

# Judicial Council of California

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## INVITATION TO COMMENT SP17-02

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| Title   | Action Requested                               |
| Judicial Council Administration: Rule for the Advisory Committee on Audits and Financial Accountability for the Judicial Branch | Review and submit comments by May 19, 2017     |
| Proposed Rules, Forms, Standards, or Statutes   | Proposed Effective Date                        |
| Amend Cal. Rules of Court, rule 10.63   | July 28, 2017                                  |
| Proposed by   | Contact  |
| Hon. Douglas P. Miller, Chair, Executive and Planning Committee   | Douglas P. Miller<br>douglasp.millerjud.ca.gov |
| Hon. Harry E. Hull, Jr., Chair, Rules and Projects Committee  |  |
| Hon. David M. Rubin, Chair, Judicial Branch Budget Committee and Litigation Management Committee                                |  |
| Hon. Marsha G. Slough Chair, Technology Committee   |  |
| Hon. Kenneth K. So, Chair, Policy Coordination and Liaison Committee  |  |

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### **Executive Summary and Origin**

The Internal Chairs of the Judicial Council recommend that rule 10.63 on an advisory committee be amended so that the committee may more effectively assist the Judicial Council in carrying out the goals of the judicial branch, particularly in the area of the management and oversight of fiscal affairs. One of the most important functions of government is to ensure that public funds are properly spent and accounted for. Rule 10.63 would be amended to more clearly prescribe the duties of the committee: the committee will assist the council in performing its responsibilities to ensure that the fiscal affairs of the judicial branch are managed efficiently, effectively, and transparently, and assist the council in performing its specific responsibilities relating to audits and contracting, as required by law and good public policy.

### **Background**

Rule 10.63 was adopted by the Judicial Council, effective February 21, 2014, to establish by rule the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

## **The Proposal**

This proposal would amend rule 10.63 so that the advisory committee can assist the council more effectively in implementing the goals of the judicial branch and assist the council in carrying out responsibilities under Government Code sections 77009 and 77206, part 2.5 of the Public Contract Code, and other applicable law.<sup>1</sup> The main proposed changes to the rule are described below.

### **Change in the title of the rule**

Rule 10.63 presently defines the title of the rule and the name of the committee as “Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch.” Under this proposal, the name would be changed to “Advisory Committee on Audits and Financial Accountability for the Judicial Branch.” Although the committee has the responsibility for reviewing and making recommendations regarding audits under the current rule (see Cal. Rules of Court, rule 10.63(b)(2)), the change of the committee’s name to include “Audits” in the title will highlight this function.

### **Purpose of the rule**

A new subdivision (a) on the purpose of the rule would be added. This subdivision emphasizes that one of the most important functions of government is to ensure that public funds are properly spent and accounted for. It explains how the rule, as amended, will assist the council in performing its responsibilities in carrying out this function.

### **Area of focus**

Similar to the change to the title, subdivision (b) on the “areas of focus” of the committee would be modified to emphasize that the committee will make recommendations to the council on *audits*.

### **Additional duties**

Subdivision (c)—formerly (b)—on the additional duties of the committee would be modified in several respects. For the most part, the committee’s duties would be expanded, though in a few instances they would be reduced (for example, where another body has assumed responsibility for the task).

First, former (b)(1) would be deleted in part and relocated in part. The rule currently provides that the committee must “[m]ake recommendations annually to the council concerning any budget change proposals for the funding of the Administrative Office of the Courts (AOC).” This provision is obsolete. The name “Administrative Office of the Courts” or “AOC” has been eliminated. Also, in 2016 the responsibility for making recommendations on budget change proposals (BCPs) was moved to the new Judicial Council–level Judicial Branch Budget

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<sup>1</sup> As discussed further below, the committee’s duty to assist the council in performing its responsibilities under these Government and Public Contract Codes sections is specified in new subdivision (c)(2) of the rule; other applicable law relating to the management of fiscal affairs and audits is identified in the expanded Advisory Committee Comment.

Committee (JBBC). Hence, the committee governed by rule 10.63 no longer has a role in the BCP process and the provision in rule 10.63 relating to BCPs should be deleted.

Another provision in former (b)(1) provides that the committee must make recommendations concerning “any proposed changes to the annual compensation plan for the AOC staff.” This provision has been updated to refer to “Judicial Council staff” and has been relocated to new subdivision (c)(4).

Second, former subdivision (b)(2) on audits has been renumbered as (c)(1) and modified. The former version gave the committee the responsibility to review audit reports, recommend council acceptance of those reports, and make recommendations on systematic issues. The amended rule would give the committee the responsibility to review and approve a yearly audit plan for the judicial branch that will ensure the adequacy and effectiveness of the judicial branch’s accounting, financial reporting, compliance, and internal control system; review all audit reports of the judicial branch; recommend council acceptance of action on audit reports that identify substantial issues; approve all other audit reports and post them publicly; and, where appropriate, make recommendations to the council on individual or systemic issues identified in audit reports.

Third, new subdivision (c)(2) would be added that gives the committee the additional duty to advise and assist the council in performing its responsibilities and exercising its authority under sections 77009 and 77206 of the Government Code and under part 2.5 of the Public Contract Code (the California Judicial Branch Contract Law). The narrower responsibility under former subdivision (b)(2) of the rule only to report on AOC contracts would be eliminated.

Fourth, the responsibility of the committee under former subdivision (b)(4) to review updates and revisions to the *Judicial Branch Contracting Manual* would be retained in relettered subdivision (c)(3), with the addition of a responsibility to “recommend” as well as “review” the updates and revisions.

