



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27, 2015

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Title	Agenda Item Type
Trial Court Management: Public Access to Administrative Decisions of Trial Courts	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Rule 10.620	January 1, 2016
Recommended by	Date of Report
Trial Court Presiding Judges Advisory Committee	August 18, 2015
Hon. Marsha G. Slough, Chair	Contact
Court Executives Advisory Committee	Claudia Ortega, 415-865-7623
Ms. Mary Beth Todd, Chair	<a href="mailto:claudia.ortega@jud.ca.gov">claudia.ortega@jud.ca.gov</a>
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### Executive Summary

The Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) recommend the amendment of California Rules of Court, rule 10.620, to repeal the provisions of that rule that apply its requirements for public notice to the decisions of trial courts to close court facilities or reduce the hours of a court location, as these provisions are inconsistent with statutory requirements.

Rule 10.620 addresses public access to certain administrative decisions made by trial courts. It sets forth requirements for trial courts to provide public notice, and seek public input, regarding budget recommendations made by trial courts to Judicial Council and specified administrative decisions. The decisions subject to public notice and comment requirements include any decision to close or reduce the hours of a court location. (Cal. Rules of Court, rule 10.620(d)(3).)

Amendments to Government Code section 68106, which took effect on January 1, 2012, created new requirements for public notice and comment when trial courts decide to close court facilities or reduce hours. These requirements are inconsistent with the requirements of rule 10.620, and trial courts have faced confusion in determining how notice is to be provided. The TCPJAC and CEAC recommend amending the rule to repeal those provisions that are inconsistent with Gov. Code section 68106, leaving the statute as the sole governing authority regarding notice where it is applicable.

## **Recommendation**

The TCPJAC and CEAC recommend that the Judicial Council:

1. Amend subdivision (b) of rule 10.620 to update two references to the Administrative Office of the Courts to refer instead to the Administrative Director in one instance and the Judicial Council in the other;
2. Amend subdivision (d) of rule 10.620 to change the reference to the Administrative Office of the Courts in paragraph (1) to refer instead to **Judicial Council staff**, and to repeal paragraph (3), which requires courts to seek public input regarding court closures and reductions in service; and
3. Repeal paragraph (5) of subdivision (f) of rule 10.620, which applies the public notice requirements of rule 10.620 to court closures or reductions in service.
4. **Add an Advisory Committee Comment noting that the provisions of rule 10.620 do not apply where statutes specify another procedure for giving public notice and allowing public input.**

The text of the proposed amended rule is attached at pages \_\_\_-\_\_\_.

## **Previous Council Action**

Rule 10.620 was adopted in 2004 (as Rule 6.620) pursuant to Government Code section 68511.6, which requires that Judicial Council adopt rules providing for public notice and an opportunity to comment regarding trial court administrative and financial decisions.

## **Rationale for Recommendation**

When rule 10.620 was adopted in 2004, it put in place requirements for public notification and public input regarding trial court administrative decisions, including decisions to close court facilities or to reduce service hours. Government Code section 68106 then took effect in 2010, putting in place specific requirements for public notice and opportunity to comment on decisions to close courtrooms, or to close or reduce the hours of clerks' offices.

Under the previous language of section 68106, subsection (b), sixty day advance written public notice was required before closing any courtroom or closing or reducing the hours of a clerks'

office. To reconcile the requirements of the statute and of the rule, some courts used a two-step notice procedure. A first notice would be issued, pursuant to the rule, fifteen court days before the decision was made, with public comment invited. Then, pursuant to the statute, another notice would be provided sixty days before the decision was implemented, but no further public comment would be solicited.

Section 68106 was amended effective January 1, 2012, to add the following requirements: 1) that notice be given “by electronic distribution to individuals who have subscribed to the court’s electronic distribution service ...” (subd. (b)(1)); 2) that the notice include “information on how the public may provide written comments during the 60-day period on the court’s plan ....” (subd. (b)(2)(A)); 3) that the court “review and consider all public comments received” (ibid.); and 4) that the court “immediately provide notice to the public,” if it changes its plans during the comment period (ibid.).

