



Center for Judicial Education and Research Advisory Committee

November 30, 2023



Judicial Council of California
Center for Judicial Education &
Research Advisory Committee



Judicial Council of California

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M E M O R A N D U M

Date

November 17, 2023

Action Requested

Please review

To

Center for Judicial Education and Research
Advisory Committee Members

Deadline

November 30, 2023

From

Center for Judicial Education and Research
Karene Alvarado, Director

Contact

Karene Alvarado, 415-865-7761
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Subject

Additional Background and Information on
Proposed Adoption of Rule 10.465

The purpose of this memo is to provide additional background and context on the proposed adoption of rule 10.465 of the California Rules of Court

Background

Access and Fairness Training: Standard to Rule

The Judicial Council adopted a comprehensive set of rules on judicial branch education in two stages in 2006 and 2007. The new rules carried over education *recommendations* for judicial officers previously established in standards 10.11-10.14 of the California Standards for Judicial Administration.

Effective January 1, 2008, these standards – including the encouragement that all judicial officers should receive education on fairness – were consolidated and expanded on in rule 10.469 of the California Rules of Court. However, when it was adopted, rule 10.469 continued to

contain only non-mandatory education *recommendations* for judicial officers on, among other topics, access and fairness education.

Prevention of Discrimination and Harassment Work Group

On July 19, 2019, the Judicial Council adopted the [final report](#) of the Prevention of Discrimination and Harassment Work Group. The group's Recommendation 2(A)(1) tasked this committee to "engage in the rulemaking process regarding education for judicial officers on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification."

To meet the 2020 rulemaking cycle, this committee and CJER moved quickly to consult with identified stakeholders and proposed an amendment to rule 10.469 that turned the recommendations on fairness and access training for judicial officers into mandatory requirements.¹

Effective January 1, 2021, the Judicial Council amended rule 10.469 to include new subsection (e)(2) mandating new education *requirements* for judicial officers on "unconscious bias, as well as the prevention of discrimination, harassment, retaliation, and other inappropriate workplace conduct."

2020-2021 General Review of the Education Rules of Court

Prompted in part by the pandemic in 2020, this committee considered rule amendments to clarify and expand the use of remote technology to satisfy education requirements. This prompted the first comprehensive review of the education requirements and expectations in a decade to ensure that the rules reflected modern technology and terms while meeting the needs of the branch and remaining effective, clear, flexible, and achievable.

In undertaking this review and recommending amendments to virtually all the education rules, the decision was made to propose edits unlikely to generate opposition or controversy. One proposal that was tabled at the time was whether the access and fairness education requirements of rule 10.469(e)(2) should be elevated and established in their own standalone rule. The slate of amendments that moved forward and were ultimately adopted by the council did not alter the substance of rule 10.469(e)(2). The question of whether a new rule of court was necessary or preferential was referred to the Judicial Branch Access, Ethics, and Fairness (JBAEF) curriculum

¹ In September 2019, the committee considered an alternate proposal that would have amended rules 10.461 (justices) and 10.462 (judges and SJOs) to include unconscious bias and antidiscrimination training in those respective rules. When considering the competing proposals, committee members noted that amending rule 10.469 required less editing to fewer rules and that judicial officers and the courts were accustomed to this topic being addressed in rule 10.469.

committee for its recommendation. It is the JBAEF's recommendation that forms the basis of the proposed Invitation to Comment under consideration by this committee.

JBAEF Curriculum Committee Proposal on adoption of Rule 10.465 (Option 1)

The JBAEF proposes that a new rule of court on access and fairness education for judicial officers be established for the following reasons. First, the placement of an education requirement somewhat buried within a rule containing only education recommendations has generated some confusion amongst judicial officers. Second, the specific phrasing of the rule requirement renders it unclear to some on what specific topics judicial officers must receive training.

The JBAEF's proposal, without seeking to add any additional obligations for judicial officers, *clarifies* existing education mandates on access and fairness issues by moving these mandates to a new, standalone rule. The proposal further emphasizes the importance of access and fairness education for all judicial officers on par with mandatory education requirements contained in other rules, including rule 10.463 (family law), rule 10.464 (domestic violence), and rule 10.468 (probate, guardianships, and conservatorships).

In addition, this proposal clarifies that judicial officers are separately required to participate in both access and fairness education, which includes antibias education, *and* education on the prevention of discrimination, harassment, retaliation, and inappropriate workplace conduct. These may, of course, be covered in separate trainings.

