



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 14, 2012

Title

Public Access to Judicial Administrative Records: AOC Policy and Procedures for Responding to Requests for Information and Records Under Rule 10.500

Agenda Item Type

Action Required

Effective Date

December 14, 2012

Rules, Forms, Standards, or Statutes Affected

Supplement Cal. Rules of Court, rule 10.500

Date of Report

December 3, 2012

Recommended by

Hon. Judith Ashmann-Gerst
Hon. Harry E. Hull, Jr.
Hon. James E. Herman
Hon. Mary Ann O'Malley

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Executive Summary

Judicial Council members recommend that the council approve and direct the Administrative Director of the Courts to implement a policy for guiding AOC staff in responding to public requests for information/explanation and for judicial administrative records under rule 10.500 of the California Rules of Court. A formal policy is needed because the AOC has recently been receiving an increased number of requests that do not fall squarely within the bounds of rule 10.500. Adoption of the proposed policy and direction to the AOC to implement will ensure appropriate, consistent handling of all requests.

Recommendation

The four Judicial Council members presenting this report recommend that the council approve and adopt the attached AOC Staff Policy on and Procedures for Responding to Requests for Judicial Administrative Records and Information, effective immediately.

Previous Council Action

On December 15, 2009, the council took the following actions:

1. Adopted rules 10.500 and 10.501 of the California Rules of Court, which provide public access to nondeliberative and nonadjudicative judicial administrative records, effective January 1, 2010.
2. Adopted a fee structure to be imposed under subdivision (e)(4) of rule 10.500.
3. Approved a one-time allocation of \$1.5 million from the Trial Court Trust Fund to reimburse superior courts for specified expenses incurred between January 1, 2010, and December 31, 2011, in responding to requests for public access to judicial administrative records under rule 10.500 and as provided in the fee guidelines and procedures and guidelines issued by the Administrative Office of the Courts (AOC).
4. Adopted rule 10.501, which requires the maintenance of certain superior court budget and management information as set forth previously in rules 10.802(a) and 10.802(b).
5. Repealed rule 10.802, on maintenance of and public access to budget and management information, now superseded by rule 10.501.
6. Amended rule 10.803, on information access disputes, to reflect the adoption of rules 10.500 and 10.501.
7. Directed the Supreme Court, Courts of Appeal, superior courts, and AOC to maintain records on requests for public access to judicial administrative records and information, including the time, cost, and type of court resources spent in responding to requests received, as well as costs recovered.
8. Directed the AOC to report to the council by January 1, 2012, on the number of requests received by the branch, the time necessary to respond to these requests, the fees imposed by judicial branch entities for access to records and information, and the impact of rule 10.500 on both the public's access to records and information and on the judicial branch entities' ability to carry out and fund core judicial operations.

At the council's business meeting on October 28, 2011, the Chair of the Executive and Planning Committee reported that the committee had directed staff to strictly comply with the requirements of rule 10.500 and not to go beyond those requirements in responding to requests made under the rule.

On December 13, 2011, AOC staff presented an informational report to the council on the impact of rule 10.500, as directed by the council in December 2009.

Rationale for Recommendation

Recent increase in requests for information not contained in judicial administrative records

By its own terms, rule 10.500 only applies to requests for public access to "judicial administrative records," which the rule defines as "any writing containing information relating to the conduct of the people's business that is prepared, owned, used, or retained by a judicial

branch entity regardless of the writing's physical form or characteristics, except an adjudicative record,” but not “records of a personal nature that are not used in or do not relate to the people's business, such as personal notes, memoranda, electronic mail, calendar entries, and records of Internet use.” (Cal. Rules of Court, rule 10.500(c)(2).) Thus, while rule 10.500 applies to information, it is a specific subset of information, namely that which is contained in a judicial administrative record or records as defined under the rule.

When rule 10.500 went into effect in January 2010, the AOC adopted internal processes and procedures for responding to requests under the rule. Those processes and procedures did not, however, provide specific guidance to staff in addressing requests for information that is not contained in judicial administrative records. In the absence of such specific guidance, some AOC divisions handled requests for information not contained in judicial administrative records the same as requests for information contained in records. That is, if a request for information was made and staff believed that they could obtain and provide that information in the regular course of business—i.e., they would not have to create “new” information—then a response was provided. This approach was also consistent with general direction from the AOC Executive Office that staff should attempt to be as responsive as possible to inquiries from the public.

