

# Order

Michigan Supreme Court  
Lansing, Michigan

November 1, 2023

Elizabeth T. Clement,  
Chief Justice

ADM File No. 2019-33

Brian K. Zahra

David F. Viviano

Rescission of Administrative  
Order No. 2021-7 and Adoption  
of the Michigan Continuing  
Judicial Education Rules

Richard H. Bernstein

Megan K. Cavanagh

Elizabeth M. Welch

Kyra H. Bolden,  
Justices

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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having been provided, and consideration having been given to the comments received, Administrative Order No. 2021-7 is rescinded and the Michigan Continuing Judicial Education Rules are adopted as follows, effective January 1, 2024.

## Michigan Continuing Judicial Education Rules

### Rule 1 General

- (A) These rules shall be known as the Michigan Continuing Judicial Education Rules and may be cited as Mich CJE R \_\_\_\_\_. These rules are subject to amendment as provided in MCR 1.201.
- (B) Every judicial officer must complete a program of continuing judicial education as described in these rules.
- (C) There are no exceptions to or exemptions from the mandatory continuing judicial education requirements except as provided in Mich CJE R 4.1(F) and Mich CJE R 5 to 5.1.
- (D) MCR 1.108 shall govern the computation of time period prescribed or allowed by these rules.
- (E) Unless the Board determines otherwise for good cause, all participants at any proceeding conducted under these rules may participate using videoconferencing technology.

### Rule 2 Definitions

When used in these rules, the words and phrases listed below shall have the following meanings:

- (A) “Accredited Provider” is the Michigan Judicial Institute, the National Judicial College, and any individual or organization that the Board has determined meets the requirements of Mich CJE R 8.1.
- (B) “Asynchronous Learning Module” means a formal course, available online and completed on demand by the judicial officer, for which the provider certifies satisfactory completion by the judicial officer.
- (C) “Board” is the Judicial Education Board established by the Michigan Supreme Court.
- (D) “Judicial Officer” is a Justice, full- or part-time judge, full- or part-time quasi-judicial officer (including a district court magistrate or 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 these rules.
- (G) “MCJE Activity” is any educational activity approved by the Board as consistent with the standards set forth in Mich CJE R 6. Except as otherwise provided in these rules, and subject to Board approval, MCJE activity may include activities other than attending a formal course of educational study, provided that the activities are consistent with the objectives to be achieved under this program of continuing judicial education.
- (H) “Non-accredited provider” is any individual or organization that provides education to judicial officers and that is not accredited under these rules.
- (I) “Proceeding” includes meetings and hearings at which the Board makes a substantive decision with respect to a judicial officer in connection with any matter arising under these rules. Proceeding does not include informal Board communications addressing scheduling or other administrative matters.
- (J) “Provider” is any individual or organization that provides education to judicial officers, whether accredited or non-accredited.
- (K) “Related areas” means an activity designed to enhance competence and judicial practice.
- (L) “Subject area of integrity and demeanor” means an activity focused on the

maintenance of professional ethics and high standards of judicial conduct and includes procedural fairness.

- (M) “Videoconferencing” means the use of an interactive technology that sends video, voice, and data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video codecs, monitors, cameras, audio microphones, and audio speakers.
- (N) “Webinar” means the real-time presentation of an MCJE activity using telephonic or video technology that is capable of sending video, voice, or data signals over a transmission circuit using video codecs, monitors, cameras, audio microphones, and audio speakers.
- (O) “Writing” includes digital communications, transmitted through electronic means, which are capable of being stored and printed.

### Rule 3 Judicial Education Board

- (A) Establishment and Purpose. There shall be a Judicial Education Board that has the primary purpose of guiding development and delivery of continuing judicial education to all judicial officers.
- (B) Composition. The Board shall consist of 12 members appointed by the Michigan Supreme Court as follows:
  - (1) 2 members selected from judges of the Court of Appeals;
  - (2) 2 members selected from judges of the Circuit Court;
  - (3) 2 members selected from judges of the District Court;
  - (4) 2 members selected from judges of the Probate Court;
  - (5) 3 members selected from quasi-judicial officers; and
  - (6) 1 member selected as a retired judge.
- (C) Leadership. The Michigan 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.

