Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

Date
August 11, 2006

Action Requested
Please Review

To
Members of the CJER Governing Committee

Deadline
August 16, 2006

From
Karen M. Thorson, Director
James M. Vesper, Assistant Director
Education Division/CJER

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Subject
Proposal for Minimum Education Requirements for the California Judicial Branch: Discussion of Comments Received and Options to be Considered

This memorandum is intended to provide current Governing Committee members with information that may be useful in discussing and determining a recommendation regarding the committee's current proposal for rules on minimum education requirements for the California judicial branch. Staff has attempted to restate former Governing Committee members' discussions and activities, to provide an overview of information received during the comment period, and to outline some options that may be useful in future discussions.

Preamble

The Governing Committee of the Center for Judicial Education and Research (CJER), as an advisory committee to the Judicial Council, is charged under California Rules of Court 6.50 with providing guidance and making recommendations to the Judicial Council for improving the administration of justice through comprehensive and quality education and training for judicial officers and judicial branch personnel. The committee's charge specifically includes making

recommendations on rules, standards, policies, and procedures for judicial branch education. Committee members, while drawn from courts across the state, do not represent their respective courts or a specific constituency, but rather are part of a body that is concerned with branchwide issues and policies and must act in the best interests of the public and the entire court system.

The initial goals of the proposal regarding minimum education requirements, as discussed by former and current committee members, were about the judicial branch making a public commitment to ongoing professional development, creating a branchwide environment of professional excellence, and ensuring that no matter the specific court, specific judge, the specific employee, or the specific type of case, each and every member of the public will have access to the highest levels of expertise and will receive the highest level of service possible in each and every court in our state. The proposal was one facet of ongoing branchwide improvement and accountability to the public; it is a statement of branch values. The impetus for the proposal was not based on the premise that California's judicial education system is broken; it was not based on increasing attendance at courses offered by the Education Division/CJER; it was not about putting check marks beside each judge's name; and it was not about education just for the sake of education.

Foundational Issues

The underlying issues and initial considerations of the Governing Committee included the following.

The Public. The public expects and deserves the highest quality of professionalism and service from the judicial branch. Ensuring that the public receives that high quality professionalism and service involves continued improvement within and across the branch. How does education currently contribute to branchwide improvement? Could or should education play a more significant role?

The Courts. The courts in California have historically been separate entities, each with practices reflective of the individuals in the specific court. How are "best practices" most effectively shared among the courts? What do we hear from attorneys practicing in multiple courts? How can education most effectively be responsive and supportive of local court culture and local court needs while addressing issues of branchwide importance?

Judges. Judges in California courts are dedicated and hard-working. Many engage in ongoing professional development. Some do not. Judges are in a unique role in the courts and in our democratic society. Everyday, judges make independent decisions regarding personal freedom, livelihood, finances and family matters of individuals. Appointing and electing highly qualified judges builds the foundation of a strong judicial branch. But laws and procedures change, the

demographics of the state change, the complexity of the law constantly evolves, and there are always new and emerging issues in cases. How can education contribute most effectively to the ongoing professional development of individual judges and of the judicial branch? What approach ensures some basic content yet allows maximum individual discretion?

Court Personnel. As with judges, court personnel are dedicated and hard-working. Some participate in ongoing professional development. Some do not. What can be done to ensure ongoing professional development for each and every member of the judicial branch? What minimal level of professional development is appropriate for various members of the branch? How can branchwide goals be met while honoring local court needs and maintaining local court control?

Resources. Human and fiscal resources in the judicial branch are limited. Increasing those resources is a challenge, but should always be a priority. How can the branch ensure ongoing professional development for every member of the judicial branch within the constraints of existing resources? How can education contribute to the most effective and efficient use of limited judicial branch resources to best serve the public?

Internally-Generated Improvement. All organizations need to improve, remain constantly responsive to changing needs, and find better ways to achieve goals. In the public sector, this improvement is vital because service to the public is at stake. What should the judicial branch do internally to ensure branchwide improvement? What is most effective approach to highlight the necessity and importance of branchwide professional development?

Process

The Governing Committee carefully followed a process that included three meetings with the Judicial Council, three meetings with Presiding Judges and Court Executive Officers, and sharing the minimum education requirement model with the branch before crafting a proposal. This summarizes the process.

Date	**February 2003**
Event	Governing Committee Meeting
Outcomes	Initial discussions whether to explore enhanced requirements and research subcommittees formed to obtain input from court leaders.

Date	**February 2003**
Event	Discussion with chairs of Judicial Council Advisory Committees
Audience	Chairs of the Judicial Council Advisory Committees
Outcomes	General support for the concept.

Date	**October 2003**
Event	Fall Issues Meeting
Audience	Presiding Judges and Court Executive Officers
Outcomes	Research subcommittees initiate first discussions with PJs and CEOs and receive general support.

