



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNING COMMITTEE OF THE CENTER
FOR JUDICIAL EDUCATION AND RESEARCH

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GOVERNING COMMITTEE OF THE CENTER FOR JUDICIAL EDUCATION AND RESEARCH

MINUTES OF OPEN MEETING WITH CLOSED SESSION

August 22, 2017
San Francisco
10:00am – 3:00pm

**Advisory Body
Members Present:**

Hon. Theodore M. Weathers, Hon. Mary Thornton House, Mr. Alex Calvo, Ms. Mary Majich Davis, Hon. Kimberly A. Gaab, Hon. Janet Gaard, Hon. Elizabeth Macias, Hon. Darrell S. Mavis, Mr. Michael M. Roddy, Hon. Arthur A. Wick, Dr. Cindy Van Schooten, Hon. Mark A. Juhas, Hon. Jackson Lucky, Hon. Rebecca S. Riley, Ms. Karene Alvarado, Dr. Mary Ann Koory, Ms. Susan Carroll

**Advisory Body
Members Absent:**

Hon. Richard Huffman, Mr. Martin Hoshino, Mr. Kevin Lane, Hon. Patricia M. Lucas

Others Present:

Mr. Gavin Lane, , Ms. Rhonda Sharbono, Ms. Rhoda Chang, Ms. Catherine Seeligson

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 10:00 a.m., and Susan Carroll took roll call.

DISCUSSION ITEMS (ITEMS 1)

Item 1 Perform cost benefit analysis for statewide live events on the 2018-2020 education plan

Judge Weathers explained that because the Education Plan will be submitted to the Judicial Council, this item is subject to the Open Meeting Rule and this discussion is now public.

Judge Weathers reminded the committee that the Judicial Council has asked the Governing Committee to perform a cost-benefit analysis on all high-cost education events on the Education Plan. Therefore, the Governing Committee will vote to approve planning and delivery of all high cost items on the 2018-2020 Education plan. The benefit of approving these high-cost items on the 2018-2020 education plan now, rather than in early 2018, is that CJER staff will be able to start the Request for Proposal (RFP) process after receiving Governing Committee approval on the delivery of these items. (In the past, because the RFP process is so long, staff would often start that process before receiving Governing Committee approval to

offer those high-cost programs) End product of this discussion will be a completed form with the Governing Committee indicating approval or disapproval of each high-cost item on the 2018-2020 education plan.

Karene Alvarado noted that accompanying materials for the discussion can be found in the binder: the draft 2018-2020 Education Plan, a narrative explanation of the research that details and supports the unique and uniquely effective benefits of both live face-to-face education and distance education, and a chart that lists each Education Plan item and its approval status.

Curriculum committees will no longer do a cost benefit analysis but they will prioritize the products. If there are too many priority 1 products that won't fit into plan then CJER will come back to the Governing Committee for decisions/approval. Also if the committees come back with more high cost items than what is currently on plan, the Governing Committee will need to conduct a cost benefit analysis on those products, and determine whether or not they can be resourced.

Gavin Lane added that CJER thinks this approach will work better because in the past the committees prioritized their products and only those that could fit in the capacities would be on the plan and the remaining items would "be forgotten." Now if a priority 1 item cannot be delivered due to faculty unavailability then staff and their committee can go down their list of items and select another product to fill the slot and avoid having to cancel items.

Gavin Lane provided the Resource Analysis Overview:

The following resource analysis addresses the feasibility of implementing the recommendations of the CJER Curriculum Committees at currently expected funding and staffing levels. The intent of this analysis is to maximize the use of approved resources for judicial branch education and to deliver as many services as possible. The analysis also provides the Governing Committee with options intended to assist in its discussion of priorities. Following discussion, the Governing Committee should provide direction to staff as to which items should be eliminated from the 2018-20 Education Plan.