The desire to respond to every inquiry is a laudable goal. When taken in the context of the budget and staff reductions suffered by the AOC and other judicial branch entities over the past fiscal years, however, that goal must be reconsidered in light of the number of staff available and the most efficient and publicly responsible use of their time.

The Judicial Council addressed the issue to some extent in October 2011. At that time, the Executive and Planning Committee directed staff to comply strictly with the requirements of rule 10.500 and not to go beyond those requirements in responding to requests made under the rule. While that direction was helpful in limiting staff’s response to certain requests, it did not fully address the present issue in that it did not specifically direct staff how to respond to requests that fall outside of the rule, i.e., that ask for information not contained in judicial administrative records.

At the same time, both AOC staff and the council began to notice a significant increase in requests for the very type of information not covered by rule 10.500.¹ Actual examples of such requests, all of which were received from judicial officers, include the following:

¹ At the direction of the Interim Administrative Director of the Courts, in June and July of 2012 all AOC divisions tracked the time spent by their respective staffs on (a) requests for judicial administrative records under rule 10.500, (b) requests for information other than basic programmatic information, and (c) requests that were hybrids of (a) and (b) to some extent. Based on the data reported, in those two months AOC staff spent 734.7 hours on requests in the three categories listed above. Although the data collected at the time did not separate the hours reported by category type, AOC staff estimate that 45% of the time reported was spent on categories (b) and (c), i.e., requests that to one degree or another sought non-basic information that is not contained in judicial administrative records.

- “How much do [former AOC Judge-in-Residence Hon. Roger] Warren and [former AOC Judge-in-Residence Hon. Leonard] Edwards actually work? One week per month? Two weeks? I notice [Judge] Warren’s salary is now listed as about 1/2 what it was listed in 2009, but I’ve heard he works one day per month.”
- “Please give me . . . a brief explanation of why the AOC needs attorneys in China?”
- “Was there ever any raise, pay increase, pay modification, hourly wage increase or wage modification given to lessen, reduce or eliminate the true financial impact of furlough days on AOC employees?”
- “The Director of AOC [sic] is not a member of the Judicial Council and never has been. Why is the Director listed among the Council members [in the minutes from each Judicial Council meeting]?”

As is evident, a common theme of these sorts of requests is that they present “why” questions, seeking explanations or rationales for policy and process decisions. Such requests are problematic on a number of levels. First, they typically do not lend themselves to quick answers, i.e., by definition staff cannot respond simply by referring to a judicial administrative record. Rather, responses must always be prepared from scratch, often only after significant research has been done to ensure a complete answer. Further, and more importantly, these requests often call for justifications of particular high-level decisions, and it generally is not appropriate for staff to offer such responses. That is, these types of requests are more appropriately directed to the policymakers, not to the staff who implement the policy.

Interim process for handling requests for information not contained in judicial administrative records

At the same time the number of requests for information not contained in judicial administrative records was increasing, the AOC was continuing to downsize. In light of the number and complexity of the requests being received, the reduced level of AOC staff available to respond, and the general inappropriateness of staff providing policy justification–type responses, the Chief Justice, in approximately early August 2012, established an interim process for handling these requests. Under that process, staff were directed to continue responding to requests for judicial administrative records consistent with past practice and the council’s October 2011 directive re strictly construing the rule. If, however, a request in full or in part requested information not contained in a judicial administrative record, that portion of the request was to be referred to a member of the Judicial Council designated by the Chief Justice.² The Chief’s designee would then determine what response, if any, to make to the informational portion of the request. That interim process remains in effect, but was only intended to be a temporary solution until such time as the council could consider and approve a formal policy in this issue.

² The Chief’s initial and still current designee is Justice Harry E. Hull, Jr.

The now recommended policy and procedures to address the issue of requests for information not contained in judicial administrative records

The recommended policy and procedures both clarify and expand on the interim process put into place by the Chief Justice in August 2012. Initially, the authors of this report wanted to keep the processes as simple and streamlined as possible to make them clear and easily implementable by staff. The authors also wanted to recognize and address, as a threshold matter, that there are fundamentally four basic types of requests that the AOC may receive:

- Requests for judicial administrative records under rule 10.500;
- Requests for basic programmatic or policy information that is not contained in judicial administrative records;
- Requests of the nature described in detail above, i.e., for information that requires an explanation, discussion of policymaking, or is otherwise inappropriate for staff to answer; and
- Requests that are hybrids of the above types.

