
INVITATION TO COMMENT

SPR20-06

Title

Judicial Branch Education: Mandatory Judicial Training Requirement for Prevention of Discrimination, Sexual Harassment and Inappropriate Workplace Behavior, and Unconscious Bias

Proposed Rules, Forms, Standards, or Statutes

Amend Cal. Rules of Court, rule 10.469

Proposed by

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

Action Requested

Review and submit comments by June 9, 2020

Proposed Effective Date

January 1, 2021

Contact

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Executive Summary and Origin

Based on the recommendations of the Work Group on the Prevention of Discrimination and Harassment, and with input from other Judicial Council advisory bodies, the CJER Advisory Committee proposes to amend rule 10.469 of the California Rules of Court to make education on unconscious bias, as well as the prevention of discrimination and harassment, mandatory for judicial officers.

Background

Mandatory training for the prevention of sexual harassment has existed in California since 2005 when Assembly Bill 1825 mandated that all organizations with 50 or more employees must provide two hours of sexual harassment training and education to supervisory employees every two years. In January 2019, in response to the nationwide #MeToo movement, legislators passed AB 1343 which mandated sexual harassment training to non-supervisory employees every two years for employers with five employees or more, in addition to the training for supervisors already mandated by AB 1825.

In October 2018, the Chief Justice appointed the Work Group for the Prevention of Discrimination and Harassment (Work Group) to examine these related issues and further support the judicial branch's commitment to a workplace free of harassment and discrimination. The Work Group examined research and discussed potential areas for improvement relating to

harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. The Work Group ultimately proposed recommendations to the Judicial Council, including, among others, recommendation 2(A)(1) that asked the council to direct the CJER Advisory Committee (CJERAC) to consult with other advisory bodies in considering modifications to the California Rules of Court to achieve the Work Group objectives. On July 19, 2019, the Judicial Council adopted the recommendations of the Work Group. The specific language of that recommendation is below.

Work Group Recommendation 2(A)(1)¹

Consistent with the requirements of California Government Code sections 68088 and 11135, and the California Rules of Court, rules 10.461 et seq., the Work Group recommends that the Center for Judicial Education and Research Advisory Committee, in consultation with the administrative presiding justices, appellate court clerk/executive officers, trial court presiding judges, and trial court executive officers, under the oversight of the Rules and Projects Committee, engage in the rulemaking process regarding education for judicial officers on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.

Current Education Rule Structure

The education rules for judicial officers are separated by court level. The Supreme Court and appellate court justices are covered by rule 10.461. Superior court judges and subordinate judicial officers (“SJOs”) are covered by rules 10.462. Both rules discuss content-based and hours-based education recommendations for justices and judges.

Rule 10.469 applies to all categories of judicial officers and has a specific section that discusses education recommendations in the areas of access and fairness.

The Proposal

The CJER Advisory Committee proposes to change the wording of rule 10.469 under access and fairness education to mandatory rather than recommended, based on the recommendations of the Work Group. Specifically, the CJER Advisory Committee proposes adding a subsection to rule 10.469 (e) that reads:

¹ Judicial Council of Cal., Work Group for the Prevention of Discrimination and Harassment, Rep., *Judicial Branch Administration: Prevention of Discrimination, Harassment, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification* (June 12, 2019), recommendations 2(A)(1), pp. 2–3 and 7–8:
<https://jcc.legistar.com/View.ashx?M=F&ID=7336325&GUID=6B7E4EDA-1AEF-457E-8045-CA0439798302>

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 period as determined by rule 10.461(c)(1) and 10.462(d)(1).

Alternatives Considered

The Work Group considered alternatives before recommending that the California Rules of Court be amended to make discrimination and harassment training a mandatory requirement. Following the council's adoption of the Work Group's recommendations, the CJER Advisory Committee consulted with the Advisory Committee on Providing Access and Fairness, the Appellate Advisory Committee, the Administrative Presiding Justices Advisory Committee, the Trial Court Presiding Judges Advisory Committee, the Court Executives Advisory Committee, the appellate clerk/executive officers and the California Judges Association about the language of the proposed amendment. The amendment as proposed herein reflects input by those bodies, and includes a suggestion from the Administrative Presiding Justices Advisory Committee to specify unconscious bias education as well as education on the prevention of harassment and discrimination.

Fiscal and Operational Impacts

The education offered by the Center for Judicial Education and Research already includes training in unconscious bias and the prevention of harassment; the new requirements will lead to some expansion in those areas, as well as in the areas of prevention of discrimination, retaliation, and inappropriate workplace conduct. Education that fulfills this new requirement can also be provided by approved providers in addition to CJER. The major costs to the judicial branch associated with implementation of the amended rule are associated with the development of expanded education content in these areas.

There should be no direct fiscal and operational impacts for any other entity, including time spent by individual judicial officers on education. Although this proposal would add additional content requirements, the overall required number of education hours would not change; there should be no increase in time spent or related education costs to individual judicial officers or, by extension, to their courts. There are no additional negative impacts associated with justice partners, attorneys, self-represented litigants or the courts, although these entities may perceive benefits from working with judicial officers with more training in these areas.

The relatively minor implementation costs would be outweighed by the enormous benefits of educating judicial officers about these important issues.

Request for Specific Comments

In addition to comments on the proposal as a whole, the 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 implementation requirements be for courts—for example, revising processes and procedures (please describe)?
- Would 3 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, rule 10.469, at page 5

Rule 10.469 of the California Rules of Court would be amended, effective January 1, 2021, to read:

1 **Rule 10.469. Judicial education recommendations for justices, judges, and**
2 **subordinate judicial officers, and additional requirements**

3
4 **(a)–(d) * * ***

5
6 **(e) Fairness and access education; unconscious bias, prevention of harassment,**
7 **discrimination, retaliation, and inappropriate workplace conduct**

8
9 (1) In order to achieve the objective of assisting judicial officers in preserving
10 the integrity and impartiality of the judicial system through the prevention of
11 bias, each justice, judge, and subordinate judicial officer should regularly
12 participate in education on fairness and access. The education should include
13 the following subjects: race and ethnicity, gender, sexual orientation, and
14 persons with disabilities, ~~and sexual harassment~~.

15
16 (2) Each justice, judge, and subordinate judicial officer must participate in
17 education on unconscious bias, as well as the prevention of harassment,
18 discrimination, retaliation, and inappropriate workplace conduct. This
19 education must be taken at least once every three-year continuing education
20 period as determined by rules 10.461(c)(1) and 10.462(d)(1).
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