1. There is a large discrepancy in cost between the two fiscal years. Plan Year 1 (2018-19) would cost about \$102,000 less than Plan Year 2.
2. Plan Year 1 (2018-19) would cost approximately \$1,149,950, which is approximately \$52,000 less than the current IMF budget allocation of \$1,202,000.
3. Plan Year 2 (2019-20) would cost approximately \$1,251,700, which is approximately \$50,000 more than the than the current IMF budget allocation of \$1,202,000.
4. These cost differences are primarily caused by:
 - a. A smaller than standard Judicial College in Plan Year 1, leaving approximately \$52,000 that would typically be required to support new judge education;
 - b. The estimate of a slightly larger than standard Judicial College in Plan Year 2;
 - c. The currently scheduled placement of the Trial Court Judicial Attorneys (TCJAI) program in Plan Year 2 at a cost of approximately \$60,000.
5. Consequently, there is not enough money to hold TCJAI in Plan Year 2.
6. The proposed programming also exceeds staffing capacity in both plan years:

- a. CJER has recently absorbed several statewide institutes previously managed by other Council offices while also reducing the number of coordinator and secretarial staff. Logistical responsibility for the Appellate Managers Institute (AMI), Appellate Staff Institute (ASI), Domestic Violence Institute (DVI), and Appellate Systems Administrator Conference (ASA) were transferred to CJER, and the frequency of the Appellate Justices Institute (AJI) was increased to every eighteen months.
 - b. Workload analysis shows that in addition to the TCJAI program in Plan Year 2, CJER does not have the coordinator resources to accommodate either one large statewide program or a combination of items comprising a similar workload weight to a large program in both plan years.
7. Consequently, it is not viable to reschedule TCJAI into Plan Year 1 in order to take one-time advantage of the unexpected Judicial College funding, or to seek additional funding for TCJAI in Plan Year 2 to reduce the IMF deficit because there are not sufficient staff resources to offer it in either year regardless of funding.

Judge Weathers explained that the Advanced Judicial Studies Institute (AJSI) was a new program that cost significantly less since than other programs since it was partially grant funded to cover faculty expenses. The participants paid their own lodging costs and their meal costs (through the PCR). It was very successful and received positive responses. This committee has responded to requests for more experienced judicial education and will be discussed in further later in the meeting.

Gavin Lane confirmed that the committee must assume that any future offerings of AJSI would have to be fully funded by IMF. He then continued with an explanation of methodology CJER uses to determine if all items on the Education Plan can all be delivered. CJER was able to identify costs for each product based on formulas that have been used for 30 years. But first, background information on financial and staffing analysis:

Financial analysis

CJER's main funding sources are:

- General Fund – staffing costs (including travel, lodging and meals for events)
- Grants – Domestic Violence and Criminal Justice Realignment education
- Trial Court Improvement Modification Fund (IMF) – travel, food and lodging for participants and faculty. This is the one that determines capacity for events. This fund has been stable for many years and the assumption is that it will remain stable.

Staffing analysis

- Weighted workloads for all programs – different programs take different number of hours to deliver
- Placed programs on a two year schedule and identified the staff.

Assuming staffing levels will not change, Karene Alvarado and Gavin Lane determined that not all the programs (including the additional appellate programs and AJSI) on the wish list will be able to be delivered.

Biggest Assumption

- When the governor leaves office, he will likely appoint a large number of judges, which means there will be increased numbers at Judicial College, NJO and primary assignment courses. CJER will be required to accommodate these judges which will impact the IMF budget

Other assumptions

- 1) CJER's Trial Court Improvement and Modernization fund (IMF) allocation will remain stable at \$1,202,000. There is no guarantee of this, but this allocation has been stable for three consecutive years and stability of the IMF funding appears to be a goal of the Trial Court Budget Advisory Committee;
- 2) CJER's General Fund operating budget will remain stable, particularly for staff lodging, travel and other general expenses in support of live programs;
- 3) CJER's other funding sources will also remain stable;
- 4) CJER's staffing resources will remain stable and the scope and amount of work for staff members who are also leveraged to support other Council Offices and the Supreme Court will remain generally stable. Also, no additional program work will be transferred to CJER in an unstaffed fashion. The leveraged staff refers primarily to Media Production staff, but also others;
- 5) The proposed schedule for delivery of live programs, including the courses within the Primary Assignment Orientation and Criminal Assignment Course programs can be accommodated by business partners in the Council's contracting, meeting and planning and course registration groups. The efficient distribution of program development and delivery throughout the two-year education plan is the primary determinant of the number of events that can be staffed and delivered;
- 6) Lodging and meal costs for appellate education programs will continue to be funded by the Office of Appellate Court Services (OACS);
- 7) Any large cost increases caused by a significant change in the number of new judges will be mitigated by the Council with an augmentation to the New Judge Education budget rather than a reduction in other judicial education;