Date	**April 2004**
Event	Issues Meeting of Judicial Council
Audience	Judicial Council
Outcomes	Governing Committee discussed issues and possible approaches and was directed by the Council to do research on this topic.

Date	**Summer 2004**
Outcomes	Research on continuing education requirements in other states. 42 other states have continuing education requirements for judges.

Date	**September 2004**
Event	Judicial survey to assess current continuing education practices
Audience	All judges and SJOs
Outcomes	324 judges responded with an average of 26 continuing education hours annually.

Date	**Fall 2004**
Outcomes	Creation of a “Minimum Education Requirements Example” for purposes of discussion. The GC invited judges and administrators from outside the Committee to assist in drafting.

Date	**February 2005**
Event	Issues Meeting with Judicial Council (second one)
Audience	Judicial Council
Outcomes	Discussion of the Example. Council directs Governing Committee to continue research for a proposal.

Date	**April 2005**
Event	Regional Meetings
Audience	PJs and CEOs
Outcomes	Discussion of the Example to gather feedback and input. Overall feedback supportive.

Date	**May 2005**
Event	CJA Annual meeting
Audience	CJA Executive Board
Outcomes	The board issued a statement in favor of voluntary continuing education and additional resources for judicial participation.

Date	**May 2005**
Event	Example published to the branch to gather feedback.
Audience	Judicial Branch members
Outcomes	160 judges gave written responses. 75% in favor; 19% opposed; 6% indeterminate.

Date	**June 2005**
Event	Joint PJ and CEO Advisory Committee Meeting
Audience	Presiding Judges and Court Executive Officers
Outcomes	Extensive discussion of the model, review of recently completed branch survey, small group discussion regarding support and opposition to the model.

Date	**November 2005**
Event	Judicial Council Business Meeting
Audience	Judicial Council
Outcomes	Presentation of the Minimum Education Requirements Model to the Judicial Council. The Council directed the committee to draft proposed rules for rule-making process.

Date	**February 2006**
Event	Governing Committee Meeting
Outcomes	CJER Governing Committee approved proposed rules

Date	**April 2006**
Event	Proposed rules presented to RUPRO
Audience	RUPRO
Outcomes	Rules approved for 90 day circulation for public comment.

Date	**April 24, 2006**
Event	Proposed rules posted, extended comment period of 90 days
Audience	The public
Outcomes	Feedback from within and outside the judicial branch

Date	**August 16, 2006**
Event	Governing Committee Meeting
Outcomes	Review of comments and decision regarding next steps

Concerns Voiced Through the Public Comment Period

Most of the comments received during the comment period were from judges and thus focused on education for judges rather than on education for court personnel. Few of the comments addressed the substance of the rules. Early in the comment period, the focus of feedback shifted away from education and its benefits. In fact most comments noted the high quality of judicial education in California and many judges noted that they attend education on a voluntary basis. Most of the comments addressed more global issues and perceptions, including the concern that the proposed rules were simply one more in a long series of actions that minimize judicial autonomy and authority. Because most comments were based on non-educational issues and on perceptions, they are therefore difficult to address in the draft committee responses staff prepared for the committee to review.

In addition, the responses seemed to have a life-cycle based on comments made and apparently shared widely, but were not submitted and thus are not part of the official comments that the Governing Committee can address directly. Initially concerns seemed to focus on whether the Judicial Council had the authority to impose education requirements. Soon comments shifted to concerns about judicial independence and a lack of need for education requirements, since many judges already participate voluntarily in ongoing education. More recently, concerns were expressed about the possibility of reduction in the quality of education if requirements were adopted.

More specifically:

Authority — many of the comments reflected the belief that the Judicial Council does not have the authority to mandate education for judges and that the proposal is therefore unconstitutional. Several noted that the Judicial Council's rule making authority was limited to issues of judicial administration, which some felt did not include requirements for education. Staff drafted responses to this concern, based on advice and an opinion from the Office of General Counsel, but this concern may be more appropriately addressed by the Judicial Council rather than the Governing Committee.

Independence — many of the comments reflected the belief that required education infringes on a judge's independence. Specific reasons for this perception were not given, nor was a definition of independence offered, but staff drafted responses based on a published definition of judicial independence. According to information from the Bureau of Justice Statistics of the National

Center for State Courts, 43 states have requirements for continuing education for judges, some in place for decades. No data could be found that judges in those states felt requirements were an infringement on their independence. Some of the text that introduces requirements in other states, however, notes judicial independence as one of the reasons for education requirements.

