

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP20-04

Title

Judicial Branch Education: Extension and Reduction of Requirements; Definition of Instructor-Led Training

Action Requested

Review and submit comments by September 16, 2020

Proposed Rules, Forms, Standards, or Statutes

Adopt Cal. Rules of Court, rules 10.492, 10.493

Proposed Effective Date

January 1, 2021

Proposed by

Center for Judicial Education and Research
Advisory Committee
Hon. Kimberly A. Gaab, Chair

Contact

Karene Alvarado, 415-865-7761
karene.alvarado@jud.ca.gov

Executive Summary and Origin

The state of emergency related to the COVID-19 pandemic has forced the Center for Judicial Education and Research (CJER) to postpone or cancel live, in-person education since mid-March 2020. The CJER Advisory Committee recommends adopting rule 10.492 of the California Rules of Court to grant a temporary extension for all content-based education requirements and a prorated reduction of all hours-based education requirements stated in the California Rules of Court. The committee also recommends adopting rule 10.493, which would allow “instructor-led training”—including live webinars—to satisfy the education requirements of the California Rules of Court for “traditional (live, face-to-face)” or “in person” training.

The Proposal

Adopt rule 10.492, temporary extension and pro rata reduction of judicial branch education requirements

Several rules on judicial branch continuing education require judicial officers or court employees to take classes on specific topics, attend specific programs, and/or attend courses via “traditional (live, face-to-face) training.” These requirements must be completed within a specific window of time, and there is no authority within the rules to waive or extend many of these requirements statewide. The COVID-19 pandemic is preventing members of the branch from completing their education requirements because providers—including CJER—are unable to offer the required programs in the required format. Judicial officers, court leadership, and court employees have

*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 Policy Coordination and Liaison Committee.
It is circulated for comment purposes only.*

asked whether CJER or the Judicial Council will waive education requirements or extend education deadlines, which are found primarily in the rules of court.¹

Rule 10.492 would provide relief for California’s court employees and judicial officers by granting a temporary extension and a prorated reduction of the education requirements in the California Rules of Court. Without this rule, a significant number of California’s judicial officers and court employees will be forced into noncompliance with the education requirements of certain rules of court. Although CJER is redesigning the majority of its multiday, live programs to offer them in a distance education format, that process will be ongoing over the next several months. Rule 10.492 thus remains urgently needed to resolve potential widespread noncompliance.

The rule would provide much needed relief by temporarily extending the deadlines for all content-based education requirements, as defined in the proposed rule, for 12 months. This extension would ensure that court employees and judicial officers would eventually obtain education content deemed essential. Impacted programs include, but are not limited to, New Judge Orientation, Primary Assignment Orientations, and Bench Conduct and Demeanor for Temporary Judges.

In addition, this rule would prorate the number of hours needed to complete all hours-based education requirements for a 12-month period. Court staff in a two-year education cycle would have their hours reduced by 50 percent. Judicial officers and court leadership in a three-year education cycle would have their hours reduced by a third. The advisory committee comment to the proposed rule provides examples of how this prorated reduction would work in practice. Overall, this provision recognizes the difficulty court employees and judicial officers may have in securing the necessary number of hours of education while contemporaneously addressing the challenges involved in operating the courts during and immediately after a pandemic. This extension and prorated reduction will expire on December 31, 2022.

The text of the proposed rule is attached at pages 7–9.

Adopt rule 10.493, instructor-led training

Several rules of court require that court employees or judicial officers attend specific courses or obtain a specific number or percentage of hours of education through “traditional (live, face-to-face)” or “in person” training. Developments in technology over the past decade, however, have enabled faculty and students to benefit from real-time communication and interactive exercises over the internet through webinars, making this delivery method a cost-effective and comparable alternative to traditional classroom education. In light of these developments, several rules of court now permit judicial officers and judicial branch employees to satisfy continuing education requirements either through traditional classroom or distance education methods. See, for

¹ Nothing in this proposal would alter education requirements and expectations outside the California Rules of Court, including education requirements mandated by statute or regulation (e.g., Welf. & Inst. Code, § 304.7) or required by Judicial Council policy (e.g., the Qualifying Ethics Program and the Temporary Assigned Judges Program).

example, Cal. Rules of Court, rules 10.468(c)(7) (judicial officers assigned to hear probate matters), and 10.491(c)(5) (Judicial Council employees).

