

From: Rothmand
To: Invitations
Subject: Strategic Evaluation Committee Report Item SP 12-05
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To
The Honorable Tani Cantil-Sakauyue
Chief Justice of California
and the Judicial Council of California

From
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**Regarding: The Strategic Evaluation Committee Report, Item SP 12-05
Comment on Section-7 -- Education Division and Judicial Education**

Dear Chief Justice and Members of the Judicial Council:

Thank you for the opportunity to address the Report of the Strategic Evaluation Committee (SEC). I would like to give my views on certain portions of the part of the Report that deal with judicial education aspects of the section regarding the Education Division of the Administrative Office of the Courts (AOC). I will not be commenting on any other parts of the Report.

The present budget crises in our state combined with certain findings in the SEC Report raise concerns for the future of the one of the oldest and highly regarded judicial education programs in the United States, with consequential harm to the quality of our judiciary and the people of this state.

General comment on "Cost Benefit Analysis"

The Education section of the SEC Report contains a number of evaluations based on a "cost-benefit" conclusion in regard to judicial education programs. The Report, however, does not contain an explanation of the standards by for making such cost-benefit conclusions.

What all judicial officers (whom I will call judges here) do, the art of

judging, and the fundamental mission of the central principle of of being a judge (assuring the honesty and integrity of the process of decision making and the decisions they make, including the courage to do what it right), is something that judges learn through experience, education programs and by constantly seeking to gain self-awareness. I do not believe that the value of any of this is measurable by examining the "cost-benefit" of the educational components of such efforts. Judges are not little businesses that produce products. They are guardians of our Constitutions, the Rule of Law, our system of justice, and our liberty.

Local judicial education programs as a substitute for the statewide model

The Report suggests that education programs in large courts may be a substitute of some of CJER's programs that require judges from around the state to attend, such as new judge education programs and new assignment programs. (Pp. 107-108)

Obviously reliance on a variety of sources for judicial education in addition to CJER is beneficial to judges, including self study, programs provided by legal education providers, local court programs, and California Judges Association education programs. All are important in assuring that judges are well trained, fulfilling their obligations under the Code of Judicial Ethics to establish, maintain and enforce "high standards of conduct," and "maintain professional competence in the law." (See Canons 1, 2A, and 3B(2)) None, however, are a substitute for CJER's core programs.

Over the last half century the judicial institution, first through the California Judges Association and shortly thereafter through the Judicial Council, assumed the duty of assuring that all judges in California have a common understanding of what it means to be a judge. Over the years we have come to accept that there are not 58 legal systems in California administering a "law unto themselves," but a single rule of law with highest standards and best practices accepted throughout the state that assure the rule of law.

The suggestion in the Report that large local courts may be able to undertake some of what CJER does poses the potential of undermining the achievements of judicial education of the past 50 years and eliminating important values for judicial education of these programs.

For example, the Report's conclusion based on "cost-benefit considerations" in reviewing this subject ignores the value of live, in person, programs where judges from around the state meet and study together. The personal connections and discussions among judges from courts all over the state, large and small, rural and urban, north and south, are a critical element of CJER's judicial education program. In every program I have taught the participant judges from diverse backgrounds and courts share their knowledge, problem solving, perceptions and ideas. Almost invariably we realize that everyone (including faculty) learns as much from one another as they do from the faculty. This and many other benefits of meetings among judges from diverse courts should not be rejected because one has difficulty placing a value on what is learned.

One must also be concerned that the focus of local court education may tend to subjects and content that are perceived by court managers as "useful", "practical," "bread and butter," and aimed at the efficient functioning of the local court, rather than those subjects that focus on the basic premises of what it means to be a judge and judging.

New judge education

The Committee's Report contains reference to the concerns of "many judicial officers and courts" about having new judges away from their courts for the one week for New Judge Orientation and two weeks for the Judicial College. (Report p. 107) There is also concern expressed in regard to education required for a judge's new assignment.

In my 34 years of CJER teaching (as well as my years in managing the West District of the Los Angeles Superior Court) this concern is regularly voiced. It is understandable that a court might not want to suffer the loss of a new judge for so long. Even so, I am convinced by my experience that most judges and presiding judges in California who have this concern know that, in the long run, the loss of three or four weeks of education is inconsequential when weighed against the value to the system of justice of providing comprehensive judicial education to new judges.

It is, of course, never inappropriate to reexamine and improve what the Judicial College and NJO are doing. These are core institutions of California's judiciary and their curriculum and management are of great importance to the people of this state, our judges and the Judicial Council.

In addition CJER's management and structure should also be studied and improved. But proposals for actions that could result in undoing the Judicial College and NJO should be declined.

Finally, we need to be mindful that judicial education is an essential component of judicial accountability. Adequate judicial education helps insure that the conduct of judges meets the highest standards, and that a judge cannot credibly claim that the judge did not know his or her ethical responsibilities. The stakes are high when the quality of the judicial education institutions are compromised.

Attorneys in CJER

Recommendation No. 7-20 the Committee Report contains the conclusion that "education specialist positions are staffed by attorneys, a staffing practice that appears unnecessary." This conclusion seems to rest on the idea that what attorney educators do can be done by non-attorney staff members at less cost. I believe this conclusion is wrong.

It is true that attorneys cost more. It is not true that they are "unnecessary" in the role of managing and planning education programs and publications. CJER's first and most critical job is the planning and administering programs for education of judges, and these programs must include careful quality control by a staff that includes lawyers. The judicial education curriculum is fundamentally about legal issues (the constitution, statutes, rules, case law, procedures, the Code of Judicial Ethics, and so on) from the point of view of a judge. Eliminating lawyers from education staff at CJER to save money would leave the judge-lecturer without the back up necessary to prepare and deliver reliable content.

Final note

There is no question that much can be done to improve the accountability and functioning of AOC as well as judicial education in California. Building trust among judges and the public by objective appropriate analysis and constructive change, although hard, painful and difficult, is always necessary, appropriate and doable. It will take work, understanding and patience (three essential qualities of being a judge). We need to remind ourselves of Coach John Wooden's advice: "Be quick, but don't hurry."

Sincerely yours,

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