- (D) Term of Board Members. Except as otherwise provided in this subrule, the members serve four-year terms. A member may not serve more than two full terms in addition to any mid-term vacancy to which the member was initially appointed. 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 were appointed on November 3, 2021. Terms of the initial board members were staggered to ensure reasonable continuity.

### Rule 3.1 Board Action

- (A) Action by the Board. Each Board member is entitled to one vote in all proceedings.
  - (1) Except as otherwise provided in these rules, there must be a quorum present for all actions undertaken by the Board at a proceeding. The Board's action following any proceeding shall be by a majority vote.
  - (2) Seven Board members shall constitute a quorum.
- (B) Written consent. The Board may take any action without a proceeding if a majority of members consent to the action in writing. Such written consents must be filed with the records of the meetings of the Board.

### Rule 3.2 Board Responsibilities

- (A) 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 these rules.
- (B) Noncompliance Appeals. The Board shall hear and decide appeals from judicial officers determined to be out of compliance with the requirements in these rules.
- (C) Waiver. The Board shall hear and decide requests from judicial officers for waiver from the requirements in these rules.
- (D) Reporting. The Board shall report at least annually to the Michigan Supreme Court on its activities.
- (E) Incidental Responsibilities. The Board shall undertake all incidental tasks attendant to the above activities, including providing essential notices and recordkeeping activities.

### Rule 3.3 Compensation and Expenses

- (A) The Board shall annually submit to the Michigan Supreme Court's budget committee for its approval the Board's anticipated expenses for the next fiscal year. The Board's submission is due to the budget committee by July 1. For purposes of this subrule, the fiscal year is October 1-September 30.
- (B) Board members shall receive no compensation for services provided under these rules, but they shall be reimbursed by the Court for their actual, reasonable, and necessary expenses in attendance at meetings and in otherwise fulfilling their responsibilities. Requests for reimbursement shall be submitted to the Court no later than 30 days after incurring the expense, or if incurred in September, no later than October 8.

#### Rule 3.4 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 these rules shall be deemed confidential and shall not be disclosed except: (1) in furtherance of the duties of the Board, (2) upon the request of the affected judicial officer, (3) as they may be introduced in evidence, or (4) as otherwise produced in proceedings under these rules.

#### Rule 3.5 Expenses Related to Compliance

The Board will not compensate or reimburse any judicial officer for any cost of compliance or attempted compliance with these rules.

#### Rule 3.6 Communication

All communication from the Board to the judicial officer will be by e-mail to the judicial officer's e-mail address or by first-class mail to the judicial officer's courthouse or work address if requested by the judicial officer. If a judicial officer does not have a courthouse or work address, the Board will use another address provided by the judicial officer.

#### Rule 4 Minimum Continuing Judicial Education Requirements

Beginning January 1, 2024, every judicial officer, except for retired judges taking assignment, shall complete a minimum of 24 hours of continuing judicial education every two years. Beginning January 1, 2024, retired judges taking assignment shall complete a minimum of 8 hours of continuing judicial education every two years.

- (A) January 1 of each even year shall begin a new reporting period.
- (B) A judicial officer's credited hours shall be distributed as follows:

- (1) 2 hours in the subject area of integrity and demeanor for retired judges taking assignment and 6 hours for all other judicial officers; and
  - (2) 6 hours in the subject area of judicial practice and related areas for retired judges taking assignment and 18 hours for all other judicial officers.
- (C) Credits may not be carried over from one reporting period to the next.

#### Rule 4.1 Fulfillment

The MCJE requirement shall be fulfilled by completing the required number of MCJE hours delivered by accredited providers, or by completing other MCJE activities.

