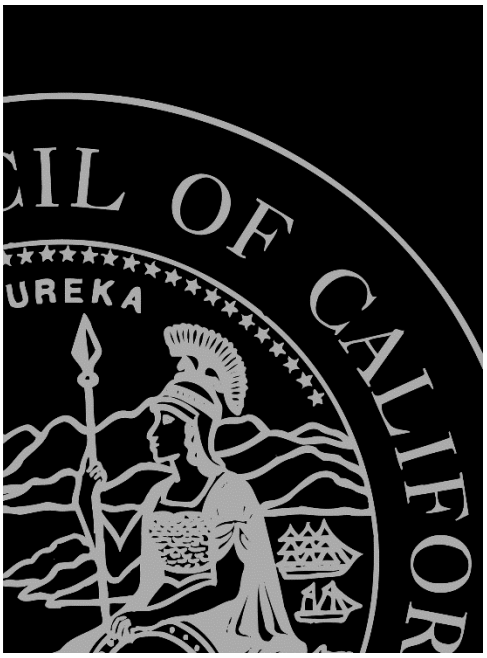


Judicial Council Governance Policies

MARCH 2021

JUDICIAL COUNCIL
OF CALIFORNIA

Judicial Council Governance Policies

The Judicial Council is the policymaking body of the California courts, the largest court system in the nation. Under the leadership of the Chief Justice and in accordance with the California Constitution, the council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice. Members of the council are appointed by the Chief Justice. Appointees from the Board of Trustees of the State Bar of California and both houses of the Legislature also serve as members of the council. Together the members serve to carry out judicial branch goals. Judicial Council staff implements the council's policies, and the goals and priorities of the council are set forth in *The Strategic Plan for California's Judicial Branch*:

I. Access, Fairness, and Diversity
II. Independence and Accountability
III. Modernization of Management and Administration
IV. Quality of Justice and Service to the Public
V. Education for Branchwide Professional Excellence
VI. Branchwide Infrastructure for Service Excellence
VII. Adequate, Stable, and Predictable Funding for a Fully Functioning Branch

GOVERNANCE PROCESS

1. Responsibilities of the Council

The council establishes goals and policies for California's judicial branch of government. The council is directly responsible for the following:

a. Establishing broad goals and policies that set the direction and priorities for the continuous improvement of California's system for the administration of justice. These goals and policies include fundamental goals such as promoting public access to the justice system, increasing responsiveness to the needs of court users of diverse backgrounds, and upholding the rule of law and the impartiality of judges as constitutional officers.

b. Establishing standards for the performance and accountability of the administrative operations and procedures of the branch. These standards address the diverse needs of court users, employ modern management practices that implement and sustain innovative ideas and effective practices, and report on judicial branch performance to the public, the Legislature, the Governor, and the courts.

c. Developing and maintaining administrative, technological, and physical infrastructures, including court facilities, that enhance accessibility to the courts and support the needs of the people of California and the judicial branch.

d. Taking all appropriate steps to develop and establish the judicial branch's fiscal priorities, secure appropriate funding for the judicial branch, establish fiscal and budget policies for the branch, allocate branch appropriations to the courts and the council, and ensure accountability through reporting on the use of its public resources to the legislative and executive branches of state government and to the public.

e. Sponsoring and taking positions on pending legislation consistent with the council's established goals and priorities to support consistent and effective statewide programs and policies that provide for the highest quality of administration of justice, and that promote an impartial judiciary.

f. Developing high-quality education and professional development opportunities for all judicial branch personnel to meet public needs and to enhance public trust and confidence in the courts.

g. Communicating with and reporting to the legislative and executive branches of state government to advance judicial branch goals, and account for the use of public funds and resources.

2. Council Policymaking

The Judicial Council establishes judicial branch policy for the improvement of an independent and impartial justice system that meets public needs and enhances public trust and confidence in the courts. The council develops policy in consultation with the people of California, court leadership, judicial officers, Judicial Council advisory bodies, employees in the judicial branch, the State Bar of California, advocacy groups, the Legislature, the Governor, and other government entities and justice system partners.

