

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Domestic Violence Practice and Procedure Task Force
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Governing Committee of the Center for Judicial Education and Research
(CJER), Hon. Ronald B. Robie, Chair
James M. Vesper, Assistant Director, 415-865-7797,
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DATE: October 2, 2009

SUBJECT: Domestic Violence: Judicial Education on Domestic Violence Issues
(adopt Cal. Rules of Court, rule 10.464) (Action Required)

Issue Statement

In February 2008, the Judicial Council approved the final report of the Domestic Violence Practice and Procedure Task Force and directed the task force “to work collaboratively with the Judicial Council’s Governing Committee of the Center for Judicial Education and Research (CJER) to revise the rules relating to minimum education requirements so that domestic violence issues are mandatory components of courses that meet the minimum requirements for new judges and judges new to a family law, juvenile law, criminal law, or probate assignment.”¹ In response to the task force report and the council’s directive, the task force and the governing committee propose new rule 10.464 regarding judicial education on domestic violence.

Recommendation

The Domestic Violence Practice and Procedure Task Force and the Governing Committee of the Center for Judicial Education and Research (CJER) recommend that the Judicial Council, effective January 1, 2010, adopt rule 10.464 to provide for education on domestic violence for judges, commissioners, and referees. The proposed rule would:

¹ (Judicial Council of Cal., Task Force Rep., *Domestic Violence Practice and Procedure* (Feb.22, 2008), p. 2).

1. Require participation in appropriate education on domestic violence issues by each judicial officer who hears matters in criminal, family, juvenile delinquency, juvenile dependency, or probate as part of his or her requirements and expectations under rule 10.462, and, in addition, for those with primary assignments in these areas, participation in periodic updates as part of these requirements and expectations; and
2. Require inclusion of domestic violence issues in courses at the Judicial College and in primary assignment courses for both new and experienced judicial officers.

The text of proposed rule 10.464 is attached at page 6.

Rationale for Recommendation

The purpose of the proposed new rule is both to ensure the continued inclusion of education on domestic violence issues in relevant courses and programs and to require judges and subordinate judicial officers to participate in domestic violence education.

Subdivision (a) of the proposed rule would require judges and subordinate judicial officers who hear matters in criminal, family, juvenile delinquency or dependency, or probate to participate in appropriate education on domestic violence issues. It would require, in addition, that judges and subordinate judicial officers whose primary assignments are in these subject areas participate in a periodic update. Participation in education on domestic violence issues would be part of the judge's or subordinate judicial officer's requirements and expectations under rule 10.462², not in addition to those requirements and expectations. Thus, this proposal will not result in judges and subordinate judicial officers having to participate in any additional hours or courses. Rather, education on domestic violence issues will be included in courses that already are required or expected, and participation in any other domestic violence education will count toward the existing number of continuing education hours required or expected.

The proposed rule does not require a specific number of hours of education for experienced judges and subordinate judicial officers who have not changed assignments. Instead, it provides that they participate in "appropriate" education on domestic violence issues (proposed rule 10.464(a)). The task force and governing committee intentionally chose this approach because the need of each judge and subordinate judicial officer for education on domestic violence issues varies widely based on the size of court, nature of assignment, mix of assignments, and other factors. The task force and governing committee decided that a "one-size-fits-all" approach would not be effective. Rather, each judge and subordinate judicial officer should thoughtfully examine and determine his or her own need. In response to a commentator who suggested that the term "appropriate" education might be vague or misconstrued, the task force and the

² Applicable subdivisions of this rule that relate to requirements and expectations are 10.462(c)(1); (c)(4); and (d)(1).

Governing Committee added a clarifying advisory committee comment; that revision is discussed more fully below.

Subdivision (b) of proposed new rule 10.464 would require the education provider to include domestic violence issues in specified courses and programs. The courses specified would include (1) courses offered at the B. E. Witkin Judicial College of California, (2) courses on primary assignments in criminal, family, juvenile delinquency or dependency, and probate provided for new judges and subordinate judicial officers, and (3) courses on primary assignments provided for experienced judges and subordinate judicial officers beginning new assignments in those subject areas.

New judges and subordinate judicial officers are required to participate in the Judicial College, an annual two-week residential program (rule 10.462(c)(1)(C)), and to take a course in their primary assignment (rule 10.462(c)(1)(B)). Experienced judges already are expected and experienced subordinate judicial officers are required to participate when beginning a new primary assignment in a course on that primary assignment (rule 10.462(c)(4)). This new provision would ensure that those courses in the criminal, family, juvenile, and probate areas include education on domestic violence issues as a mandatory component. This provision also would be consistent with Government Code section 68555, which provides that the Judicial Council must establish judicial training programs for judges and subordinate judicial officers who perform duties in domestic violence matters.