- (A) **Required Courses.** At least half of the MCJE required hours for each reporting period shall be earned through courses offered by the Michigan Judicial Institute. Credits earned during the Michigan Supreme Court Judicial Conference count as MCJE activity offered by the Michigan Judicial Institute. Courses offered by the Michigan Judicial Institute and the State Court Administrative Office should be provided at no cost to those required to comply with the MCJE rules.
- (B) **Videoconferencing, Webinars, and Asynchronous Learning Modules.** No more than 12 credit hours for each reporting period may be earned through videoconferencing technology, webinars, or asynchronous learning modules from providers other than the Michigan Judicial Institute or the National Judicial College.
- (C) **Newly-Elected, Appointed, or Hired Judicial Officers.** Attendance at the New Judge/New Magistrate/New Referee Orientation Program administered by the Michigan Judicial Institute will count toward the MCJE requirements described elsewhere in these rules.
- (D) **Newly-Appointed Chief Judges.** Attendance at the New Chief Judge Orientation Program administered by the Michigan Judicial Institute will count toward the MCJE requirements described elsewhere in these rules.
- (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 State Court Administrative Office Guidelines for Assignment.
- (F) **Taking Office or Being Hired During Reporting Period.** Judicial officers initially taking office or hired during a reporting period will be required to complete a prorated number of hours with one hour allocated per month beginning the first full month after becoming a judicial officer. A waiver for undue hardship remains

available under Mich CJE R 5(A).

#### Rule 4.2 MCJE Credit for Teaching Activities

Up to 8 of the MCJE required hours for each reporting period may be earned through Board-approved teaching activities under Mich CJE R 7.1.

- (A) Credit for teaching activities shall be awarded only for teaching a course or activity otherwise approved for MCJE credit and which is designed primarily for other judicial officers.
- (B) Credit for teaching activities will be given on the basis of 2 hours credit for each hour of presentation the first-time credit is sought in any reporting period. Repeat presentations during the reporting period will not be entitled to any further credit.

#### Rule 5 Waiver

Except as provided in Mich CJE R 5.1, 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 the judicial officer from complying in any reasonable manner with the MCJE requirement.

- (A) **Undue Hardship.** For purposes of this rule, undue hardship is a circumstance that could not have been reasonably anticipated and that causes an unreasonable or disproportionate burden or obstacle to compliance with MCJE requirements, such as severe and/or prolonged illness or incapacitation, or the time in which a judicial officer has to complete the requirements given the date on which the officer took office or was hired.
- (B) **Circumstances Beyond Control.** For purposes of this rule, circumstances beyond the control of the judicial officer are situations that significantly impede the ability to participate in MCJE, for example, the death of a spouse, child, stepchild, or member of the judicial officer's household.
- (C) **Time for Request.** A waiver request must be made within 60 days of the occurrence of the undue hardship or circumstances beyond the control of the judicial officer necessitating the request but no later than the end of the reporting period.
- (D) **Hearing.** An informal hearing will be held as soon as practicable on waiver requests unless the Board and judicial officer agree no hearing is necessary.
  - (1) A waiver hearing must be held before a hearing panel composed of three

Board members to be determined by the Board.

- (2) The hearing panel will make a recommendation to the Board regarding the waiver request and submit it to the Board for final decision. The Board will communicate its decision to the judicial officer within 14 days after the hearing concludes unless extended by the Board for good cause.
- (E) Form. Requests for waiver must be made using the method required by the Board, and any documentation supporting the request must be included.

#### Rule 5.1 Members of the Armed Forces

- (A) 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.
- (B) Termination of Active Duty. Within 30 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 as adjusted by the Board.

#### Rule 6 Activity Approval Standards

An MCJE Activity shall:

- (A) 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, integrity and demeanor, or related areas.
- (B) Be an organized program of learning to deal with matters directly related to subjects that satisfy the objectives of these rules.
- (C) Be open to all judicial officers interested in the subject matter or with a docket assignment complementary to the subject matter.
- (D) Have no attendance restrictions. However, upon application from a provider, the Board may approve restricted attendance where:
  - (1) attendance is restricted based on objective criteria for a bona fide educational objective to enhance the activity; or



- (2) 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.
- (E) Have program leaders or lecturers that are qualified with the practical or academic experience necessary to conduct the program effectively.
- (F) Provide each attendee thorough, high quality, and carefully prepared written course materials before or at the time of the activity whenever possible and appropriate.
- (G) Be presented in a suitable setting to create a positive educational environment.

