



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-158

For business meeting November 12-13, 2020

Title

Judicial Branch Education: Temporary Extension and Reduction of Requirements; Define “Instructor-Led Training”

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rules 10.492, 10.493

Recommended by

Center for Judicial Education and Research
Advisory Committee
Hon. Kimberly A. Gaab, Chair

Agenda Item Type

Action Required

Effective Date

January 1, 2021

Date of Report

September 21, 2020

Contact

Karene Alvarado, 415-865-7761
karene.alvarado@jud.ca.gov

Executive Summary

The Center for Judicial Education and Research (CJER) Advisory Committee recommends adopting two rules of the California Rules of Court relating to branch-wide education. The first would grant a temporary extension for all content-based education requirements and a prorated reduction of all hours-based education requirements contained within existing rules. The second would allow “instructor-led training”—including live webinars—to satisfy the provisions in the rules that require “traditional (live, face-to-face)” or “in person” training. Both provisions are necessary due to the state of emergency related to the COVID-19 pandemic which has forced CJER and other approved education providers to postpone or cancel live, in-person education since mid-March 2020.

Recommendation

The Center for Judicial Education and Research (CJER) Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Adopt rule 10.492 of the California Rules of Court to provide temporary relief to court staff and judicial officers regarding their content-based and hours-based education requirements; and
2. Adopt rule 10.493 of the California Rules of Court to expand the delivery methods available to obtain required “traditional (live, face-to-face)” or “in person” training.

The proposed rules are attached at pages [6-9].

Relevant Previous Council Action

In 2006, the Judicial Council adopted a set of rules containing continuing education requirements and expectations for judicial officers and employees of the judicial branch. These provisions are generally found within Title Ten of the Rules of Court. (See Cal. Rules of Court, rules 10.451-10.491, but see, e.g., Cal. Rules of Court, rule 2.812(c) (education and training requirements for temporary judges).)

When implementing these rules, the Judicial Council varied requirements and expectations based on the position held by the individual judicial branch member. For example, there is one rule for appellate justices and another for trial court judges and subordinate judicial officers. Appellate court, trial court, and Judicial Council staff are similarly governed by separate rules with their own respective requirements.

In addition to being position-specific, most rules include both “content-based” and “hours-based” requirements. Content-based requirements specify individual programs (e.g., New Judge Orientation, the B. E. Witkin Judicial College of California, etc.) or specific content (e.g., bench demeanor and conduct, domestic violence training, etc.) that must be completed within a specific timeframe. Hours-based education requirements set a minimum number of hours—ranging from 8 to 30—to be completed within a 2-year or 3-year education cycle, depending again on the position held by the judicial officer or branch employee.

Analysis/Rationale

The rules of court require judicial officers or court employees to take classes on specific topics, attend specific programs, and/or attend courses via “traditional (live, face-to-face)” or “in person” training. In addition, a set number of hours of education must be completed within an education cycle. These requirements must be completed within a specific window of time, and there is no clear local or statewide authority to waive or extend some of these requirements. The public health crisis has made it impossible for members of the branch to complete their education requirements because providers—including CJER—are not currently able to offer the required programs in the required format in the timeframe specified by rule of court.

Rule 10.492

Rule 10.492 would provide temporary relief to court staff and judicial officers regarding their education requirements by granting a temporary extension for all content-based education

requirements and a prorated reduction of all hours-based education requirements contained within existing rules.

Rule 10.493

Rule 10.493 would expand the delivery methods available to obtain required continuing education by allowing “instructor-led training”—defined as including live webinars—to satisfy the provisions in the rules that require “traditional (live, face-to-face)” or “in person” training.

Policy implications

Adoption of the rules is in alignment with current Judicial Council policy on continuing education. In implementing continuing education requirements branch-wide, the Judicial Council deemed content-based requirements essential to a well-trained judiciary. Granting an extension to complete these requirements will ensure that this training is ultimately obtained.

The prorated reduction of hours-based requirements for the 12-month period beginning April 1, 2020, further recognizes the unprecedented crisis facing California’s courts by relieving judicial officers and court employees of general continuing education obligations to focus on the court’s principal mission of providing access to justice.

Lastly, allowing “instructor led-training”—including live webinars—to meet requirements in the rules for “traditional (live, face-to-face)” and “in-person” training recognizes safety protocols imposed by the current public health crisis. In-person education in a classroom lead by qualified faculty who are present to immediately answer questions and provide feedback remains the most effective delivery method. However, such an environment is not currently safe and many of the benefits of this delivery formant can be replicated with existing remote technology.

Comments

Prior to submitting to the Rules Committee, the CJER Advisory Committee consulted with the appellate court clerks/administrators, the Administrative Presiding Justices Advisory Committee, the Trial Court Presiding Judges Advisory Committee, the Court Executives Advisory Committee, and the Appellate Advisory Committee about the proposed language of rule 10.492. The rule as proposed herein reflects input by those bodies.