The principal focus of the Judicial Council is to establish policies that emphasize long-term strategic leadership and that align with judicial branch goals. Council policymaking is focused on the beneficiaries of the policy, the results to be achieved, the costs that may be incurred, and the corresponding judicial branch goals.

To enable the council to make well-informed strategic decisions, all policy proposals submitted for council consideration by internal committees, advisory bodies, the Administrative Director, and staff should address the following:

- Beneficiaries of the policy;
- Results to be achieved;
- Costs that may be incurred;
- Each corresponding judicial branch goal, objective, and anticipated outcome;

- Previous council action on the issue or policy;
- Comments from interested parties;
- Analysis of the benefits and risks of the proposals; and
- Analysis of the strengths and weaknesses of alternative options and an explanation of their implications.

3. Maintenance of Governance Policies and Principles

Every three years, the Judicial Council conducts a review of its governance policies and principles and determines whether any revisions are needed. The Executive and Planning Committee monitors the regular implementation of the governance policies and principles.

In order to ensure that new council members have the knowledge and understanding needed to perform their duties effectively, they are oriented to the council's governance policies and principles as well as the council's history of policymaking on key topics, such as court facilities, fiscal appropriations, and infrastructure initiatives. On an annual basis, the chair of the Executive and Planning Committee reviews the governance policies and principles at a council meeting with members.

4. Internal Committees

a. **Executive and Planning Committee**

The Executive and Planning Committee makes regular reports to the council on its actions. Its responsibilities are outlined in California Rules of Court, rule 10.11, and summarized below.

i. Oversees the council's strategic planning process.
ii. Oversees the council's policies and procedures regarding court facilities.
iii. Establishes agendas for council meetings.
iv. Develops a schedule of topics the council intends to consider for making policy.
v. Makes recommendations to the council regarding governance.
vi. Recommends candidates to the Chief Justice for appointment to the council and its advisory bodies.

b. **Rules Committee**

The Rules Committee makes regular reports to the council on its actions. Its responsibilities are outlined in California Rules of Court, rule 10.13, and summarized below.

i. Identifies the need for new rules, standards, and forms.
ii. Establishes and publishes procedures for the proposal, adoption, and approval of rules of court, forms, and standards of judicial administration that ensure that relevant input from the public is solicited and considered.

iii. Reviews proposed rules, standards, and forms, and circulates those proposals for public comment in accordance with its procedures and guidelines.
iv. Provides guidelines for the style and format of rules, forms, and standards and ensures that proposals are consistent with the guidelines.
v. Ensures that proposals for new or amended rules, standards, and forms do not conflict with statutes or other rules.
vi. Determines whether proposals for new or amended rules, standards, or forms have complied with its procedures.

c. **Legislation Committee**
The Legislation Committee makes regular reports to the council on its actions. Its responsibilities are outlined in California Rules of Court, rule 10.12, and summarized below.

i. Represents the Judicial Council's position with other agencies and entities, such as the Legislature, the Governor's Office, the State Bar of California, local government, local bar associations, and other court-related professional associations.
ii. Reviews and makes recommendations on proposals for Judicial Council–sponsored legislation; reviews pending bills; determines positions consistent with the council's previous policy decisions; and oversees advocacy for those positions.

d. **Technology Committee**
The Technology Committee makes regular reports to the council on its actions. Its responsibilities are outlined in California Rules of Court, rule 10.16, and summarized below.

i. Oversees the council's policies concerning technology and is responsible in partnership with the courts for coordinating with the Administrative Director and all internal committees, advisory committees, commissions, working groups, task forces, justice partners, and stakeholders on technological issues relating to the branch and the courts.
ii. Responsible for ensuring that council policies are complied with, and that specific projects proceed on schedule and within scope and budget.
iii. Seeks reports and recommendations from the Administrative Director, the courts, and stakeholders on technology issues. It ensures that technology reports to the council are clear, comprehensive, and provide relevant options so that the council can make effective final technology policy decisions.

e. **Judicial Branch Budget Committee**
The Judicial Branch Budget Committee makes regular reports to the council on its actions. Its responsibilities are outlined in California Rules of Court, rule 10.15, and summarized below.