The members of the council who are recommending adoption of the attached policy and procedures recognize that AOC staff in all offices and divisions routinely and as a matter of course receive requests for basic information about their respective areas of expertise. It is entirely appropriate for staff to continue to respond to such requests in accord with the specific policies of their offices/divisions, as the recommended policy and procedures make clear. Thus, judicial officers, court personnel, judicial branch partners, and members of the public who rely on AOC staff for day-to-day program information will not be affected by the new policy and procedures.

As to “explanatory” information requests, the authors’ ultimate goal was to ensure that responses are provided when appropriate, by an appropriate responder. Thus, the recommended procedures provide that when a request of this nature is received, the first consideration should be who is making the request and for what purpose. If the requester is a judicial officer and the request is one that is being made in the regular course of judicial business—i.e., the request relates directly to the business of that judge’s courtroom—then a response will be made by appropriate staff, in consultation with a Judicial Council member or members appointed by the Chief Justice and the Director of the Court Operations Special Services Office.³ Likewise, if the requester is a member of a Judicial Council advisory committee, working group, task force, or the like and the request relates directly to the work of that advisory body, a response will be made.

The authors also recognize that requests from the media and from the executive and legislative branches often ask for explanatory information that may not be set forth in judicial administrative records. The recommended procedures ensure that such responses are handled

³ This is the AOC office that has also been charged with administering the agency’s responses to requests for judicial administrative records under rule 10.500.

appropriately by referring them to the AOC’s Office of Communications and Office of Governmental Affairs, respectively.

All other requests will still receive consideration and may, if appropriate as determined by the Chief’s Judicial Council appointee(s), be responded to.

Lastly, the proposed policy and procedures make it clear that upon a receipt of a “hybrid” request, staff are to make every effort to separate the request into component parts and respond accordingly. By doing so, it is the authors’ intent to maximize responsiveness and ensure that, e.g., the presence of an “explanatory” request as a part of a judicial administrative records request will not slow or impede staff in responding to the latter while the former is being considered.

Comments, Alternatives Considered, and Policy Implications

The recommended policy did not go out for comment.

The authors considered a more streamlined process under which the identity of the requester is not a consideration in determining the response. However, the authors believe that many such requests will be made by judicial officers within the regular scope of their judicial business or by members of Judicial Council advisory bodies, and thus wanted to ensure that such requests are handled as expeditiously as possible. Likewise, there was a concern that not specifically addressing requests by the media or by the other branches of government could lead to an inconsistency in the handling of those requests. Hence the ultimate decision was to provide specific processes for staff to follow as to each type of requester.

Adoption of the recommended policy and procedures will give much-needed direction to staff and help to ensure consistent handling and responses across the AOC. Further, the involvement of a Judicial Council appointee or appointees in responses to requests for “explanatory” information will ensure that when such responses are given, they are made by an appropriate person at an appropriate level. That is, staff will no longer be in the position of providing justifications for the policy decisions of the Judicial Council or its advisory bodies. Such an outcome is entirely consistent with the recommendations of the Strategic Evaluation Committee—recently adopted nearly in full by the Judicial Council—concerning the role of the AOC vis-à-vis the Judicial Council.

Implementation Requirements, Costs, and Operational Impacts

Implementation requirements are minimal; staff will need to be informed about the new procedures and there may be a need for some level of training—possibly through the development of FAQs—to ensure that staff understand and appropriately implement the new procedures. There will be no costs other than the staff time needed to carry out implementation as described above.

Operationally, the new procedures will ensure that staff stay focused on responding only to those requests (for judicial administrative records or information) that are appropriate for their response. That is, staff will no longer expend time attempting to respond to “explanatory” requests for information. Thus, the proposed policy and procedures will actually promote efficiencies and are likely to result in an overall savings of staff time that can be directed to other purposes.

