

Order

Michigan Supreme Court
Lansing, Michigan

October 20, 2021

Bridget M. McCormack,
Chief Justice

ADM File No. 2019-33

Brian K. Zahra

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Administrative Order No. 2021-7

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Adoption of a Mandatory
Continuing Judicial Education
Program

Megan K. Cavanagh

Elizabeth M. Welch,
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, Administrative Order No. 2021-7 is adopted. The mandatory continuing judicial education requirements for all judicial officers are effective January 1, 2024. The Board created by adoption of this order may begin operating and preparing for implementation of this program upon entry of this order.

Administrative Order No. 2021-7 — Mandatory Continuing Judicial Education Program

1. Requirement.
 - (A) General Requirement. Beginning 1/1/2024, every judicial officer must complete a program of continuing judicial education as described in this order.
 - (B) Exceptions and Exemptions. There shall be no exceptions to or exemptions from this requirement (including waivers) except in limited instances only with approval of the Judicial Education Board.
2. Definitions. The following words and phrases, when used in this order, shall have the following meanings (unless the context clearly indicates otherwise):
 - (A) “Accredited Provider” is an individual or organization that offers continuing judicial education activities that are consistent with the requirements established under this order.
 - (B) “Approved Course” is a learning opportunity offered by a non-accredited provider, but which is consistent with the requirements established under this order.
 - (C) “Board” is the Judicial Education Board established by this order.

- (D) “Judicial Officer” is a Justice, appellate court judge, full-time judge, part-time judge, full-time quasi-judicial officer (including a district court magistrate or circuit court family division referee), part-time quasi-judicial officer (including a district court magistrate or a circuit court family division referee), or a retired judge taking assignment as a visiting judge.
- (E) “Judicial Practice” includes legal knowledge and ability, communication, and administrative capacity.
- (F) “MCJE” is the mandatory continuing judicial education to be provided under this order.

3. Judicial Education Board.

- (A) Establishment. The Supreme Court establishes the Judicial Education Board.
- (B) Purpose. The primary purpose of the Board is to guide development and delivery of continuing judicial education to all judicial officers.
- (C) Composition. The Board shall consist of twelve members appointed by the Supreme Court as follows:
 - (i) 2 members selected from judges of the Court of Appeals;
 - (ii) 2 members selected from judges of the Circuit Court;
 - (iii) 2 members selected from judges of the District Court;
 - (iv) 2 members selected from judges of the Probate Court;
 - (v) 3 members selected from quasi-judicial officers; and
 - (vi) 1 member selected as a retired judge.
- (D) Leadership. The Supreme Court shall appoint from the members of the Board a chair and vice-chair who shall serve one-year terms, which may be renewed. The Board may designate other officers and form committees as it deems appropriate.
- (E) Term of Board Members. Except as otherwise provided in this subsection, the members serve four-year terms. A member may not serve more than two full terms unless a member is appointed to fill a mid-term vacancy. In such a situation, the member shall serve the remainder of that term and may be

reappointed to serve up to two more full terms. Initial board members may be appointed at any time after this order is entered. Terms of the initial board members shall be staggered to ensure reasonable continuity. An initial board member's initial term shall constitute one full term.

- (F) Action by the Board. Seven board members shall constitute a quorum. The Board shall act only with the concurrence of at least seven board members. The Board may adopt rules providing for participation of teleconference meetings or the use of other technology to enable maximum participation.
- (G) Responsibilities of the Board.
 - (i) Accreditation and Approval Decisions. The Board shall make decisions regarding accreditation of providers and approval of courses consistent with the purpose and standards set forth in this order.
 - (ii) Noncompliance Appeals. The Board shall hear and decide appeals from judicial officers determined to be out of compliance with this order's requirements.
 - (iii) Waiver. The Board shall hear and decide requests from judicial officers for waiver from the requirements in this order.
 - (iv) Reporting and Budget. The Board shall report at least annually to the Supreme Court on its activities, and annually propose a budget for the Board and submit it to the Supreme Court for approval.
 - (v) Incidental Responsibilities. The Board shall undertake all incidental tasks attendant to the above activities, including providing essential notices and recordkeeping activities.
 - (vi) Rules for Mandatory Continuing Judicial Education. The Board shall prepare a set of rules governing continuing judicial education for review and approval by the Supreme Court to replace this order. The proposed rules must be submitted to the Court no later than four years after the effective date of this order.
- (H) Compensation and Expenses. Board members shall receive no compensation for services provided under these rules, but they shall be reimbursed by the Board for their reasonable and necessary expenses in attendance at meetings and in otherwise fulfilling their responsibilities.

