

# Order

**Michigan Supreme Court  
Lansing, Michigan**

March 11, 2020

Bridget M. McCormack,  
Chief Justice

ADM File No. 2019-33

David F. Viviano,  
Chief Justice Pro Tem

Administrative Order No. 2020-X

Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

Proposed Adoption of a  
Mandatory Continuing Judicial  
Education Program

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On order of the Court, the Court is considering adoption of a mandatory continuing judicial education program for the state's justices, judges, and quasi-judicial officers. The program is intended to promote and sustain competence and professionalism in Michigan's judiciary, and ensure continued proficiency in the core competencies of Michigan's judicial education curriculum, including knowledge about the current law, integrity and demeanor, communication skills, and administrative capacity.

Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

Administrative Order No. 2020-X — Mandatory Continuing Judicial Education Program

1. Requirement.
  - (A) General Requirement. As of X/X/XXXX, 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, extensions, or deferments) 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 nonaccredited provider, but which is consistent with the requirements established under this order.
  - (C) “Alternative Education Activity” is a learning opportunity that is not otherwise specifically addressed here, but which is consistent with the requirements established under this order.
  - (D) “Board” is the Judicial Education Board established by this order.
  - (E) “MCJE” is the mandatory continuing judicial education to be provided under this order.
  - (F) “Judicial Officer” is a Justice, appellate court judge, full-time judge, part-time judge, retired judge assigned by SCAO as a visiting judge, full-time quasi-judicial officer (including a district court magistrate or circuit court family division referee), or a part-time quasi-judicial officer (including a district court magistrate or a circuit court family division referee).
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. The members serve three-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. Terms of the initial board members shall be staggered to ensure reasonable continuity.
- (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, Extension, Deferment. The Board shall hear and decide requests from judicial officers for waiver, extension, or deferment 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 X/X/XXXX.
  - (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.
  - (I) Immunity. The Board and its members, employees, and agents are absolutely immune from suit for conduct and communications arising out of the performance of their duties under this act. In addition, any other person is immune from suit for statements and communications transmitted solely to the Board or its staff related to the requirements contained in this order.
4. Minimum Continuing Judicial Education Requirements.
- (A) General Requirements. Commencing X/X/XXXX, every judicial officer annually shall complete a minimum of 12 hours of continuing judicial education. The hours shall be distributed as follows:
    - (i) 3 hours in the subject area of integrity and demeanor (including ethics); and
    - (ii) 9 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 MJJI. At least six of the annual MCJE required hours shall be earned through courses offered by the Michigan Judicial Institute.

- (iii) Distance Learning Courses. Up to four of the annual MCJE required hours may be earned through Board-approved computer-based or distance education courses.
    - (iv) Teaching or Alternative Educational Activity. Up to four of the annual MCJE required hours may be earned through Board-approved teaching or alternative education activities. The activity must be approved in advance of including such activity in the required hours.
  - (C) Newly-elected or Appointed Judicial Officers. Every newly-elected or appointed judicial officer serving in a general or limited jurisdiction court shall attend the New Judge/New Magistrate/New Referee Orientation Program as applicable (administered by the Michigan Judicial Institute) in its entirety at his or her first opportunity. This requirement shall be in addition to the annual MCJE requirements described elsewhere in this order.
  - (D) Newly-appointed Chief Judges. Every newly-appointed chief judge shall attend the New Chief Judge Orientation Program (administered by the Michigan Judicial Institute) in its entirety as his or her first opportunity. This requirement shall be in addition to the annual MCJE requirements described elsewhere in this order.
- 5. Waivers, Extensions, Deferrals.
  - (A) Waiver. Except as provided in subsection (d), the Board may waive the MCJE requirements for a period of not more than one year 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) Extensions of Waivers. A waiver may be extended upon application to the Board and Board approval. Upon termination of the waiver, the Board may make such additional MCJE requirements as it deems appropriate.
  - (C) Deferrals. Deferment is available to a judge who has left judicial office by reason of resignation or retirement and who has been approved for assignment under the SCAO Guidelines for Assignment following retirement or resignation. A judge who seeks a judicial assignment but who has not completed the annual judicial education requirement shall complete the MCJE requirement by the deadline of the assignment year and will have until the following compliance deadline to complete the standard requirement plus the deferred MCJE requirements, not to exceed two (2) times the current annual requirement.