Lack of Need — many of the comments reflected a belief that judges already participate in continuing education, or otherwise remain current on the law, and thus a mandate is unnecessary, and for some, a mandate is seen as insulting. Based on previous committee discussions, one of the premises for the proposed rules was to ensure ongoing education across the judicial branch while not overburdening the courts or individual judges. The proposed model was chosen in part because for many judges it would be easily accomplished and not create new burdens on the courts. Staff drafted responses to this concern based on the Governing Committee's original goals.

Reduced Quality — many of the comments reflected a belief that requirements would result in cookie-cutter education and would cause a need for increased programming, leading to a reduction in the quality of courses. The premise for this concern was that with voluntary education, planners and faculty had to ensure high quality or attendance would be low. This concern is difficult to understand due to the high level of participation and dedication to quality by judges who plan and deliver judicial education. Staff drafted responses to this concern based on the current level of quality of required programs and the lack of need for increased programming if requirements are adopted.

Other Issues — some of the concerns expressed during the comment period seem to be based on misinformation, misunderstanding, and/or misperception. Examples include: beliefs that there would be statewide tracking; state-directed content; no choices for judges regarding the content; no ability for local courts to address their own educational needs; beliefs that the proposal was designed and promoted by non-judges; and that CJER would be the only provider.

While the Governing Committee will respond as fully as possible to each comment received during the comment period in a chart summarizing the comments, staff felt the thematic areas warranted summary for the committee's consideration.

Concerns about the Authority of the Judicial Council

The Administrative Office of the Courts has concluded that the rules are within the council's authority to adopt rules for court administration, are not inconsistent with statute, and do not add a qualification for judicial office. (See Memorandum from the AOC's Office of the General Counsel to RUPRO re: Judicial Council's Rule-Making Authority for Minimum Education Requirements for Judges, dated April 13, 2006.)

Concerns about Independence

This concern has been difficult to address because judicial independence can be defined in different ways. The following is a definition that is published and widely accepted:

The following definition is found on the American Judicature Society World-Wide Web site:

> Judicial independence is a concept that expresses the ideal state of the judicial branch of government. The concept encompasses the idea that individual judges and the judicial branch as a whole should work free of ideological influence. Scholars have broken down the general idea of judicial independence into two distinct concepts: decisional independence and institutional, or branch, independence. Decisional independence refers to a judge's ability to render decisions free from political or popular influence based solely on the individual facts and applicable law. Institutional independence describes the separation of the judicial branch from the executive and legislative branches of government.

Based on this definition, the minimum education proposal would support judicial independence, both institutional and individual, rather than infringe on it as some have indicated. Institutional independence would be maintained by the proposed requirements as this represents the judicial branch taking action to ensure ongoing professional development and continuous improvement of the branch, rather than leaving action in the hands of others. Individual independence in decision-making would be maintained by the proposed requirements as continuing education and professional development ensure that each judge has the most recent information, the most relevant practices, and the most effective skills at his or her disposal to make the most effective decisions possible.

Concerns about the Need for the Proposed Rules

This concern is at the heart of the proposal. Many comments focused on the fact that the individual responding already attended judicial education and believed that most other judges did as well. The prime reason for the proposed rules is not whether all or almost all judges participate in appropriate amounts of education and professional development. There is not good data to answer that question (most of the information is anecdotal), and it is also not helpful to try to determine what percentage of judges who do not participate much or at all is acceptable. As has been stated by the committee throughout the process, the primary reasons for the proposal include: a public commitment to ongoing professional development, creating a branchwide environment of professional excellence, and ensuring that no matter the specific court, specific judge, the specific employee, or the specific type of case, each and every member of the public will have access to the highest levels of expertise and will receive the highest level of professional and service possible in each and every court in our state. Education requirements are a public statement of branchwide values – a statement that the judicial branch takes

improvement, individually and collectively, as a serious matter of accountability – that self-generated requirements are a matter of pride and professionalism. The current system of education requirements only for new judges and voluntary standards for continuing education makes the statement that education for new judges is necessary and important (and thus required by rule) but that continuing education for judges and education for court personnel must not be necessary or important (because it is voluntary, and thus optional). To say that education is not needed appears arrogant to some, and to say that it is not important undercuts our ability to defend the need for the resources (staff and funding) needed to support the education program.

One of the arguments put forth is that imposing required education is not necessary because of the existing rich culture of voluntary education and the widely acknowledged high caliber of its content and the faculty who teach. While it is very true that there is a rich and extensive culture of voluntary judicial education, the proposed rules also establish a commitment by the judicial branch to education and training as an essential, not optional, component of professional development and excellence.

Concerns about Reduced Quality of Education

This concern can be dispelled directly and quantifiably. There is no evidence that quality would suffer if minimum education requirements were adopted.