Finally, the proposal incorporates cross-references to statutes providing authorization for the Judicial Council's adoption of a rule on this topic and direct guidance on the content of implicit bias training for the judicial branch. The proposal also seeks minor amendments to rules 10.461, 10.462, and 10.469 to include internal cross-references to the new rule and eliminate duplicative provisions.

Alternatives Under Consideration

This committee may wish to consider several alternatives to Option 1 (above).

Option 2. The JBAEF proposes an alternative version of rule 10.465 that places the access and fairness education requirements in a separate subsection from the education requirements related to discrimination, harassment, retaliation, and other inappropriate workplace conduct. This separation structurally clarifies that these requirements are two distinct mandates. In all other aspects, Option 1 and Option 2 are identical. This includes the minor amendments proposed to rules 10.461, 10.462, and 10.469.

Option 3. This committee may elect to create a new rule limited to the exact language already contained in rule 10.469(e)(2) with only a minor structural modification. This proposal has the least potential to generate opposition as, unlike Options 1 and 2, it is simply moving the precise language of 10.469(e)(2) to a new rule. This option would also, however, include the minor amendments to rules 10.461, 10.462, and 10.469.

Option 4. This committee may determine that the changes are not necessary or that the changes are not pressing. The committee may defer making any changes at this time and revisit the issue at any point in the future.

Attachments

1. Draft Invitation to Comment with JBAEF's Proposed Rule 10.465 (Option 1)
2. Draft JBAEF Alternate Proposed Rule 10.465 (Option 2)
3. Draft Proposed Rule 10.465 (Option 3)



Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

[ITC prefix as assigned]-__

Title

Judicial Branch Education: Access and Fairness Requirements

Action Requested

Review and submit comments by May 3, 2024

Proposed Rules, Forms, Standards, or Statutes

Adopt Cal. Rules of Court, rule 10.465; amend rules 10.461, 10.462, and 10.469

Proposed Effective Date

January 1, 2025

Contact

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Proposed by

Center for Judicial Education and Research
Advisory Committee
Hon. Darrell S. Mavis, Chair

Executive Summary and Origin

The Center for Judicial Education and Research Advisory Committee proposes the adoption of rule 10.465 to clarify existing access and fairness education requirements for judicial officers. This proposal also seeks to amend rules 10.461 and 10.462 to add appropriate cross-references and delete rule 10.469(e)(2) as duplicative.

Background

The Judicial Council adopted a comprehensive set of rules on judicial branch education in two stages in 2006 and 2007, including rule 10.469 which initially contained only non-mandatory education *recommendations* for judicial officers. Effective January 1, 2021, the Judicial Council amended rule 10.469 to include new subsection (e)(2) mandating new education *requirements* for judicial officers on unconscious bias, as well as the prevention of discrimination, harassment, retaliation, and other inappropriate workplace conduct.

The Proposal

Since its adoption, rule 10.469(e)(2) has generated confusion by placing two separate mandatory education requirements for judicial officers in a subsection of a rule that had previously only contained education recommendations.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

Without adding any additional requirements for judicial officers, this proposal clarifies existing education mandates on access and fairness issues by moving these mandates to a new, standalone rule. The proposal emphasizes the essential nature of access and fairness education for all judicial officers on par with mandatory education requirements contained in other rules, including rule 10.463 (family law), rule 10.464 (domestic violence), and rule 10.468 (probate, guardianships, and conservatorships).

In addition, this proposal would clarify that judicial officers are separately required to participate in both access and fairness education, which includes antibias education, and education on the prevention of discrimination, harassment, retaliation, and inappropriate workplace conduct.

Finally, the proposal incorporates cross-references to statutes providing authorization for the Judicial Council's adoption of a rule on this topic and direct guidance on the content of implicit bias training for the judicial branch. The proposal also requires minor amendments to rules 10.461, 10.462, and 10.469 to include internal cross-references to the new rule and eliminate duplicative provisions.

Alternatives Considered

The committee considered three alternatives to the proposal. The committee initially considered taking no action, leaving the access and fairness requirements wedged into the recommendations of rule 10.469. The committee rejected this proposal as it did not address the underlying issue, the confusion caused by mandates being included in a rule with dissimilar provisions.

The committee also considered exporting the text of rule 10.469(e) into a new rule with only minor modification to the requirements' structure to highlight that two separate mandatory education requirements exist. The committee declined this approach as it would not emphasize the essential nature of access and fairness education nor would it include the cross-references to statutory guidance on implicit bias training. These cross-references provide direction to both judicial officers and Judicial Council staff on relevant content for implicit bias education.

Lastly, the committee considered a version of the proposal that divided the education mandates into two separate but overlapping subsections. That proposal was ultimately rejected because of its duplicative provisions and in favor for a simpler rule structure.

