



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 20-158*

For business meeting November 13, 2020

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**Title**

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

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2021

**Rules, Forms, Standards, or Statutes Affected**

Adopt Cal. Rules of Court, rules 10.492 and  
10.493

**Date of Report**

September 24, 2020

**Recommended by**

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

**Contact**

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### Executive Summary

The Center for Judicial Education and Research (CJER) Advisory Committee recommends adopting two rules of court relating to branchwide education. The first would grant a temporary extension of time for completing content-based education requirements and a prorated reduction of hours for hours-based education requirements contained within existing rules. The second would allow instructor-led training via live webinars to satisfy the provisions in the rules that require “traditional (live, face-to-face)” or “in person” training. Both rules are necessary due to the COVID-19 pandemic and the imposition of social distancing measures, which have forced CJER and other approved education providers to postpone or cancel in-person education since mid-March 2020.

### Recommendation

The CJER Advisory Committee recommends that the Judicial Council, effective January 1, 2021:

1. Adopt rule 10.492 of the California Rules of Court to provide temporary relief to court staff and judicial officers regarding their content-based and hours-based education requirements; and
2. Adopt rule 10.493 of the California Rules of Court to expand the delivery methods available to obtain required “traditional (live, face-to-face)” or “in person” training.

The text of the proposed rules is attached at pages 6-9.

### **Relevant Previous Council Action**

In 2006, the Judicial Council adopted a set of rules<sup>1</sup> containing continuing education requirements and expectations for judicial officers and employees of the judicial branch. These provisions are generally found within title 10 of the California Rules of Court. (See Cal. Rules of Court, rules 10.451–10.491; but see, e.g., rule 2.812(c) (training requirements for new temporary judges).) These rules establish requirements that vary depending on the specific judicial position and, generally, include both content-based and hours-based requirements.

### **Analysis/Rationale**

Content-based requirements within existing rules require judicial officers and court employees to take classes on specific topics, attend specific programs, and/or attend courses via “traditional (live, face-to-face)” or “in person” training. In addition, a set number of hours of education—ranging from 8 to 30 hours depending on the individual’s position—must be completed within an education cycle. These hours-based requirements must be completed within a specific window of time, and there is no clear local or statewide authority to waive or extend some of these requirements.

The public health crisis has made it impossible for members of the branch to complete their education requirements because providers—including CJER—are not currently able to offer the required programs in the required format in the time frame specified by the rules.

#### ***Rule 10.492, Temporary extension and pro rata reduction of judicial branch education requirements***

Proposed rule 10.492 would provide temporary relief to court staff and judicial officers by granting a temporary extension of time for completion of all content-based education requirements and a prorated reduction of hours for all hours-based education requirements contained within the existing rules.

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<sup>1</sup> All references to rules in this document are to the California Rules of Court, unless otherwise indicated.

### ***Rule 10.493, Instructor-led training***

Proposed rule 10.493 would expand the delivery methods available to obtain required continuing education by allowing instructor-led training via live webinars to satisfy the provisions in the rules that require “traditional (live, face-to-face)” or “in person” training.

### **Policy implications**

Adoption of these rules aligns with current Judicial Council policy on continuing education. In implementing continuing education requirements branchwide, the Judicial Council deemed content-based requirements essential to a well-trained judiciary. Granting an extension of time to complete these requirements will ensure that this training is ultimately obtained.

The prorated reduction of hours for all hours-based requirements for the 12-month period beginning April 1, 2020, further recognizes the unprecedented crisis facing California’s courts by relieving judicial officers and court employees of general continuing education obligations so that they may focus on the courts’ primary mission of providing access to justice.