First, the currently mandated New Judge Orientation and the B. E. Witkin Judicial College are of the highest caliber. These programs have been required by rule of court for more than a decade. The judges who plan and deliver these programs have not allowed the mandated nature of the programs to diminish quality. On the contrary, because the programs are required, the judges who serve on the education committee, as seminar leaders, and as faculty feel an even stronger commitment to excellence. They conduct faculty development programs to ensure they all have the skills necessary to plan and deliver effective education. They devote days and weeks at a time to their responsibilities. And they consistently evaluate the programs, improving them again and again over time. The judges who organize and implement programs for new judges want each participant to leave having experienced memorable and useful courses that will contribute to their individual and collective success in the judicial branch.

Qualifying Ethics, although not required by rule, is attended by more than 99% of California judges and is required if participants want access to the Commission on Judicial Performance insurance. The judges who plan and deliver these courses, more than 30 courses per year, also conduct faculty development courses to enable all faculty to deliver the most effective courses possible. They also consistently evaluate and update the content, the materials, and the delivery. The judges who organize and implement programs dealing with ethics want each participant to leave having experienced a course that will enable them to avoid ethical problems.

Judges who currently plan and deliver judicial education do so out of a sense of giving back to the judicial branch, giving other judges the tools to be the best they can be, sharing effective practices to make the courts better, and sharing their individual and collective expertise for the benefit of others. It is doubtful that they would abandon those goals simply because there are requirements.

Finally, the proposed rules identify numerous providers and provide very basic criteria for local courts to use to approve courses offered by any provider. As only one provider for judicial education, CJER currently delivers enough education for each judge in California to earn 15 hours per year, or 45 hours in any three-year period, 50% more than called for in the proposed rules. Those who have commented praise the current excellence of CJER programs.

In summary: a) Currently mandated programs have high quality based on the dedication of the judges who plan and deliver them; b) Current faculty demonstrate ongoing dedication to the improvement of the judicial branch; c) CJER, as only one of many providers, currently delivers more than is required for judges in the proposed rules and quality is currently high. Based on all of these factors, there is no basis for concerns about diminishment of quality due to minimum education requirements.

Analysis of Comments

The following table presents a simple numerical analysis of the comments received in the categories of Agree, Agree If Modified, and Do Not Agree with the proposal. The results are then broken down vertically in the table, with group responses listed first, followed by the individual responses grouped by court. As of August 11, a total of 254 comments had been received with 82.5 who agreed, 17 who agreed if modified, and 154.5 who disagreed. Of the comments received from groups, 9.5 agreed, 3 agreed if modified, and 5.5 disagreed.

GROUP or COURT	AGREE	AGREE IF MODIFIED	DO NOT AGREE	TOTAL FOR GROUP/ COURT
California Judges Association Executive Board	0	0	1	1
California Partnership to End Domestic Violence	1	0	0	1
Commission on Judicial Performance	1	0	0	1
Consumer Attorneys of California	1	0	0	1
Continuing Education of the Bar	0	1	0	1
Crime Victims United of California	1	0	0	1

GROUP or COURT	AGREE	AGREE IF MODIFIED	DO NOT AGREE	TOTAL FOR GROUP/ COURT
Domestic Violence Practice and Procedure Task Force	No Position – Revisions Recommended			
Fresno County Superior Court Executive and Management Team	1	0	0	1
Imperial County Superior Court	0	0	1	1
Los Angeles County Superior Court	0	1	1	2
Mendocino County Superior Court	1	0	0	1
San Mateo County Superior Court	0	0	1	1
Stanislaus County Superior Court	0	0	1	1
State Bar Board of Governors	1	0	0	1
State Bar Family Law Executive Committee	1	0	0	1
State Bar Taxation Section	1	0	0	1
Superior Court Clerks Association	0	1	0	1
Ventura County Superior Court	0.5	0	0.5	1
COURT OF APPEAL	14	1	1	16
ALAMEDA	5	0	7	12
ALPINE	0	0	0	0
AMADOR	0	0	1	1
BUTTE	0	1	1	2
CALAVERAS	0	0	0	0
COLUSA	0	0	0	0
CONTRA COSTA	2	0	3	5
DEL NORTE	0	0	1	1
EL DORADO	0	0	1	1
FRESNO	3	0	3	6
GLENN	0	0	1	1
HUMBOLDT	0	0	1	1
IMPERIAL	0	0	1	1
INYO	0	0	0	0
KERN	0	0	3	3
KINGS	0	0	0	0
LAKE	0	0	0	0
LASSEN	0	0	0	0
LOS ANGELES	3	2	69	74
MADERA	0	0	1	1
MARIN	1	0	0	1