- (D) Members of the Armed Forces.
  - (i) Waiver. Upon written request to the Board, the MCJE requirements will be waived in their entirety for any compliance 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 forthcoming year.

6. Standards for Approval of MCJE Activities.

- (A) General Standards. All MCJE activities approved for credit shall meet the following standards:
  - (i) The activity shall have significant intellectual or practical content, the primary objective of which is to improve a judicial officer's knowledge of current law and/or professional capacity in the following competency areas: communication, integrity and demeanor, and administrative capacity to fulfill their judicial responsibilities.
  - (ii) The activity shall be an organized program of learning to deal with matters directly related to subjects that satisfy the objectives of these rules.
  - (iii) 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:
    - (a) attendance is restricted based on objective criteria for a bona fide educational objective to enhance the MCJE activity; or
    - (b) 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.

- (v) The program leaders or lecturers shall be qualified with the practical and/or academic experience necessary to conduct the program effectively.
  - (vi) 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.
  - (vii) The course or activity must be presented in a suitable setting to create a positive educational environment.
  - (viii) 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.
- (B) Distance Education. Distance learning courses—including computer-based and teleconference programs—may be approved for credit provided that they meet interactive, technical, and accreditation standards set forth by the Board, as well as the following terms and conditions:
- (i) Seminars viewed at remote sites by electronic transmission will be approved for credit if they offer the opportunity for learner engagement and interaction.
  - (ii) Only distance learning courses pre-approved for credit or conducted by Accredited Providers may be taken for credit.

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 NonAccredited Providers, Alternative Education Activities, and Teaching Activities.
- (i) General Statement. Courses offered by a provider that is not an accredited MCJE provider, alternative education activities, 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, alternative education activity, or teaching activity must be individually approved by the Board for credit.
  - (iii) Requests for Approval. A judicial officer should request Board approval for MCJE activities conducted by a non-accredited provider, alternative education activities, or teaching activities at least 60 days prior to the activity, but in all cases, the judicial officer must request such approval no more than 30 days after completing the activity for the request to be considered.
  - (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 of the four core competencies comprising Michigan's judicial education curriculum outlined in Section 6 (i.e., legal knowledge and ability, communication, integrity and demeanor, or administrative capacity), 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.

- (vii) Teaching Activities. The following additional terms and conditions apply to credit for teaching activities:
  - (a) Credit will be given on the basis of two hours credit for each one hour of presentation to a peer audience where the applicant has prepared quality written materials for use in the presentation.
  - (b) Credit for repeat presentations or presentations without such written materials (whether peer presentations or nonjudicial presentations) will be given only for the actual time of presentation.
  - (c) Credit will be given on the basis of one hour of credit for each hour of presentation where the applicant has prepared quality written materials for use in the presentation to a nonjudicial audience.
  
- (G) Carry Forward Credits. A judicial officer may carry forward a balance of credit hours earned in excess of the annual MCJE requirement—including computer-based and distance learning credits, which shall retain their character as such—for the succeeding reporting year, subject to the following limitations.
  - (i) Credit Limitation. No more than one times the current annual MCJE requirement may be carried forward into the succeeding reporting year.
  - (ii) Time Limitation. No MCJE credit may be carried forward more than one succeeding reporting year.
  - (iii) Credit Attributes. Carry forward credits retain the same attributes (subject matter, manner of presentation) that they would have had if used in the year in which they were earned.
  