### **Membership**

To enable the committee to better perform its responsibilities, the rule would be amended to provide that the committee “may include members with experience in public or judicial branch finance.” (Amended rule 10.63(d).) Also, the membership requirements would be modified to add “at least one nonvoting advisory member who has significant governmental auditing experience.” (Id.) These amendments are consistent with a recommendation by the California State Auditor that the committee should have more expertise in public judicial branch finance. The proposal would also add at least one appellate clerk/administrator to the membership.

### **Advisory Committee Comment**

To provide the public and persons affected by the rule with clear understanding of the purpose of the rule, the Advisory Committee Comment on the rule has been expanded. It explains that the purpose of the Advisory Committee on Audits and Financial Accountability for the Judicial

Branch is to advise and assist the council in performing its constitutional and statutory responsibilities relating to the fiscal affairs of the judicial branch. To improve the administration of the courts, Article VI, section 6 of the Constitution requires the council to survey judicial business and make recommendations. To ensure that the fiscal affairs of the courts are managed efficiently, effectively, and responsibly, Government Code section 77206 authorizes the council to regulate the fiscal management of the courts and provides for audits of the courts and the Judicial Council staff by the council, its representatives, and other entities. Government Code section 77009(h) provides that the Judicial Council or its representatives may perform audits, reviews, and investigations of superior court operations and records wherever they may be located. The Public Contract Code provides that the council shall publish a Judicial Branch Contracting Manual (Pub. Contract Code, section 19206). It also provides that the California State Auditor, subject to appropriations, shall biennially identify and audit five or more judicial branch entities to assess the implementation of the California Judicial Branch Contract Law (JBCL) (Pub. Contract Code, section 19210(a)–(b)) and shall biennially conduct audits of the Judicial Council staff to assess the implementation of, and compliance with, the JBCL (Pub. Contract Code, section 19210(c)).

### **Alternatives Considered**

Rule 10.63 could have been left unchanged or amended to make only necessary technical corrections. But because of the high priority that the Judicial Council gives to protecting public funds and to exercising its fiscal responsibilities over judicial branch financial affairs, the amendments to the rule described in this invitation to comment are being proposed. These changes will make the committee more effective and help the council to have a structured approach to meeting its fiscal responsibilities.

### **Implementation Requirements, Costs, and Operational Impacts**

The amendments to the rule will require some changes in the focus and work of the committee. Also, an additional members will need to be recruited with expertise in governmental auditing and with appellate court administrative experience. Although these changes will require some additional resources, the benefits to the council in terms of receiving better assistance in performing its fiscal responsibilities should outweigh the costs.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

### **Attachments**

Amended rule 10.63, at pages 5–7

Rule 10.63 of the California Rules of Court would be amended, effective July 28, 2017 to read:

1 **Rule 10.63. Advisory Committee on Audits and Financial Accountability and**  
2 **Efficiency for the Judicial Branch**

3  
4 **(a) Purpose of the rule**

5  
6 One of the most important functions of government is to ensure that public funds  
7 are properly spent and accounted for. This committee will advise and assist the  
8 council in performing its responsibilities to ensure that the fiscal affairs of the  
9 judicial branch are managed efficiently, effectively, and transparently, and assist  
10 the council in performing its specific responsibilities relating to audits and  
11 contracting, as required by law and good public policy.

12  
13 **(a)(b) Area of focus**

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15 The committee makes recommendations to the council on audits and practices that  
16 will promote financial accountability and efficiency in the judicial branch.

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18 **(b)(c) Additional duties**

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20 In addition to the duties specified in rule 10.34, the committee must:

- 21  
22 ~~(1) Make recommendations annually to the council concerning any budget~~  
23 ~~change proposals for funding of the Administrative Office of the Courts~~  
24 ~~(AOC) and any proposed changes to the annual compensation plan for the~~  
25 ~~AOC staff;~~  
26  
27 ~~(2)~~(1) Review and approve a yearly audit plan for the judicial branch that will  
28 ensure the adequacy and effectiveness of the judicial branch's accounting,  
29 financial reporting, compliance, and internal control system; review all audit  
30 reports of the judicial branch; recommend council acceptance of action on  
31 audit reports that identify substantial issues; approve all other audit reports  
32 and post them publicly; and, where appropriate, make recommendations to  
33 the council on individual or systemic issues identified in audit reports;  
34  
35 (2) Advise and assist the council in performing its responsibilities and exercising  
36 its authority under sections 77009 and 77206 of the Government Code and  
37 under part 2.5 of the Public Contract Code (the California Judicial Branch  
38 Contract Law);  
39  
40 ~~(3) Report to the council on AOC contracts that meet established criteria to~~  
41 ~~ensure that he contracts are in support of judicial branch policy; and~~  
42



1 judicial branch entities to assess the implementation of the California Judicial Branch Contract  
2 Law (JBCL) (Pub. Contract Code, section 19210(a)–(b)) and shall biennially conduct audits of  
3 the Judicial Council staff to assess the implementation of, and compliance with, the JBCL (Pub.  
4 Contract Code, section 19210(c)).~~promote transparency, accountability, efficiency, and~~  
5 ~~understanding of the AOC and the judicial branch. The advisory committee fosters the best use of~~  
6 ~~the work, information, and recommendations provided by the AOC, and it promotes increased~~  
7 ~~understanding of the AOC’s mission, responsibilities, accomplishments, and challenges.~~