GROUP or COURT	AGREE	AGREE IF MODIFIED	DO NOT AGREE	TOTAL FOR GROUP/ COURT
MARIPOSA	0	0	1	1
MENDOCINO	0	0	1	1
MERCED	3	0	0	3
MODOC	0	0	0	0
MONO	0	0	0	0
MONTEREY	3	0	0	3
NAPA	0	0	1	1
NEVADA	0	0	2	2
ORANGE	8	0	0	8
PLACER	1	0	1	2
PLUMAS	0	0	1	1
RIVERSIDE	2	0	6	8
SACRAMENTO	3	0	8	11
SAN BENITO	0	1	0	1
SAN BERNARDINO	2	4	1	7
SAN DIEGO	2	1	3	6
SAN FRANCISCO	2	0	3	5
SAN JOAQUIN	1	0	0	1
SAN LUIS OBISPO	0	0	0	0
SAN MATEO	0	1	3	4
SANTA BARBARA	3	0	2	5
SANTA CLARA	1	2	4	7
SANTA CRUZ	0	0	0	0
SHASTA	2	0	0	2
SIERRA	0	0	2	2
SISKIYOU	2	0	0	2
SOLANO	0	0	1	1
SONOMA	0	0	1	1
STANISLAUS	1	0	2	3
SUTTER	0	0	1	1
TEHAMA	0	0	0	0
TRINITY	0	0	0	0
TULARE	1	0	2	3
TUOLUMNE	0	0	0	0
VENTURA	1	0	1	2
YOLO	0	1	4	5
YUBA	0	0	1	1

GROUP or COURT	AGREE	AGREE IF MODIFIED	DO NOT AGREE	TOTAL FOR GROUP/ COURT
ASSIGNED OR RETIRED JUDGE	4	0	1	5
ANONYMOUS	1	0	2	3
PUBLIC, NON-COURT	2	0	0	2
TOTALS	**82.5**	**17**	**154.5**	**254**

The following chart analyzes the broad themes which emerge from a review of all of the comments, both those in support of and those opposed to the proposed rules on minimum education requirements. This chart is provided to assist committee members in reviewing the comments and the draft responses and in determining the committee's final responses. The themes, as defined below, are not intended to be verbatim from the original comments, but contain the gist of the original comments. Please note that because many comments contained more than one theme, the total number of comments in the chart does not equal the total number of comments received.

The remaining comments either mention a single instance of a specific issue (e.g., labor issues), refer generally to the comments of other commentators, or simply state support for or opposition to the proposed rules without elaborating further.

Comments Opposed		Comments in Support	
Unneeded The proposed rules are not needed because the current voluntary system is excellent and well attended and the majority of judges already stay current on the law.	43 comments contained this theme.	Public Trust and Confidence The proposed rules would enhance the trust and confidence the public has in the judicial branch.	50 comments contained this theme.
Independence The proposed rules would infringe on the independence of the judiciary as a third branch of government or on the independence of individual judicial officers.	34 comments contained this theme.	Independence The proposed rules would support judicial independence, both institutional and individual.	29 comments contained this theme.

Comments Opposed		Comments in Support	
Authority The Judicial Council does not have the authority under the California Constitution to promulgate these rules with education requirements for judges.	27 comments contained this theme.	Professional Development The proposed rules will enhance and facilitate the professional development and excellence of all judicial branch members.	16 comments contained this theme.
Reduced Quality The rules would result in lower quality education programs, reduced enthusiasm of faculty, and the promulgation of unnecessary and irrelevant courses.	18 comments contained this theme.	Current on the Law The proposed rules will facilitate judicial branch members remaining current on the law.	16 comments contained this theme.
Demeaning The proposed rules are insulting and/or demeaning to the bench.	9 comments contained this theme.		
Funding/Logistics The proposed rules would result in a financial and scheduling hardship on the courts.	6 comments contained this theme.		

Conclusion

The proposal on minimum education requirements has generated much debate within the judicial branch, most of it seemingly unrelated to education. The committee has devoted much time and energy in the past three years trying to share information and gather input so it could produce a meaningful proposal. Given the lengthy development process, the feedback during the comment period has been surprising, with a focus on what some have called an erosion of the judicial position rather than on the benefits of a branchwide commitment to ongoing improvement and professional development. The original proposal reflected what the committee thought that the judicial branch would want to be patent - that branchwide ongoing professional development is

essential, not optional, to a successful and independent judiciary, and continuing education is an integral part of that development.

The question that remains is what to do given the goals of the committee and the opposition to the proposal.

The committee may want to consider (1) whether the information received from the comments changes the goals of the proposal in any significant way; (2) whether the need for and benefits of the proposal significantly outweigh any burdens/concerns that the proposal may cause for the trial courts; (3) whether the proposal is the appropriate policy for the committee to recommend; and (4) if not, how to proceed.

Options That Might Be Considered, Either Singly or Jointly

These options are not exhaustive, but are outlined by staff to address both the goals of the committee in its original proposal of minimum education requirements and some of the concerns voiced in the comment period.