4. Minimum Continuing Judicial Education Requirements.

- (A) **General Requirements.** Beginning 1/1/2024, every judicial officer shall complete a minimum of 24 hours of continuing judicial education every two years. January 1 of each even year shall begin a new reporting period. The hours shall be distributed as follows:
- (i) 6 hours in the subject area of integrity and demeanor (including ethics); and
 - (ii) 18 hours in the subject area of judicial practice and related areas as defined by the Board.
- (B) **Fulfillment.**
- (i) **Course Attendance and Alternatives.** The MCJE requirement shall be fulfilled by attending the required number of MCJE courses delivered by the Michigan Judicial Institute or Accredited Providers, or by completing a MCJE activity approved by the Board as sufficient to meet the MCJE general requirement.
 - (ii) **Courses Offered by MJJ.** At least 12 of the MCJE required hours for each reporting period shall be earned through courses offered by the Michigan Judicial Institute.
 - (iii) **Teaching.** Up to eight of the MCJE required hours for each reporting period may be earned through Board-approved teaching activities.
- (C) **Newly-elected or Appointed Judicial Officers.** Attendance at the New Judge/New Magistrate/New Referee Orientation Program administered by the Michigan Judicial Institute does not count toward the MCJE requirements described elsewhere in this order.
- (D) **Newly-appointed Chief Judges.** Attendance at the New Chief Judge Orientation Program administered by the Michigan Judicial Institute does not count toward the MCJE requirements described elsewhere in this order.
- (E) **Retiring Judges.** A retiring judge does not need to complete the MCJE requirements for the reporting period in which they are retiring, unless the retiring judge seeks judicial assignment under the SCAO Guidelines for Assignment.

5. **Waivers.**

- (A) Waiver. Except as provided in subsection (B), the Board may waive the MCJE requirements for any part of the remaining portion of the current reporting period upon a finding by the Board of undue hardship or circumstances beyond the control of the judicial officer which prevent him or her from complying in any reasonable manner with the MCJE requirement.
 - (B) Members of the Armed Forces.
 - (i) Waiver. Upon written request to the Board, the MCJE requirements will be waived in their entirety for any reporting period in which a judicial officer is a member of the Armed Forces serving on full-time active duty.
 - (ii) Termination of Active Duty. Within thirty days after termination of active duty, the judicial officer must notify the Board and will be required to comply with MCJE requirements for the reporting period.
6. Standards for Approval of MCJE Activities. All MCJE activities approved for credit shall meet the following standards:
- (A) The activity shall have significant intellectual or practical content, the primary objective of which is to improve a judicial officer's knowledge or professional capacity to fulfill their judicial responsibilities in the subject areas of judicial practice and integrity and demeanor.
 - (B) The activity shall be an organized program of learning to deal with matters directly related to subjects that satisfy the objectives of these rules.
 - (C) Each MCJE activity shall be open to all judicial officers interested in the subject matter or with a docket assignment complementary to the subject matter of the MCJE activity and there shall be no attendance restrictions, except as may be permitted by the Board, upon application from a provider, where:
 - (i) attendance is restricted based on objective criteria for a bona fide educational objective to enhance the MCJE activity; or
 - (ii) membership in the provider organization is open to all interested judicial officers of a particular type (judges or quasi-judicial officers) on a reasonable nondiscriminatory basis and cost.
 - (D) The program leaders or lecturers shall be qualified with the practical and/or

academic experience necessary to conduct the program effectively.

- (E) Each attendee shall be provided with thorough, high quality and carefully prepared written course materials before or at the time of the activity. Although written materials may not be appropriate to all courses, they are expected to be utilized whenever possible.
- (F) The course or activity must be presented in a suitable setting to create a positive educational environment.
- (G) The Board will take into consideration the special needs of disabled and incapacitated judicial officers in gaining access to and participation in MCJE activities. The Board shall require providers to make reasonable accommodations for disabled and incapacitated judicial officers.