Attachment

1. AOC Staff Policy on and Procedures for Responding to Requests for Judicial Administrative Records and Information

AOC STAFF POLICY ON AND PROCEDURES FOR RESPONDING TO REQUESTS FOR JUDICIAL ADMINISTRATIVE RECORDS AND INFORMATION

Policy Statement

In responding to public requests for judicial administrative records or for information not contained in judicial administrative records, staff follow consistent procedures as approved and directed by the Judicial Council.

Procedure

When AOC staff receives a request for records or information, they shall follow the process set forth below.

I. Identify the Type of Request

Requests will generally fall into four categories:

- Requests for judicial administrative records under rule 10.500 of the California Rules of Court
- Requests for basic programmatic or process information not embodied in judicial administrative records
- Requests for information that requires an explanation, discussion of policymaking, or is otherwise inappropriate for staff to answer
- Hybrid requests seeking both judicial administrative records and information

Once the type of request is identified, follow the process specified below for the particular type of request.

II. Responding to Requests for Judicial Administrative Records Under Rule 10.500

EXAMPLES:

- Please provide any and all documents related to the financing and/or lease terms of the under-construction Long Beach Courthouse between the AOC; Long Beach Judicial Partners, their entities, affiliates or successors; and/or the State of California.
- Please provide a copy of the report called “Surveying the Future: California’s Attitudes Toward the Court System” that was published by the Commission on the Future of California’s Courts.

Staff should handle these according to the AOC policy for responding to requests for judicial administrative records:

http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceList&ref_catid=46

III. Responding to Requests for Basic Programmatic or Process Information not Embodied in Judicial Administrative Records

EXAMPLES:

- How far in advance of his or her preferred starting date for serving on assignment should a retiring judge submit his or her application to the Assigned Judges Program?
- How long does it typically take to process a compensation claim for a panel attorney in the Court-Appointed Counsel Program?

Because the nature of the basic programmatic/process information will vary from Office to Office, staff should handle these according to the policy of their Office or Division.

IV. Responding to Requests for Information not Embodied in Judicial Administrative Records That Requires an Explanation, Discussion of Policymaking, or is Otherwise Inappropriate for Staff to Answer

EXAMPLES:

- Why was the decision made to implement the Voluntary Separation Incentive Program (VSIP) for AOC employees?
- Why are judicial officers not afforded priority treatment with respect to requests for records made under rule 10.500 of the California Rules of Court?

First, identify the requester according to the following five (5) categories and then respond accordingly:

- Judicial officers
- Members of Judicial Council advisory committees, task forces, and working groups
- Media
- Executive and legislative branch staff
- General public

A. Judicial officers

- Refer to Director of Court Operations Special Services Office, who will consult with Chief's appointee(s) to determine whether request is within the regular scope of judicial business
 - o If "yes," appropriate staff will be notified and should respond
 - o If "no," refer to Chief's appointee(s)

B. Members of Judicial Council committees, etc.

- Is request from or on behalf of committee chair?
 - o If "yes," respond
 - o If "no," continue below
- Refer to Director of Court Operations Special Services Office, who will consult with Chief's appointee(s) and/or committee chair to determine whether request is within the regular scope of committee business
 - o If "yes," appropriate staff will be notified and should respond
 - o If "no," refer to Chief's appointee(s)

C. Media

- Refer to Office of Communications for evaluation and response as appropriate

D. Executive and legislative staff

- Refer to Office of Governmental Affairs for evaluation and response as appropriate

E. General public

- If the request appears to presents a legitimate issue or otherwise be appropriate for response, refer to Director of Court Operations Special Services Office, who will consult with Chief's appointee(s) to determine whether to respond. Otherwise, a response is not necessary.

V. Responding to Hybrid Requests Seeking Both Judicial Administrative Records and Information

EXAMPLES:

- Please provide a list of every AOC employee whose compensation increased in FY 2011–12 and an explanation as to why each listed employee received his or her increase.
- It has been reported that, at a public meeting, the Administrative Director of the Courts said *X*. Please provide a transcript or audio recording of the Administrative Director’s complete remarks at that meeting and provide all facts on which the Administrative Director made the statement *X*.

Staff should make every effort to parse these as follows:

- To the extent the request seeks judicial administrative records, that portion of the request should be handled according to the AOC policy on rule 10.500:
http://intranet.jud.ca.gov/reference/index.cfm?pg=referenceList&ref_catid=46
- To the extent the request seeks information not contained in judicial administrative records, it should be handled as described in sections III and IV above.