The CJER Advisory Committee recommended rule 10.493 as a late addition to clarify that live webinars could be used to satisfy requirements within the rules that specified “traditional (live, face-to-face)” and “in person” training.

The proposal for both rules went through an off-schedule, expedited invitation-to-comment process from August 26 through September 16 and received five comments. As indicated in the attached comments chart at pages [10–12], four of the five comments approved the proposed rules without modification. The other commenter approved the rules but requested that the prorated reduction of hours-based requirements in rule 10.492(d) be limited to 9 months instead of the proposed 12 months. No disapproving comment, internal or external, was made to the CJER Advisory Committee.

Alternatives considered

Rule 10.492

CJER and the CJER Advisory Committee considered multiple alternative courses of action to the proposed rule 10.492, including:

1. Declining to intervene;
2. Extending the education cycles for court staff and judicial officers;
3. Assessing and separately amending each impacted rule as necessary, including rules 2.812, 2.813, 2.815, 5.340, 10.452, 10.455, 10.461–10.464, 10.468, 10.469, 10.471–10.474, 10.478, 10.479, and 10.491 of the California Rules of Court;
4. Extending content-based deadlines, but leaving hours-based deadlines unmodified;
5. Extending both content-based and hours-based deadlines; and
6. Prorating both content-based and hours-based for the duration of the crisis.

Declining to intervene was rejected because of the widespread noncompliance that would result from inaction. The second and third alternatives were considered and rejected based on their complexity to administer and implement. Altering the education cycle and amending all the impacted rules would be time-consuming and implement a permanent restructuring of the branch's education requirements for what is hoped will be a temporary issue. The remaining proposals would have either afforded incomplete relief or eliminated timely essential education throughout the branch.

The temporary extension in the rule is needed, regardless of whether CJER's programming is modified for distance delivery. Even with a switch to a complete distance delivery model, some judicial officers and court employees are already or will soon be noncompliant with the requirements as a result of the current public health crisis.

The committee concluded that the proposed rule 10.492 is the best option for ensuring that essential education (i.e., content-based requirements such as the New Judge Orientation) is eventually obtained. At the same time, the proposed rule alleviates pressure on the judicial branch by preventing hours-based education requirements from being compressed into a smaller window of time before the completion of the current education cycles. Lastly, this option avoids the administrative and operational costs associated with extending the education cycles—such as reprogramming education tracking systems—or the time it would take to amend the specific rules cited above.

Rule 10.493. Instructor-led training

The CJER Advisory Committee considered including the substance of rule 10.493 into a broader review of judicial branch education requirements. The CJER Advisory Committee had intended

to initiate a comprehensive review of the education requirements in the rules of court as part of its annual agenda.¹ The purpose of this review was to recommend amendments that would apply consistent terminology throughout the rules and acknowledge the impact of new technologies. However, the COVID-19 pandemic and the necessity to cease all live, in-person training required the CJER Advisory Committee to act sooner to ensure that essential education is obtainable.

As an alternative to the proposed rule, the committee also considered permitting not only instructor-led training, but also “independent training” to satisfy all continuing education required or expected from a judicial officer or court staff person. In that alternative, “independent training” would be defined asynchronous education unguided by faculty in real time and taken by a participant at a time and location that does not depend on the participation of others. This alternative was rejected as being overly sweeping. The alternative would have permitted, for example, a commissioner to satisfy the requirements of rule 10.462 by watching 30 hours of instructional videos over a 3-year education cycle, never once speaking about the training with a colleague or instructor.

The committee’s opinion is that education is most effective when it provides an opportunity to ask questions and receive answers in real time and to engage in a free exchange of ideas with fellow participants and faculty. This is the same policy rationale behind the original requirements that certain courses or a specific number or percentage of hours be taken via traditional (live, face-to-face) training. The proposed rule preserves this policy while simultaneously permitting the flexibility that technology brings and that is urgently needed during the current public health crisis.

Fiscal and Operational Impacts

This proposal will not increase fiscal or operational costs on the courts or the Judicial Council. The proposal will result in fiscal savings by decreasing travel expense reimbursement claims and time spend away from the work by both judicial officers and court staff.

Attachments and Links

1. Cal. Rules of Court, rules 10.492 and 10.493, at pages [6-9]
2. Chart of comments, at pages [10-12]

¹ These plans are suspended during the current public health crisis.