7. Credit for MCJE Activities.

- (A) Accreditation or Approval. Credit will be given only for completion of MCJE activities that are accredited or approved by the Board.
- (B) Course Length. No course of instruction less than 60 minutes shall be considered eligible for MCJE credit.
- (C) Credit. One hour of credit will be awarded for each 60 minutes of instruction.
- (D) Credit Increments. Credit will be awarded in 30 minute increments beyond the first 60 minutes.
- (E) Local Education Activities. Local education activities will be subject to approval by the Board for credit upon submission of appropriate documentation. Accreditation will be determined by the Board according to the standards set forth in 6(A).
- (F) Approval of MCJE Activities Conducted by Non-Accredited Providers and Teaching Activities.
 - (i) General Statement. Courses offered by a provider that is not an accredited MCJE provider and teaching activities that are consistent with the purposes of this order may qualify for MCJE credit, subject to the following terms and conditions.

- (ii) Individual Approval Required. All MCJE activities conducted by a non-accredited provider or teaching activity must be individually approved by the Board for credit.
 - (iii) Requests for Approval. A judicial officer shall request Board approval for MCJE activities conducted by a non-accredited provider or teaching activities within 30 days after completing the activity.
 - (iv) Form of Application. The application shall be in the form and with such documentation required by the Board.
 - (v) Additional Information. Upon request by the Board, the applicant shall submit to the Board information concerning the course or activity, including the brochure describing the activity and the qualifications of anticipated speakers, the method or manner of presentation of materials, and, if requested, a set of the materials.
 - (vi) Courses Pertaining to Nonjudicial Subjects or Deemed to Fall Below Minimum Standards. If a course does not bear entirely on at least one area of judicial practice or integrity and demeanor, or the manner of presenting the course is deemed to fall below minimum standards, the Board may determine that such course is entitled to no credit or may assign such partial credit as it deems appropriate.
- (G) Self Study. Self study will not be approved for credit.
8. Accreditation of Mandatory Continuing Judicial Education Providers.
- (A) Application. Application may be made for accreditation as an Accredited Provider by submitting the appropriate form to the Board.
 - (B) Evaluations. The provider shall develop and implement methods to evaluate its course offerings to determine their effectiveness and the extent to which they meet the needs of judicial officers and, upon a request from the Board, provide course evaluations by the attendees on such forms as the Board shall approve.
 - (C) Period of Accreditation.
 - (i) General Rule. The grant of accreditation shall be effective for a period of two years from the date of the grant.

- (ii) Continuation of Accreditation. The accreditation may be continued for an additional two year period if the provider files an application for continued accreditation with the Board before the end of the provider's accreditation period, subject to further action by the Board.
 - (D) Conditional Accreditation. In considering whether to continue an approved provider's accreditation, the Board shall determine if there are pending or past breaches of these rules by the approved provider. The Board, at its discretion, may condition continuation upon the provider meeting additional requirements specified by the Board.
 - (E) Termination. If an application for continuation is not filed within 30 days before the end of the provider's accreditation period, the provider's accredited status will terminate at the end of the period. Any application received thereafter shall be considered by the Board as an initial application for Accredited Provider status.
 - (F) Revocation. Accredited Provider status may be revoked by the Board if the requirements specified by the Board are not met or if, upon review of the provider's performance, the Board determines that content of the course material or the quality of the MCJE activities or provider's performance does not meet the standards set forth in this order.
9. Standards for Accredited Provider Status. Accredited Provider status may be granted at the discretion of the Board to applicants that satisfy one of the following requirements:
- (A) The provider has presented, within the past two years prior to the date of the application, five separate programs of judicial education which meet the standards of quality set forth in these rules;
 - (B) The provider has demonstrated to the Board that its judicial education activities have consistently met the standards of quality set forth in this order;
or
 - (C) The provider is an American Bar Association-accredited law school.
10. Accreditation of a Single Course or MCJE Activity by a Provider. A provider of MCJE activities that has not qualified as an Accredited Provider may apply for accreditation of a single MCJE activity in a form provided by the Board, subject to the following terms and conditions:

- (A) The Board may require submission of a detailed description of the provider, the course, the course materials, and the lectures.
- (B) Application by a provider for accreditation of a single MCJE activity should be submitted prior to the date of presentation of the activity. Application for retroactive approval must be made within 30 days after the event or activity.
- (C) The MCJE activity must meet the standards set forth in this order.