The existing notice requirements of rule 10.620, as applied to court closures and reduction of hours, are inconsistent with these new provisions of section 68106. In particular, rule 10.620 requires that public notice be given at least fifteen court days before a decision is made, including a decision to close or significantly reduce the hours of a court location, and that public comment be allowed within that notice period. The rule further requires that a second public notice be given of such closures or service reductions within fifteen court days after the action is taken. By contrast, Government Code section 68106 now requires public notice to be provided no less than sixty days before a courtroom is closed or a clerks’ office closed or its hours reduced, with the public comment period running concurrent with the notice period. Courts have continued to struggle with the question of how to provide notice due to the inconsistency of rule 10.620 with the new statutory requirements.

Trial court leadership have conveyed to members of both the TCPJAC and CEAC that the existing inconsistency between the rule and the statute has led to difficulty in determining how to provide notice and an opportunity to comment on court closures or reductions in service. A number of trial courts have asked Judicial Council’s Legal Services Office for guidance regarding the notice requirements. Other courts, unaware of the statutory changes and resulting conflict, have mistakenly followed the now superseded requirements of the rule rather than the new statutory requirements.

With the repeal of subdivisions (d)(3) and (f)(5), rule 10.620 would no longer apply to notice of court closures or reductions in service. Notice of such decisions would be subject solely to the statutory requirements of Government Code section 68106, eliminating any confusion over how to provide for public notice and comment.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments**

An Invitation to Comment on this proposal was circulated for public comment from April 17, 2015 to June 17, 2015. Four comments were received. Two support the proposed amendments and two support the amendments but suggest modification.

Both the Superior Court of Riverside County and the State Bar of California's Standing Committee on the Delivery of Legal Services raise issues regarding the proposed language of subdivision (g)(3), requiring that notices under the rule be posted "within or about court facilities" rather than, under the existing language, "at all locations of the court that accept papers for filing." The Riverside County Court suggests that language be added to the proposed language of (g)(3) such that notice would be required to be posted "within or about court facilities that are open to the public."

The State Bar Standing Committee on the Delivery of Legal Services (SCDLS) elaborates further on the issues raised by the proposed change to subdivision (g)(3). SCDLS notes that the existing requirements for posting notice are more likely to result in notices being seen by self-represented litigants, as those litigants must at times come to those locations to file their documents. SCDLS further comments that these self-represented litigants are the people who will be hit hardest if they do not get notice of a reduction in service or a court closure, as they may have to take multiple days of work to file court documents. SCDLS also notes that the existing language of subdivision (g)(3) does not conflict with Gov. Code section 68106, so no change is necessary.

The TCPJAC and CEAC, upon consideration of these comments, recommend that the change to subdivision (g)(3) of rule 10.620 be dropped from the proposed amendments. The TCPJAC and CEAC agree with SCDLS that the existing language of section (g)(3) better ensures that litigants, including self-represented litigants, will receive notice of a trial court's proposed and completed administrative decisions. The TCPJAC and CEAC also note that if the remaining proposed changes to rule 10.620 are adopted, the rule will no longer apply the posting of notice of the decisions covered under Government Code section 68106. The requirements for posting public notice for these decisions governed by the rule therefore need not be identical to the Government Code requirements for posting of notice of court closures or service reductions.

TCPJAC and CEAC therefore recommend that the rule be amended as proposed except that section (g)(3) should remain unchanged.

### **Alternatives Considered**

The committees considered amending the rule to conform the notice and comment requirements regarding court closures and service reductions to the requirements of Government Code section 68106. The committees concluded that such amendment would require significant revision of the rule to leave existing notice and comment requirements in place for the other types of

decisions covered under the rule while creating new specially applicable provisions for court closures and service reductions. The end result, however, would be the same as is accomplished by the simpler alternative of repealing subdivisions (d)(3) and (f)(5). Moreover, rewriting the rule to conform to the statute runs the risk of the statute once again being amended, leaving courts facing inconsistent requirements yet again.

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

The repeal of subdivisions (d)(3) and (f)(5) should have a positive operational impact on the trial courts, as they will no longer face conflicting requirements for public notice and comment regarding court closures and service reductions. There is a potential cost savings as courts will no longer have to give the two-step notification previously required to comply with both the statute and the rule.