Option	**Pros**	**Cons**
1. Propose the Current Draft of the Rules Selecting this option would require a report to the Judicial Council recommending it.	This would achieve the goals originally established by the Governing Committee.	The current debate will probably continue.
2. Modify the Current Draft of the Rules Incorporating Some of the Suggestions Given in the Comments [see attached suggestion chart] Selecting this option would require a report to the Judicial Council recommending it.	This would achieve the goals originally established by the Governing Committee.	Some would still oppose the proposal.

3. Modify the Proposed Rules to Address Only New Judge Education, Assignment Rotation, Orientation for Presiding Judges [the content requirements] Selecting this option would require a report to the Judicial Council recommending it.	This would eliminate the concern that continuing education is being dictated at the state level. This would accomplish some of the goals originally established by the Governing Committee.	Some would still oppose the proposal. This temporarily negates the Governing Committee's original goal of ongoing branchwide professional development
4. Modify the Proposed Rules to Only Address a Certain Number of Continuing Education Hours after New Judge Education is Completed Selecting this option would require a report to the Judicial Council recommending it.	This would eliminate the concern that content is being dictated at the state level. This would accomplish some of the goals originally established by the Governing Committee.	Some would still oppose the proposal. This might lead to a perception of "seat time" rather than education as professional development.
5. Modify the Proposal to Address Only Court Personnel [Excluding SJOs] Selecting this option would require a report to the Judicial Council recommending it.	This would reduce the debate regarding judicial independence and necessity for judicial requirements. This would accomplish some of the goals originally established by the Governing Committee.	Some would still oppose the proposal.
6. Modify the Proposal to Address Only Judicial Officers [Including SJOs] Selecting this option would require a report the Judicial Council recommending it.	This would reduce the debate regarding local court resources given the number of court personnel. This would accomplish some of the goals originally established by the Governing Committee.	Court personnel are often the "face" of the court to the public. Some would still oppose the proposal.

7. Propose a Rule That Directs Local Courts to Establish Their Own Minimum Education Requirements; Offer the Current Proposal as a Potential Model Selecting this option would require that the revised proposal be sent out again for public comment.	This would reduce the debate as it relates to concern about statewide requirements applied to all courts. This might accomplish some of the goals originally established by the Governing Committee.	Some would complain that requirements differ from court to court. Some would still oppose the proposal.
8. Propose the Rules as Aspirational for Current Judges and Required for Judges Taking the Oath after January 1, 2006 [Leaving intact the proposal for court personnel.] Selecting this option would require that the revised proposal be sent out again for public comment.	This might reduce the current debate. This would accomplish the goals originally established by the Governing Committee, although in phases.	Some would still oppose the proposal. This would create differential treatment of judges.
9. Propose the Rules as "Should" Rather Than "Must" Selecting this option would require that the revised proposal be sent out again for public comment.	This might reduce the debate and refocus the discussion on education and its benefits rather than the current focus on authority, independence and necessity.	This would do nothing regarding education requirements that may originate outside the judicial branch. This is a weakened commitment from what the Governing Committee initially sought and would not fully address the goals originally established. Some would still oppose the proposal.

10. Make the Proposal Aspirational Only (Standards/Guidelines rather than Rules) [With the exception of the existing rules regarding new judges, appellate justices, etc. already in place.] Selecting this option would require that the revised proposal be sent out again for public comment.	This might reduce the debate and refocus the discussion on education and its benefits rather than the current focus on authority, independence and necessity.	The existing Standards of Judicial Administration already have aspirational goals for education (for judges the aspiration is eight days annually - more than the proposed rules). This would do nothing regarding education requirements that may originate outside the judicial branch. The Judicial Council is moving away from Standards.
11. Temporarily Withdraw the Proposed Rules and Study the Issues Further Selecting this option would require a report to the Judicial Council recommending it. If significant changes were made to the proposal after further study, the revised proposal would have to be sent out for public comment.	This might provide a hiatus in the debate, providing an opportunity for further clarification and discussion. Local courts could track participation and provide additional information.	This may not yield any new information as concerns seem global rather that specific to the substance of the proposed rules. Tracking individual participation does not address the original goals established by the Governing Committee.
12. Withdraw the Proposed Rules [This would leave the existing rules regarding new judges, appellate justices, etc. in place.] Selecting this option would require a report to the Judicial Council recommending withdrawal of the proposed rules.	This would eliminate the debate.	This would abandon the goals originally established by the Governing Committee. This would do nothing regarding education requirements that may originate outside the judicial branch.