11. Reporting.

- (A) Reporting Responsibility. Reporting shall be the responsibility of the individual judicial officer.
- (B) Form of Reporting of MCJE Activities. A judicial officer shall report accredited MCJE activities to the Board in a manner approved by the Board.
- (C) Time for Reporting. A judicial officer should report accredited MCJE activities within 30 days after successfully completing the activity.
- (D) Compliance Status Review. All judicial officers shall review their MCJE compliance status within seven days of receiving notice of their status under Section 12(C)(i).

12. Compliance.

- (A) Records.
 - (i) Recordkeeping by the Board. The Board shall maintain a record of MCJE attendance for each judicial officer to whom this order applies. These records shall be made available as the Board shall determine, but shall at least establish whether the judge met the required standard for a particular reporting period.
 - (ii) Recordkeeping by Judicial Officers. Each active judicial officer shall maintain records sufficient to establish compliance with the MCJE requirement in the event of a dispute or inconsistency.
- (B) Compliance Status Notification. The Board will notify each judicial officer of his or her MCJE status three months prior to the end of the reporting period and will provide a final compliance notice within 60 days after the end of the reporting period. The final compliance notice shall include the hours earned

during the reporting period which have been reported and carryover hours, if applicable.

- (C) Noncompliance and Compliance Disputes.
- (i) Notification. If a judicial officer fails to comply with this order, or is determined by the Board to have failed to fully comply with the MCJE requirements, such judicial officer shall be notified in writing by the Board of the nature of the noncompliance and be given 180 days from the date of the notice to remedy the noncompliance. A “writing” includes digital communications, transmitted through electronic means, which are capable of being stored and printed.
 - (ii) Evidence of Compliance or Hearing Request. Within 30 days after the date of the notice of noncompliance, the judicial officer shall either submit evidence of compliance or request a hearing. Unless good cause is shown, a hearing request submitted after 30 days from the date of the notice of noncompliance will be denied.
 - (iii) Hearing. If the judicial officer timely files a request for a hearing under this subsection, the Board shall schedule a hearing. The hearing shall be held at least ten days after written notice to the judicial officer. In addition, the State Court Administrator, or his or her designee, is required to attend a hearing held under this provision, and is entitled to notice in the same manner as the judicial officer.
 - (iv) Reasonable Cause for Noncompliance. If the Board finds that the judicial officer had reasonable cause for noncompliance, the judicial officer shall have 180 days from the date of notice of the Board’s decision to correct the noncompliance. If compliance is not achieved within the 180 day period, the Board shall proceed as provided.
 - (v) Report to Judicial Tenure Commission and State Court Administrator. If a judicial officer fails to remedy noncompliance within 180 days after the later of the date of the notice of noncompliance or the date of a decision from the Board finding reasonable cause for noncompliance, the Board shall report that fact to the Judicial Tenure Commission and the State Court Administrator for their consideration.
- (D) Crediting Hours During a Period of Noncompliance. Credit hours earned shall be first applied to satisfy the requirements of the reporting period that

was the subject of the notice to the judicial officer before any excess credits earned during the notice period may be applied to subsequent requirements.

13. Confidentiality. The files, records, and proceedings of the Board as they relate to or arise out of any alleged failure of a judicial officer to satisfy the requirements of this order shall be deemed confidential and shall not be disclosed except in furtherance of the duties of the Board or upon the request of the affected judicial officer or as they may be introduced in evidence or otherwise produced in proceedings under this order.

Staff Comment: This administrative order establishes a mandatory continuing judicial education program for the state’s justices, judges, and quasi-judicial officers. The 2024 effective date is intended to provide sufficient time for an electronic reporting system to be put in place, as well as allow the Board, which members will be appointed soon, to begin creating policies, forms, and other necessary requisites to implementation of this program.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

MCCORMACK, C.J. (*concurring*). Teachers, architects, pilots, accountants, nurses, pharmacists, doctors, electricians, and numerous other professions require continuing education. They do so because staying competent in any dynamic profession requires ongoing learning—of the latest tools, methods, skills, and not least of all substantive subject-matter expertise. The question is whether Michigan should join the 47 other states that require continuing education of their judiciary.¹ At 12 hours per year, the obligation is not especially burdensome.

The answer is yes, for good reason. The law changes regularly. Legislatures enact new laws and amend old ones, and courts interpret those laws. Legal processes change too—more rapidly in the last 18 months than ever before. Michigan’s judges meanwhile resolve over 3 million cases every year, concerning a wide variety of issues. In many of these cases, judges interact directly with litigants who cannot afford lawyers. Giving all litigants confidence that they will be treated fairly by judicial officers who are well prepared is our obligation. Today’s order is faithful to that duty.

