



JUDICIAL COUNCIL OF CALIFORNIA

CENTER FOR JUDICIAL EDUCATION AND
RESEARCH ADVISORY COMMITTEE

CJER Advisory Committee Meeting Minutes September 2, 2021 Zoom Meeting

Present: Hon. Kimberly A. Gaab, Hon. Darrell S. Mavis, Hon. Carlos M. Cabrera, Hon. Mr. Joseph Ford, Hon. Janet Gaard, Hon. Michael A. Fagalde, Hon. Mark A. Juhas, Hon. Michael A. Knish, Mr. Kevin J. Lane, Hon. Mary Ann O'Malley, Hon. Gayle L. Peron, Hon. Robert J. Trentacosta, Dr. Cindy Van Schooten, Hon. Daniel Zeke Zeidler

Staff: Ms. Karene Alvarado, Dr. Mary Ann Koory, Ms. Sandy Flagge-Phillips, Mr. Jason Mayo, Ms. Lynn Muscat, Ms. Rhonda Sharbono, Ms. Kristine Van Dorsten, Mr. Steven Warner, Ms. Hazel Houle

Not Present: Hon. Michele M. Castillo, Mr. Jason Galkin, Hon. Michael S. Groch, Hon. Richard D. Huffman, Mr. Martin Hoshino, Mr. Robert Oyung

OPEN MEETING

Review and Discuss Draft 2022–2024 Education Plan

Ms. Alvarado noted that accompanying materials for the discussion can be found in the binder: the draft 2022–2024 Education Plan and an explanation of the research that details and supports the unique and effective benefits of both live face-to-face education and distance education. The draft 2022–2024 Education Plan includes specific high-cost programs and lists capacities for lower-cost distance education courses, including videos, webinars, podcasts, and online courses. In the past, all high-cost live statewide programming has been offered in person. As a result of the COVID-19 pandemic, CJER has delivered one hundred percent of its education remotely from late March 2020 through today.

Ms. Alvarado said that as discussed at the CJER Advisory Committee meeting on May 27, 2021, CJER's experience delivering high-cost live statewide programs remotely has provided CJER with valuable lessons that we will apply moving forward. CJER carefully and creatively designed and delivered remote classes to replicate as much as possible the in-person learning experience. As always, CJER emphasized interaction and learner-centeredness. The breakout room feature of virtual meeting software facilitated small group discussions. We also used the polling, whiteboard, and chat features, in addition to holding large group discussions.

CJER learned that offering education remotely often increased enrollment. Diversity of court size among enrollees also increased because smaller courts may have found it easier to send people to remote programs.

Ms. Alvarado said that similarly to how courts conducting some proceedings remotely has expanded access to justice for court users, CJER expanded access to high quality learner-centered judicial branch education by offering programs remotely. Because CJER has been reaching more people without sacrificing many of the benefits of in-person delivery, it makes sense that CJER explore which events should continue to be offered remotely.

Ms. Alvarado also said th cost-benefit analysis this committee conducts as it considers the draft education plan determines that there are only a few unique benefits of in-person delivery that are not present with remote delivery. Those unique benefits are providing an immersive learning experience and creating a new learning community. Participants who are new to an assignment or role benefit most from an immersive experience characterized by accelerated learning involving multiple senses, with fewer distractions. Because those participants usually do not have extensive knowledge of their new assignments or roles, they benefit the most from creating a new peer network to exchange knowledge and best practices. The conclusion is that courses and programs that are designed to orient audiences to new assignments or new roles should be delivered in person. The New Judge Orientation (NJO) and the Primary Assignment Orientation (PAO) courses are programs that are designed for judges new to an assignment. These programs should return to in-person delivery once it is safe to do so given the need for an immersive learning experience and the creation of a community of learning.

Ms. Alvarado observed that the Experienced Assignment Courses (EACs) are similar to PAOs in that they are intensive, immersive courses. The CJER Advisory Committee previously determined that many of the EACs, such as Felony Sentencing and Homicide Trials, meet the primary assignment rule requirement for experienced judges. She said that other EACs, such as the Death Penalty Trials course, are similar to a PAO because they introduce judges to a new advanced assignment. Thus, CJER recommends that EACs also remain in person. Institutes that are specifically designed for those new to a role, including the Supervising Judges Institute and the PJ/CEO Institute, are also likely to be offered in person once it is safe.

Ms. Alvarado said that additional considerations are the specific content and desired learning outcomes. Ethics and demeanor topics, for example, are better suited to in-person delivery, where non-verbal feedback is easier to see and ambiguity can be explored safely. Clearly, the Qualifying Ethics core course is best suited to in-person learning. Substantive law institutes, in contrast, are designed for participants who are experienced and knowledgeable in an assignment and therefore more likely to have an existing peer community. Additionally, institutes do not have an immersive curriculum. They consist of short, stand-alone, mostly unrelated classes that can be offered separately. Continuing to offer these institutes remotely provides multiple benefits. It increases access to the education both because it remote offerings are more accessible and hot-topic course offerings may be spread out during the two-year Education Plan cycle rather than being offered only once every two years. Physical access, convenience of time commitments, and content responsiveness are increased.