#### Rule 6.1 Accessibility

In order to ensure full access to, and participation in an MCJE activity, reasonable accommodations shall be made for a disabled or incapacitated judicial officer, within the meaning of Title I of the Americans with Disabilities Act (42 USC 12101, *et. seq.*). In the event of a dispute between a judicial officer and a provider over the provider's obligation to make reasonable accommodations for a disabled or incapacitated judicial officer, and at the request of either the judicial officer or the provider, the Board will engage in an interactive process among the interested parties in order to ascertain specific limitations and identify potential effective accommodations.

#### Rule 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. One hour of credit will be awarded for each 60 minutes of instruction.
- (C) Credit Increments. Credits will be awarded in 15-minute increments.
- (D) 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 Mich CJE R 6(A).
- (E) Self-Study. Self-study will not be approved for credit.

#### Rule 7.1 Approval of Teaching Activities and Education Activities Conducted by Non-Accredited Providers

An educational activity offered by a non-accredited provider and teaching activities that are consistent with the purposes of these rules may qualify for MCJE credit as provided in this rule.

- (A) Individual Request Required. Except as provided in subrule (B), a judicial officer seeking credit for any educational activities conducted by a non-accredited provider or teaching activities that meet the requirements of Mich CJE R 4.2, must request approval from the Board using the Board's required method and form.
- (B) Provider Request Allowed. A non-accredited provider may request accreditation of a single educational activity using the Board's required method. If the activity is approved for credit, individual approval under subrule (A) is not required.
- (C) Requests for Approval. Except as otherwise provided in this subrule, a request for approval under subrules (A) or (B) must:
  - (1) be made no earlier than 60 days before completing or holding the activity,
  - (2) be made no later than 42 days after completing or holding the activity,
  - (3) include information required by the Board, such as a detailed description of the activity, the qualifications of anticipated speakers, and information regarding the materials or anticipated lectures.

All requests must be made before the end of the reporting period.

- (D) Board's Decision. In determining whether credit will be awarded for an activity under this rule, the Board shall consider:
  - (1) whether the activity is duplicative of an MCJE activity offered by an accredited provider;
  - (2) whether the activity meets the requirements of Mich CJE R 6; and
  - (3) whether the activity is an organized program of learning taught by instructors qualified by practical or academic experience.

#### Rule 7.2 Educational Activities Pertaining to Nonjudicial Subjects or Deemed to Fall Below Minimum Standards

If an educational activity does not bear entirely on at least one area of judicial practice, integrity and demeanor, or related areas, or the manner of presenting it is deemed to fall below minimum standards, no credit will be earned unless the Board determines partial

credit is appropriate. In order to receive partial credit, the activity must satisfy some criteria found in Mich CJE R 6. In determining whether to grant partial credit, the Board may consider whether:

- (A) The subject matter is relevant to the work of the courts or the judicial branch.
- (B) Anticipated learning outcomes are identified prior to the activity. For purposes of this subrule, “anticipated learning outcomes” means how new knowledge, skills, or abilities will be applied, demonstrated, or used.
- (C) The learning environment is educationally sound, which includes limited distractions and a physical location that is conducive to learning the subject matter.
- (D) The participant receives or has access to all the reference tools and other materials and resources that are required for learning and applying the content.
- (E) The participant has an opportunity to practice using or applying the new information or skill through direct experience, role-play, or case studies/hypothetical situations as part of the learning experience.
- (F) The participant has the opportunity to interact with knowledgeable faculty or other experts in the topical area to pose questions or clarify understanding.
- (G) An assessment tool or activity, such as the development of an action plan to apply the newly gained knowledge or skill, enables the participant to determine whether the skills, abilities, or knowledge gained through the education can be used in the future in his or her work.