The Covid-19 pandemic and the need to temporarily cease all live, face-to-face education has brought this issue immediately to the forefront regarding the remaining provisions in the rules of court that require traditional (live, face-to-face) training. This rule is urgently needed to enable judicial officers and court staff to obtain essential education in a timely manner while preserving real-time instruction and communication between faculty and students. Proposed rule 10.493 would permit any “instructor-led training”—including live webinars—to satisfy the requirement that a specific course, or a number or percentage of education hours, be completed by traditional (live, in-person) training.

The text of the proposed rule is attached at page 9-10.

Alternatives Considered

Rule 10.492

CJER and the CJER Advisory Committee considered multiple alternative courses of action, including:

1. Declining to intervene in any manner;
2. Extending the education cycles for court staff and judicial officers;
3. Assessing and separately amending each impacted rule as necessary, including rules 2.812, 2.813, 2.815, 5.340, 10.452, 10.455, 10.461–10.464, 10.468, 10.469, 10.471–10.474, 10.478, 10.479, and 10.491 of the California Rules of Court;
4. Extending content-based deadlines, but leaving hours-based deadlines unmodified;
5. Extending both content-based and hours-based deadlines; and
6. Prorating both content-based and hours-based for the duration of the crisis.

Declining to intervene was rejected because of the widespread noncompliance that would naturally result from inaction. The second and third alternatives were considered and rejected based on their complexity to administer. Altering the education cycle and amending all the impacted rules would be time-consuming and implement a permanent restructuring of the branch’s education requirements for what is hoped will be a temporary issue. The remaining proposals would have either afforded incomplete relief or eliminated timely essential education throughout the branch.

The temporary extension in the rule is needed, regardless of whether CJER’s programming is modified for distance delivery. Even with a switch to a complete distance delivery model, some

judicial officers and court employees are already or will soon be noncompliant with the requirements as a result of the current public health crisis.

The committee concluded that the proposed rule is the best option for ensuring that essential education (i.e., content-based requirements such as the New Judge Orientation) is eventually obtained. At the same time, the proposed rule alleviates pressure on the judicial branch by preventing hours-based education requirements from being compressed into a smaller window of time before the completion of the current education cycles. Lastly, this option avoids the administrative and operational costs associated with extending the education cycles—such as reprogramming education tracking systems—or the time it would take to amend the specific rules cited above.

Rule 10.493. Instructor-led training

The CJER Advisory Committee considered including the substance of rule 10.493 into a broader review of judicial branch education requirements. In the near future, the CJER Advisory Committee intends to initiate a comprehensive review of the education requirements in the rules of court. The purpose of this review is to recommend amendments that would apply consistent terminology throughout the rules and acknowledge the impact of new technologies. However, the Covid-19 pandemic and the necessity to cease all live, in-person training required the CJER Advisory Committee to act sooner to ensure that essential education is obtainable.

As an alternative to the proposed rule, the committee also considered permitting not only instructor-led training, but also “independent training” to substitute for all continuing education required or expected from a judicial officer or court staff person. In that alternative, “independent training” would mean asynchronous education unguided by faculty in real time and taken by a participant at a time and location that does not depend on the participation of others. This alternative was rejected as being overly sweeping. The alternative would have permitted, for example, a commissioner to satisfy the requirements of rule 10.462 by simply watching 30 hours of instructional videos over the three-year education cycle, never once speaking about the training with a colleague or instructor.

The committee’s opinion is that education is most effective when it provides an opportunity to ask questions and receive answers in real time and to engage in a free exchange of ideas with fellow participants and faculty. This is the same policy rationale behind the original requirements that certain courses or a specific number or percentage of hours be taken via traditional (live, face-to-face) training. The proposed rule preserves this policy while simultaneously permitting the flexibility that technology brings and that is urgently needed during the current public health crisis.

