INVITATION TO COMMENT

Title:
Proposed New Rule 9.81 of the California Rules of Court Governing the Supreme Court Advisory Committee on the Code of Judicial Ethics

Action Requested:
Review and submit comments by Friday, April 24, 2026

Proposed Effective Date:
June 1, 2026

Contact:
E-mail all comments to:
Rule_9.81_Comments@jud.ca.gov

SUMMARY

The California Supreme Court seeks comments on proposed new rule 9.81 of the California Rules of Court.[1] Proposed rule 9.81 would govern the composition, duties, and procedures of the Supreme Court Advisory Committee on the Code of Judicial Ethics (committee). The committee considers and offers the court recommendations regarding possible amendments to the California Code of Judicial Ethics and its commentary. Various iterations of the committee have existed since 1995, but unlike other court advisory bodies, the committee is not governed by a rule of court specifying its mandate, composition, membership terms, and leadership. The proposed rule would address these subjects and the committee's procedures for making recommendations to the court.

[1] All subsequent rule references are to the California Rules of Court.

The proposed rule is attached as an appendix to this invitation to comment.[2] To ensure its timely consideration, all comments must be emailed to the court at Rule_9.81_Comments@jud.ca.gov no later than Friday, April 24, 2026. Comments so received will be a matter of public record.

DISCUSSION

In 1995, the Supreme Court established the Advisory Committee on Judicial Ethics. The committee's initial purpose was to advise the court in adopting the first iteration of the California Code of Judicial Ethics. After the committee completed its work in 1996, it was disbanded. Between 1997 and 2002, the court reconstituted the committee on an ad hoc basis to consider various proposed amendments to the Code of Judicial Ethics and its commentary. In 2002, the committee was again reconstituted as the "Advisory Committee on the Code of Judicial Ethics."

This iteration of the committee became a permanent advisory body, and it offered the court recommendations regarding possible amendments to the Code of Judicial Ethics and its commentary. Since 2002, based on the committee's recommendations, the court has amended the Code of Judicial Ethics and its commentary over a dozen times, with the most recent amendments occurring on July 1, 2020.

From 2004 to 2022, the nine-member committee was chaired by the late Justice Richard Fybel of the Court of Appeal, Fourth District, Division Three. The committee is currently chaired by Justice Marla J. Miller of the First Appellate District, Division Two.

At present, the committee is the court's only permanent advisory body that is not governed by a rule of court. (Cf. rules 9.11 [governing the Applicant Evaluation and Nomination Committee, which recommends appointments to the State Bar Court], 9.80 [governing the Supreme Court Committee on Judicial Ethics Opinions (CJEO)], and 9.90 [governing the State Bar Trustees Nominating Committee, which recommends appointments to the State Bar Board of Trustees].) As a result, the committee does not operate under any formal charge or mandate by the court that would define its powers, duties, and procedures, and the necessary qualifications for membership.

For these reasons, the court is considering the creation of a new rule of court to govern the committee's composition, duties, and procedures. This new rule would be designated rule 9.81 and placed in Division 6 (Judicial Ethics Opinions) of Title Nine of the California Rules of Court, following the rule governing the CJEO.

The proposed rule would include the following provisions, directions, and limitations:

- The committee's purpose is "to consider and recommend to the Supreme Court amendments to the Code of Judicial Ethics and its commentary."

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[2] The fact that the court is soliciting public comment on a proposed new rule should not be understood as conveying the court's endorsement of the proposed rule.

- The committee would operate independently from the Commission on Judicial Performance and the CJEO, but it must consider requests from the Supreme Court regarding possible amendments to the ethics code and its commentary.
- The Supreme Court would appoint the committee's nine members, at least three of whom must be Court of Appeal justices, with the other members all being superior court judges.
- No more than two retired judges or justices may serve on the committee at any time, but the Supreme Court may approve exceptions to this limitation.
- Retired judicial officers who are engaged in private dispute resolution or have active State Bar licenses would be ineligible to serve.
- Members would be appointed for a four-year term with no term limits, but, concerning any reappointment, "renewal of the term is not a presumption."
- To ensure a degree of continuity in the committee's membership, the court's initial appointments would have staggered terms of either two, three, or four years.
- The Supreme Court would select the committee's chair and vice-chair.
- The committee would need to first seek the Supreme Court's approval before soliciting public comment on any proposed amendments to the Code of Judicial Ethics or its commentary.
- Any public comment period, unless directed otherwise by the Supreme Court, would last at least 45 days, and any comments received by the committee would be kept confidential "in order to encourage honest and constructive feedback from a broad spectrum of perspectives."
- The committee would be required to meet at least once a year to consider potential amendments to the Code of Judicial Ethics and its commentary.
- The proposal would retitle Division 6 from "Judicial Ethics Opinions" to "Judicial Ethics." At present, the only rule in Division 6 is rule 9.80, which governs the CJEO and its procedures for producing ethics opinions, so the addition of new rule 9.81 to Division 6 would require a title change.

Following the 45-day comment period, the court will consider the comments received, decide whether to adopt the proposed rule, and, if so, whether to make any further revisions to the rule before its adoption. If adopted by the court, the new rule could take effect as early as June 1, 2026.

CONCLUSION

The court would appreciate any comments regarding proposed rule 9.81.

APPENDIX:
PROPOSED RULE 9.81 OF THE CALIFORNIA RULES OF COURT

Division 6. Judicial Ethics ~~Opinions~~

Rule 9.81. Supreme Court Advisory Committee on the Code of Judicial Ethics

(a) Purpose

The Supreme Court has established the Advisory Committee on the Code of Judicial Ethics to consider and recommend to the Supreme Court amendments to the Code of Judicial Ethics and its commentary.

(b) Committee recommendations

In providing its recommendations to the Supreme Court, the committee acts independently of the Commission on Judicial Performance, the Committee on Judicial Ethics Opinions, and all other entities.

(c) Membership

The committee consists of nine members appointed by the Supreme Court. At least three members must be justices of the Courts of Appeal, with the remaining members being judges of the superior courts. Unless otherwise requested by the committee chair and approved by the Supreme Court, no more than a total of two retired justices or judges may serve on the committee at one time, except that if an active justice or judge retires before the expiration of the member's term, the member will be permitted to complete that term. A retired justice or judge who becomes an active licensee of the State Bar of California or is engaged in privately compensated dispute resolution activities is not eligible to serve on the committee.

(d) Terms

(1) Except as provided in (d)(2), all full terms are for four years. Appointments to fill a vacancy will be for the balance of the term vacated.

(2) To create staggered terms among the members of the committee, the Supreme Court will in 2026 appoint members of the committee as follows:

(A) Three members each to serve an initial term of four years. The court may reappoint these members to subsequent four-year terms.

(B) Three members each to serve an initial term of three years. The court may reappoint these members to subsequent four-year terms.

(C) Three members each to serve an initial term of two years. The court may reappoint these members to subsequent four-year terms.

(e) Chair and vice-chair

The Supreme Court will initially appoint a chair and vice-chair from the members of the committee to serve a term consistent with the terms provided by (d)(2) of this rule. Thereafter, a chair and the vice-chair will each be reappointed or appointed by the Supreme Court to a four-year term. The chair may call meetings as needed and otherwise coordinate the work of the committee. If the chair is unavailable, the vice-chair shall assume the duties of the chair.

(f) Powers and duties

Upon the request of the Supreme Court or on its own initiative, the committee may consider and propose amendments to the Code of Judicial Ethics or its commentary and submit recommendations to the Supreme Court for consideration. Specifically, the committee is authorized to:

(1) Make recommendations to the Supreme Court for amending the Code of Judicial Ethics, its commentary, or these rules; and

(2) Make other recommendations to the Supreme Court as deemed appropriate by the committee or as requested by the court.

(g) Procedures

(1) Prior to issuing any recommendation, the committee must first draft a proposal and seek approval from the Supreme Court on whether to solicit public comment on the proposal. Any approved public comment period shall last at least 45 days, unless directed otherwise by the Supreme Court. After the public comment period has expired, the committee must consider all submitted comments and, in light of those comments, decide whether to modify or withdraw its original proposal.

(2) Because the Code of Judicial Ethics addresses sensitive subjects that are often informed by actual experiences, any comments received by the committee under (g)(1) of this rule will be deemed confidential. Preserving the confidentiality of these comments is necessary in order to encourage candid and constructive feedback from a broad spectrum of perspectives and will generally outweigh the necessity for their disclosure in the interests of justice.

(3) In any final recommendations submitted to the Supreme Court, the views of any dissenting committee members must be presented.

(4) The committee shall meet at least once every calendar year to consider, on its own initiative, whether to consider and propose amendments to the Code of Judicial Ethics or its commentary.