Alternative Actions Considered

The governing committee and the task force submit this rule in accordance with a specific recommendation to and directive from the Judicial Council. As a result, the committee and the task force did not consider alternative actions.

Comments From Interested Parties

The proposed rule was circulated for comment during the spring 2009 cycle from April 17, 2009, through June 17, 2009, to the standard mailing list for family and juvenile law proposals and to persons and entities interested in proposals relating to domestic violence, as well as to the regular rules and forms mailing list. Eighteen comments were received. Of those, 8 agreed with the proposal, 6 agreed with the proposal if modified, none disagreed, and 4 did not take a position, although 2 of those provided written comments. The comments are attached at pages 7–16.

The modifications suggested by those who agreed with the proposal but also suggested changes fall into the following three related categories:³

³ Some comments suggested more than one area of modification.

1. Those who believe that the curriculum content should be specified as a way to ensure inclusivity, relevance, and neutrality or who offer to provide the education themselves (6 comments);
2. Those who suggest that a specific number of hours or other specific requirement be included in the language of the rule to ensure that the quantity of education is sufficient and consistent (4 comments); and
3. Those who assert that the term “appropriate” education in the rule is vague and could be misconstrued and that the standard that could be used to determine “appropriate” education should be articulated in the actual text of the rule (1 comment).

Determining content

Several commentators expressed concern that the content details of the education on domestic violence should be mandated. These details are not typically delineated by rule. Suggestions for educational content can be forwarded to the education committees appointed by the Governing Committee for their consideration. Under rule 10.50 of the California Rules of Court, educational content is determined by the New Judge Education Committee and various subject-matter education committees composed of experienced judges with expertise in each area of assignment, such as criminal, family, juvenile dependency, juvenile delinquency, probate, and others. These education committees function under the authority and oversight of the Governing Committee and their role includes ensuring the balanced, neutral, and consistent quality of the education. Further, under rule 10.451, providing for judicial education is clearly a function of the judicial branch and standards of impartiality and fairness are also specified in this rule.

The rules of court also provide that judicial officers may obtain education from a wide array of sources. Those providers are noted in rule 10.481. The rule contains a list of approved providers and specifies the criteria for education obtained from other sources to qualify under the rules. Providers, such as those commentators who volunteered their expertise, are free to offer education to judicial officers and attempt to ensure that the education offered qualifies under the rules by meeting these criteria.

Hourly requirement or other mandate

Others commented that an hourly requirement or consistent annual program should be mandated. Under subdivisions (a) and (b) of the proposed rule, domestic violence education will be effectively required for new judicial officers and those new or returning to an assignment after a specified period. Moreover, continuing education on domestic violence will be required as part of the ongoing hourly requirements and expectations under rule 10.462 of the California Rules of Court. The task force and governing committee intentionally decided not to include a more specific hourly or programmatic requirement because the need for education in this area varies widely based on the judicial officer’s size of court, nature of assignment, and mix of assignments and the extent to which domestic violence issues are prevalent in these assignments.

Clarification of the term “appropriate” education

One commentator suggested that the term “appropriate” was vague and could be misconstrued as referring to the type or delivery method of the education rather than the number of hours. The commentator suggested that the following language be added to the text of the proposed rule: “Each judge or subordinate judicial officer should determine the number of hours of education on domestic violence that is adequate for his or her assignment, taking into account the size of court, nature of assignment, mix of assignments, and other factors.” The task force and governing committee determined that language offering guidance for judicial officers to consider when making decisions about what constitutes “appropriate” education, though useful, might more properly be contained in an advisory committee comment. The text of the proposed rule was revised to reflect the suggested language in an advisory committee comment to the rule.

Advisory committee review and suggestions

The text of the proposed rule was presented to various Judicial Council advisory committees and committee staff for review before it was circulated for comment. The committees included the Criminal Law Advisory Committee, Probate and Mental Health Advisory Committee, Family and Juvenile Law Advisory Committee, and the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee. With the exception of one comment, discussed below, all of the suggestions of the advisory committees were incorporated in the text of the rule that was distributed for comment, and no disagreement about the rule as currently drafted was submitted during the comment period.