Fiscal and Operational Impacts

This proposal will result in no fiscal or operational costs on the courts or the Judicial Council.

Request for Specific Comments

In addition to comments on the proposal as a whole, the CJER Advisory Committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The CJER Advisory Committee also seeks comments from *courts* on the following cost and implementation matters:

- What would the training implementation requirements be for courts—for example, Court Training Coordinators?
- Would 1.5 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. Cal. Rules of Court, rules 10.492 and 10.493, at pages 7–9
2. Link A: Cal. Rules of Court, rule 2.812,
www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_812
3. Link B: Cal. Rules of Court, rule 2.813,
www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_813
4. Link C: Cal. Rules of Court, rule 2.815,
www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_815
5. Link D: Cal. Rules of Court, rule 5.340,
www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_340
6. Link E, Cal. Rules of Court, rule 10.452,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_452
7. Link F, Cal. Rules of Court, rule 10.455,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_455
8. Link G, Cal. Rules of Court, rule 10.461,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_461
9. Link H, Cal. Rules of Court, rule 10.462,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_462
10. Link I, Cal. Rules of Court, rule 10.463,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_463
11. Link J, Cal. Rules of Court, rule 10.464,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_464
12. Link K, Cal. Rules of Court, rule 10.468,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_468
13. Link L, Cal. Rules of Court, rule 10.469,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_469

14. Link M, Cal. Rules of Court, rule 10.471,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_471
15. Link N, Cal. Rules of Court, rule 10.472,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_472
16. Link O, Cal. Rules of Court, rule 10.473,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_473
17. Link P, Cal. Rules of Court, rule 10.474,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_474
18. Link Q, Cal. Rules of Court, rule 10.478,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_478
19. Link R, Cal. Rules of Court, rule 10.479,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_479
20. Link S, Cal. Rules of Court, rule 10.491,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_491

Rules 10.492 and 10.493 of the California Rules of Court would be adopted, effective January 1, 2021, to read:

1 **Rule 10.492. Temporary extension and pro rata reduction of judicial branch**
2 **education requirements**

3
4 **(a) Application**

5
6 This rule applies to the requirements and expectations in the California Rules of
7 Court relating to judicial branch education, except rule 10.491 on minimum
8 education requirements for Judicial Council employees.

9
10 **(b) Definitions**

11
12 As used in this rule:

13
14 (1) “Content-based education requirement” means a requirement or expectation
15 of:

16
17 (A) Attendance at any specific program;

18
19 (B) A course of study on any specific topic or topics; or

20
21 (C) A course of study limited to a specific delivery method, such as
22 traditional (live, face-to-face) education.

23
24 (2) “Hours-based education requirement” means a requirement or expectation of
25 a specified number of hours of education to be completed within a specified
26 time period.

27
28 **(c) Content-based education requirement**

29
30 Notwithstanding any other rule, any deadline for completion of a content-based
31 education requirement or expectation is extended for 12 months from that deadline,
32 even if the deadline has passed.

33
34 **(d) Hours-based education requirement**

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36 Notwithstanding any other rule, the months of April 2020 through March 2021 are
37 excluded from the education cycles in which those months fall, and the number of
38 hours of education to complete hours-based education requirements or expectations
39 is prorated accordingly.

40

1 **(e) Sunset**

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3 This rule remains in effect until December 31, 2022, or until amended or repealed.

4
5 **Advisory Committee Comment**

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7 Various rules in title 10, chapter 7, of the California Rules of Court authorize, for good cause, the
8 granting of an extension of time to complete content-based and hours-based education
9 requirements and expectations. Nothing in this rule modifies that authority.

10
11 Nothing in this rule alters education requirements and expectations outside the California Rules
12 of Court, including education requirements mandated by statute or regulation (e.g., Welf. & Inst.
13 Code, § 304.7) or required by Judicial Council policy (e.g., the Qualifying Ethics Program and
14 the Temporary Assigned Judges Program).

