

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

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SUBJECT: Educational Model for New Judicial Officers to Qualify for Commission on Judicial Performance Insurance (Action Required)

Issue Statement

Currently, to maintain Commission on Judicial Performance (CJP) insurance coverage, a justice, judge, commissioner, or referee (hereinafter referred to collectively as “judicial officer”) must, within a three-year cycle, complete an ethics education program known as Qualifying Ethics. Experienced judicial officers satisfy their ethics training requirement by attending five hours of training consisting of a mandatory three-hour course plus two hours of electives. New judicial officers satisfy their training requirement for the cycle in which they assume their position by completing the two-and-a-half-day ethics and fairness component of New Judge Orientation (NJO) and by attending mandatory judicial ethics courses offered at the B. E. Witkin Judicial College of California (the college). The current model and cycle present two problems. First, this model results in some disparity among new judges in terms of the amount of training a new judge must complete, depending on when the judge assumed office and when he or she attends NJO and the college. Second, the current cycle is not concurrent with the new three-year continuing education period created by the Judicial Council’s adoption of rules regarding minimum education requirements and expectations.

Recommendations

1. The Education Division and the Office of the General Counsel recommend that the Judicial Council modify the current model so that during any Qualifying Ethics cycle in which new judicial officers are fulfilling, in a timely way, educational requirements for new judicial officers, they are deemed to have satisfied their CJP insurance ethics training requirements for that three-year cycle.

2. The Education Division recommends that the Judicial Council extend the current three-year Qualifying Ethics cycle for one year to conclude on December 31, 2009, instead of December 31, 2008. Because the first three-year cycle for minimum education expectations for judicial officers began on January 1, 2007, and ends on December 31, 2009, extending the current Qualifying Ethics cycle one year would make these two cycles concurrent.

Rationale for Recommendations

1. Ethics Training for New Judicial Officers

In July 1999, the Judicial Council approved a requirement that all judicial officers who elect to obtain CJP insurance coverage must complete a one-day ethics education program once every three years. To enroll in the program, new judicial officers must submit a signed form stating that they agree to complete the Qualifying Ethics program once every three years in exchange for insurance coverage. Thus, new judicial officers are covered by the insurance policy upon submission of the form and they maintain their coverage by completing the Qualifying Ethics program once every three years.

In August 2002, the Judicial Council approved the current education model for Qualifying Ethics training, which includes the provision that new judicial officers satisfy their ethics training requirement for the cycle in which they assumed office by completing NJO and the college. For example, if a cycle runs from January 1, 2003, to December 31, 2005, and a judge assumes office in November 2005, the judge likely will not complete NJO and the college until sometime during the following cycle.¹ Under the current plan, this judge satisfies his or her ethics training requirement for the cycle that ends on December 31, 2005, even though the judge attended NJO and the college in the following cycle. This is because, under the current model, a new judicial officer who completes NJO and the college satisfies the training requirements only *for the cycle in which he or she assumes office*. Thus, regardless of when the judicial officer completes NJO and the college, those courses are applied to the cycle in which the judicial officer assumed office. This judge will then be required to complete the regular five-hour Qualifying Ethics training for experienced judicial officers sometime between January 1, 2006, and December 31, 2008.

In practice, this model has resulted in some inequities depending on when the new judicial officer assumes office and when he or she completes NJO and the college. In the example above, the judge is covered by the CJP insurance policy only for one to two months in the 2003–2005 cycle; the NJO and college courses completed in the 2006–2008 cycle apply to the 2003–2005 cycle, during which the judge was covered only for that short period of time at the end of 2005. In the 2006–2008 cycle, this judge must

¹ Rule 10.462(c) of the California Rules of Court provides that new judicial officers must complete NJO within six months of taking the oath of office and must complete the college within two years of taking the oath. The college is held once a year in the summer.

attend NJO, the college, and the Qualifying Ethics training to maintain insurance coverage.

Another example highlights a potential disparity in the current model. If a judge assumed office on December 31, 2005, and completed NJO and the college sometime in 2006 (the following cycle), that judge's completion of NJO and the college would be attributed to the cycle in which the judge assumed office, i.e., the 2003–2005 cycle. The judge would then have to complete the Qualifying Ethics training sometime during the 2006–2008 cycle in order to keep current on his or her training requirements. By contrast, a judge who assumed office the following day on January 1, 2006, would not have to complete the Qualifying Ethics training during the 2006–2008 cycle because, even though he or she may attend the same NJO and college as the first judge, those courses would be credited to the 2006–2008 cycle (the cycle in which the judge assumed office).

