Judicial Council of California · Administrative Office of the Courts

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 28, 2013

Title
Judicial Branch Education: AOC Staff Education

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rule 10.491

Recommended by
Rules and Projects Committee
Hon. Harry E. Hull, Jr., Chair
Hon. Judith Ashmann-Gerst, Vice-Chair

Agenda Item Type
Action Required

Effective Date
July 1, 2013

Date of Report
June 12, 2013

Contact
Susan R. McMullan, 415-865-7990
susan.mcmullan@jud.ca.gov

Executive Summary

Rule 10.491 of the California Rules of Court addresses minimum education requirements for Administrative Office of the Courts (AOC) executives, managers, supervisors, and other employees. The Rules and Projects Committee (RUPRO) recommends amending rule 10.491 regarding AOC staff education to give the Administrative Director of the Courts greater discretion and flexibility in using the AOC workforce.

Recommendation

The Rules and Projects Committee recommends that the Judicial Council amend rule 10.491, effective July 1, 2013, to allow the Administrative Director of the Courts to:

1. Grant a one-year extension of time for AOC staff to complete the required education, and

2. Determine the number of hours, if any, of live, face-to-face education required to meet the continuing education requirement.

The text of the amended rule is attached at pages 6–7.

Previous Council Action

Effective January 1, 2008, the Judicial Council adopted rule 10.491 as part of a comprehensive set of rules addressing judicial branch education. Subdivision (c) of the rule was amended, effective January 1, 2012, to provide more individual choice and flexibility in what and how many hours count toward the continuing education hours requirement. The amendments provide that an individual must complete at least half of his or her education requirement as a participant in traditional (live, face-to-face) education. In addition, the amendments removed limitations on online course work, self-directed study, and faculty service by counting all education hours in the same way.

Rationale for Recommendation

On May 25, 2012, the Strategic Evaluation Committee (SEC) issued its report on the Administrative Office of the Courts. Among the recommendations to the Judicial Council was the following recommendation concerning AOC and trial court education requirements:

> **Recommendation No. 7-23:** As to training currently required of AOC staff and court personnel, the Judicial Council should examine and consider a relaxation of current mandatory requirements to allow the Administrative Director of the AOC and/or court executive officers greater discretion and flexibility in utilizing their workforces during times of budget constraints.

The council's Executive and Planning Committee (E&P) evaluated and prioritized each recommendation in the SEC report and presented them to the council on August 31, 2012. As to recommendation No. 7-23, E&P proposed and the council adopted the following:

> **Directive #79:** E&P recommends that the Judicial Council direct the Rules and Projects Committee to evaluate relaxation of mandatory education requirements to allow the Administrative Director of the Courts and Court Executive Officers greater discretion and flexibility in utilizing their workforces during times of budget constraints.

In response, RUPRO considered Directive #79; recommendations from Administer Director of the Courts Steven Jahr; the rules that apply to education for AOC staff, trial court staff, appellate court staff, and clerk/administrators of the appellate courts; and the compliance periods for each category of employees. In its deliberations, RUPRO recognized the importance of judicial branch education and did not consider recommending that the education requirements be eliminated. Because of the impending end of the compliance period for AOC staff education on December 31, 2013, RUPRO decided to address immediately the rule pertaining to AOC staff education.

RUPRO recommends amending rule 10.491, effective July 1, 2013, to give the Administrative Director of the Courts greater discretion and flexibility in using the AOC workforce. Specifically, RUPRO recommends that the rule be amended to provide the Administrative Director with discretion to grant a one-year, rather than six-month, extension of time to complete required education. (Cal. Rules of Court, rule 10.491(d).) The rule would provide that the next compliance period begins after the extended compliance period ends, unless the Administrative Director determines otherwise.[1] This would allow the Administrative Director to grant an extension to all AOC employees and extend the compliance period one year, if deemed necessary. But it also would maintain the authority of the Administrative Director to grant individual extensions based on specific needs, such as for an employee in a unit that is particularly short-staffed or an employee who experienced a prolonged illness, without extending the compliance period.

In addition, RUPRO recommends amending subdivision (c) to allow the Administrative Director the discretion to determine the number of hours, if any, of traditional (live, face-to-face) education required to meet the continuing education requirement. Because some education requirements are mandated by statute, an advisory committee comment would be added to the rule to provide that "[t]he time frame for completion of compliance courses based on statutory or regulatory mandates is unaffected by the one-year extension in (d)(1)."

RUPRO considered the education requirements for trial court staff stated in rules 10.474 and 10.478. Because the end of the compliance period for trial court staff education is December 31, 2014—more than a year away—and to determine trial court needs for staff education, RUPRO decided to solicit information from presiding judges and court executive officers in all superior courts. RUPRO has begun to do so through a letter from Justice Harry E. Hull, Jr., chair, asking courts' views on relaxing the mandatory education requirements for trial court staff to allow court executive officers greater discretion and flexibility in use of their workforces. In addition, Justice Hull and Justice Robert L. Dondero, chair of the Center for Judicial Education and Research (CJER) Governing Committee, will attend the statewide joint meeting of trial court presiding judges and court executive officers on August 29 to continue this dialog.

