



Center for Judicial Education and Research Advisory Committee

May 14, 2024



Judicial Council of California

Center for Judicial Education &
Research Advisory Committee



Judicial Council of California

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www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: [24-XXX]

For business meeting on September 19, 2024

Title

Judicial Branch Education: Fairness and Access Requirements

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

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

Effective Date

January 1, 2025

Date of Report

May 8, 2024

Recommended by

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

Contact

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Executive Summary

The Center for Judicial Education and Research Advisory Committee proposes adopting rule 10.465 and amending rule 10.469 of the California Rules of Court and to clarify existing fairness and access education requirements for judicial officers. The proposal would also require related technical changes to rule 10.461 and 10.462.

Recommendation

The Center for Judicial Education and Research Advisory Committee proposes adopting rule 10.465 and amending rule 10.469 of the California Rules of Court and to clarify existing fairness and access education requirements for judicial officers. The proposal would also require related technical changes to rule 10.461 and 10.462.

The proposed amended rules, attached at pages [5]–[7], would be effective January 1, 2025.

Relevant Previous Council Action

The Judicial Council adopted a comprehensive set of rules on judicial branch education in two stages in 2006 and 2007. This action included the adoption of rule 10.469 of the California Rules

of Court¹ which contained only nonmandatory education recommendations for judicial officers. In 2020, the Judicial Council amended rule 10.469 to include new subdivision (e)(2) mandating new education requirements for judicial officers on unconscious bias, as well as on the prevention of discrimination, harassment, retaliation, and other inappropriate workplace conduct.

Analysis/Rationale

Since its adoption, rule 10.469(e)(2) of the California Rules of Court has generated confusion by stating two separate mandatory education *requirements* for judicial officers in a subdivision of a rule that had previously contained only education *recommendations*. Additionally, the existence of two separate requirements in one subdivision generated further misunderstanding of what training judicial officers are required to obtain.

Without altering the requirements for judicial officers, this proposal clarifies existing education regulation on fairness and access issues by moving fairness and access requirements and recommendations to a new, standalone rule—proposed rule 10.465. In the new rule, the recommendation remains in a separate subdivision from the requirements, but the two requirements are now separated in their own provision emphasizing that education on two discrete subjects – bias and discrimination prevention – must be obtained by judicial officers every three-year education cycle. An added benefit of the proposal is that it emphasizes the essential nature of fairness and access education for all judicial officers and places the requirements 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).

The proposal also incorporates references to statutes providing authorization for the Judicial Council’s adoption of a rule on this topic and guidance on the content of implicit bias training for the judicial branch. Finally, the proposal, if adopted, also requires an amendment to rule 10.469 to delete subdivision (e), and amendments to rules 10.461 and 10.462 to include references to new rule 10.465.

Altogether, this action improves access to the consistent, impartial, and independent administration of justice by clarifying and emphasizing existing educational requirements for judicial officers on bias and discrimination prevention.

Policy implications

This proposal will assist judicial officers to better understand their training obligations on the prevention of bias, discrimination, harassment, retaliation, and other inappropriate workplace conduct. Thus, this proposal supports Goal I of the Strategic Plan for California’s Judicial Branch, specifically the goal of providing equal access to the courts and court proceedings and

¹ All further references are to the California Rules of Court unless otherwise indicated.

programs. California Courts, “The Strategic Plan for California’s Judicial Branch” (July 2019), <https://www.courts.ca.gov/3045.htm>.

Comments

The proposal generated no significant points of discussion or divergence of opinion within the CJER Advisory Committee membership. Prior to circulation for public comment, however, members of the Rules Committee asked whether there was a distinction between the terms “unconscious bias” and “implicit bias.” They further enquired if there was a rationale for the adoption of the term “unconscious bias” instead of “implicit bias” in rule 10.469(e)(2) that supported keeping the term in the proposed new rule.

During this discussion, it was noted that terms are often used interchangeably, but some subject matter experts in this field believe that there is a distinction between the two terms that is worth noting.

This proposal circulated for public comment from March 29 through May 3, 2024, as part of the regular spring comment cycle. Three comments were received, one agreeing with the proposal and two not indicating a position. A chart with the text of the comments and the committee responses is at page [8].