We note that these inequities have affected a small number of judicial officers. Since the current model took effect in 2002, questions about the timing issues described above have been raised.

To address these inequities, we recommend that new judicial officers be deemed to have completed their ethics training during any Qualifying Ethics cycle in which they are engaged in meeting their new judicial officer education requirements in a timely way.² Under this proposed model, if a new judge, regardless of when he or she assumes office, completes NJO *or* the college *or* the required overview course for new judicial officers sometime during the 2006–2008 cycle, that judge has satisfied his or her training requirements for that cycle. If the judge completes NJO during the 2006–2008 cycle and attends the college or the overview course during the 2009–2011 cycle, the judge will have met the training requirements for both cycles. After completing all new judicial officer education requirements, judicial officers would be subject to the ethics training requirements for experienced judicial officers in the next Qualifying Ethics cycle (beginning on January 1 of the cycle after they complete all new judicial officer education requirements).

Under this new model, a judicial officer's ethics training requirements would be based on the dates on which he or she completes the new judicial officer education requirements rather than the date on which he or she assumes office. Except in a very few cases, this new model will not result in less ethics training. To the extent it does result in less training, it will affect only those judicial officers who assume office in the latter part of a three-year cycle. Because the college, which is completed after NJO, includes at least five hours of ethics training, judges would still receive at least five hours of ethics training in every

² Beginning in 2007, new judges are required to participate in NJO, the college, *and* an overview course in their area of primary assignment. (Cal. Rules of Court, rule 10.462(c).) New judicial officers must complete the overview course within one year of taking the oath of office.

cycle. Although a few judicial officers will receive less ethics training, the new model will lead to more equitable treatment of new judicial officers.

It should be noted that the new model could still result in a slight disparity among a small number of new judicial officers. For example, two judges assume office on the same day in March 2005, which is the third year of the 2003–2005 cycle. One of those judges may attend NJO, an overview course, and the college before the end of 2005. This judge would be required to complete the Qualifying Ethics program sometime during the 2006–2008 cycle. The other judge may attend NJO and the overview course in 2005 but postpone attending the college until the following year, which is the first year of the 2006–2008 cycle. By attending the college in the 2006–2008 cycle, this judge will have satisfied his or her training requirement for that cycle and will not be required to complete the Qualifying Ethics program until sometime during the 2009–2011 cycle.

2. Extension of Current Qualifying Ethics Cycle for One Year

The first three-year Qualifying Ethics cycle was January 1, 2000–December 31, 2002; the second cycle was January 1, 2003–December 31, 2005; the current cycle is January 1, 2006–December 31, 2008.

On October 20, 2006, the Judicial Council adopted rules 10.451–10.471 of the California Rules of Court, regarding minimum education requirements and expectations. The rules as adopted created a three-year reporting cycle for judicial participation in continuing education. Because the rules took effect on January 1, 2007, the initial cycle will end on December 31, 2009.

The end date of the reporting cycle created by rules 10.451–10.471 is one year past the current end date for the current Qualifying Ethics education cycle. Having two different three-year cycles in which judges track their participation in education is administratively burdensome and may prove to create confusion because hours earned in participation in Qualifying Ethics courses are applicable to continuing education requirements and expectations.

We recommend extending the current Qualifying Ethics cycle one year to conclude on December 31, 2009, instead of December 31, 2008. This action will make the current and future Qualifying Ethics three-year education cycles concurrent with the three-year continuing education cycles created by rules 10.451–10.471.

Alternative Actions Considered

As to recommendation No. 1, one alternative considered was to allow a judicial officer who attends NJO and the college in different cycles to use attendance at the college to satisfy the elective component of the ethics education requirement in the cycle in which the judicial officer completed the college. This alternative, however, did not address the issues described above. The amount of ethics training would still be based on the date on

which the judicial officer assumed office rather than on the date the judicial officer attended the training. Thus, judges who assume office near the end of a cycle would still have to take more ethics training to cover the small amount of time they were covered by the insurance in that cycle.

As to recommendation No. 2, other than altering one of the current cycles, no other alternatives are available to make the cycles concurrent.

Comments From Interested Parties

There have not been any comments from interested parties on either of these recommendations.

Implementation Requirements and Costs

No additional costs would be associated with these recommendations.