i. Ensures that proposed judicial branch budgets, allocation schedules, and related budgetary issues are brought to the Judicial Council in a timely manner and in a format that permits the council to establish funding priorities in the context of the council's annual program objectives, statewide policies, and long-range strategic and operational plans.
ii. Reviews and makes recommendations annually to the council on submitted budget change proposals for the judicial branch, coordinates these budget change proposals, and ensures that they are submitted to the council in a timely manner.
iii. Reviews and makes recommendations on the use of statewide emergency funding for the judicial branch.
iv. Reviews and makes recommendations on the funding of grants on programs assigned to the committee.
v. Acts on other assignments referred to it by the council.

f. **Litigation Management Committee**
The Litigation Management Committee makes regular reports to the council on its actions. Its responsibilities are outlined in California Rules of Court, rule 10.14, and summarized below.

i. The committee oversees litigation and claims against trial and appellate courts, the Judicial Council, and employees of those bodies that seek recovery of $100,000 or more, or raise important policy issues.
ii. Important policy or court operations issues may include whether to initiate litigation on behalf of a court, when to defend a challenged court practice, or how to resolve disputes where the outcome might have statewide implications.

5. Role of Advisory Committees
Advisory committees under California Rules of Court, rule 10.34(a) are standing committees created by rule of court or the Chief Justice to make recommendations and offer policy alternatives to the Judicial Council for improving the administration of justice within their designated areas of focus by doing the following:

i. Identifying issues and concerns affecting court administration and recommending solutions to the council.
ii. Proposing necessary changes to rules, standards, forms, and jury instructions.

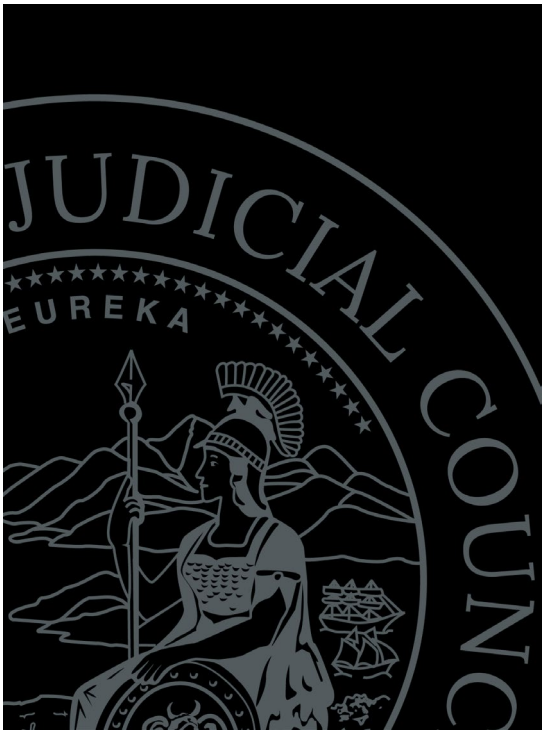
iii. Reviewing pending legislation and making recommendations to the Legislation Committee on whether to support or oppose it.
iv. Recommending new legislation to the council.
v. Recommending to the council pilot projects and other programs to evaluate new procedures or practices.
vi. Acting on assignments referred by the council or an internal committee.
vii. Making other appropriate recommendations to the council.

6. Council-Staff Relationship

Officially passed motions of the council, and decisions and instructions of the Chief Justice, are binding on the Administrative Director. Decisions or instructions of individual council members or internal and advisory bodies are binding on the Administrative Director if the council or its chair has specifically delegated such exercise of authority.

The Administrative Director has sole authority to assign, supervise, and direct staff. The Administrative Director is responsible for ensuring the completeness and quality of reports and other work product presented to the council. Council members may from time to time request information or assistance from staff, unless in the Director's opinion such requests require an unreasonable amount of staff time or become disruptive. Council members and advisory body members may individually provide information to the Administrative Director on the performance of staff or staff agency to the council.

The Administrative Director, as secretary to the council, may attend and participate in the meetings of each internal committee.