NOTE: CJER has resubmitted a FY 18-19 BCP this year that proposes a mechanism to stabilize the funding for New Judge Education by enabling it to fluctuate up or down from a standard amount when the number of new judicial officers requiring education fluctuates significantly from a standard number of 104.

Now we will discuss the discrepancy of budget/costs for plan year 1 and plan year 2

Why? The 2018 College will be small (84) instead of the average 104. Assuming in plan year 2 the governor will appoint new judges, then the next 3 years will have higher than average College attendance as well as additional NJOs; which will impact the budget. For the past 8 years there has been a low number of judicial appointments which has allowed CJER to

continue its delivery of live education products for experienced judges within its existing budget.

The Trial Court Judicial Attorneys Institute (TCJAI) stands out as a high cost item in year 2 at \$60,000 since no PCR is collected, unlike the judicial programs. Since the PCR was instituted to protect experienced judicial education, non-judicial staff therefore are not being asked to pay.

After careful analysis it was determined that there is not enough staffing available, therefore not all items in plan year 2 can be delivered.

In order to preserve TCJAI, the only program for trial attorneys, some options have been proposed.

Judge Gaab asked for more information about the Trial Judicial Attorneys Institute.

Rhoda Chang, the Institute content attorney, explained that it is a 2-day program offered every other year. The program provides judicial attorneys with their general MCLE requirements as well as the specific MCLE requirements in substance abuse, bias, and ethics. Additionally, roundtable sessions are offered for best-practices discussions and content is offered in various legal areas including legal research. The attorneys appreciate the opportunity to network which is provided by the program since they feel so isolated in their jobs. The Institute is very well attended and very popular. The average number of participants is 182, which is roughly half the number of trial judicial attorneys in the state -- not all can be accommodated at the program. CJER uses priority lists submitted by the courts to help determine who will be accepted.

Judge Weathers asked about capping the number of participants, and also suggested that we explore charging a Program Cost Reimbursement ("PCR") since he really doesn't want to eliminate the program.

Mike Roddy explained that it would probably be harder for smaller courts to send attorneys if a PCR is charged.

Judge Gaab said her court would pay a PCR. She also noted that her court's attorneys are long-term employees, so we are not training a new group. She voiced her concerns about eliminating education for experienced judges. She also mentioned that she had attended the Appellate Judicial Attorneys Institute when she was an attorney and while it was a wonderful program, but it was not necessary for her job and wondered if it was the same for TCJAI.

Karene Alvarado explained that they are not the same. TCJAI is more skills-based and so it is essential education.

Gavin Lane explained that the next Education Plan wish list has more programs for experienced judicial officers than CJER has been able to deliver in the past:

- Currently CJER cannot deliver all institutes. Criminal had to be cancelled last plan and for this plan Civil has been pushed one year later

CJER has been addressing the needs of experienced judge education in this current plan in the following ways:

- Adding back in an additional offerings of Homicide Trials and Advanced Felony Trials
- Allowing judges to attend PAO courses who want continuing education or are returning after more than 3 years away from assignment. Previously CJER was not able to accommodate them

These changes cost small amount of money and no additional staffing, since these are existing programs/venues. What is harder to do is add in another program, such as AJSI.

Mike Roddy added that he sees this challenge to be less about money and more about staffing. Staffing is a much bigger problem. The PCR does help alleviate the budget problem. But adding staff is very difficult.

Gavin Lane confirmed that it is a staffing issue not a budget issue. An increased budget wouldn't help since there is no staff to work on additional programs. More money would help with the increased new judge education costs we foresee. But staffing levels are not going to increase from current levels.

Judge Riley agreed, saying no matter how you look at it something has to be eliminated because of staffing.