Fiscal and Operational Impacts

Since the proposal is a reorganization and clarification of existing requirements, the committee does not anticipate that the proposal will have significant fiscal or operational impacts on the judicial branch.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- [Include any other specific issues for which the proponent seeks comments.]

The advisory committee [or other proponent] also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would four months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed Cal. Rules of Court, rule 10.495 and Cal. Rules of Court, rules 10.461, 10.462 and 10.469 at pages [4–5]
2. Link A, Cal. Rules of Court, rule 10.461
https://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_461
3. Link B, Cal. Rules of Court, rule 10.462
https://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_462
4. Link C, Cal. Rules of Court, rule 10.469
https://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_469
5. Link D: Gov. Code, § 11135,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=11135.&lawCode=GOV
6. Link E: Gov. Code, § 68088,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=68088.&lawCode=GOV

OPTION ONE

Rules 10.461, 10.462, 10.465 and 10.469 of the California Rules of Court are adopted and amended, effective January 1, 2025, to read:

**1 Rule 10.461. Minimum education requirements for Supreme Court and Court of
2 Appeal justices**

**3
4 (a) Applicability**

5
6 All California Court of Appeal justices must complete the minimum judicial
7 education requirements for new justices under (b), and all Supreme Court and
8 Court of Appeal justices must complete minimum continuing education
9 requirements as outlined under (c), and rule 10.465. All justices should participate
10 in more judicial education than is required, related to each individual's
11 responsibilities and in accordance with the judicial education recommendations set
12 forth in rule 10.469.

**13
14 (b)–(e) *****

**15
16 Rule 10.462. Minimum education requirements and expectations for trial court
17 judges and subordinate judicial officers**

**18
19 (a) Applicability**

20 All California trial court judges must complete the minimum judicial education
21 requirements for new judges under (c)(1) and are expected to participate in
22 continuing education as outlined under (d), and rule 10.465. All subordinate
23 judicial officers must complete the minimum education requirements for new
24 subordinate judicial officers under (c)(1) and for continuing education as outlined
25 under (d), and rule 10.465. All trial court judges and subordinate judicial officers
26 who hear family law matters must complete additional education requirements set
27 forth in rule 10.463. All trial court judges and subordinate judicial officers who
28 hear certain types of matters must participate in education on domestic violence
29 issues as provided in rule 10.464. All trial court judges and subordinate judicial
30 officers regularly assigned to hear probate proceedings must complete additional
31 education requirements set forth in rule 10.468. All trial court judges and
32 subordinate judicial officers should participate in more judicial education than is
33 required and expected, related to each individual's responsibilities and particular
34 judicial assignment or assignments and in accordance with the judicial education
35 recommendations set forth in rule 10.469.
36

**37
38 (b)–(g) ***
39**

Commented [MJ1]: Alternative to placement at end of 1st sentence:

Amend 2nd Sentence: All justices must complete additional education requirements set forth in rule 10.465 and should participate in more judicial education than is required, related to ...

Commented [MJ2]: Alternative to placement at end of 1st and 2nd sentence:

Add new 5th sentence: All trial court and subordinate judicial officers must complete additional education requirements set forth in rule 10.465.

Commented [MJ3]: See above comment.

OPTION ONE

Rules 10.461, 10.462, 10.465 and 10.469 of the California Rules of Court are adopted and amended, effective January 1, 2025, to read:

Rule 10.465. Education requirements for justices, judges, and subordinate judicial officers on access and fairness

(a) Authority

This rule is adopted under Government Code section 68088(a).

(b) Access and fairness education requirements

(1) In order to achieve the objective of assisting judicial officers in preserving the integrity and impartiality of the judicial system through the prevention of **conscious and unconscious bias (including bias based on race and ethnicity, gender, sexual orientation, and persons with disabilities)**, each justice, judge, and subordinate judicial officer **shall participate in: antibias education; education on fairness and access; [and] education on prevention of harassment, discrimination, retaliation; and inappropriate workplace conduct education.** **This training or course of trainings may include, but is not limited to, the topics specified in Government Code section 68088(b).** **The Judicial Council may also develop training on implicit bias with respect to the characteristics listed or defined in Government Code section 11135.**

(2) The education in subsection (b)(1) must be taken at least once every three-year continuing education cycle as determined by rules 10.461(c)(1) (**justices**) and 10.462(d) (**judges and subordinate judicial officers**).