To be sure, most Michigan judges already voluntarily do more continuing education than this rule will require. The rule simply will ensure that judges, no less than electricians,

¹ A few of these states do not have a traditional mandatory continuing education requirement, but may require some or all of their judicial officers to participate in certain programs.

keep up with changes in our dynamic profession, keep up for the public good. And if anything, our duty to keep pace should be higher than that of the many professions for which the market may impose discipline against laggards. Our litigants do not choose us, nor are we judges rated by consumer organizations for our quality. Our duty to keep abreast of the law that we administer in the public's name is a corollary of our oath.

Justice BERNSTEIN misses this important point. He says that “the government” should not tell judges what to do. But that is not our situation. The issue rather is whether we, the judiciary, should require of ourselves modest efforts to keep up with the law we apply. To pose the question is to answer it.

WELCH, J., joins the statement of MCCORMACK, C.J.

VIVIANO, J. (*concurring in part and dissenting in part*). I agree that this Court should adopt mandatory continuing education for our state's judges, but I do not believe this is the right time to do so. Many of our trial courts—including some of our largest courts—are confronting a significant backlog of criminal and civil cases resulting from their inability to conduct in-person court proceedings for long stretches of time during the COVID-19 pandemic.¹ Adopting this proposal now will distract trial judges from their primary duty of resolving the many thousands of aging cases that are clogging court dockets in various places across the state. Even though the order does not take effect until 2024, the trial judges who have been appointed to the Judicial Education Board will need to spend many hours away from their benches to design and establish the judicial education program requirements that are at the heart of this order. In my view, we simply do not have the luxury of adopting this program at this time. Instead, I would defer adoption until our trial courts have worked through the backlog caused by the pandemic.

¹ The impact of the pandemic on court caseloads has not been uniform across the state, but the overall increase in pending cases during 2020 provides some indication of how the pandemic has affected our trial courts. See Michigan Supreme Court, State Court Administrative Office, *Trial Court Backlogs Backgrounder, March 2021* <<https://www.courts.michigan.gov/siteassets/covid/covid-19/trial-court-case-backlog-backgrounder.pdf>> (accessed October 14, 2021) [<https://perma.cc/4QPF-SCG5>] (noting that the number of pending felony and misdemeanor cases increased by more than 75% and that the number of pending noncriminal cases increased by approximately 14% in district courts and approximately 18% in circuit and probate courts). It appears that these case backlogs have continued to increase in 2021 and that they continue to be a problem, as chronicled in numerous news reports. See, e.g., Bayron, *Muskegon County Prosecutor Discusses Court Backlog, Proposed State Assistance*, WZZM-TV (October 8, 2021) <<https://www.wzzm13.com/article/news/crime/muskegon-county-prosecutor-discusses-court-backlog-proposed-state-assistance/69-a5b6ae88-de47-4642-a310-0dd321797403>>

BERNSTEIN, J. (*dissenting*). I stand behind my dissenting statement from last year, when the issue of mandatory continuing judicial education was last before this Court. As I believe my objections are even more relevant today, I reproduce my position below.

I agree that the goal of continuing judicial education is a fine one—however, my problem lies with the idea of mandating educational goals for an already burdened judiciary. We should respect the autonomy of individual judicial officers to choose for themselves; the government should not seek to intervene in these individual decisions. Stated simply, I believe that any of the problems that continuing judicial education seeks to correct could be better addressed in private forums by private actors.

Moreover, should continuing judicial education become a reality in Michigan, I fear that continuing legal education for all attorneys might come next.

(accessed October 14, 2021) [<https://perma.cc/D85B-R3M3>]; Anderson, *Wayne County Prosecutor: Office is in “Crisis Mode” and Caseloads are “Inhumane”*, Detroit Free Press (September 20, 2021), <<https://www.freep.com/story/news/local/michigan/wayne/2021/09/20/wayne-county-prosecutors-office-kym-worthy/8419000002/>> (accessed October 14, 2021) [<https://perma.cc/N8N3-54QG>]; Schollett, *Local Courts Prepare to Tackle Backlog of Jury Trials*, UpNorthLive (June 3, 2021) <<https://upnorthlive.com/news/local/local-courts-prepare-to-tackle-backlog-of-trials>> (accessed October 14, 2021) [<https://perma.cc/F584-UZQT>].



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 20, 2021

Clerk