disqualification motions or peremptory challenges against them, including proposed legislation, rules, forms, standards of judicial administration, or jury instructions.

(e) Notice of meetings

(1) *Regular meetings*

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

(2) *Urgent circumstances*

A meeting that is subject to this rule may be conducted on 24-hours notice in case of urgent circumstances requiring prompt action. The minutes of such meetings must briefly state the facts creating the urgent circumstances requiring prompt action and the action taken.

(f) Form of notice

(1) The notice and agenda for a meeting subject to this rule, whether open or closed, must be posted on the California Courts website.

(2) The notice for meetings subject to this rule must state whether the meeting is open or closed. If a meeting is closed or partially closed, the notice must identify the closed agenda items and the specific subdivision of this rule authorizing the closure.

(3) For meetings that are open in part or in full, the notice must provide:

(A) The telephone number or other electronic means that a member of the public may use to attend the meeting;

(B) The time of the meeting, whether the public may attend in person, and, if so, the meeting location; and

(C) The e-mail address or other electronic means that the public may use to submit written comments regarding agenda items or requests to make an audio recording of a meeting.

(g) Contents of agenda

The agenda for a meeting subject to this rule, whether open or closed, must contain a brief description of each item to be considered during the meeting. If a meeting is closed or partially closed, the agenda must identify the specific subdivision of this rule authorizing the closure.

(h) Meeting materials

Materials for an open meeting must be posted on the California Courts website at least three business days before the date of the meeting, except in extraordinary circumstances.

(i) Public attendance

The public may attend open sessions of advisory body meetings by telephone or other available electronic means. If the members of an advisory body gather in person at a single location for a meeting, the public may attend in person at that location if the chair concludes security measures permit.

(j) Conduct at meeting

Members of the public who attend open meetings in person must remain orderly. The chair may order the removal of any disorderly person.

(k) Public comment

(1) *Written comment*

The public may submit written comments for any agenda item of a regularly noticed open meeting up to one complete business day before the meeting.

(2) *In-person comment*

If security measures permit public attendance at an open in-person advisory body meeting, the meeting must include an opportunity for public comment on each agenda item before the advisory body considers the item. Requests to comment on an agenda item must be submitted before the meeting begins, indicating the speaker's name, the name of the organization that the speaker represents, if any, and the agenda item that the public comment will address. The advisory body chair may grant a request to comment on an agenda item that is received after a meeting has begun.

(3) *Reasonable limits and timing*

The advisory body chair has discretion to establish reasonable limits on the length of time for each speaker and the total amount of time permitted for public comment. The chair may also decide whether public comments will be heard at the beginning of the meeting or in advance of the agenda items.

(*l*) Making an audio recording of a meeting

An advisory body chair may permit a member of the public to make an audio recording of an open meeting, or the open portion of a meeting, if a written request is submitted at least two business days before the meeting.

(m) Minutes as official records

Minutes of each meeting subject to this rule, whether open or closed, must be prepared for approval at a future meeting. When approved by the advisory body, the minutes constitute the official record of the meeting. Approved minutes for the open portion of a meeting must be posted on the California Courts website.

(n) Adjourned meetings

An advisory body chair may adjourn a meeting to reconvene at a specified time without issuing a new notice under (e)(1), provided that, if open agenda items remain for discussion, notice of the adjourned meeting is posted on the California Courts website 24 hours before the meeting reconvenes. The notice must identify any remaining open agenda items to be discussed, the time that the meeting will reconvene, the telephone number that the public may use to attend the meeting, and if the public may attend the reconvened meeting in person, the location. The advisory body may not consider new agenda items when the meeting reconvenes except as permitted under (e)(2).

(o) Action by e-mail between meetings

An advisory body may take action by e-mail between meetings in circumstances specified in this subdivision.

(1) *Circumstances*

An advisory body chair may distribute a proposal by e-mail to all advisory body members for action between meetings if:

(A) The advisory body discussed and considered the proposal at a previous meeting but concluded additional information was needed; or

(B) The chair concludes that prompt action is needed.

(2) *Notice*

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

(3) *Communications*

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

(4) *Official record*

Written minutes describing the action taken on an e-mail proposal that otherwise must be discussed in an

open meeting must be prepared for approval at a future meeting. The minutes must attach any public comments received. When approved by the advisory body, the minutes constitute the official record of the proposal. Approved minutes for such a proposal must be posted to the California Courts website. The e-mails exchanged concerning a proposal that otherwise would have been considered in a closed meeting will constitute the official record of the proposal.

(p) Review requirement

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

Rule 10.75 adopted effective July 1, 2014.