#### Rule 8 Accreditation of Mandatory Continuing Judicial Education Providers

- (A) **Application.** Any entity that institutionally provides education primarily to judicial officers may apply to be recognized as an accredited provider under these rules. When applying for accreditation under this rule, the applicant must submit the information required by the Board, and the Board will consider the application as provided in Mich CJE R 8.1.
- (B) **Evaluations.** The accredited 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.**

- (1) General Rule. The grant of accreditation shall be effective for the period provided by the Board, but no more than three years from the effective date of the grant.
- (2) 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 at least 30 days before the end of the accredited provider's accreditation period, subject to further action by the Board.
- (3) Renewal of Accreditation. In determining if an accredited provider's status should be renewed for an additional two-year period, the Board shall consider the following:
  - (a) the quality and substance of the programs the accredited provider has presented over the prior two years;
  - (b) the accredited provider's compliance with these rules; and
  - (c) any other information relevant to assessing the accredited provider's commitment to providing the highest quality of judicial education.
- (4) Continuation of Status. If an application for renewal is timely filed, the accredited provider status shall continue until the Board acts on the application for renewal.

#### Rule 8.1 Standards for Accredited Provider Status

To become an accredited provider, the provider must satisfy one of the following:

- (A) The provider has presented, within the two years before the date of the application, five separate programs of education for judicial officers 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 these rules. In determining whether an educational activity meets the standards for accredited provider status, the Board shall consider:
  - (1) the quality and substance of the programs the provider has presented to other judicial education programs over the prior two years;
  - (2) whether the educational activity or teaching activity meets the requirements of Mich CJE R 6; and

- (3) whether each faculty member who has teaching responsibility for the educational activity is qualified by academic work or practical experience to teach the subject.
- (C) The provider is an American Bar Association-accredited law school.

#### Rule 8.2 Termination and Revocation of Accreditation

- (A) 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.
- (B) 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 or quality of the MCJE activities or the provider's performance does not meet the standards set forth in these rules.
- (C) Providers whose accreditation has been revoked by the Board will have the ability to reapply for accredited provider status once the provider meets the standards set forth in these rules.
- (D) All decisions of the Board under this rule and Mich CJE R 8 shall be final. The provider shall be notified in writing by the Board of its decision.

#### Rule 9 Reporting Responsibility

- (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 MCJE activities to the Board in a manner approved by the Board.
- (C) Time for Reporting. A judicial officer shall report MCJE activities within 42 days after successfully completing the activity or receiving approval from the Board regarding credit for educational or teaching activities under Mich CJE R 7.1.
- (D) Compliance Status Review. All judicial officers shall review their MCJE compliance status within seven days of receiving notice of their status under Mich CJE R 11.

## Rule 10 Records of Compliance Reporting

- (A) Recordkeeping by the Board. The Board shall maintain a record of MCJE attendance for each judicial officer to whom these rules apply. These records shall be made available as the Board determines but shall at least establish whether the judicial officer met the required standard for a particular reporting period.
- (B) Recordkeeping by Judicial Officers. Each judicial officer shall maintain records sufficient to establish compliance with the MCJE requirement in the event of a dispute or inconsistency.

## Rule 11 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 instructions to view the hours earned during the reporting period which have been reported.

## Rule 12 Noncompliance and Compliance Disputes

- (A) Notification. A judicial officer who fails to comply in whole or in part with these rules will be notified in writing of the nature of the noncompliance and will be given 180 days from the date of the notice to remedy the noncompliance.
- (B) 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 an appeal hearing in writing. Unless good cause is shown, a hearing request submitted after 30 days from the date of the notice of noncompliance will be denied.
- (C) Notice of Appeal Hearing. If the judicial officer timely requests a hearing under this rule, the Board will schedule a hearing no sooner than 10 days after written notice of the hearing to the judicial officer. The notice of hearing must state the date, time, and location of the hearing, and it must be sent to the judicial officer in accordance with Mich CJE R 3.6 and the State Court Administrator, or his or her designee.
- (D) Appeal Hearing. The State Court Administrator, or his or her designee, is required to attend this hearing.
- (E) Board's Decision. Upon considering the evidence presented at the appeal hearing, the Board will issue a written decision within 42 days of the hearing unless extended

by the Board for good cause. The Board may determine that the judicial officer:

- (1) had reasonable cause for noncompliance,
- (2) did not have reasonable cause for noncompliance, or
- (3) has achieved compliance.