Rules 10.492 and 10.493 of the California Rules of Court would be adopted, effective January 1, 2021, to read:

1 **Rule 10.492. Temporary extension and pro rata reduction of judicial branch**
2 **education requirements**

3
4 **(a) Application**

5
6 This rule applies to the requirements and expectations in the California Rules of
7 Court relating to judicial branch education, except rule 10.491 on minimum
8 education requirements for Judicial Council employees.
9

10 **(b) Definitions**

11
12 As used in this rule:

13
14 (1) “Content-based education requirement” means a requirement or expectation
15 of:

16
17 (A) Attendance at any specific program;

18
19 (B) A course of study on any specific topic or topics; or

20
21 (C) A course of study limited to a specific delivery method, such as
22 traditional (live, face-to-face) education.

23
24 (2) “Hours-based education requirement” means a requirement or expectation of
25 a specified number of hours of education to be completed within a specified
26 time period.
27

28 **(c) Content-based education requirement**

29
30 Notwithstanding any other rule, any deadline for completion of a content-based
31 education requirement or expectation is extended for 12 months from that deadline,
32 even if the deadline has passed.
33

34 **(d) Hours-based education requirement**

35
36 Notwithstanding any other rule, the months of April 2020 through March 2021 are
37 excluded from the education cycles in which those months fall, and the number of
38 hours of education to complete hours-based education requirements or expectations
39 is prorated accordingly.
40

1 **(e) Sunset**

2
3 This rule remains in effect until December 31, 2022, or until amended or repealed.

4
5 **Advisory Committee Comment**

6
7 Various rules in title 10, chapter 7, of the California Rules of Court authorize, for good cause, the
8 granting of an extension of time to complete content-based and hours-based education
9 requirements and expectations. Nothing in this rule modifies that authority.

10
11 Nothing in this rule alters education requirements and expectations outside the California Rules
12 of Court, including education requirements mandated by statute or regulation (e.g., Welf. & Inst.
13 Code, § 304.7) or required by Judicial Council policy (e.g., the Qualifying Ethics Program and
14 the Temporary Assigned Judges Program).

15
16 **Subdivision (c).** This subsection applies to all rules of court containing content-based education
17 requirements. Below are examples of this subsection in practice.

18
19 Rule 10.462(c)(1) contains education requirements for new trial court judges and subordinate
20 judicial officers. Based on the date an individual took his or her oath of office, a judge has six
21 months to attend the New Judge Orientation (NJO) program, one year to attend an orientation
22 course in his or her primary assignment, and two years to attend the B. E. Witkin Judicial College
23 of California.

24
25 Under rule 10.462(c)(1), a judge who took her oath of office on January 1, 2020, would need to
26 complete these programs by June 30, 2020 (NJO), December 31, 2020 (primary assignment), and
27 December 31, 2021 (Judicial College), respectively. With the 12-month extension under rule
28 10.492(c), this same judge would now need to complete these programs by June 30, 2021 (NJO),
29 December 31, 2021 (primary assignment), and December 31, 2022 (Judicial College).

30
31 As another example of the 12-month extension under rule 10.492(c), a judge who took his oath of
32 office on December 1, 2018, would need to complete the NJO by April 30, 2020 (within 18
33 months), a primary assignment by November 30, 2020 (within two years), and the Judicial
34 College by November 30, 2021 (within three years).

35
36 Using a different rule as an additional example, rule 10.478(b)(1) requires court investigators to
37 complete 18 hours of education within one year of their start date on specified topics.

38 Rule 10.492(c) would allow a court investigator up to two years to complete this education.

39
40 **Subdivision (d).** This subsection applies to all rules of court containing hours-based education
41 requirements. Below are examples of this subsection in practice.

1 Rule 10.461(c)(1) contains education requirements for Supreme Court and appellate justices.
2 Each justice must complete 30 hours of education every three years.

3
4 Under rule 10.492(d), a justice’s hours requirements are prorated for the education cycle that runs
5 from January 1, 2019, through December 31, 2021. For justices who were confirmed for
6 appointment before January 1, 2019, they must complete 20 hours of education by December 31,
7 2021.

8
9 Education requirements for justices who were confirmed for appointment on or after January 1,
10 2019, would also be prorated by rule 10.492(d) and prorated additionally based on the number of
11 years remaining in the three-year educational cycle. For example, a justice confirmed for
12 appointment on October 1, 2020, would ordinarily have 10 hours of hours-based education
13 requirements to complete for the last year of the three-year cycle. Under rule 10.492(d), the
14 months of January 2021 through March 2021 would be excluded, and the justice must complete
15 7.5 hours rather than 10 hours of hours-based education.

16
17 As an additional example, rule 10.474(c)(2) requires eight hours of continuing education every
18 two years for nonmanagement court staff. For a court employee hired on or before January 1,
19 2020, rule 10.492(d) prorates the number of hours for the cycles that run from January 1, 2020,
20 through December 31, 2021. For this cycle, the number of hours required would be prorated for
21 four quarters, April 1, 2020, through March 31, 2021. This results in a reduced hours-based
22 requirement of four hours.

23 24 **Rule 10.493. Instructor-led training**

25 26 **(a) Definition**

27
28 “Instructor-led training” means synchronous education, guided by faculty, that
29 allows for real-time communication between faculty and participants and is offered
30 by an approved provider under rule 10.481. Examples of instructor-led training
31 include in-person trainings in a classroom setting, live webinars, or live
32 videoconferences.

33 34 **(b) Application**

35
36 Notwithstanding any other rule, instructor-led training may be used to satisfy all
37 continuing education requirements specified in the California Rules of Court that
38 require traditional (live, face-to-face) education. This provision applies whether the
39 requirement relates to a specific course or to a certain percentage or number of
40 hours of education.

41 42 **Advisory Committee Comment**

1 This rule is intended to eliminate within the California Rules of Court any restriction that requires
2 that a specific course or a certain number or percentage of hours of education be taken in a
3 traditional (live, face-to-face) learning environment. This rule applies whether the education is
4 described as “traditional (live, face-to-face),” “live (face-to-face),” “in person,” or any
5 combination of these terms.
6

DRAFT

[SP 20-04]

**Judicial Branch Education: Temporary Extension and Reduction of Requirements;
Definition of Instructor-Led Training (Cal. Rules of Court, rules 10.492, 10.493)**

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Teresa S. Bennett, Judge of the Superior Court of California, County of San Bernardino	A	I would agree that due to the pandemic the Rules should be modified. Although I have sought in person continuing judicial education, all of the seminars have been cancelled. I have attended live webinars where there is live interaction between the presenters and the audience and this has been an effective educational tool. Many of those events have been through platforms that allow camera views of all participants and presenters.	The committee thanks the commenter and notes its support for the proposal.
2.	Hon, Mary E. Fuller (Ret.), Temporary Assigned Judges Program	A	Allowing webinars to be credited as live attendance education is very necessary in this COVID 19 period but also makes sense as the available interaction between instructor and attendee is the same as the in person presentation.	The committee thanks the commenter and notes its support for the proposal.
3.	Superior Court of California, County of Stanislaus	AM	Recommend a prorated reduction in hours for 2020 only.	<p>The committee thanks the commenter and notes its support for the proposal if modified.</p> <p>The committee notes that the commenter provided no rationale for its request that the proration of hours-based education requirements be reduced from 12 to 9 months.</p> <p>The committee determined that a 12-month proration of hours-based requirements was consistent with the 12-month extension of content-based requirements. The committee also determined that a 12-month reduction would best assist the courts during the pandemic until a time</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
				in which either the public health crisis will have abated sufficiently to allow the resumption of in-person programming <i>or</i> would accord CJER enough time to adapt its programming for almost 100% remote delivery.
4.	Superior Court of California, County of Los Angeles	A	<p>We recommend adopting both proposals.</p> <p>Request for Specific Comments</p> <p>Does the proposal appropriately address the stated purpose? The California Rules of Court require live, face-to face training within a specific period of time. Because of the COVID-19 pandemic, educational providers, including CJER, cannot provide the mandatory programming in the required live format. Proposed Rule 10.492 addresses the stated purpose by temporarily extending the time period to complete content-based education and reducing the hourly education requirements in a pro-rated manner. Proposed Rule 10.493 allows “live webinars” and “live videoconferences” to meet the traditional “face-to-face” training requirement. This addresses the stated purpose as it allows real-time communication between instructors and the students.</p> <p>What would the training implementation requirements be for courts—for example, Court Training Coordinators? The Los Angeles Superior County Court is able to immediately implement the rules with its comprehensive Judicial Education Seminars</p>	<p>The committee thanks the commenter and notes its support for the proposal.</p> <p>No further response required.</p> <p>No further response required.</p>

	Commenter	Position	Comment	Committee Response
			<p>(JES) to provide content-based education to judicial officers using “live webinars.”</p> <p><i>Would 1.5 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> The 1.5 months implementation period is sufficient for the Los Angeles County Superior Court.</p> <p><i>How well would this proposal work in courts of different sizes?</i> The provision of education, and the availability of instructors to organize and conduct the training, may vary depending on the size of a court, and its current use of technology to communicate using platforms such as Webex, Zoom, Teams, etc. However, a court’s ability to implement remote education may be impacted by the current budget situation in many courts. As a result, some courts may struggle to implement new technology platforms needed for remote learning.</p> <p>The proposal should not impact courts regarding the receipt of instruction. For all courts, it will minimize time spent in travelling to education.</p> <p>Thank you for the opportunity to comment. We recommend adopting both proposals.</p>	<p>No further response required.</p> <p>No further response required.</p>
5.	Mr. Lester Perpall, Court Executive Officer of the Superior Court of California, County of Mono	A	Remote learning is a great option for small rural courts like Mono County. Travel to training sites takes the individual out of the court for up to 3 days to attend 1 day of training.	The committee thanks the commenter and notes its support for the proposal.

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