

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SP21-07

Title

Judicial Branch Education: Extension of
Judicial College Deadline

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rule 10.492

Proposed by

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

Action Requested

Review and submit comments by [proposed
one week circulation] October 8, 2021

Proposed Effective Date

January 1, 2022

Contact

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Executive Summary and Origin

Due to the state of emergency related to the COVID-19 pandemic, the Judicial Council adopted rule 10.492 of the California Rules of Court in November 2020, extending deadlines by 12 months to complete mandatory judicial education programs. The Center for Judicial Education and Research (CJER) Advisory Committee recommends amending rule 10.492 to extend the rule's temporary extension for the B. E. Witkin Judicial College by an additional 12 months to avoid the inability to comply with rule 10.462(c)(1)(C) amongst new judicial officers. The CJER Advisory Committee also proposes amending the rule's expiration date in light of the ongoing nature of the pandemic.

Background

Even prior to the adoption of rule 10.492, CJER has redesigned the large majority of its scheduled in-person courses for remote delivery. The sole exceptions thus far have been the judicial college, the Appellate Justice Institute, and the Appellate Judicial Attorney Institute. Of these three programs, only the judicial college is a mandatory program.

The judicial college is ordinarily hosted annually. The last judicial college was held in August 2019. The August 2020 college was postponed to April 2021 and ultimately cancelled due to the pandemic. The July 2021 college was postponed three months to October 2021, and the decision was made to cancel it in September 2021 due to the ongoing anticipated risk of contagion. The next in-person college is tentatively scheduled for July 2022.

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 Legislation Committee. It is circulated for comment purposes only.

In light of the three years that will pass between colleges, the original 12-month extension for the judicial college will expire, leaving approximately 40 judicial officers unable to comply with rule 10.462(c)(1)(C). If the college is unable to be held in 2022, an additional 80 judicial officers will face noncompliance.

The recently formed 2021–2023 B. E. Witkin Judicial College Steering Committee will meet soon to plan the July 2022 program and consider remote alternatives to meet the needs of judicial officers who have been waiting to attend the college. While this process is underway, the CJER Advisory Committee proposes amending rule 10.492 to extend the compliance deadline solely as it pertains to the judicial college and delay the rule’s sunset provision.

The Proposal

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

Rule 10.492 currently provides 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. The rule is set to sunset on December 31, 2022.

The proposal would amend rule 10.492 to:

- Grant an additional 12 months for judicial officers to attend the judicial college; and
- Change the rule’s expiration to December 31, 2024.

Without this rule amendment, a significant number of California’s judicial officers will be forced into noncompliance with the education requirement of rule 10.462(c)(1)(C) (B. E. Witkin Judicial College). CJER and the B. E. Witkin Judicial College Steering Committee are currently evaluating how to redesign the college curriculum, consisting of 10 full days of in-person classes and seminars, into a remote delivery format. In the interim, the amendment to rule 10.492 is urgently needed to resolve potential widespread noncompliance with the college requirement.

The text of the proposed rule is attached at pages 4–6.

Alternatives Considered

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

1. Declining to intervene;
2. Requesting a waiver of the requirements of rule 10.462(c)(1)(C);
3. Fast-tracking a truncated and quickly redesigned college program for remote delivery to allow compliance in calendar year 2021; and

4. Assessing and separately amending rule 10.462(c)(1)(C) of the California Rules of Court.

Declining to intervene was rejected because of the widespread noncompliance that would naturally result from inaction. A waiver of the judicial college requirement would be a disservice to our branch. Education content that is provided at the judicial college is essential for new judges and is not otherwise available.

Fast-tracking a shortened college program would also be a disservice to the judicial officers who have been waiting patiently and deserve an effective and well-designed college experience. The fact that 32 sessions led by 62 faculty would need to be evaluated and redesigned for remote delivery suggests that an attempt to redesign the program in an exceedingly short time frame is not likely to be successful. Lastly, amending rule 10.462(c)(1)(C) would offer a permanent fix to what is still anticipated to be a temporary issue—albeit longer than initially predicted.

Fiscal and Operational Impacts

This proposal will result in no fiscal or operational costs to 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 advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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. Proposed Cal. Rules of Court, rule 10.492, at pages 4–6
2. Link A, Cal. Rules of Court, rule 10.462,
www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_462

Rule 10.492 of the California Rules of Court would be amended, effective January 1, 2022, 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 As used in this rule:

12
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 (1) Notwithstanding any other rule, any deadline for completion of a content-
31 based education requirement or expectation, except for the deadline for the
32 B. E. Witkin Judicial College, is extended for 12 months from that deadline,
33 even if the deadline has passed.
34

35 (2) The deadline for completion of the B. E. Witkin Judicial College is extended
36 for 24 months from the deadline specified in rule 10.462(c)(1)(C), even if the
37 deadline has passed.
38

39 **(d) Hours-based education requirement**

40
41 Notwithstanding any other rule, the months of April 2020 through March 2021 are
42 excluded from the education cycles in which those months fall, and the number of

1 hours of education to complete hours-based education requirements or expectations
2 is prorated accordingly.

3
4 **(e) Sunset**

5
6 This rule remains in effect through December 31, 2022~~4~~, or until amended or
7 repealed.

8
9 **Advisory Committee Comment**

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

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

19
20 **Subdivision (c).** This subdivision applies to all rules of court containing content-based education
21 requirements. Below are examples of this subdivision in practice.

22
23 Rule 10.462(c)(1) contains education requirements for new trial court judges and subordinate
24 judicial officers. Based on the date on which individuals took their oath of office, rule
25 10.462(c)(1) allows judges six months within which to attend the New Judge Orientation (NJO)
26 program, one year within which to attend an orientation course in their primary assignment, and
27 two years within which to attend the B. E. Witkin Judicial College of California.

28
29 Under rule 10.462(c)(1), a judge who took the oath of office on January 1, 2020, is required to
30 complete these programs by June 30, 2020 (NJO), December 31, 2020 (primary assignment
31 orientation), and December 31, 2021 (judicial college), respectively. With the 12-month
32 extension under rule 10.492(c)(1), this same judge now has to complete NJO these programs by
33 June 30, 2021, ~~(NJO)~~ and a primary assignment orientation by December 31, 2021 ~~(primary~~
34 ~~assignment orientation)~~, With the 24-month extension under rule 10.492(c)(2), the same judge
35 must now complete the judicial college by and December 31, 2023~~2~~ ~~(judicial college)~~,
36 respectively.

37
38 As another example of the 12-month extension under rule 10.492(c)(1), a judge who took the oath
39 of office on December 1, 2018, needs to complete NJO by April 30, 2020 (within 18 months), a
40 primary assignment orientation by November 30, 2020 (within two years), and the judicial
41 college by November 30, 2022~~4~~ (within three ~~four~~ years).

1 Using a different rule as an example, rule 10.478(b)(1) requires court investigators to complete 18
2 hours of education on specified topics within 1 year of their start date. Rule 10.492(c) allows a
3 court investigator up to 2 years to complete this education.

4
5 **Subdivision (d).** This subdivision applies to all rules of court containing hours-based education
6 requirements. Below are examples of this subdivision in practice.

7
8 Rule 10.461(c)(1) contains education requirements for Supreme Court and Court of Appeal
9 justices. Each justice must complete 30 hours of judicial education every three years.

10
11 Under rule 10.492(d), a justice's hours requirements are prorated for the three-year education
12 cycle that runs from January 1, 2019, through December 31, 2021. For example, justices who
13 were confirmed for appointment before January 1, 2019, must complete 20 hours of education by
14 December 31, 2021.

15
16 Education hours requirements for justices who were confirmed for appointment on or after
17 January 1, 2019, would be prorated by rule 10.492(d) and prorated additionally based on the
18 number of years remaining in the three-year educational cycle. For example, a justice confirmed
19 for appointment on October 1, 2020, ordinarily has 10 hours of hours-based education to
20 complete for the last year of the three-year cycle. Under rule 10.492(d), the months of January
21 2021 through March 2021 would be excluded, and the justice would have 7.5 hours rather than 10
22 hours of hours-based education to complete.

23
24 As an additional example, rule 10.474(c)(2) requires 8 hours of continuing education every two
25 years for nonmanagement court staff. For a court employee hired on or before January 1, 2020,
26 rule 10.492(d) prorates the number of hours of education required for the cycle that runs from
27 January 1, 2020, through December 31, 2021. The number of hours required would be prorated
28 for 4 quarters—April 1, 2020, through March 31, 2021—and would result in a reduced hours-
29 based requirement of 4 hours.