Rule 10.469. Education recommendations for justices, judges, and subordinate judicial officers

(a)-(d) ***

~~(e) Education on fairness and access, unconscious bias, and prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct~~

~~(1) In order to achieve the objective of assisting judicial officers in preserving the integrity and impartiality of the judicial system through the prevention of bias, each justice, judge, and subordinate judicial officer should regularly participate in education on fairness and access. The education should include the following subjects: race and ethnicity; gender; sexual orientation; persons with disabilities; persons with limited economic means; and persons without stable housing.~~

Commented [MJ4]: "Shall" replaced "should regularly" in relation to general "education on fairness and access"

"unconscious bias" education replaced with broader term "antibias"

POHDR+ requirement remains the same

Commented [MJ5]: This [and] was not included in the JBAEF draft, but it may be necessary to be grammatically correct and to avoid confusion about what is required.

Commented [MJ6]: Condenses subsections current 10.469(e)(1) and (2) into one 10.465(e)(1).

Commented [MJ7]: Incorporates by reference the specific topics enumerated in Gov. Code § 68088(b) (which itself references the protected characteristics contained in Gov. Code § 11135).

Commented [MJ8]: Adds broader protected characteristics listed in Gov. Code § 11135 that currently include: sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation. Future categories may be added by statute and automatically incorporated by reference without need to amend rule.

However, the JBAEF proposal eliminates recently added recommendation that fairness and access training include persons with limited economic means and persons without stable housing (as highlighted as a priority by the former Chief Justice.)

OPTION ONE

Rules 10.461, 10.462, 10.465 and 10.469 of the California Rules of Court are adopted and amended, effective January 1, 2025, to read:

- 1 ~~(2) Each justice, judge, and subordinate judicial officer must participate in~~
- 2 ~~education on unconscious bias, as well as the prevention of harassment,~~
- 3 ~~discrimination, retaliation, and inappropriate workplace conduct. This~~
- 4 ~~education must be taken at least once every three-year continuing education~~
- 5 ~~cycle as determined by rules 10.461(c)(1) and 10.462(d).~~

OPTION TWO

Rules 10.461, 10.462, 10.465 and 10.469 of the California Rules of Court are adopted and amended, effective January 1, 2025, to read:

Rule 10.465. Education requirements for justices, judges, and subordinate judicial officers on access and fairness

(a) Authority

This rule is adopted under Government Code section 68088(a).

(b) Access and fairness education requirements

(1) Each justice, judge, and subordinate judicial officer must participate in antibias education. This training or course of trainings may include, but are not limited to, the topics specified in Government Code section 68088(b). The Judicial Council may also develop training on implicit bias with respect to the characteristics listed or defined in Government Code section 11135.

(2) In order to achieve the objective of assisting judicial officers in preserving the integrity and impartiality of the judicial system through the prevention of conscious and unconscious bias (including race and ethnicity, gender, sexual orientation, and persons with disabilities), each justice, judge, and subordinate judicial officer shall participate in education on fairness and access, prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct.

(3) The education in subsection (b)(1) and (b)(2) must be taken at least once every three-year continuing education cycle as determined by rules 10.461(c)(1) (justices) and 10.462(d) (judges and subordinate judicial officers).

Commented [MJ1]: The main difference between the JBAEF Proposal and Alternative is that the alternative separates out antibias education from PODHR+/fairness and access education into separate subsections.

All other comments in the proposal apply to this alternate, as well.

OPTION THREE

Rules 10.461, 10.462, 10.465 and 10.469 of the California Rules of Court are adopted and amended, effective January 1, 2025, to read:

Rule 10.465. Education requirements and recommendations for justices, judges, and subordinate judicial officers on access and fairness

(a) Access and fairness education requirements

(1) Each justice, judge, and subordinate judicial officer must participate in unconscious bias education.

(2) Each justice, judge, and subordinate judicial officer must participate in education on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct.

(3) The education in subsection (b)(1) and (b)(2) must be taken at least once every three-year continuing education cycle as determined by rules 10.461(c)(1) and 10.462(d).

(b) Recommendations for additional bias prevention training.

In order to achieve the objective of assisting judicial officers in preserving the integrity and impartiality of the judicial system through the prevention of bias, each justice, judge, and subordinate judicial officer should regularly participate in education on fairness and access. The education should include the following subjects: race and ethnicity; gender; sexual orientation; persons with disabilities; persons with limited economic means; and persons without stable housing.

Commented [MJ1]: Rule 10.469(e)(2) broken into two components in order to clarify that antibias education is distinct from PODHR+ education.

No change in current requirements is reflected or intended.

Commented [MJ2]: Recommend substituting general term "antibias" for "unconscious bias"