Remote Access to Electronic Court Records—Policy, Rationale, and Guidance

September 20, 2023

Judicial Council *of* California

Remote Access to Electronic Court Records—Policy, Rationale, and Guidance

Questions for analysis:

- ***What entity should determine who can access which court records remotely? (the "who/what")***
- ***What entity should make decisions on the implementation/operations of the policy? (the "how")***

Policy

The Judicial Council recognizes the Legislature's policymaking role in balancing remote access to public electronic court records[1] against privacy interests, in determining what information contained in these records may be disclosed and to whom. At the same time, the Judicial Council affirms its role in promoting the fair administration of justice. In doing so, the Judicial Council will establish the manner by which the public may remotely access these records consistent with any laws passed by the Legislature and will prioritize efficiencies and ease of access for court users.

Rationale

When evaluating proposals that implicate remote access to electronic court records, the Judicial Council recognizes that the Legislature in its policymaking role is better suited to balancing the competing constitutional interests of the right to privacy and the right to access court records, as well as evaluating any other relevant competing interests. This balancing implicates important policy questions such as whether the purpose of the proposal is legitimate and is in the best interest of the public and what factors should be considered in that analysis. Other policy questions include whether any groups of court users should be limited from remotely accessing electronic court records, even though they may obtain the records in person at a courthouse. These are ultimately policy determinations that are more appropriate for the legislative branch.[2]

At the same time, the Judicial Council, in its policymaking role related to the administration of justice, is best suited to evaluating and addressing operational issues relating to remote access to electronic court records. It is therefore the Judicial Council's responsibility to establish the manner by which the public may remotely access these records. This is consistent with the Judicial Council's charge to "improve the administration of justice" (Cal. Const., art. VI, § 6) and "improv[e] the quality of justice and advanc[e] the consistent, independent, impartial, and accessible administration of justice by the judicial branch for the benefit of the public." (Cal. Rules of Court, rule 10.1(a)(1).) It is also consistent with the Judicial Council's expertise in court

[1] This policy addresses electronic court records other than those that are sealed by court order or otherwise made confidential by law. In addition, for purposes of this policy, "court records" includes documents, papers, or exhibits filed with a court, registers of actions, calendars, and indexes.

[2] This policy does not preclude the Judicial Council from providing subject matter expertise to the Legislature as to the implications of any proposed legislation.

operations—supported in large part in its advisory bodies comprised of judicial officers and court administrators.

Once the Legislature determines what information contained in public electronic court records may be disclosed remotely and to whom, the Judicial Council is in the best position to determine how to implement that remote access. In addition to individual decisions regarding whether to seal a record, there are operational, administrative, security, and budgetary considerations that the judicial branch best understands. It is incumbent on the Judicial Council to adopt rules that preserve efficient functionality of the courts. This policy is consistent with the Judicial Council's responsibility to carry out the fair administration of justice.

Guidance

This policy will come into play when advisory bodies are reviewing pending legislation, considering proposals for new legislation or rules of court, or considering any other action that implicates remote access to electronic court records. When determining whether to recommend action by the Judicial Council, advisory bodies should address the following questions:

(1) Does the pending legislation or proposal for new legislation or rules of court relate to *what* information may be accessed remotely and/or *by whom*?

   (a) Generally, under this policy, such decisions would be addressed by the Legislature.

   (b) Does that legislation or legislative proposal also raise or impact operational, administrative, security, or budgetary issues for courts? If so, the advisory body may recommend a position on the legislation or legislative proposal addressing that impact but should explain and support the basis under the policy for that recommendation.

(2) Does the pending legislation or proposal for new legislation or rules of court relate to *how* remote access to court records is provided? Under this policy, the Judicial Council may provide input and so the advisory body may recommend a position or action within this policy.

(3) Is the pending legislation or proposal for new legislation or rules of court a hybrid? In other words, does it relate to *both* what information may be accessed remotely and/or by whom *and* how remote access to court records is provided? If the pending legislation or proposal for new legislation or rules of court is a hybrid, the advisory body should limit any recommendation regarding a position on legislation or action by the Judicial Council to the aspects of the proposal that address how remote access is provided (but see (1)(b) for when recommendations may be appropriate).