15
16 **Subdivision (c).** This subsection applies to all rules of court containing content-based education
17 requirements. Below are examples of this subsection in practice.

18
19 Rule 10.462(c)(1) contains education requirements for new trial court judges and subordinate
20 judicial officers. Based on the date an individual took his or her oath of office, a judge has six
21 months to attend the New Judge Orientation (NJO) program, one year to attend an orientation
22 course in his or her primary assignment, and two years to attend the B. E. Witkin Judicial College
23 of California.

24
25 Under rule 10.462(c)(1), a judge who took her oath of office on January 1, 2020, would need to
26 complete these programs by June 30, 2020 (NJO), December 31, 2020 (primary assignment), and
27 December 31, 2021 (Judicial College), respectively. With the 12-month extension under rule
28 10.492(c), this same judge would now need to complete these programs by June 30, 2021 (NJO),
29 December 31, 2021 (primary assignment), and December 31, 2022 (Judicial College).

30
31 As another example of the 12-month extension under rule 10.492(c), a judge who took his oath of
32 office on December 1, 2018, would need to complete the NJO by April 30, 2020 (within 18
33 months), a primary assignment by November 30, 2020 (within two years), and the Judicial
34 College by November 30, 2021 (within three years).

35
36 Using a different rule as an additional example, rule 10.478(b)(1) requires court investigators to
37 complete 18 hours of education within one year of their start date on specified topics.

38 Rule 10.492(c) would allow a court investigator up to two years to complete this education.

39
40 **Subdivision (d).** This subsection applies to all rules of court containing hours-based education
41 requirements. Below are examples of this subsection in practice.

1 Rule 10.461(c)(1) contains education requirements for Supreme Court and appellate justices.
2 Each justice must complete 30 hours of education every three years.

3
4 Under rule 10.492(d), a justice’s hours requirements are prorated for the education cycle that runs
5 from January 1, 2019, through December 31, 2021. For justices who were confirmed for
6 appointment before January 1, 2019, they must complete 20 hours of education by December 31,
7 2021.

8
9 Education requirements for justices who were confirmed for appointment on or after January 1,
10 2019, would also be prorated by rule 10.492(d) and prorated additionally based on the number of
11 years remaining in the three-year educational cycle. For example, a justice confirmed for
12 appointment on October 1, 2020, would ordinarily have 10 hours of hours-based education
13 requirements to complete for the last year of the three-year cycle. Under rule 10.492(d), the
14 months of January 2021 through March 2021 would be excluded, and the justice must complete
15 7.5 hours rather than 10 hours of hours-based education.

16
17 As an additional example, rule 10.474(c)(2) requires eight hours of continuing education every
18 two years for nonmanagement court staff. For a court employee hired on or before January 1,
19 2020, rule 10.492(d) prorates the number of hours for the cycles that run from January 1, 2020,
20 through December 31, 2021. For this cycle, the number of hours required would be prorated for
21 four quarters, April 1, 2020, through March 31, 2021. This results in a reduced hours-based
22 requirement of four hours.

23 24 **Rule 10.493. Instructor-led training**

25 26 **(a) Definition**

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28 “Instructor-led training” means synchronous education, guided by faculty, that
29 allows for real-time communication between faculty and participants and is offered
30 by an approved provider under rule 10.481. Examples of instructor-led training
31 include in-person trainings in a classroom setting, live webinars, or live
32 videoconferences.

33 34 **(b) Application**

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36 Notwithstanding any other rule, instructor-led training may be used to satisfy all
37 continuing education requirements specified in the California Rules of Court that
38 require traditional (live, face-to-face) education. This provision applies whether the
39 requirement relates to a specific course or to a certain percentage or number of
40 hours of education.

41 42 **Advisory Committee Comment**

1 This rule is intended to eliminate within the California Rules of Court any restriction that requires
2 that a specific course or a certain number or percentage of hours of education be taken in a
3 traditional (live, face-to-face) learning environment. This rule applies whether the education is
4 described as “traditional (live, face-to-face),” “live (face-to-face),” “in person,” or any
5 combination of these terms.

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