KMT/JMV/bjw
Attachment
cc: Hon. Deirdre H. Hill, Advisory Member, CJER Governing Committee
Mr. William C. Vickrey, Advisory Member, CJER Governing Committee
Hon. Richard D. Huffman, Liaison from the Judicial Council
Hon. Kim G. Dunning, Liaison from the Court Technology Advisory Committee
Hon. David S. Richmond, Liaison from the Trial Court Presiding Judges Advisory Committee
Mr. Ronald G. Overholt, Chief Deputy Director, AOC
Ms. Kate Howard, Liaison from the AOC Office of Governmental Affairs

Attachment: Suggestions to Modify the Proposed Rules
(organized by topic)

	Suggestion	Pros	Cons
	<u>Approved Providers</u>		
A(1)	Add the Superior Court Clerks Association to the list of approved providers.	This is a recognized organization that provides quality education.	None.
A(2)	Add CEB to the list of approved providers.	This is a recognized provider of quality education.	None.
A(3)	Have all State Bar MCLE providers automatically approved as providers.		For a blanket approval, there may be some MCLE provider courses that would not necessarily be appropriate for the judiciary.
	<u>Expand Online and Self-Study</u>		
B(1)	Expand the hours allowed for online education.	This would provide more flexibility for the judges, executive officers and court personnel.	Not all education is appropriate for online delivery and there are benefits from live programs that are not applicable for online study.
B(2)	Expand amount of self study allowed.	This would provide more flexibility for judges and executive officers.	Not all education is appropriate for self-study and there are benefits from live programs that are not applicable for self-study.

	Suggestion	Pros	Cons
C	<u>Supervising Judges</u> Add classes in management for supervising judges.	Already being done via the curriculum process.	None.
D(1)	<u>Increase Requirements</u> Make it 45 hours over three years.	More education and training reflects more closely what judges are actually doing, and reflects more closely their educational needs.	There may be a burden placed on certain courts based on a higher hourly requirement.
D(2)	Increase the hours to meet the median of other states. We are currently at the bottom.		There may be increased resistance to the proposal.
E(1)	<u>Rules vs. Standards</u> Adopt the current Standards as the rules.	The Standards outline a comprehensive and potentially useful educational model.	Since they were written to be aspirational and not requirements, they would likely have to be reexamined and edited to be appropriate for a rule of court. The Standards recommend more education than the current proposal.
E(2)	If the rules are enacted, the current standards should be repealed.	There would be a single place for judicial education requirements.	The Standards set aspirational goals beyond the education requirements and that would be lost if they were repealed.

	Suggestion	Pros	Cons
	<u>Appellate Courts</u>		
F(1)	Expand current appellate orientation to Supreme Court Justices who have no prior appellate experience.	The content of the orientation course would likely be appropriate for supreme court justices.	The committee has not yet studied the educational needs of the supreme court or proposed requirements.
F(2)	Modify rule so that the presiding justice and not the APJ can grant leave for a justice to attend education. The PJ assigns work and knows the workload better than the APJ	This seems to be administratively appropriate.	The committee has not yet studied the educational needs of the appellate courts or proposed requirements.
F(3)	Have the proposed rules apply to all courts, not just the trial courts.	The intent has always been that if the proposed rules were adopted, the appellate courts would be studied next to consider what recommendations to make for their education requirements. It would be a more consistent implementation of educational requirements. Including the appellate courts, rather than only addressing the trial courts, would be more acceptable to some of the trial court judges.	Appellate courts may have different educational needs and the proposed requirements were not drafted to specifically incorporate those potential differences. The appellate courts were not studied or consulted as extensively as were the trial courts. Taking the time to study the educational needs of the appellate courts would delay the existing proposal. If the currently proposed rules are not adopted, the work on the appellate courts would be superfluous.

	Suggestion	Pros	Cons
	<u>Education Leave</u>		
G(1)	Revise CRC 970 and 6.603 to allow a specific number of days off for judges to attend education. These rules currently qualify time off ("to the extent compatible with the admin of justice") or make no mention of time off.	If in addition to proposed rules, this might enhance the ability of judges to attend education beyond the required education.	The proposal is intended to strike a balance. Under proposed rule 6.402(c)(1), the presiding judge must grant sufficient educational leave to complete education requirements; granting educational leave is qualified ("to the extent compatible with the administration of justice") for education beyond the requirements recommended by the Standards.
G(2)	Allocate a specific number of work days for continuing education in lieu of mandatory rules.		If in lieu of the proposed rules, this would negate ensuring a commitment to branchwide professional development.
G(3)	Adopt a rule allowing a minimum of 10 days for education and funding to attend	Funding that may be used for professional development is already being considered by the Judicial Council under a "chambers budget" proposal.	See comments above.
	<u>Additional Content Requirements</u>		
H(1)	The rules should also include specific requirements to attend classes on access and fairness as well as Domestic Violence.	These areas of education are critical and including them would ensure a higher participation in these classes	There are many, many areas of education that are essential and it would be possibly too burdensome to include complete list of these and other subjects as