Lastly, allowing instructor led-training via live webinars to meet the requirements in the rules for “traditional (live, face-to-face)” and “in person” training recognizes that many of the benefits of in-person education can be replicated with existing remote technology and is necessary due to current safety restriction imposed by COVID-19. In-person education in a classroom led by qualified faculty who are present to immediately answer questions and provide feedback remains the most effective delivery method. However, allowing remote access to education furthers the Judicial Council’s goal of providing “access to the resources and training necessary to meet the diverse needs of the public and to enhance trust and confidence in the courts.”<sup>2</sup>

### **Comments**

In developing rule 10.492, the CJER Advisory Committee consulted with appellate court clerk/administrators, the Administrative Presiding Justices Advisory Committee, the Trial Court Presiding Judges Advisory Committee, the Court Executives Advisory Committee, and the Appellate Advisory Committee. The rule as proposed herein reflects input by those bodies.

The committee subsequently developed rule 10.493 to clarify that live webinars could be used to satisfy requirements within the rules that specified “traditional (live, face-to-face)” and “in person” training. This rule expands the availability of education for the duration of the current public health crisis. In addition, this rule ensures broader ongoing access to education for those working in California’s remote counties.

This proposal circulated for comment on an expedited, special cycle from August 26 through September 16, 2020, and received five comments. As indicated in the attached comment chart at pages 10–12, four of the five commenters approved the proposal, and the remaining commenter

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<sup>2</sup> Judicial Council of Cal., The Strategic Plan for California’s Judicial Branch, Goal V: Education for Branchwide Professional Excellence, at < <https://www.courts.ca.gov/3045.htm> > [as of Sept.24, 2020].

approved with modification. No disapproving comments, internal or external, were received by the CJER Advisory Committee.

## **Alternatives considered**

### ***Rule 10.492***

CJER and the CJER Advisory Committee considered multiple alternative courses of action to proposed rule 10.492, including:

- Declining to act;
- Extending the education cycles for court staff and judicial officers;
- 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;
- Extending content-based deadlines, but leaving hours-based requirements unmodified;
- Extending both content-based and hours-based deadlines; and
- Prorating both content-based and hours-based requirements for the duration of the crisis.

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

The committee concluded that proposed rule 10.492 is the best option for ensuring that essential education (i.e., content-based requirements such as 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 end 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***

The CJER Advisory Committee recently considered including the substance of rule 10.493 in a broader review of judicial branch education requirements. The committee had intended to initiate a comprehensive review of the education requirements in the rules as part of its 2021 annual agenda, but these plans are suspended due to the current public health crisis. The purpose of this review would have been 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 in-person training required the 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 satisfy all continuing education required or expected of judicial officers or court staff. In that alternative, “independent training” would be defined as 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; it would have permitted, for example, a commissioner to satisfy the requirements of rule 10.462 by watching 30 hours of instructional videos over a three-year education cycle without ever interacting with a colleague or instructor about the training.

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 not increase fiscal or operational costs for the courts or the Judicial Council. Conversely, as noted by two commenters, the proposal will result in savings by reducing travel expense reimbursement claims and time spent away from work by both judicial officers and court staff.

### **Attachments and Links**

1. Cal. Rules of Court, rules 10.492 and 10.493, at pages 6-9
2. Chart of comments, at pages 10-12

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

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

**(a) Application**

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

**(b) Definitions**

As used in this rule:

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

(A) Attendance at any specific program;

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

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

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

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

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

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

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

**(e) Sunset**

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

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

#### **Advisory Committee Comment**

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

Nothing in this rule alters 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).

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

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

Under rule 10.462(c)(1), a judge who took the oath of office on January 1, 2020, is required to complete these programs by June 30, 2020 (NJO), December 31, 2020 (primary assignment orientation), and December 31, 2021 (judicial college), respectively. With the 12-month extension under rule 10.492(c), this same judge now has to complete these programs by June 30, 2021 (NJO), December 31, 2021 (primary assignment orientation), and December 31, 2022 (judicial college), respectively.

As another example of the 12-month extension under rule 10.492(c), a judge who took the oath of office on December 1, 2018, needs to complete NJO by April 30, 2020 (within 18 months), a primary assignment orientation by November 30, 2020 (within two years), and the judicial college by November 30, 2021 (within three years).