- (H) Law School and Graduate School Courses. Law school and graduate school courses taken as a student may qualify for MCJE credit, computed in accordance with these standards, subject to the following terms and conditions:

- (i) Courses must otherwise qualify for credit, and the law school or graduate school courses in question cannot be required to qualify for the awarding of a basic degree.
  - (ii) Courses offered toward graduate or advanced degrees may receive credit, upon submission of appropriate documents and approval by the Board.
  - (iii) One hour of MCJE credit may be given for each approved law school/graduate credit hour awarded by the school (or the non-credit equivalent).
  - (iv) The school offering the course shall be a law school accredited by the American Bar Association or a regionally-accredited college or university.
  - (v) The course offers a learning opportunity which is consistent with the scope and purposes of this order.
- (I) 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) Annual Compliance Reporting. All judicial officers shall report MCJE compliance in writing within 30 days after the end of each calendar year.

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) Annual 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.

- (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.
  - (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.
  - (vi) Sanctions by State Court Administrator. Upon receiving notice from the Board of a judge's noncompliance, the State Court Administrator may impose an appropriate sanction, separate from any judicial sanction recommended by the JTC.
- (D) Crediting Hours During a Period of Noncompliance. Credit hours earned shall be first applied to satisfy the requirements of the compliance 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. Remedial Education. Upon being notified that a judicial officer is not performing as expected or required of the position, the State Court Administrator may require that a judicial officer engage in remedial education. Any remedial education required of a judicial officer will be in addition to the annual MCJE requirements of all judicial officers.

14. 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 proposed administrative order would establish a mandatory continuing judicial education program for the state's justices, judges, and quasi-judicial officers.

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.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by July 1, 2020, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2019-33. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).

MARKMAN, J. (*concurring*). I support the Court's decision to publish for public comment the proposed administrative order for mandatory continuing judicial education (CJE), but write to raise the following questions that might perhaps be addressed in the course of such comment:

First, given that Michigan has lacked mandatory CJE since its formation, what should be viewed as the most compelling present rationale for such a program?

Second, if CJE is not to devolve into an assemblage of "make-work" requirements, how should mandatory CJE programs be designed to ensure that they are of genuinely lasting value to those who exercise the judicial power of the state, as well as the public these persons serve?

Third, should mandatory CJE include a testing component in which judges demonstrate that they have actually gained useful or practical legal insight, or otherwise derived benefit, from these programs?

Fourth, in developing a mandatory CJE curriculum, do we wish to give emphasis to “nuts-and-bolts” courses such as those currently offered by the Michigan Judicial Institute, or do we want to give emphasis to “law school-oriented” courses such as jurisprudence, the evolution of the common law, and legal history? And in emulating the mandatory CJE requirements of Pennsylvania, as our proposal does, should there be some sense that courses offered in that state such as “America’s Fascination with Serial Killers,” “Best Practices for Handling Sovereign Citizen Litigants,” and “Storytelling and Persuasion Skills for Lawyers” are to be discouraged or avoided?

Fifth, is there any basis to agree or disagree with Justice BERNSTEIN in his dissent that if mandatory CJE is adopted, mandatory continuing legal education (CLE) for attorneys will likely follow? And if it *is* to follow, and in light of the fact that Michigan has lacked mandatory CLE since its formation, what should be viewed as the most compelling present rationale for such a program?

Sixth, what is inadequate about the present range of *voluntary* CJE programs currently offered by the Michigan Judicial Institute and elsewhere? If the only difference is that the current proposal is mandatory and MJI and other programs are voluntary, what, if anything, does this portend for the success of the newly created requirement?

Seventh, because the judiciary, as with any other governmental entity, is expected to serve as a responsible custodian of public funds, how significant a consideration should new program costs be as to whether mandatory CJE is adopted and its specific form?

Eighth, what will be the impact upon the expedition of the judicial process of 591 judges throughout the state being obligated to convene and participate in mandatory CJE programs?

Ninth, must distinctive curriculums be established for the trial and appellate judges of the state? For circuit, probate, and district judges?

Tenth, by what means can it best be ensured that mandatory CJE programs remain neutral and even-handed in their influence upon substantive judicial perspectives?

BERNSTEIN, J. (*dissenting*). 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.



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.

March 11, 2020

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk