



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-07

For business meeting November 18-19, 2021

Title

Judicial Branch Education: Extension of
Judicial College Deadline

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 10.492

Effective Date

January 1, 2022

Recommended by

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

Date of Report

October 22, 2021

Contact

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Executive Summary

The Center for Judicial Education and Research (CJER) Advisory Committee recommends amending rule 10.492 of the California Rules of Court to extend the deadline to complete the B. E. Witkin Judicial College by an additional 12 months. This action is necessary to avoid the widespread inability to comply with rule 10.462(c)(1)(C) amongst new judges and subordinate judicial officers who joined the bench prior to January 2020. The CJER Advisory Committee also proposes amending the rule's sunset date in light of the ongoing nature of the pandemic.

Recommendation

The CJER Advisory Committee recommends that the Judicial Council, effective January 1, 2022, amend rule 10.492 of the California Rules of Court to:

1. Provide extended, temporary relief to new judicial officer who otherwise would be unable to comply with rule 10.462(c)(1)(C); and
2. Extend the sunset date of the rule from December 31, 2022, to December 31, 2024.

The text of the proposed rules is attached at pages [4-6].

Relevant Previous Council Action

In 2006, the Judicial Council adopted a set of rules¹ containing continuing education requirements and expectations for judicial officers and employees of the judicial branch.² Among these rules, rule 10.462(c)(1)(C) requires that “[e]ach new trial court judge and subordinate judicial officer must complete ... [t]he B. E. Witkin Judicial College of California within two years of taking the oath as a judge or subordinate judicial officer....”

In November 2020, the Judicial Council adopted rule 10.492 due to the state of emergency related to the COVID-19 pandemic. This rule, among other things, extended the deadline for all content-based education requirements contained within the rules by 12 months, including the Judicial College requirement in rule 10.462(c)(1)(C).

Analysis/Rationale

Since March 2020, the public health crisis has prevented CJER from hosting the Judicial College, traditionally a two-week, in-person educational conference. Since that time, it has not been possible for members of the branch to complete their college requirement because CJER has not been able to offer the program in the standard format in the time frame specified by the rules. Even with the previous extension authorized by the Judicial Council last year, this rule amendment is necessary to prevent widespread noncompliance amongst the judiciary who have been unable to attend that Judicial College since March 2020.

The proposed amendment would add an additional 12-month extension solely applicable to the Judicial College deadline. This would be in addition to the 12-month extension already authorized for all content-based deadlines within the Rules of Court. The amendment would also extend the sunset provision of rule 10.492 by two years, allowing more recent members of the bench to benefit from an extended compliance window.

Policy implications

Adoption of this amendment aligns with current Judicial Council policy on continuing education. In implementing continuing education requirements branchwide, the Judicial Council deemed content-based requirements, including the Judicial College, essential to a well-trained judiciary. Granting an extension of time to complete this requirement will ensure that this training is obtained, either in an in-person or remote format.³

Comments

In developing the amendment to rule 10.492, the CJER Advisory Committee consulted with the Trial Court Presiding Judges Advisory Committee (TCPJAC). While approving the proposed

¹ All references to rules in this document are to the California Rules of Court, unless otherwise indicated.

² These provisions are generally found within title 10 of the California Rules of Court. (See Cal. Rules of Court, rules 10.451–10.491; but see, e.g., rule 2.812(c) (training requirements for new temporary judges).)

³ Judicial Council of Cal., The Strategic Plan for California’s Judicial Branch, Goal V: Education for Branchwide Professional Excellence, at < <https://www.courts.ca.gov/3045.htm> > [as of Oct. 14, 2021].

amendment, the TCPJAC requested that the CJER Advisory Committee review the Judicial College curriculum and content to ensure that it remained relevant for judicial officers with 3-4 years judicial experience. The amendment as proposed herein reflects input by that body.

This proposal circulated for comment on an expedited, special cycle from October 1 through 8, 2021, and received three comments. As indicated in the attached comment chart at pages [7–8], two of the three commenters agreed with the proposal without additional comment. The remaining commenter agreed with modification. The CJER advisory Committee received no comments in opposition to the proposed amendment.

Alternatives considered

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

- Declining to intervene;
- Requesting a waiver of the requirements of rule 10.462(c)(1)(C);
- Fast-tracking a truncated and quickly redesigned college program for remote delivery to allow compliance in calendar year 2021; and
- Assessing and separately amending rule 10.462(c)(1)(C) of the California Rules of Court.

