



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-115

For business meeting on: September 24–25, 2020

Title

Judicial Branch Education: Qualifying Ethics Requirements for Retiring Judges

Agenda Item Type

Action Required

Effective Date

September 25, 2020

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

September 3, 2020

Recommended by

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Executive Summary

With the support of the chairs of the Judicial Council's internal committees, Judicial Council staff proposes modifying the ethics training requirements for retiring judges who are enrolled in the Commission on Judicial Performance (CJP) insurance defense program due to the current unavailability of the Qualifying Ethics 7 (QE7) core course. Under the existing policy, judges who retire in 2020 are required to complete the three-hour core course before they retire in order to be allowed to purchase extended coverage under the insurance policy. Because the in-person core courses have been canceled since March 2020 and an online replacement course will likely not be offered until October 2020, this proposal would waive the core course requirement for judges retiring in 2020 so they will be able to obtain extended coverage. The proposal would also delegate to the Administrative Director the authority to modify the requirements as needed to address changing circumstances related to the COVID-19 pandemic and the availability of QE7 courses.

Recommendation

With the support of the chairs of the Judicial Council's internal committees, Judicial Council staff recommends that the Judicial Council, effective September 25, 2020:

1. Modify the requirement that judges retiring in 2020 complete the QE7 core course; and
2. Delegate to the Administrative Director the authority to modify QE7 requirements as needed to address changing circumstances based on the availability of an online substitute for the in-person core course.

Relevant Previous Council Action

The CJP insurance program, which covers defense costs for judges who are investigated by the CJP, was implemented by the Judicial Council in July 1999. The council report established the policy of requiring judges to take ethics training in exchange for insurance coverage, stating that judges who elect to receive coverage must “take at least one course every three years in a relevant area such as ethics, elimination of bias and fairness issues, sexual harassment, employment issues, or other issues related to judicial conduct.” The council delegated to Judicial Council staff the responsibility for administering the insurance program and ensuring that judges enrolled in the program complete their ethics training. Following this mandate, the Center for Judicial Education and Research (CJER) developed a one-day program that judges had to complete once during a three-year cycle.

In September 2002, the Judicial Council approved a recommendation to move to the current model of a three-hour core course plus two hours of electives in a three-year period.

Neither the 1999 nor the 2002 report directly addressed the issue of compliance by retiring judges.

Analysis/Rationale

Background

Judges who are enrolled in the CJP insurance defense program are required to complete an ethics training program once every three years in order to qualify for representation by counsel in CJP proceedings through the insurance program. The training consists of a three-hour core course, which is delivered live, plus two hours of electives. If a judge does not complete the training requirements during a three-year cycle, the judge (1) must repay the premiums paid on the judge’s behalf for the three years of coverage during that cycle; and (2) upon retirement during the three-year cycle, will not be permitted to purchase the “tail policy” offered by the insurance carrier. The tail policy, which is paid for by the individual judge, provides coverage for six years after retirement at a current cost of \$103.25. The coverage is desirable because the CJP can investigate judges for misconduct even after they retire, and the Judicial Council’s policy only covers judges until they retire.

Consistent with its responsibilities to administer the insurance program and a system for ensuring compliance with the educational requirements, Judicial Council staff implemented a policy addressing how much ethics training a retiring judge must take depending on which year in the cycle the judge retires. In any three-year cycle, if a judge retires during the first year of the cycle, the judge has no ethics training requirements. A judge who retires during the second year must

complete the core course. And a judge who retires during the third year must complete the core course plus the two hours of electives. Thus, for the current cycle, which began on January 1, 2019, and runs through December 31, 2021, judges who retire in 2020 must complete the core course to fulfill their training requirements.

Due to the pandemic, CJER has been unable to offer the live core course since March 2020. CJER plans to prepare and offer the core course in a distance learning format in the future and expects the course to be available by October 2020. However, many judges who are retiring in 2020, or have already retired this year, had planned to take the live core course before retiring and, under the circumstances, have been unable to do so. Some of these judges were enrolled in courses that have been canceled and some had yet to enroll but intended to do so before retiring.

The insurance carrier will not sell a retired judge a tail policy if the judge has not submitted to Legal Services a compliance form showing the judge has completed his or her training. As a result, if the requirements are not modified, through no fault of their own, these judges will be denied the opportunity to purchase tail insurance that would cover their legal expenses if they are investigated by the CJP after they retire. Under the terms of the insurance policy, the tail coverage must be purchased within 45 days after expiration of the current policy. The policy expires October 15, 2020, so retiring judges have until the end of November 2020 to obtain tail coverage.