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

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

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

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

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

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

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

### **Rule 10.493. Instructor-led training**

#### **(a) Definition**

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

#### **(b) Application**

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

### **Advisory Committee Comment**



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

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

**[SP 20-04]****Judicial Branch Education: Temporary Extension and Reduction of Requirements; Definition of Instructor-Led Training**

(adopt Cal. Rules of Court, rules 10.492, 10.493)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Hon. Teresa S. Bennett, Judge of the Superior Court of California, County of San Bernardino	A	I would agree that due to the pandemic the Rules should be modified. Although I have sought in person continuing judicial education, all of the seminars have been cancelled. I have attended live webinars where there is live interaction between the presenters and the audience and this has been an effective educational tool. Many of those events have been through platforms that allow camera views of all participants and presenters.	The committee thanks the commenter and notes her support for the proposal.
2.	Hon, Mary E. Fuller (Ret.), Temporary Assigned Judges Program	A	Allowing webinars to be credited as live attendance education is very necessary in this COVID 19 period but also makes sense as the available interaction between instructor and attendee is the same as the in person presentation.	The committee thanks the commenter and notes her support for the proposal.
3.	Superior Court of California, County of Stanislaus by Margaret Middleton, Staff Development Specialist	AM	Recommend a prorated reduction in hours for 2020 only.	<p>The committee thanks the commenter and notes its support for the proposal if modified.</p> <p>The committee declines to modify the proposal as requested.</p> <p>The committee determined that a 12-month reduction would best assist the courts during the pandemic until a time in which either the public health crisis will have abated sufficiently to allow the resumption of in-person programming <i>or</i></p>

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

				would accord CJER enough time to adapt its programming for almost 100% remote delivery.
4.	Superior Court of California, County of Los Angeles by Bryan Borys, Director, Research and Data Management	A	<p>We recommend adopting both proposals.</p> <p>Request for Specific Comments</p> <p><b>Does the proposal appropriately address the stated purpose?</b> The California Rules of Court require live, face-to face training within a specific period of time. Because of the COVID-19 pandemic, educational providers, including CJER, cannot provide the mandatory programming in the required live format. Proposed Rule 10.492 addresses the stated purpose by temporarily extending the time period to complete content-based education and reducing the hourly education requirements in a pro-rated manner. Proposed Rule 10.493 allows “live webinars” and “live videoconferences” to meet the traditional “face-to-face” training requirement. This addresses the stated purpose as it allows real-time communication between instructors and the students.</p> <p><b><i>What would the training implementation requirements be for courts—for example, Court Training Coordinators?</i></b> The Los Angeles Superior County Court is able to immediately implement the rules with its comprehensive Judicial Education Seminars (JES) to provide content-based education to judicial officers using “live webinars.”</p> <p><b><i>Would 1.5 months from Judicial Council approval of this proposal until its effective date</i></b></p>	<p>The committee thanks the commenter and notes its support for the proposal.</p> <p>No further response required.</p> <p>No further response required.</p> <p>No further response required.</p>

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

			<p><b><i>provide sufficient time for implementation?</i></b> The 1.5 months implementation period is sufficient for the Los Angeles County Superior Court.</p> <p><b><i>How well would this proposal work in courts of different sizes?</i></b> The provision of education, and the availability of instructors to organize and conduct the training, may vary depending on the size of a court, and its current use of technology to communicate using platforms such as Webex, Zoom, Teams, etc. However, a court's ability to implement remote education may be impacted by the current budget situation in many courts. As a result, some courts may struggle to implement new technology platforms needed for remote learning.</p> <p>The proposal should not impact courts regarding the receipt of instruction. For all courts, it will minimize time spent in travelling to education.</p> <p>Thank you for the opportunity to comment. We recommend adopting both proposals.</p>	No further response required.
5.	Mr. Lester Perpall, Court Executive Officer of the Superior Court of California, County of Mono	A	Remote learning is a great option for small rural courts like Mono County. Travel to training sites takes the individual out of the court for up to 3 days to attend 1 day of training.	The committee thanks the commenter and notes his support for the proposal.

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