Though Directive #79 does not address appellate court staff education, RUPRO recognized that appellate courts may have the same need for a relaxation of education requirements. Because the appellate court staff education compliance period ends December 31, 2013, Justice Hull attended a recent meeting of the Administrative Presiding Justices Advisory Committee to solicit members' views. Administrative presiding justices saw no need to amend the rules to provide an extension of time for appellate court staff or to relax the requirement for face-to-face education.

[1] The current rule provides that an extension of time to complete the hours-based requirement does not affect the timing of the next two-year period.

Comments, Alternatives Considered, and Policy Implications

This proposal did not circulate for public comment. Under rule 10.22, a proposal need not be circulated for public comment if it presents a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy, or RUPRO finds that compelling circumstances require a different procedure. The compelling circumstances exception provides as follows:

> The procedures established in this rule must be followed unless the Rules and Projects Committee finds that compelling circumstances necessitate a different procedure. The committee's finding and a summary of the procedure used must be presented to the council with any recommendation to the council made under this subdivision.

(Cal. Rules of Court, rule 10.22(g).)

The existing two-year compliance period provided in rule 10.491 for AOC staff is currently nearly three-quarters completed. The number of AOC staff has been reduced since early 2012, when the current compliance period began, and the number of education courses offered has similarly been reduced. There is thus an urgent need to provide the Administrative Director with the discretion to relax the mandatory education requirements to allow staff to obtain the required education over a longer period of time (three years rather than two) and through delivery methods such as online courses that allow employees to select the course times that work best for them.

Circulating this proposal would delay the effective date beyond July 1, 2013 would reduce the number of staff benefitting from an extended compliance period. If fewer staff benefit from the extended compliance period and elimination of the rule requirement for face-to-face education, the overall benefits of increasing staff availability to provide needed services to the courts will likewise be reduced.

Though RUPRO recognizes the benefits of circulating rule proposals for comment in ordinary times, the extraordinary times and circumstances now confronting the judicial branch and the particular subject of this proposal compel adoption of the proposal without circulation for comment. If approved by the council, the proposal will be circulated for comment after adoption.

RUPRO considered alternative rule amendments that would simply state that the compliance period ending December 31, 2013, is extended one year to December 31, 2014, or that would allow the Administrative Director to grant an extension of the hours-based education requirements, but not the content-based education requirements. RUPRO decided not to recommend these amendments and instead grant the Administrative Director as much flexibility as possible to relax education requirements as needed.

Implementation Requirements, Costs, and Operational Impacts

If the Administrative Director exercises the discretion provided to him to extend the time by which employees must complete their education requirements, there will be some minimal requirements and costs associated with tracking employee education. Similarly, the elimination of face-to-face education requirements will result in some minimal requirements and costs associated with tracking employee education. The proposal, however, is expected to have positive operational impacts by allowing AOC employees additional time to complete educational requirements and flexibility with respect to alternatives to live training, thereby increasing employee availability to provide needed services to the courts.

Attachments

1. Cal. Rules of Court, rule 10.491, at pages 6–7

Rule 10.491 of the California Rules of Court is amended, effective July 1, 2013, to read:

Rule 10.491. Minimum education requirements for Administrative Office of the Courts executives, managers, supervisors, and other employees

(a)–(b) * * *

(c) Hours-based requirements

(1)–(3) * * *

(4) ~~The first two-year period begins on January 1, 2008.~~ The orientation courses and the compliance courses required for new managers, supervisors, and other employees under (b) do not apply toward the required hours of continuing education. Each new executive enters the two-year continuing education period on the first day of the quarter following his or her appointment, and each new manager, supervisor, and employee enters the two-year continuing education period on the first day of the quarter following the six-month period provided for his or her completion of the orientation courses and the compliance courses required under (b); the quarters begin on January 1, April 1, July 1, and October 1. Each executive, manager, supervisor, or employee who enters the two-year continuing education period after it has begun must complete a prorated number of continuing education hours for that two-year period, based on the number of quarters remaining in it.

(5) * * *

(6) Each hour of participation in traditional (live, face-to-face) education; distance education such as broadcasts, videoconference courses, and online coursework; and faculty service counts toward the requirement on an hour-for-hour basis. ~~Each executive, manager, supervisor, and employee must complete at least half of his or her continuing education hours requirement as a participant in traditional (live, face-to-face) education. The individual may complete the balance of his or her education hours requirement through any other means with no limitation on any particular type of education.~~ The Administrative Director of the Courts or an executive, manager, or supervisor, if delegated by the Administrative Director, has discretion to determine the number of hours, if any, of traditional (live, face-to-face) education required to meet the continuing education requirement.

(7)–(8) * * *

(d) Extension of time

(1) For good cause, the Administrative Director of the Courts or an executive, manager, or supervisor, if delegated by the Administrative Director, may grant a ~~six-month~~ one-year extension of time to complete the education requirements in this rule. If an extension is granted, the subsequent two-year compliance period begins immediately after the extended compliance period ends, unless otherwise determined by the Administrative Director.

(2) * * *

(3) ~~An extension of time to complete the hours-based requirement does not affect the timing of the next two-year period.~~

(e)–(f) * * *

Advisory Committee Comment

The time frame for completion of compliance courses based on statutory or regulatory mandates is unaffected by the one-year extension in (d)(1).