### **Attachments and Links**

1. Cal. Rules of Court, rule 10.620, at pages \_\_\_-\_\_\_
2. Chart of comments, at pages \_\_\_-\_\_\_

Rule 10.620 of the California Rules of Court is amended, effective January 1, 2016, to read:

1 **Rule 10.620. Public access to administrative decisions of trial courts**

2  
3 **(a) Interpretation**

4  
5 The provisions of this rule concern public access to administrative decisions by trial courts  
6 as provided in this rule. This rule does not modify existing law regarding public access to  
7 the judicial deliberative process and does not apply to the adjudicative functions of the trial  
8 courts or the assignment of judges.  
9

10 **(b) Budget priorities**

11  
12 The ~~Administrative-Director-Office-of-the-Courts~~ may request, on 30 court days' notice,  
13 recommendations from the trial courts concerning judicial branch budget priorities. The  
14 notice must state that if a trial court is to make recommendations, the trial court must also  
15 give notice, as provided in (g), that interested members of the public may send input to the  
16 Judicial Council~~Administrative Office of the Courts~~.  
17

18 **(c) Budget requests**

19  
20 Before making recommendations, if any, to the Judicial Council on items to be included in  
21 the judicial branch budget that is submitted annually to the Governor and the Legislature, a  
22 trial court must seek input from the public, as provided in (e), on what should be included  
23 in the recommendations.  
24

25 **(d) Other decisions requiring public input**

26  
27 Each trial court must seek input from the public, as provided in (e), before making the  
28 following decisions:  
29

30 (1) A request for permission from the Judicial Council staff ~~Administrative Office of the~~  
31 ~~Courts~~ to reallocate budget funds from one program component to another in an  
32 amount greater than \$400,000 or 10 percent of the total trial court budget, whichever  
33 is greater.  
34

35 (2) The execution of a contract without competitive bidding in an amount greater than  
36 \$400,000 or 10 percent of the total trial court budget, whichever is greater. This  
37 subdivision does not apply to a contract entered into between a court and a county  
38 that is provided for by statute.  
39

40 (3) ~~The planned, permanent closure of any court location for an entire day or for more~~  
41 ~~than one-third of the hours the court location was previously open for either court~~  
42 ~~sessions or filing of papers. As used in this subdivision, planned closure does not~~

1 ~~include closure of a location on a temporary basis for reasons including holidays,~~  
2 ~~illness, or other unforeseen lack of personnel, or public safety.~~

3  
4 (4)—The cessation of any of the following services at a court location:

5  
6 (A) The Family Law Facilitator; or

7  
8 (B) The Family Law Information Center.

9  
10 **(e) Manner of seeking public input**

11  
12 When a trial court is required to seek public input under this rule, it must provide public  
13 notice of the request at least 15 court days before the date on which the decision is to be  
14 made or the action is to be taken. Notice must be given as provided in (g). Any interested  
15 person or entity who wishes to comment must send the comment to the court in writing or  
16 electronically unless the court requires that all public comment be sent either by e-mail or  
17 through a response system on the court’s Web site. For good cause, in the event an urgent  
18 action is required, a trial court may take immediate action if it (1) gives notice of the action  
19 as provided in (f), (2) states the reasons for urgency, and (3) gives any public input  
20 received to the person or entity making the decision.

21  
22 **(f) Information about other trial court administrative matters**

23  
24 A trial court must provide notice, not later than 15 court days after the event, of the  
25 following:

26  
27 (1) Receipt of the annual allocation of the trial court budget from the Judicial Council  
28 after enactment of the Budget Act.

29  
30 (2) The awarding of a grant to the trial court that exceeds the greater of \$400,000 or 10  
31 percent of the total trial court budget.

32  
33 (3) The solicitation of proposals or the execution of a contract that exceeds the greater of  
34 \$400,000 or 10 percent of the trial court budget.

35  
36 (4) A significant permanent increase in the number of hours that a court location is open  
37 during any day for either court sessions or filing of papers. As used in this paragraph,  
38 a significant increase does not include an emergency or one-time need to increase  
39 hours.