Judge House agrees that preserving experienced judicial education is important, but notes that the TCJAI is the only training for trial judicial attorneys, and it should be preserved. Thinking outside the box, can money be saved by eliminating a day and then offering some training in a webinar?

Judge Riley commented that it seems unfair that the committee is considering eliminating the only attorney program when there are so many judicial programs.

Judge Lucky agreed saying that his court works their attorneys to death and doesn't want to eliminate the only program that is going to help them do their job better.

Judge Gaard asked if programs could be combined to help with staffing.

Judge Weathers says he believes the trend is to stay smaller since it is harder to place larger programs in hotels. Gavin Lane agreed.

Judge Weathers seeing that everyone wants to keep TCJAI, let's discuss how we can keep.

Gavin Lane explained that the regional courses were instituted at the time when we thought institutes were going away and the regionals would be offered to deliver the content. Regional programs are lower cost, but they are staffing intensive.

Karene Alvarado also suggested that AJSI be on the chopping block since it is new.

Judge Wick asked if CJER is preparing paperwork to request additional staffing.

Karene Alvarado explained that JC prefers that CJER plan within existing staffing. It's not a good idea to plan for products that cannot be staffed. We can ask for more staff so we can do more programming, but we should not say that we are doing more programs and therefore need more staffing.

Gavin Lane added that no one will be surprised when we ask for more money to accommodate all the new judges the outgoing Governor will appoint. And we think we will need to obligate some judges to wait until their second year on the bench to attend the Judicial. We currently are using new judge education money to fund experienced judicial education. So when we have a higher number of new judges, the funding goes away for experienced judicial education.

Judge Trentacosta said that to address staffing problem in year 2, he saw the eliminating Regional Courses as a good option. So let's commit to deciding to eliminate regional courses and explore what else needs to be done to keep TCJAI.

Gavin Lane explained that the Governing Committee needs to eliminate a program in year 2 and find \$60,000. He suggested finding an annual program and reduce to every other year.

Options are:

- Cow County Judges Institute
- Complex Civil Litigation Workshop (which is a smaller program with 30 participants)

Judge Gaard explained that Cow County is valuable to small counties and should remain every year since due to small court size, the judges can't all attend the institute every year so if reduced the institute then a judge might not attend for 4 years. Small counties depend entirely on CJER for resources and education.

Mike Roddy says to help with budget, need to expand the collection of the PCR to TCJAI.

Judge Juhas asked about Local Court Education and if it is successful.

Karene Alvarado explained that local programming was designed for small courts but is only being utilized by the largest counties – Los Angeles, San Diego, and Alameda. Therefore this would be a good item to eliminate.

Final Decision by Governing Committee on the programming that should be kept in the 2018-2020 Education Plan:

Budget Savings:

Keep TCJAI in year 2 and charge PCR (\$50 per day), reduce judicial education attendance across the board in year 2 to offset costs.

Staffing/Resourcing Savings:

Eliminate Judicial Regional Education both years, eliminate Judicial Local Education both years, and move Complex Civil Roundtable to being offered every other year – offering in year 1 of the 2018-2020 Education Plan.

Karene Alvarado then asked the committee to go through the checklist of High Cost Items and have the Governing Committee vote on each product. The list was approved in its entirety by the committee. There was discussion about the Complex Civil Litigation Workshop.

Karene Alvarado explained 15 years ago the Judicial Council designated 6 Pilot counties with specialized judges hearing only complex civil cases and their own research attorneys. The Roundtable started with 17 judges and included no faculty, being offered in a roundtable discussion format. Two years ago the program was opened up to other non-pilot counties and includes judges who hear some complex cases. The program is capped at 30 participants.

Judge House asked why the Complex Judges can't meet remotely since these are judges that might be able to do it that way. Karene Alvarado responded that the roundtable discussion format is far less effective when offered remotely.

Judge Lucky commented that he thought in the future Felony Sentencing could be divided into discreet subjects and some subjects delivered via Webinar.

Judge Weathers announced the conclusion of the public portion of the meeting. The remainder of the meeting will be closed to the public.

A D J O U R N M E N T

There being no further open meeting business, the meeting was adjourned at 12:35 p.m.