

**Written Comments Received for  
December 14, 2012, Judicial Council Meeting**

<b>Name and Title</b>	<b>Affiliation</b>	<b>Topic</b>	<b>Date of Receipt</b>	<b>Page Nos.</b>
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2. Terry Francke, General Counsel	Californians Aware	Agenda Item X, Public Access to Judicial Administrative Records: AOC Policy and Procedures for Responding to Requests for Information and Records Under Rule 10.500	12/12/12	3-4

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December 10, 2012

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455 Golden Gate Avenue  
San Francisco, California 94102-3688

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JUDICIAL COUNCIL  
ADMINISTRATIVE OFFICE OF THE COURTS

Re: Written Public Comment for Meeting  
of December 14, 2012.

Dear Judicial Council:

As a practicing attorney I register my vehement objection to the mandatory court reporter fees imposed upon the filing of a motion. Code of Civil Procedure Section 269 does not mandate use of a court reporter except by order of the court or upon request of a party. If one is requested by a party I can understand imposition of a fee. However, creating a mandatory \$30.00 fee even when no court reporter is needed or requested is unacceptable.

Having recently filed two motions and having been told by the court my client cannot waive the court reporter and eliminate the fee, the \$30.00 fee is not truly a court reporter fee but another revenue generating mechanism under disguise. Also, since most courts in California use a tentative ruling system whereby absent an objection the tentative ruling becomes the Order of the Court, it is incredible that a litigant must still pay a fee when no actual hearing is conducted.

The motion fee already has been raised to \$60.00 and with this new "mandatory fee" the cost to file any motion is now \$90.00. Quite frankly, it's embarrassing to our profession and unfair to the litigants who ultimately suffer the cost of paying for something they often don't need or use just because government is looking for not so clever ways to generate revenue.

Very truly yours,

  
John David Pereira



CaliforniansAware  
THE CENTER FOR PUBLIC FORUM RIGHTS

December 12, 2012

The Honorable Tani G. Cantil-Sakauye  
Chief Justice of California

RE: Judicial Council Meeting of Friday, December 14: Agenda Item X

Dear Chief Justice Cantil-Sakauye,

Californians Aware, a nonprofit, nonpartisan public interest organization concerned to protect and advance open government and public information policies and practices in California, asks that the Judicial Council defer the action recommendation proposed under agenda item X for Friday's meeting.

The proposal calls for a complex, nuanced and somewhat subjective spectrum of authorized responses or (non-responses) to requests for information about judicial branch administration that are required to be given response—or not—under Rule of Court 10.500, governing access to judicial administrative records.

Before approving the recommended procedures, we urge the Judicial Council to direct AOC staff to consider, evaluate and report back on a far simpler approach. That approach will do nothing to solve the problem of reduced staff resources, but should at least make the work somewhat simpler in the sense of simplifying the decisional tree.

It should also permit dispensing with an apparent discretionary filter under which “Who’s asking?” can make a definite difference inconsistent with Rule 10.500’s declared aim to provide access comparable, by and large, to that of the California Public Records Act (CPRA), under which the requester’s identity or purpose are not to be factors considered in making a disclosure decision. Clearly judges may need specific information for practical and official purposes in doing their jobs; those requests are understandably to be given priority outside the Rule 10.500 scheme.

But otherwise, categorically qualifying and properly submitted requests (including those from judges) that reflect a general civic, policy or even political perspective should not be sliced, diced and pigeonholed for better or less better response depending on who the requester is.

Much of the problem that the recommendation identifies is one familiar to CPRA processors: a request for explanation, justification, qualitative or quantitative analysis, listing, etc. that calls on the agency, in effect, to create a new record. This issue is addressed in Rule 10.500 (e) (1) (B): “Nothing in this rule requires a judicial branch entity to create any record or to compile or assemble data in response to a request for judicial administrative records if the judicial branch

entity does not compile or assemble the data in the requested form for its own use or for provision to other agencies."

But usually this kind of request can be recast into one which seeks records *reflecting or addressing* the subject matter of interest, for example treating the question, "Why does the AOC need an employee in China?" as "Please provide any record or records documenting the decision to have an AOC representative in China." Most requests or queries that do not literally ask for records, in other words, can be converted fairly easily into those that do, and fulfilled accordingly, or declined, either because those records are exempt from disclosure under the Rule, or because they do not exist. The latter situation should be extremely rare: *if something about how the branch is or has been run is being researched or questioned, it almost certainly has a documentary history.* The records constituting that history can be provided, allowing the requester to draw his or her own conclusions.

A phrasing commonly used by public agencies in answering CPRA-based queries is that the agency has located "records responsive to your request," meaning that the records are not necessarily those specified in the request but do contain information of the kind that seems to be sought. In fact often requesters cannot specify precisely the records whose contents will best answer their concerns. As the Court of Appeal has pointed out,

Unquestionably, public records must be described clearly enough to permit the agency to determine whether writings of the type described in the request are under its control.


(The CPRA) compels an agency to provide a copy of nonexempt records upon a request 'which reasonably describes an identifiable record, or information produced therefrom . .

.' However, the requirement of clarity must be tempered by the reality that a requester, having no access to agency files, may be unable to precisely identify the documents sought. Thus, writings may be described by their content. The agency must then determine whether it has such writings under its control and the applicability of any exemption. An agency is thus obliged to search for records based on criteria set forth in the search request.

*California First Amendment Coalition v. Superior Court*, 78 Cal.Rptr.2d 847, 849 (1998).

Accordingly, Californians Aware requests that the Judicial Council defer approval of the recommended policy pending consideration of the approach suggested here, specification of the kind of request(s) that it could not accommodate, and the reasons why.

Respectfully submitted,



Terry Francke  
General Counsel