40  
41 (5) ~~A significant permanent decrease in the number of hours that a court location is open~~  
42 ~~during any day for either court sessions or filing of papers, except those governed by~~  
43 ~~(d)(3). As used in this paragraph, a significant decrease does not include a decrease~~

1           ~~in response to an emergency need to close a location on a temporary basis for~~  
2           ~~reasons including illness or other unforeseen lack of personnel or public safety.~~

3  
4       (6)—The action taken on any item for which input from the public was required under (d).  
5           The notice must show the person or persons who made the decision and a summary  
6           of the written and e-mail input received.

7  
8       **(g) Notice**

9  
10       When notice is required to be given by this rule, it must be given in the following ways:

- 11  
12       (1) Posted on the trial court’s Web site, if any.  
13  
14       (2) Sent to any of the following persons or entities—subject to the requirements of (h)—  
15       who have requested in writing or by electronic mail to the court executive officer to  
16       receive such notice:  
17  
18           (A) A newspaper, radio station, and television station in the county;  
19  
20           (B) The president of a local or specialty bar association in the county;  
21  
22           (C) Representatives of a trial court employees organization;  
23  
24           (D) The district attorney, public defender, and county counsel;  
25  
26           (E) The county administrative officer; and  
27  
28           (F) If the court is sending notice electronically using the provisions of (h), any  
29           other person or entity that submits an electronic mail address to which the  
30           notice will be sent.  
31  
32       (3) Posted at all locations of the court that accept papers for filing.

33  
34       **(h) Electronic notice**

35  
36       A trial court may require a person or entity that is otherwise entitled to receive notice under  
37       (g)(2) to submit an electronic mail address to which the notice will be sent.  
38

39       **(i) Materials**

40  
41       When a trial court is required to seek public input under (b), (c), or (d), it must also provide  
42       for public viewing at one or more locations in the county of any written factual materials  
43       that have been specifically gathered or prepared for the review at the time of making the



1 decision of the person or entity making the decision. This subdivision does not require the  
2 disclosure of materials that are otherwise exempt from disclosure or would be exempt from  
3 disclosure under the state Public Records Act (beginning with Government Code section  
4 6250). The materials must be mailed or otherwise be made available not less than five  
5 court days before the decision is to be made except if the request is made within the five  
6 court days before the decision is to be made, the materials must be mailed or otherwise be  
7 made available the next court day after the request is made. A court must either (1) provide  
8 copies to a person or entity that requests copies of these materials in writing or by  
9 electronic mail to the executive officer of the court or other person designated by the  
10 executive office in the notice, if the requesting person or entity pays all mailing and  
11 copying costs as determined by any mailing and copy cost recovery policies established by  
12 the trial court, or (2) make all materials available electronically either on its Web site or by  
13 e-mail. This subdivision does not require the trial court to prepare reports. A person  
14 seeking documents may request the court to hold the material for pickup by that person  
15 instead of mailing.

16  
17 **(j) Other requirements**

18  
19 This rule does not affect any other obligations of the trial court including any obligation to  
20 meet and confer with designated employee representatives. This rule does not change the  
21 procedures a court must otherwise follow in entering into a contract or change the types of  
22 matters for which a court may contract.

23  
24 **(k) Enforcement**

25  
26 This rule may be enforced under Code of Civil Procedure section 1085.

27  
28 **Advisory Committee Comment**

29  
30 **The procedures required under this rule do not apply where statutes specify another procedure for giving**  
31 **public notice and allowing public input. (See, e.g., Gov. Code, § 68106 [notice of reduced court services];**  
32 **id., § 68511.7 [notice of proposed court budget plan].)**

**SPR15-30****Trial Court Management: Public Access to Administrative Decisions of Trial Courts** (amend rule 10.620)

All comments are verbatim unless indicated by an asterisk (\*). List by alpha.