The Board's decision must state the reasons for its decision, and it must be delivered to the judicial officer in the same manner as the notice under subrule (C).

- (F) **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 will proceed as provided in subrule (G).
- (G) **Report to Judicial Tenure Commission and State Court Administrator.** If the Board determines that a judicial officer did not have reasonable cause for noncompliance, or a judicial officer who was found to have reasonable cause for noncompliance fails to remedy it within 180 days after the date of the Board's decision, the Board will report that fact to the Judicial Tenure Commission and the State Court Administrator for their consideration.

### Rule 13 No Appeal of Board Decisions

Except as provided in Mich CJE R 12, there is no right to appeal any decision of the Board under these rules.

### Rule 14 Credit During Period of Noncompliance

Credit hours earned while a judicial officer is noncompliant with these rules shall be first applied to satisfy the requirements of the reporting period that was the subject of the notice provided under Mich CJE R 11. Credits will be applied to the current reporting period once compliance from previous reporting periods has been achieved.

### Rule 15 Disqualification

- (A) **Applicability.** This rule applies to all Board members.
- (B) **Who May Raise.** A judicial officer who is the subject of a proceeding may raise the issue of a Board member's disqualification or a Board member may raise it.

- (C) Grounds. Disqualification of a Board member to decide or participate in a decision of compliance or noncompliance of a judicial officer, requests from a judicial officer for waiver from the MCJE requirements, or for any other Board approval requests is warranted for reasons that include but not limited to the following:
- (1) The Board member is the judicial officer who is the subject of the noncompliance or compliance determination or of other Board requests.
  - (2) The Board member has personal knowledge of disputed evidentiary facts concerning the proceeding.
  - (3) The Board member is likely to be a material witness in the proceeding.
  - (4) The Board member's spouse, or a person within the third degree of relationship to either of them, or the spouse of such person is the judicial officer who is the subject of the proceeding.
- (D) Process. A majority vote of the Board will resolve any contested disqualification issues.

*Staff Comment (ADM File No. 2019-33):* The Michigan Continuing Judicial Education Rules govern the mandatory continuing judicial education (MCJE) program and replace Administrative Order No. 2021-7.

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

VIVIANO, J. (*concurring in part and dissenting in part*). I continue to agree that adoption of continuing judicial education will be beneficial to our judicial system and help our state's judges better serve the public. But I disagree with two aspects of the order the Court issues today.

First, I remain concerned that the Court is imposing continuing education requirements on judges at a time when many courts still have not recovered from the backlog caused by the COVID-19 pandemic.<sup>1</sup> In recent years, increased demands have been placed on our trial court judges by the Legislature and the judiciary. For example, recent decisions from the United States Supreme Court and this Court have announced

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<sup>1</sup> See Administrative Order No. 2021-7, 508 Mich \_\_\_, \_\_\_ (2021) (VIVIANO, J., concurring in part and dissenting in part); Appointment of Initial Members of the Judicial Education Board, 508 Mich \_\_\_, \_\_\_ (2021) (VIVIANO, J., dissenting).



ever-evolving and impossible-to-predict new sentencing standards that have, of course, caused major backlogs of resentencings for juvenile and young adult offenders who must be sentenced time and time again to meet these new standards.<sup>2</sup> Legislation allowing for automatic expungement of certain crimes has also created backlogs in the court system.<sup>3</sup> We received a comment from a group of Oakland Circuit Court judges that highlighted the numerous ways in which these and other changes have increased the amount of time required to handle various matters.<sup>4</sup> I do not believe the Court has sufficiently considered concerns about the burden that implementing a continuing judicial education requirement will have on judges across the state. Instead of imposing this new requirement on our trial judges now, I would move the effective date back by two years, to January 1, 2026, to allow our trial courts around the state to work through the various backlogs noted above.