Declining to intervene was rejected because of the widespread noncompliance that would naturally result from inaction; 102 judges and subordinate judicial officers are or would be noncompliant by July 2022 when the next program is scheduled. A waiver of the judicial college requirement would be a disservice to our branch and contrary to Goal V of the Strategic Plan for California’s Judicial Branch: Education content that is provided at the judicial college remains essential for judges relatively new to their judicial careers and is not otherwise available.

Fast-tracking a shortened college program would also be a disservice to the judicial officers who have been waiting patiently and deserve an effective and well-designed college experience. The fact that 32 sessions led by approximately 62 faculty would need to be evaluated and redesigned for remote delivery suggests that an attempt to redesign the program in an exceedingly short time frame is not likely to be successful. Lastly, amending rule 10.462(c)(1)(C) would offer a permanent fix to what is still anticipated to be a temporary issue—albeit longer than initially predicted.

Fiscal and Operational Impacts

This proposal will not increase fiscal or operational costs for the courts or the Judicial Council.

Attachments and Links

1. Cal. Rules of Court, rule 10.492, at pages [4-6]
2. Chart of comments, at pages [7-8]

Rule 10.492 of the California Rules of Court is amended, effective January 1, 2022, 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 As used in this rule:

12
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 (1) Notwithstanding any other rule, any deadline for completion of a content-
31 based education requirement or expectation, except for the deadline for the
32 B. E. Witkin Judicial College, is extended for 12 months from that deadline,
33 even if the deadline has passed.
34

35 (2) The deadline for completion of the B. E. Witkin Judicial College is extended
36 for 24 months from the deadline specified in rule 10.462(c)(1)(C), even if the
37 deadline has passed.
38

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

40
41 Notwithstanding any other rule, the months of April 2020 through March 2021 are
42 excluded from the education cycles in which those months fall, and the number of

Rule 10.492 of the California Rules of Court is amended, effective January 1, 2022, to read:

1 hours of education to complete hours-based education requirements or expectations
2 is prorated accordingly.

3

4 **(e) Sunset**

5

6 This rule remains in effect through December 31, 2022~~4~~, or until amended or
7 repealed.

8

9

Advisory Committee Comment

10

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

14

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

19

20 **Subdivision (c).** This subdivision applies to all rules of court containing content-based education
21 requirements. Below are examples of this subdivision in practice.

22

23 Rule 10.462(c)(1) contains education requirements for new trial court judges and subordinate
24 judicial officers. Based on the date on which individuals took their oath of office, rule
25 10.462(c)(1) allows judges six months within which to attend the New Judge Orientation (NJO)
26 program, one year within which to attend an orientation course in their primary assignment, and
27 two years within which to attend the B. E. Witkin Judicial College of California.

28

29 Under rule 10.462(c)(1), a judge who took the oath of office on January 1, 2020, is required to
30 complete these programs by June 30, 2020 (NJO), December 31, 2020 (primary assignment
31 orientation), and December 31, 2021 (judicial college), respectively. With the 12-month
32 extension under rule 10.492(c)(1), this same judge now has to complete ~~NJO~~these programs by
33 June 30, 2021 (~~NJO~~) and a primary assignment orientation by December 31, 2021 (~~primary
34 assignment orientation~~). With the 24-month extension under rule 10.492(c)(2), the same judge
35 must now complete the judicial college by and December 31, 2023~~2~~ (judicial college),
36 respectively.

37

38 As another example of the 12-month extension under rule 10.492(c)(1), a judge who took the oath
39 of office on December 1, 2018, needs to complete NJO by April 30, 2020 (within 18 months), a
40 primary assignment orientation by November 30, 2020 (within two years), and the judicial
41 college by November 30, 2022~~4~~ (within ~~three~~four years).

42

Rule 10.492 of the California Rules of Court is amended, effective January 1, 2022, to read:

1 Using a different rule as an example, rule 10.478(b)(1) requires court investigators to complete 18
2 hours of education on specified topics within 1 year of their start date. Rule 10.492(c) allows a
3 court investigator up to 2 years to complete this education.

4
5 **Subdivision (d).** This subdivision applies to all rules of court containing hours-based education
6 requirements. Below are examples of this subdivision in practice.

7
8 Rule 10.461(c)(1) contains education requirements for Supreme Court and Court of Appeal
9 justices. Each justice must complete 30 hours of judicial education every three years.