One of the commenters offered a suggestion on the same issues raised during the Rules Committee’s initial consideration of the proposal. The commenter noted that the term “implicit bias” is used predominantly in section 68088(b)(1) of the Government Code which authorizes the Judicial Council to develop training on this topic. The statute further requires that such training include “the social science on *implicit bias, unconscious bias, and systemic implicit bias*, including the ways that bias affects institutional policies and practices.” Gov. Code § 68088(b)(1)(A) (emphasis added). The use of three distinct terms in the statute strongly implies a legal distinction between them. The commentator also noted that the term “implicit bias” is used by the California State Bar in its recently adopted minimum continuing legal education requirements. Cal. State Bar, rule 2.72(B)(2)(a)(ii)(1) (“[A]t least one hour must focus on *implicit bias* and the promotion of bias-reducing strategies” (emphasis added)).

Given that the consensus in the legal community now leans towards the term “implicit bias,” the committee altered its proposal to replace the term “unconscious bias” with “implicit bias.”

Alternatives considered

The committee considered two alternatives to the proposal. The committee initially considered taking no action, leaving the fairness and access requirements in rule 10.469(e). The committee rejected this proposal as it did not address the underlying issue: the confusion caused by including with two education *requirements* within a single subdivision of a rule pertaining to education *recommendations*.

The committee also considered a draft version of the new rule that condensed the current requirements and recommendation on fairness and access into one subdivision with additional

clarifying language and references. The committee declined this approach given the potential for it to be misinterpreted as adding additional mandates in this area. The alternative language considered also did not resolve the underlying need to clarify that judicial officers are separately required to participate in education on unconscious bias and education on the prevention of discrimination, harassment, retaliation, and inappropriate workplace conduct.

Fiscal and Operational Impacts

Since the proposal is a reorganization and clarification of existing requirements, the proposal will have no significant fiscal or operational impacts on the judicial branch.

Attachments and Links

1. Cal. Rules of Court, rules 10.461, 10.462, 10.465, and 10.469, at pages [5–7]
2. Link A: Cal. Rules of Court, rule 10.461,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_461
3. Link B: Cal. Rules of Court, rule 10.462,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_462
4. Link C: Cal. Rules of Court, rule 10.469,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_469
5. Link D: Gov. Code, § 68088,
leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=68088.&lawCode=GOV

Rule 10.465 of the California Rules of Court is adopted and rules 10.461, 10.462, and 10.469 is 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). All justices must complete education
10 requirements on fairness and access as set forth in rule 10.465(a) and should
11 participate in more judicial education than is required, related to each individual's
12 responsibilities and in accordance with the judicial education recommendations set
13 forth in rule 10.469.

14
15 **(b)–(e) * * ***

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

20
21 **(a) Applicability**

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

40
41 **(b)–(g) * * ***
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1
2 **Rule 10.465. Education requirements and recommendations for justices, judges,**
3 **and subordinate judicial officers on fairness and access**
4

5 **(a) Education on ~~unconscious-implicit~~ bias and the prevention of harassment,**
6 **discrimination, retaliation, and inappropriate workplace conduct**
7

- 8 (1) Each justice, judge, and subordinate judicial officer must participate in
9 ~~unconscious-implicit~~ bias education.
10
11 (2) Each justice, judge, and subordinate judicial officer must participate in
12 education on the prevention of harassment, discrimination, retaliation, and
13 inappropriate workplace conduct.
14
15 (3) The education in (1) and (2) must be taken at least once every three-year
16 continuing education cycle as determined under rules 10.461(c)(1) and
17 10.462(d).
18

19 **(b) Additional education on fairness and access**
20

21 In order to achieve the objective of assisting judicial officers in preserving the
22 integrity and impartiality of the judicial system through the prevention of bias, each
23 justice, judge, and subordinate judicial officer should regularly participate in
24 education on fairness and access in addition to that required in (a). The education
25 should include the following subjects: race and ethnicity; gender; sexual
26 orientation; persons with disabilities; persons with limited economic means; and
27 persons without stable housing.
28
29

30 **Rule 10.469. Education recommendations for justices, judges, and subordinate**
31 **judicial officers**
32

33 **(a)–(d) * * ***
34

35 **(e) ~~Education on fairness and access, unconscious bias, and prevention of~~**
36 **harassment, discrimination, retaliation, and inappropriate workplace conduct**
37

- 38 (1) ~~In order to achieve the objective of assisting judicial officers in preserving~~
39 ~~the integrity and impartiality of the judicial system through the prevention of~~
40 ~~bias, each justice, judge, and subordinate judicial officer should regularly~~
41 ~~participate in education on fairness and access. The education should include~~
42 ~~the following subjects: race and ethnicity; gender; sexual orientation; persons~~

1 with disabilities; persons with limited economic means; and persons without
2 stable housing.