Ms. Alvarado said that we recommend that the Cow County Judges Institute continue to be delivered in-person. Although the audience for that program has other opportunities for in-person

education, the need to build a community of learning among rural court judges is uniquely salient. Remote learning does not build community to the same degree as in-person learning.

Ms. Alvarado stated that several statewide programs are being recommended to be offered in a hybrid format because they include participants who are new to the assignment but who also need the increased access of remote delivery. By offering selected programs in person and remotely, audiences receive the immersive experience essential for those who are new to an assignment, the necessary and unique opportunities to build community in person, and the increased access of remote offerings. Programs that will be offered in a hybrid format include the Court Clerk Training Institute, the Core Leadership courses, the Appellate Staff Institute, and the Appellate Management Institute.

Ms. Alvarado referred Committee members to the draft 2022–2024 Education Plan. She pointed out that neither the Appellate Staff Institute nor the Appellate Management Institute are listed by those specific titles on the Education Plan. Instead of attending one Appellate Management Institute every two years, appellate managers and supervisors have multiple in-person education opportunities, including Core 40, Advanced Core 40, Core 24, and ICM (Education Plan rows 116–143). She added that this Education Plan includes an annual one-day in-person session consisting of leadership topics solely for appellate court leaders (row 173) and regular webinars designed specifically for the appellate audience. Similarly, rather than one Appellate Staff Institute every two years, appellate staff will have the opportunity to attend the Core Leadership course (rows 161–165), one-day in-person annual offerings designed specifically for appellate staff (rows 181, 182, 194, and 195), and multiple webinars each year. This new hybrid approach allows both audiences to benefit from more frequent offerings of in-person and remote programs throughout the two-year Education Plan.

In summary, according to analysis of the 79 in-person statewide events that CJER typically offers in a two-year Education Plan, only five assignment-specific institutes are best suited for continued remote delivery: the Criminal Law, Civil Law, Family Law, Juvenile Law, and Probate Law Institutes. The substantive law curriculum committees responsible for those institutes have chosen different ways to deliver them. For example, the Civil Law Curriculum Committee decided to offer one full day of programming every six months (rows 98–101); the Criminal Law Curriculum Committee will offer two back-to-back half days of programming every six months (rows 102–105); and the Family Law, Juvenile Law, and Probate Law Curriculum Committees are recommending one day of programming in the first year of the plan and two days of programming in the second year (rows 106–107, 108–109, and 110–111).

Ms. Alvarado noted the Judicial Branch Access, Ethics and Fairness Curriculum Committee has recommended adding several in-person bias courses (rows 169–170), which makes them high-cost items requiring a cost-benefit analysis. The Judicial Branch Access, Ethics and Fairness Curriculum Committee discussed and weighed the benefits offered by in-person education against the costs and concluded that the need for in-person anti-bias education justifies the cost. Specifically, the committee found that the unique benefits of in-person delivery are essential for anti-bias content.

Ms. Alvarado stated that the budget and staffing costs of the newly proposed anti-bias courses are negated by the decision not to continue offering regional courses in a different content area that were included in the current Education Plan. Thus, CJER has the resources to support the delivery of these requested anti-bias courses in the next Education Plan.

Cost-Benefit Analysis

Dr. Koory directed Committee members to the cost-benefit analysis document that the curriculum committees use to assess high-cost in-person statewide education. This document is based on current educational research and explains how CJER determines the delivery method best suited to specific audiences' needs.

Dr. Koory shared with the Committee a Venn diagram which shows the separate and shared educational benefits of live in-person and live remote delivery. The diagram's left side highlights that live in-person delivery uniquely facilitates uninterrupted focus and a confidential space to practice new skills and concepts; it is difficult to feel that same level of psychological safety while using virtual meeting software. Additionally, in-person learning involves multiple senses and helps create better long-term memories. If one receives information over the telephone, for instance, it is harder to move that information from working memory to long-term memory because only the auditory sense is used. Live in-person training effectively creates an immersive environment that helps new judges, court leaders, and staff internalize the mindset and technical skills of a new role.

Dr. Koory pointed out that in the middle of the diagram are shared benefits of live remote and in-person education, and noted that these benefits are usually enhanced when education is in-person. In-person learners may have fewer distractions and be less likely to get fatigued than those attending remote programs, resulting in better attention and increased ability to devote the time required for in-depth learning. CJER is finding that longer remote classes can also offer in-depth learning to some extent.

Dr. Koory noted that while collaboration and immediate feedback happen remotely and in person, both are more effective in person, especially since it is easier to absorb non-verbal feedback in the same room. A teacher who is in the same classroom with students can read cues and knows instantly when students do not understand a concept. Similarly, creativity can happen in both modes, but again, it tends to occur more often in person. The student's presence in a new physical space provides a new frame of reference and can spark a new way of thinking.