10
11 Under rule 10.492(d), a justice's hours requirements are prorated for the three-year education
12 cycle that runs from January 1, 2019, through December 31, 2021. For example, justices who
13 were confirmed for appointment before January 1, 2019, must complete 20 hours of education by
14 December 31, 2021.

15
16 Education hours requirements for justices who were confirmed for appointment on or after
17 January 1, 2019, would be prorated by rule 10.492(d) and prorated additionally based on the
18 number of years remaining in the three-year educational cycle. For example, a justice confirmed
19 for appointment on October 1, 2020, ordinarily has 10 hours of hours-based education to
20 complete for the last year of the three-year cycle. Under rule 10.492(d), the months of January
21 2021 through March 2021 would be excluded, and the justice would have 7.5 hours rather than 10
22 hours of hours-based education to complete.

23
24 As an additional example, rule 10.474(c)(2) requires 8 hours of continuing education every two
25 years for nonmanagement court staff. For a court employee hired on or before January 1, 2020,
26 rule 10.492(d) prorates the number of hours of education required for the cycle that runs from
27 January 1, 2020, through December 31, 2021. The number of hours required would be prorated
28 for 4 quarters—April 1, 2020, through March 31, 2021—and would result in a reduced hours-
29 based requirement of 4 hours.

SP 21-07

Judicial Branch Education: Extension of Judicial College Deadline

(amend Cal. Rules of Court, rule 10.492)

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

	Commenter	Position	Comment	Committee Response
1.	Hon. Stephen Gizzi , Judge of the Superior Court of California, County of Solano	AM	<p>I support this much needed extension. However, for many of us (3 in my court alone), the additional 12 months as proposed is insufficient. We will still be out of compliance even with an additional 12 month extension - and that assumes Witkin is conducted in Spring 2022 as currently planned.</p> <p>A better proposal would be to suspend the timeline until things are normalized and the backlog of judges requiring the training is eliminated. The truth is, if the class is not being offered, you can establish all the artificial deadlines you want and they will continue to be meaningless. Better to have enforceable rules than ones that are not and have to be constantly revisited and revised.</p>	<p>The committee thanks the commenter and notes his support for the proposal if modified. However, the committee declines to modify the proposal as requested for the reasons specified below.</p> <p>As background, CJER received 181 applications for the Fall 2021 Judicial College. Although this program was ultimately cancelled, the breakdown of applicants by oath year was:</p> <ul style="list-style-type: none"> • 2018: 38 (earliest oath date: 7/9/2018); • 2019: 80; • 2020: 39; and • 2021: 24. <p>The 12-month extension in the proposed amendment is <u>in addition</u> to the 12-month extension previously granted by the adoption of rule 10.492. New judges and subordinate judicial officers will now have a total of <u>4 years</u> to complete the Judicial College requirement if the amendment is adopted. For example, Judge Gizzi’s oath date was reported as 1/7/2019. Under the proposed amendment, he would have until 1/6/2023 to complete the college.</p> <p>If the next program is held in July 2022, as currently planned, all but one of the current applicants who have been on the bench since 2019 will have the opportunity to complete the requirement within the 4-year window. Only one</p>

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

				<p>judge, the judge with the earliest oath date of 7/9/2018, would be out of compliance—for approximately 8 days—even with the proposed amendment. Interestingly, however, this judge had the opportunity to attend the August 2019 Judicial College but did not apply. Arguably, this decision placed them in no worse position vis-à-vis compliance with the Rules of Court than had there been no pandemic at all.</p> <p>The committee recognizes that suspending the deadline indefinitely until the more recently appointed and elected are able attend the program would eliminate the possibility of having to revisit rule 10.492 in the future. However, this course of action might demotivate judges from attending this program as soon as it is made available to them, particularly since so many courts have reported backlogs of cases due to the pandemic. It also delays indefinitely the receipt of the essential education the college provides.</p> <p>The committee is also aware that the public health crisis may not be over by July 2022. However, the committee is confident that the Judicial College will be held—in either an in-person or a remote format—by July 2022.</p>
2.	Hon, John Monterosso , Judge of the Superior Court of California, County of Riverside	A	No additional comments provided.	The committee thanks the commenter and notes their support for the proposal.
3.	Hon. Stephanie Jones, Judge of the Superior Court of California, County of Solano	A	No additional comments provided.	The committee thanks the commenter and notes their support for the proposal.

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