Second, when combined with the burdens already placed on judges, I am concerned that the mandate for a specific number of hours dedicated to the subject of “demeanor” is patronizing and will further harm morale among judges. I have seen no evidence of widespread boorishness or improper demeanor among judges in Michigan such that it is necessary to single out this personality trait for a set amount of continuing education. In particular, I am perplexed at the inclusion of “procedural fairness” in the category of “integrity and demeanor” without any indication or evidence that trial judges are systematically treating litigants unfairly. On the contrary, public satisfaction surveys administered by trial courts across the state have consistently shown that the vast majority

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<sup>2</sup> Burr, *Hundreds of Juveniles Serving Life Sentences Still Await Resentencing in Michigan*, MLive (July 22, 2023) <<https://www.mlive.com/public-interest/2023/07/hundreds-of-juveniles-serving-life-sentences-still-await-resentencing-in-michigan.html>> (accessed October 30, 2023) [<https://perma.cc/XGX4-BPXD>] (explaining that nearly 400 inmates in Michigan could be eligible for resentencing and that the backlog could take years to clear).

<sup>3</sup> See Clark, *State Grant Will Help Jackson County Officials Process Court Expungement Backlog*, MLive (June 23, 2023) <<https://www.mlive.com/news/jackson/2023/06/state-grant-will-help-jackson-county-officials-process-court-expungement-backlog.html>> (accessed October 30, 2023) [<https://perma.cc/689G-HHNZ>].

<sup>4</sup> Oakland Circuit Court Judges Warren, Matthews, Langton, and Gorcyca, *Comment on the Proposed Rescission of AO No. 2021-7 and the Proposed Adoption of the Michigan Continuing Judicial Education Rules* (June 30, 2023) <<https://www.courts.michigan.gov/49f49f/contentassets/66544dd7ece24a0396073f8c8adfadb7/approved/4-oakland-county-judges-judicial-education-comments.pdf>> (accessed October 31, 2023) [<https://perma.cc/8KA8-8KCV>].

of respondents believe that their case was handled fairly and that the judge treated everyone with courtesy and respect.<sup>5</sup> Absent evidence to the contrary, I would not single out this category as a separate requirement in the minimum education requirements. Of course, it is essential that every litigant be treated with courtesy and respect—but, as Justice ZAHRA recently pointed out, our ethics rules already require this. See Amendment of Rule 1.109 of the Michigan Court Rules, 512 Mich \_\_\_, \_\_\_ (September 27, 2023) (ZAHRA, J., dissenting) (“Our Code of Judicial Conduct, Canon 2(B), provides that ‘a judge should treat every person fairly, with courtesy and respect.’ ”).

In conclusion, I respectfully dissent as to the effective date of this order and the inclusion of “demeanor” as a separate educational requirement.

BERNSTEIN, J. (*dissenting*). I continue to believe that continuing judicial education is a fine goal, but that this goal could and should be achieved through encouraging judges to exercise their individual autonomy in determining when and whether they should participate. I have previously expressed my concerns with imposing a judicial education mandate, and my concerns persist. See Proposed Adoption of a Mandatory Continuing Judicial Education Program, 505 Mich 1211, 1221 (2020) (BERNSTEIN, J., dissenting). Given the burdens on our trial court judges as they work through the backlog of cases that were on pause during the COVID-19 pandemic, I dissent from this Court’s decision today.

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<sup>5</sup> See Michigan Courts, *2018 Michigan Trial Court Public Satisfaction Survey Results* <<https://www.courts.michigan.gov/48edb6/siteassets/reports/statistics/public-satisfaction/2018statewide.pdf>> (accessed October 30, 2023) [<https://perma.cc/5XC5-96ZL>] (providing the results from the surveys conducted in 2015 through 2018).



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.

November 1, 2023

Clerk