The Probate and Mental Health Advisory Committee, through its staff, suggested that the rule be clarified to ensure that the concept of domestic violence include issues relating to elder abuse, both physical and financial, for purposes of probate matters. The task force and the governing committee agreed with the underlying concept that domestic violence does include elder abuse issues and that these issues should be the subject of the education provided for judicial officers who hear probate matters. They determined, however, that domestic violence is an implicitly inclusive term that encompasses an array of issues particular to different subject areas, including elder abuse (most frequently encountered in probate matters), and declined to change the specific language of the rule.

Implementation Requirements and Costs

The proposed rule is intended to describe education that is included within the existing hourly requirements and expectations. No additional hours are proposed. In addition, substantial grant funding is available to support education for judges and subordinate judicial officers in this subject area. Accordingly, the new rule will have no implementation costs.

Attachments

Rule 10.464 of the California Rules of Court is adopted by the Judicial Council, effective January 1, 2010, to read:

1 **Rule 10.464. Education requirements and expectations for judges and**
2 **subordinate judicial officers on domestic violence issues**

3
4 **(a) Judges and subordinate judicial officers hearing specified matters**

5
6 Each judge or subordinate judicial officer who hears criminal, family,
7 juvenile delinquency, juvenile dependency, or probate matters must
8 participate in appropriate education on domestic violence issues as part of his
9 or her requirements and expectations under rule 10.462. Each judge or
10 subordinate judicial officer whose primary assignment is in one of these
11 areas also must participate in a periodic update on domestic violence as part
12 of these requirements and expectations.

13
14 **(b) Specified courses to include education on domestic violence issues**

15
16 The education provider must include education on domestic violence issues
17 at the Judicial College under rule 10.462(c)(1)(C) and in courses for primary
18 assignments in criminal, family, juvenile delinquency, juvenile dependency,
19 or probate under rule 10.462(c)(1)(B) or (c)(4).

20
21 **Advisory Committee Comment**

22
23 In determining what constitutes “appropriate” education, each judge or subordinate judicial
24 officer should determine the number of hours of education on domestic violence that is adequate
25 for his or her assignment, taking into account the size of the court, the nature of his or her
26 assignment, the mix of assignments, and other factors.

SPR09-29**Domestic Violence: Judicial Education on Domestic Violence Issues** (adopt rule 10.464 of the California rules of Court)

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

	Commentator	Position	Comment	Committee Response
1.	Dr. Angela Browne-Miller Director Brown & Associated Research Tiburon	AM	I write to agree with the proposed changes IF modified. It is essential that the training provided be neutral, unbiased, not favoring one theoretical orientation over another—and that this training is screened for neutrality in all directions.	The details of educational content within a given subject area, such as domestic violence, are not typically delineated by rule. Rather, suggestions for educational content can be forwarded to the education committees appointed by the Governing Committee for their consideration. Under rule 10.50 of the California Rules of Court, educational content is determined by the New Judge Education Committee and various subject-matter education committees composed of experienced judges with expertise in each area of assignment, such as criminal, family, juvenile dependency, juvenile delinquency, probate, and others. These education committees function under the authority and oversight of the Governing Committee of CJER, and their role includes ensuring the balanced and neutral quality of the education.
2.	California Protective Parents Association Connie Valentine Policy Director Sacramento	AM	We respectfully disagree that “appropriate education” on domestic violence is sufficient. Judges are no more likely to know what they do not know than are community members.	The details of educational content within a given subject area, such as domestic violence, are not typically delineated by rule. Rather, suggestions for educational content can be forwarded to the education committees appointed by the Governing Committee for their consideration. Under rule 10.50 of the

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			<p>A specific uniform domestic violence curriculum must be designed by a national organization such as the National Council of Juvenile and Family Court Judges in Nevada that contains accurate research data from law enforcement on domestic violence and the negative effect on minors who witness violence.</p> <p>Judges also need tools such as lethality index checklists and case studies to provide them the ability to make decisions that prevent further violence.</p>	<p>California Rules of Court, educational content is determined by the New Judge Education Committee and various subject matter education committees composed of experienced judges with expertise in each area of assignment, such as criminal, family, juvenile dependency, juvenile delinquency, probate, and others. These education committees function under the authority and oversight of the Governing Committee of CJER, which is responsible for ensuring the balanced and neutral quality of the education.</p> <p>The committee agrees with these suggestions. However, as a point of information, the Domestic Violence Judicial Institute, conducted biannually, is based on the curriculum developed by the National Council of Juvenile and Family Court Judges referred to by the commentator.</p> <p>Risk and lethality assessment tools are also included in relevant programming.</p>
3.	Center for Judicial Excellence Jean Taylor	N/I	We respectfully disagree that “appropriate education” on domestic violence is	The details of educational content within a given subject area, such as domestic violence,