Advisory Committee Comment

Subdivisions (a) and (c)(1). This rule expands public access to Judicial Council advisory bodies. The council recognizes the important public interest in access to those meetings and to information regarding administration and governance of the judicial branch. Meetings of the Judicial Council are open, and notice and materials for those meetings are provided to the public, under rules 10.5 and 10.6. Rules in Division 1 of Title 10 describe the council's advisory bodies and require that proposals for rules, standards, forms, and jury instructions be circulated for public comment. (See Cal. Rules of Court, rules 10.10-10.22, 10.30-10.70.) Reports to the council presenting proposals and recommendations are publicly posted on the California Courts website (*www.courts.ca.gov*). Internal committee chairs report at each council meeting regarding the activities of the internal committees in the period since the last council meeting, and internal committee meeting minutes also are posted on the California Courts website. This rule expands on those existing rules and procedures to increase public access by opening the meetings of advisory bodies to review issues that the advisory body will report to the council. The rule does not apply to meetings that do not involve review of issues to be reported to the council, such as meetings providing education and training of members, discussion of best practices, or sharing of information of general interest unrelated to advice or reports to the council. Those non-advisory matters are outside the scope of this rule.

Subdivision (b)(1). The definition provided in (b)(1) is intended exclusively for this rule and includes internal committees, advisory committees, task forces, and other similar multimember bodies that the council creates to review issues and report to it. (Cf. Cal. Rules of Court, rule 10.30(a) ["Judicial Council advisory bodies are typically advisory committees and task forces].)

Subdivisions (c)(2), (c)(3), and (d)(10). The Code of Judicial Ethics governs the conduct of judges and is binding upon them. It establishes high standards of conduct that judges must personally observe, maintain, and enforce at all times to promote and protect public confidence in the integrity and impartiality of the judiciary. (See Code Judicial Ethics, Preamble, canon 1, canon 2A.) Among other things, compliance with these high ethical standards means avoiding conduct that could suggest a judge does not have an open mind in considering issues that may come before the judge. (*Id.,* canon 2A.) Judges also are prohibited from making public comments about a pending or impending proceeding (*id*., canon 3B(9)), signifying that they may not publicly discuss case law that has not reached final disposition through the appellate process, or pending or anticipated litigation, conduct that would be required to participate in the work covered by the referenced subdivisions. Ethical standards also direct that they hear and decide all matters assigned to them, avoiding extrajudicial duties that would lead to their frequent disqualification. (*Id.,* canons 3B(1), 4A(4).)

The work of the three advisory bodies listed in subdivision (c)(2) exclusively involves discussion of topics that are uniquely difficult or impossible for judges to address while honoring the detailed ethical standards governing the judiciary. For example, as required by rule, the Litigation Management Committee discusses pending or anticipated claims and litigation against judicial officers, courts, and court employees. Jury instruction committees also may discuss decisions or rulings issued in cases that have not reached final resolution through the appellate process. Thus, opening the meetings of these three committees would result in precluding judges, who are specially learned in the law, from meaningful participation on those committees. Subdivision (c)(2) is added to avoid this result.

The work of the six rule committees listed in subdivision (c)(3) almost always will trigger similar issues. Those bodies focus primarily on developing, and providing input concerning, proposed legislation, rules, forms, and standards of judicial administration. That work necessarily entails a complex interchange of views, consideration of multiple perspectives, and the vetting of opposing legal arguments, which judges cannot undertake in public without risk that their comments will be misunderstood or used as a basis for disqualification or challenge. Service on the referenced committees, and public participation in discussing the referenced topics, may make it difficult for a judge to hear and decide all matters assigned to the judge and conceivably could lead to frequent disqualification of the judge, exposing

the judge to risk of an ethical violation. This may create significant practical issues for courts related to judicial workloads, while also deterring individuals specially learned in the law from serving on advisory bodies, in turn depriving the public of the benefits of their training and experience in crafting procedures for the effective and efficient administration of justice. Subdivisions (c)(3) and (d)(10) are intended to prevent such deleterious results by clarifying that meetings of the six rule committees whose work almost entirely focuses on these topics ordinarily will be closed and that meetings of other bodies performing similar functions also will be closed as the chairs deem appropriate, with the exception that any budget meetings must be open.

Subdivision (d)(7). Definitions of the terms "trade secret," "privileged information," and "confidential commercial and financial information," are provided in rule 10.500(f)(10).

Subdivision (k)(1). Due to budget constraints, members' schedules, and the geographic diversity of most committees' membership, advisory body meetings typically are held via teleconference or other method not requiring the members' in person attendance. Because judicial officer and attorney members may have limited time for meetings (e.g., only a lunch hour), the volume of advisory body business to be accomplished in those periods may be considerable, and the costs of coordinating teleconferences that would accommodate spoken comments from the public would be significant in the aggregate, the rule only provides for public comment in writing. To ensure sufficient time for advisory body staff to gather and distribute written comments to members, and for members to review comments before the meeting, the rule requires that comments be submitted one complete business day before the meeting.