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

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Judicial Branch Education: Fairness and Access Requirements (adopt Cal. Rules of Court, rule 10.465; amend rules 10.461, 10.462, and 10.469)

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

	Commenter	Position	Comment	Committee Response
1.	Rasha Gerges Shields Attorney Los Angeles	NI	<p>* The commenter proposes two changes to the committee’s recommendation to adopt rule 10.465.</p> <p>I commend the underlying goals of the education requirements, as well as the stated goals of the proposed changes to the rules, which is to provide clarity to the requirements and avoid confusion. With those same goals in mind, I believe proposed rule 10.465 would benefit from two changes. First, proposed rule 10.465 (and rule 10.469) use the phrase “unconscious bias,” but I believe the more precise phrase to use is “implicit bias.” Although the two phrases are often used interchangeably, Diversity Equity & Inclusion professionals do not all agree that these terms, are, in fact, equivalent (see, e.g., https://percipiocompany.com/what-is-the-difference-between-implicit-and-unconscious-bias/). In any event, using the phrase “implicit bias” instead of “unconscious bias” would align more directly with Government Code Section 68088, which authorizes the Judicial Council to “develop training on implicit bias” broadly, which shall include, but not be limited to [Gov. Code § 68088(b)(1)(A)-(F) (emphasizing multiple references to the term “implicit bias”)].</p> <p>Although the statute references unconscious biases, the structure of the statute demonstrates that the over-arching topic of the training should be “implicit bias,” with unconscious bias being a sub-topic. Accordingly, to avoid confusion</p>	<p>The committee agrees with the commenter’s suggestion to replace the term “unconscious bias” with the term “implicit bias” and has incorporated the new term into the proposal it is recommending for adoption. Although the terms are often used interchangeably, the committee agrees that the use of both terms in Gov. Code § 68088 implies that they have legally distinct meanings, and the term “implicit bias” is the principal focus of the statute.</p>

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

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Judicial Branch Education: Fairness and Access Requirements (adopt Cal. Rules of Court, rule 10.465; amend rules 10.461, 10.462, and 10.469)

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	Commenter	Position	Comment	Committee Response
			<p>and to be more faithful to the underlying statutory authority, proposed Rule 10.465 should refer to “implicit bias” rather than “unconscious bias.”</p> <p>I also note that using the phrase “implicit bias” would also align this judicial training requirement to the MCLE requirements of California attorneys. The California Bar requires one hour of bias-related training to “focus on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system (Implicit Bias/Bias-Reducing Strategies Credit).” https://www.calbar.ca.gov/Attorneys/MCLE-CLE/Requirements#:~:text=At%20least%20two%20credit%20hours,(Elimination%20of%20Bias%20Credit). Using similar terminology between the two trainings will help judges and lawyers work together with a shared vocabulary to disrupt bias, including attending joint trainings that clearly satisfy both requirements.</p> <p>Second, to avoid any confusion, proposed Rule 10.465 should include hours requirements for each of the trainings set forth in the rule. Currently, the rule requires education in unconscious bias and the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct. It is likely</p>	<p>As to the commenter’s second suggestion that a minimum number of hours be added to the proposed rule, the committee believes this would be an important substantive change to the proposal that would require additional public comment before it could be considered for</p>

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

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Judicial Branch Education: Fairness and Access Requirements (adopt Cal. Rules of Court, rule 10.465; amend rules 10.461, 10.462, and 10.469)

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

	Commenter	Position	Comment	Committee Response
			implied that each of those trainings would be at least one-hour in duration. However, it would be clearer if the rule expressly stated that each education program should be at least one hour, similar to the California attorneys' MCLE requirements.	adoption. The committee will consider this suggestion during the next rules cycle.
2.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	A	The Court agrees that SPR24-13, "Judicial Branch Education: Fairness and Access Requirements" adequately addresses its goal of clarifying existing fairness and access education requirements for judicial officers. To add even more clarity, it is suggested that the rule also outline the number of hours required to be taken for subdivisions (a)(1) and (a)(2).	The committee believes that adding a minimum number of hours requirement for both implicit bias and discrimination prevention would be an important substantive change to the current proposal that would require additional public comment. The committee will consider this suggestion during the next rules cycle.
3.	Superior Court of Orange County, Family Law and Juvenile Divisions, by Katie Tobias, Operations Analyst	NI	* The commenter provided no comment on the substance of the proposal, but the court responded that the proposal appropriately addresses the stated purpose. The commenter also noted that implementation of the proposal would require the court to communicate the adoption to its judicial officers and that four months' notice prior to the effective date of the proposal would provide sufficient time for implementation.	No response required.

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