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			<p>sufficient. Judges are no more likely to know what they do not know than are community members.</p> <p>A specific uniform domestic violence curriculum must be designed by a national organization such as the National Council of Juvenile and Family Court Judges in Nevada that contains accurate research data from law enforcement on domestic violence and the negative effect on minors who witness violence.</p> <p>Judges also need tools such as lethality index checklists and case studies to provide them the ability to make decisions that prevent further violence.</p>	<p>are not typically delineated by rule. Rather, suggestions for educational content can be forwarded to the education committees appointed by the Governing Committee for their consideration. Under rule 10.50 of the California Rules of Court, educational content is determined by the New Judge Education Committee and various subject-matter education committees composed of experienced judges with expertise in each area of assignment, such as criminal, family, juvenile dependency, juvenile delinquency, probate, and others.</p> <p>The committee agrees with these suggestions. However, as a point of information, the AOC-sponsored Domestic Violence Judicial Institute, conducted biannually, is based on the curriculum developed by the National Council of Juvenile and Family Court Judges referred to by the commentator.</p> <p>Risk and lethality assessment tools are also included in relevant programming.</p>

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			In addition to CPPA's recommendation here on judicial education, CJE feels it essential that judicial trainings on Domestic Violence should be mandatory for all bench officers and relevant court personnel.	Under the proposed rule, domestic violence education will be effectively required for new judicial officers and those new or returning to one of the specified assignments. Continuing education on domestic violence will be required as part of the ongoing hourly requirements and expectations under rule 10.462 of the California Rules of Court. Mandating education for court staff is beyond the scope of the rule. The Domestic Violence Practice and Procedure Task Force can consider this issue in the future.
4.	Child Abuse Solutions, Inc. Meera Fox Executive Director Berkeley	N/I	No specific comment on this proposed rule was contained in the submission.	No response required.
5.	Harriett Buhai Center for Family Law Erin Dabbs, Staff Attorney Los Angeles	AM	We fully support the decision to mandate domestic violence training for judicial officers. ... We do, however, question the decision to forego specific recommendations about areas of instruction within the broad theme of domestic violence.	The details of educational content within a given subject area, such as domestic violence, are not typically delineated by rule. Rather, suggestions for educational content can be forwarded to the education committees appointed by the Governing Committee for their consideration. Under rule 10.50 of the California Rules of Court, educational content is determined by the New Judge Education Committee and various subject-matter

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			<p>Additionally, without an hour requirement, we worry that the topic could receive short shrift.</p>	<p>education committees composed of experienced judges with expertise in each area of assignment, such as criminal, family, juvenile dependency, juvenile delinquency, probate, and others. These education committees function under the authority and oversight of the CJER Governing Committee, and their role includes ensuring the balanced and neutral quality of the education.</p> <p>Under the proposed rule, domestic violence education will be effectively required for new judicial officers and those new or returning to one of the specified assignments. Continuing education on domestic violence will be mandated as part of the ongoing hourly requirements and expectations under rule 10.462 of the California Rules of Court. The task force and governing committee intentionally decided not to include a more specific hourly requirement predicated on the view that the need for education in this area varies widely based on the judicial officer’s size of court, nature of assignment, and mix of assignments. The committee added an advisory committee comment to the rule to provide further direction.</p>
6.	Barbara Kauffman	AM	In order to ensure judicial accountability,	Under the proposed rule, domestic violence

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	Attorney San Rafael		and consistent application of the domestic violence laws, there SHOULD be an annual mandatory, uniform, statewide basic “one size fits all” training to ensure that all bench officers and relevant court personnel truly understand domestic violence, and proper application of the current laws designed to prevent it.	education will be effectively required for new judicial officers and those new or returning to one of the specified assignments. Continuing education on domestic violence will be required as part of the ongoing hourly requirements and expectations under rule 10.462 of the California Rules of Court. The task force and governing committee intentionally decided not to include a more specific hourly requirement or a “one-size-fits all” approach predicated on the view that the need for education in this area varies widely based on the judicial officer’s size of court, nature of assignment, and mix of assignments.
7.	Karen Manalisay	A	I think more education is positive for judges... This education should be more than book education. I would hope that the professionals can hear stories from litigants as a part of their education because there are many types of domestic violence.	No response required. Judicial education on domestic violence often contains information gathered from the accounts of litigants and an analysis of the different types and fact patterns that characterize domestic violence cases.
8.	Julie Netchaev Saugus	A	Any education provided to any Officer of the Court would be beneficial in creating one universal way to address some of the more serious issues that relate to the family courts in domestic violence cases.	No response required.
9.	Dr. Nancy Olesen Licensed Psychologist	A	I think this is extremely important and am delighted to see the change.	No response required.