The insurance policy provides that a judge who does not complete ethics training is not an “insured” under the policy, and therefore may not purchase tail coverage. The policy acknowledges that the Judicial Council is responsible for establishing the training requirements and the timeline for completing the training. It states:

If any person, who otherwise qualifies as an Insured under this policy, refuses to sign the agreement between that person and the Judicial Council of California (hereafter referred to as the “JCC”) obligating said person to complete the ethics training program established by the JCC within the required timeframe, then said person shall not qualify as an Insured under this policy. Furthermore, if said person signs the aforementioned agreement, but does not timely fulfill the ethics training program established by the JCC, then said person shall no longer be considered an Insured under this Policy.

Based on this provision, the council may modify the core course requirement for judges retiring in 2020 without affecting a judge’s coverage because the insurance carrier defers to the council on content and timing of ethics training. When a retired judge seeks to purchase tail coverage, the insurance carrier simply confirms with Judicial Council staff that the judge has submitted a compliance form.

Proposal to amend the training requirements for retiring judges

Judicial Council staff proposes amending the policy for judges retiring during this cycle so that a judge who retires during 2020 has no ethics training requirement. This would allow those judges

retiring this year who have not already completed the core course to obtain tail coverage even though they did not complete any ethics training so far in the current cycle. Currently, there are remote core classes scheduled for October and November 2020. In the meantime, several judges have already retired this year. Even though core courses are expected to resume before the end of the year, there is little need to make a retired judge take an ethics course, and judicial branch resources are limited. It should be noted that judges who plan to join the Temporary Assigned Judges Program (TAJP) will be required by that program to complete the core course by the end of 2021. Consequently, if a retiring judge is joining the TAJ, the judge will have until the end of the cycle to take that course.

It is unclear exactly how many judges would benefit from the proposed amendment to the policy. Based on information from the insurance carrier, staff estimates that approximately 12–15 retiring or recently retired judges who wish to buy tail coverage have not completed the core course or have been unable to complete it due to the cancellation of the courses. But it is difficult to estimate how many more retiring judges there will be before the end of the year. We are aware of several judges who are planning to retire who have not yet completed the core course.

This proposal does not affect those judges who retire in 2021. Under the current policy, they are required to complete the core course and two hours of electives before the end of 2021. Because CJER expects to offer an online core course by mid-October 2020, any judge who is retiring in 2021 would be able to complete all five hours online.

Proposal to delegate authority to Judicial Council staff

As noted, CJER plans to offer the core course in a distance learning format by fall 2020. It is possible, however, that there could be a delay in the rollout of the remote course. Therefore, consistent with the Judicial Council’s directive that staff administer the insurance program and ensure compliance with the educational requirements, staff proposes that the council delegate to the Administrative Director or his designee the authority to address how training requirements for judges who retire in 2021 may be satisfied in light of the reduced training opportunities. For example, if the core course is not available in early 2021, the Administrative Director would have the ability to modify the requirements for judges who retire before the remote course is offered by requiring that those judges complete an additional three hours of ethics electives in order to complete his or her training requirements, which would in turn enable the judge to purchase the tail coverage.

Policy implications

The insurance policy provides that a judge who does not complete ethics training is not an “insured” under the policy, and therefore may not purchase tail coverage. Modifying the QE7 requirements for retiring judges will allow judges who retire in 2020 to purchase, at their own expense, tail insurance that will cover their legal expenses if they are investigated by the CJP after they retire. This will afford retiring judges the important protection of insurance coverage if they desire it and will not impose any additional costs on the Judicial Council. Because the change in requirements affects only retiring judges, it will not have a negative impact on the

currency of ethics training for sitting judges and no impact on the adjudication of matters pending in the courts.

Comments

This proposal has not been circulated for public comment due to the limited time in which staff had to submit the proposal and the uncontroversial nature of the proposal.

Alternatives considered

Instead of waiving all training requirements for 2020, a judge retiring in 2020 could be required to complete two hours of electives rather than the core course. Many courses approved for elective credit are available online through the CJER website. The problem with this alternative is that, as noted, several judges have already retired and are not planning on joining the TAJ. For those judges not planning on joining the TAJ, ethics education following retirement does not benefit the judicial branch or those retired judges.

Fiscal and Operational Impacts

This proposal will have no fiscal or operational impacts.

Attachments and Links

None.