	Suggestion	Pros	Cons
H(2)	Add mandatory training in the area of therapeutic justice.		required. In addition, the curriculum development work should include some of these areas, including the most critical ones, in substantive education, which reflects how these areas are encountered in the courts.
I(1) I(2)	<u>Incentives</u> Create an incentive to comply with voluntary requirements. Judges who exceed the minimum could be granted a sabbatical or increased retirement contributions. Establish an education fund for judges.	This could likely increase voluntary participation. This is already being proposed.	There may be ethical issues or other concerns with this approach.
J	<u>Simplify Rules</u> Simplify the rule language. The format of the rules is too complex and contains unnecessary language dealing with purpose and goals, which is more appropriate to a notes or annotation section.	Making the rule simpler would make them more accessible to everyone.	The rule making process drives some of the format of the rule and much of the essential content must be in the actual rule. Moving much of the language to a note or comment would mean that many people might not read that essential information.
K	<u>Board of Exemptions</u> Create a board of judges to consider exemptions to the requirements based upon substantial compliance via other means.	This would provide more flexibility for the judiciary.	This would be too administratively cumbersome a process to effectively implement.

	Suggestion	Pros	Cons
L	Adopt methods used by the Board of Legal Specialization Advisory Commissions (Lewis)	Unknown	Unknown
M	<u>Rules vs. Publication</u> Provide a quality monthly publication on changes in the law instead of these rules.	This would provide additional information in a timely manner.	While useful, this approach to providing additional information it is not education as envisioned by the committee.
N(1)	<u>Additional Process</u> Table the proposed rules and issue a survey to everyone asking if they would comply with the proposed minimum requirements. Analyze and publish the results for further discussion.	This might provide the Council with additional meaningful information for it to consider.	The committee has analyzed educational requirements for three years. It is doubtful that more would be learned and it is unknown what impact these results would have on actual compliance if the rules were adopted.
N(2)	Impose a 90-day cooling off period and appoint a blue ribbon commission to deal with this issue (Lewis).	A neutral board composed of stakeholders (including members from the Bar, the Legislature, and the public) would be able to review the current rules with a fresh eye and might have added legitimacy with respect to the judiciary.	The committee could be considered to be that body now and it has done this work over the past 3 years.
N(3)	Implement the rule in two phases – phase 1 would make the proposed requirements voluntary and the Council would track how many comply with them voluntarily. If not complied with then in phase 2 make it mandatory. (Rosenberg)	This process would test the proposed requirements to see how easily they can be met and we would have a true benchmark on them.	Tracking would be difficult and it is not certain we would be able to obtain valid and complete results. Tracking at the local level has been the committee's

	Suggestion	Pros	Cons
			desire. Voluntary participation to avoid requirements is not necessarily a true indicator of ongoing participation.
N(4)	Phase in the requirements for staff in consideration of the labor issues involved. (LeTellier)	This might reduce potential conflicts with existing labor contracts.	This would delay full implementation of the proposed rules.
O	<u>New Assignment Education</u> Change the new assignment rules so that this education is completed closer to assuming the new assignment than 6 months. Also specify the length of the training (e.g., 10 hours) and specify the type of training that would qualify. (Shuman)	Education is more useful the closer it is to the actual need, so having the new assignment education closer to actually assuming the new assignment would enhance its value. Being more specific with respect to the length of the course and the content would be beneficial to the judge needing the education.	Scheduling this education closer to the assumption of the assignment is often difficult, especially if it is live training. Much of the flexibility desired for continuing education would be lost if length and type of training were specified. Content determines both the length and the most effective delivery for a course; setting an artificial length does not necessarily promote or facilitate the quality of the course. Course content will likely change over time to meet the needs of the participants, so enumerating the content or length in the rule may prove unnecessary.

	Suggestion	Pros	Cons
P	Records Records verifying compliance with standards or policies should not be required. But if required, responsibilities of local courts should be minimized, records should not be public records, and records should include programs that each judicial officer requested but approval for which was denied.	Local court administrative work would be lessened.	Record keeping is of concern as these are expenditures of public funds. Without records, it is more difficult to demonstrate accountability.
Q	Education Criteria The approved education criteria in proposed Rule 6.421(b)(2)(A)-(E) should be eliminated as unnecessary and overly restrictive, although (A) and (B) are acceptable.	This would increase flexibility and the ability to participate in education based on each individual's interests, background, need, and style.	Approved education criteria were included to ally concerns voiced by some judges that (1) if local courts were determining courses that could receive credit, some common criteria should be in place or there would be criticism of inequality from court to court, and (2) some criticism of MCLE was based on a lack of standards, which in the view of some allowed non-relevant or poorly planned education to receive credit.