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	San Rafeel			
10.	Orange County Bar Association Michael G. Yoder, President	A	Agree with proposed changes.	No response required.
11.	Safe at Home Cathleen Patrick, Manager	AM	In order for this rule to be effective, a specific number of hours of domestic violence training should be required for all judges, regardless of whether or not they have changed assignments. To leave the choice for whether or not or how much training is needed to each individual judge and subordinate judicial officer may undermine the intent of the new rule as those judges who are conscientious about receiving training will take the updated training and those who are not will not.	Under the proposed rule, domestic violence education will be effectively required for new judicial officers and those new or returning to one of the specified assignments. Continuing education on domestic violence will be required as part of the ongoing hourly requirements and expectations under rule 10.462 of the California Rules of Court. The task force and governing committee intentionally decided not to include a more specific hourly requirement predicated on the view that the need for education in this area varies widely based on the judicial officer's size of court, nature of assignment, and mix of assignments. The committee added an advisory committee comment to the rule to provide further direction.
12.	San Diego County Probation Department Pamela Martinez, DCPO	N/I	No specific comment on this proposed rule was contained in the submission.	No response required.
13.	State Bar of California, Standing Committee on the Delivery of Legal Services Sharon Ngim, Staff Liaison	A	This rule would help insure that bench officers are aware of underlying dynamics occurring in the referenced cases so they can use those dynamics when determining	No response required.

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			<p>the best course of action. . . .</p> <p>Our only recommendation is that the same uniform and consistent training is also required for pro tem judges.</p>	<p>The comment relating to requirements for temporary judges is beyond the scope of this proposal but may be considered by the Domestic Violence Practice and Procedure Task Force in the future. The Center for Judicial Education and Research (CJER) currently posts many online courses and publications on a Temporary Judge Resources web page for trial courts to use in training temporary judges. The courses and publications posted include some coverage of domestic violence issues.</p>
14.	Mary Stump	N/I	<p>It would be useful to allow local DV prevention agencies to augment what is provided by the judicial college, with an annual presentation to judges.</p>	<p>The details of educational content within a given subject area, such as domestic violence, are not typically delineated by rule. Rather, suggestions for educational content can be forwarded to the education committees appointed by the Governing Committee for their consideration. Under rule 10.50 of the California Rules of Court, educational content is determined by the New Judge Education Committee and various subject-matter education committees composed of experienced judges with expertise in each area of assignment, such as criminal, family, juvenile dependency, juvenile delinquency,</p>

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				probate, and others. These education committees function under the authority and oversight of the Governing Committee of CJER, and their role includes ensuring the balanced and neutral quality of the education.
15.	Superior Court of Kern County Christina Rodriguez, Assistant Court Supervisor	A	Agree with proposed changes.	No response required.
16.	Superior Court of Los Angeles County	A	Agree with proposed changes.	No response required.
17.	Superior Court of San Diego County Michael M. Roddy, Executive Officer	AM	The term “appropriate education” is too vague to convey the intent of the committee and task force, i.e., to allow each judicial officer to determine the number of hours of education based on “size of court, nature of assignment, mix of assignments, and other factors.” (Inv. To Comment, p. 3.) The term can be misinterpreted as referring to the type of education provider or, perhaps, the format of the education (e.g., classroom courses, self-study, on-line judicial courses, moodle). Suggestion: The following might be added as a third sentence in subdivision (a): “Each judge or subordinate judicial officer should	The task force and the governing committee concur that the language used might be misinterpreted and suggest that the language cited from the Invitation to Comment be included in an advisory committee comment to the rule that will provide guidance to the individual judicial officer.

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			determine the number of hours of education on domestic violence that is adequate for his or her assignment, taking into account the size of court, nature of assignment, mix of assignments, and other factors.”	
18.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee (TCPJAC CEAC) Joint Rules Subcomimttee Patrick Danna	A	Agree with no further comment.	No response required.

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