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>[Proposed] Committee Response</b>
1.	Superior Court of Riverside County Marita Ford, Public Information Officer	AM	Agree with modification. Suggested change to section (g) <i>Notice</i> (3), “Posted within or about court facilities that are <u>open to the public.</u> ”	<p>The proposed change to rule 10.620, section (g)(3) regarding the locations where notices are to be posted was intended to make the language of the rule consistent with Government Code section 68106 which sets forth the requirements for public notice when a trial court decides to close court facilities or reduce hours. However, two commentators suggest that the proposed new language is not sufficiently specific.</p> <p>TCPJAC and CEAC note that if the remaining proposed changes to rule 10.620 are adopted, the rule will no longer apply to the decisions covered under Government Code section 68106: the Government Code provisions will apply to court closures and reductions in service, and the rule will apply to other administrative decisions of trial courts, such as budget decisions. The requirements for posting public notice for these decisions governed by the rule therefore need not be identical to the Government Code requirements for posting of notice of court closures or service reductions. TCPJAC and CEAC therefore recommend that the rule be amended as proposed except that section (g)(3) should remain unchanged.</p>
2.	Orange County Bar Association Ashleigh Aitken, President	A	Conforms Cal. Rule of Court, Rule 10.620 where inconsistent with Government Code § 68106; statute will be sole authority as to	The commentator’s support for the proposal is noted.

**SPR15-30**

**Trial Court Management: Public Access to Administrative Decisions of Trial Courts** (amend rule 10.620)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>[Proposed] Committee Response</b>
			notices where applicable. Inconsistency and confusion will be curtailed.	
3.	Superior Court of San Diego County Mike Roddy, CourtExecutive Officer	A	No additional comments.	The commentator’s support for the proposal is noted.
4.	State Bar Standing Committee on the Delivery of Legal Services Maria C. Livingston, Chair	AM	<p><i>(Agree with proposal if modified)</i></p> <p>The bulk of the proposal is necessary to conform to existing law that expands the notice and comment period for court closures and reduction in hours. The proposal improves the opportunity for litigants and other interested parties to comment on how the changes would impact their ability to access the courts. However, the revised language of Rule 10.620(g)(3) is vague. In practice, this new language could result in notices being posted almost anywhere which could mean the stakeholders this proposal was intended to help failing to receive notices of the administrative changes.</p> <p><b>Specific Comments</b></p> <p><u>Does the proposal appropriately address the stated purpose?</u></p> <p>Generally, yes. This proposal is intended to</p>	<p>The proposed change to rule 10.620, section (g)(3) regarding the locations where notices are to be posted was intended to make the language of the rule consistent with Government Code section 68106 which sets forth the requirements for public notice when a trial court decides to close court facilities or reduce hours. However, two commentators suggest that the proposed new language is not sufficiently specific.</p> <p>TCPJAC and CEAC note that if the remaining proposed changes to rule 10.620 are adopted, the rule will no longer apply to the decisions covered under Government Code section 68106: the Government Code provisions will apply to court closures and reductions in service, and the rule will apply to other administrative decisions of trial courts, such as budget decisions. The requirements for posting public notice for these decisions governed by the rule therefore need not be identical to the Government Code requirements for posting of notice of court closures or service reductions. TCPJAC and</p>

**SPR15-30**

**Trial Court Management: Public Access to Administrative Decisions of Trial Courts** (amend rule 10.620)

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	Commentator	Position	Comment	<b>[Proposed]</b> Committee Response
			<p>bring Cal. Rules of Court, rule 10.620 regarding advance notice of administrative decisions closing courts or limiting their hours and seeking public comment on those changes into conformity with Government Code section 68106. The change is necessary and beneficial to the public, in that Section 68106 provides more time (60 days) for notice and comments than does Rule 10.620 (15 days).</p> <p>However, the proposed change to Rule 10.620(g)(3) may be counter-productive in part. Section 68106 provides that notices must be “Posted within or about court facilities” in addition to the methods of notice provided for in Rule 10.620(g)(1) and (2). Rule 10.620(g)(3) currently reads that all such notices must be “Posted at all locations of the court that accept papers for filing.” SCDLS does not feel that the existing language of Rule 10.620(g)(3) conflicts with Section 68106, so no change to the rule is required. Moreover, compliance with the existing rule seems more likely to result in notices actually being seen by self-represented litigants if the notices are posted where they will file documents. SCDLS also notes that low and moderate income self-represented litigants may be hardest hit by these</p>	CEAC therefore recommend that the rule be amended as proposed except that section (g)(3) should remain unchanged.

**SPR15-30****Trial Court Management: Public Access to Administrative Decisions of Trial Courts** (amend rule 10.620)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>[Proposed] Committee Response</b>
			changes as they may have to take off multiple days of work, possibly without pay, to file court documents if they are unaware of court closures or reduced hours.	