While both live in-person and remote education create learning communities by allowing participants to share perspectives and build relationships, community building happens differently in each delivery method. Live in-person education is uniquely effective in creating a learning community from scratch where none exists, such as for an audience that is new to an assignment. Live remote education, on the other hand, expands and activates existing learning communities.

Dr. Koory noted that distance education offers its own benefits, including accessibility. If a student cannot travel to an in-person class, there is no education. Remote education is also more cost effective: it saves hotel and travel costs, travel time, and days away from court for faculty

and participants. Timelines and responsiveness vary when developing education for different delivery methods. It takes up to 18 months to plan a live in-person event due to the mandatory contracting process. Distance education permits CJER to revise plans quickly if the law changes.

Dr. Koory said that CJER has used and applied this cost-benefit analysis to all high-cost items each time that CJER has designed a new Education Plan. The Judicial Branch Access, Ethics and Fairness Curriculum Committee members recently applied this cost-benefit analysis to the new anti-bias course that they recommended for the 2022–2024 Education Plan. Curriculum committee members conducted the following analysis of the new anti-bias course, on which CJER Advisory Committee members commented:

1. *How does uninterrupted, singularly focused learning impact anti-bias training?*

- Uninterrupted, focused learning environments make it more difficult for participants to remain passive and pay superficial attention. Studies show that passive anti-bias education is less effective than in-person experiences.¹
- Judges Zeidler and O’Malley discussed how the flow of the anti-bias content benefits from uninterrupted focus.

2. *Why is a confidential and safe space important for anti-bias education?*

- A confidential and safe space is essential for effective anti-bias education. The participant must identify their biases and reassess their belief systems, habitual behavior, and judicial decision-making. In an in-person environment, affective (emotional and empathetic) instruction can effectively overcome natural resistance to changing personal beliefs, values, and stereotypes. Acknowledging biases and practicing these types of skills makes participants vulnerable and requires trust. Trust is hard to achieve in any situation, but especially at a distance.
- Judge Zeidler pointed out that the discussions around anti-bias content require a safe space for sharing personal experiences.

3. *How does multisensory experience impact anti-bias training?*

- Cultivating empathy through multi-sensory experience is essential to anti-bias training. Multisensory experiences must be understood holistically rather than simply as part of a legal scenario.
- Mr. Ford discussed the effectiveness of experiential learning in anti-bias training. Judge Zeidler gave an example from the CASA program, where instructors ask students to fill out a multiple-choice questionnaire and select an answer ranging from agree to strongly disagree. Then they are asked to switch answer sheets and justify another person’s responses. These experiential exercises make a difference.

4. *How does an immersive environment impact anti-bias training?*

- Live in-person training creates an immersive environment that helps judges internalize the mindset and skills of a new role, such as responding to bias in the courtroom or workplace. Criminal and civil judges will soon perform a new role by

¹ Jerry Kang, “What Judges Can Do about Implicit Bias” (2021) 57 *Court Review: The Journal of the American Judges Association* 78, 83.

determining if a party's use of a peremptory challenge during jury selection is motivated by bias.²

- Judge O'Malley said that with anti-bias training you don't know what you don't know, and that an immersive environment can allow participants to see that.

Dr. Koory noted that while the benefits of in-depth training do not apply to the new anti-bias course, the other benefits common to remote and in-person education are present.

5. *How does collaborative learning impact anti-bias training?*

- Per the Legislature, participants must engage in collaborative learning by developing strategies for reducing the impact of implicit bias on parties appearing before the court, members of the public, and court staff.
- Judge Gaab emphasized that participants collaborate more freely in person.

6. *How does immediate verbal and nonverbal feedback apply to anti-bias training?*

- Participants must practice soft skills in hypothetical situations addressing bias and have the opportunity to be critiqued. Some participants may find anti-bias education polarizing and uncomfortable. When faculty receive participant feedback in-person, including nonverbal communication, they can respond immediately to various learning needs and offer differentiated instruction.

7. *How does fostering innovation apply to anti-bias training?*

- As discussed above, participants must develop strategies for reducing the impact of implicit bias on parties before the court, the public, and court staff. They will be asked to discuss their anti-bias practices and solutions, which can lead to new ideas and improved ways to ameliorate bias-based injustice.

8. *How does a community of learning in and out of the classroom apply to anti-bias training?*

- During in-person bias training, social integration of judicial officers may result in participants' seeing and meeting people in their full diversity. That may alter negative attitudes and held stereotypes.³ In-person education can also lay the foundation for subsequent exchanges. Since anti-bias training is rapidly evolving, forming a network allows participants to share best practices, common problems, and personal experiences after the training.

These are some of the considerations that led the JBAEF Curriculum Committee to conclude that in-person delivery is the most effective for anti-bias content.

Mr. Lane asked if curriculum committees were involved in the recommendations for the programming related to the Appellate Staff and Appellate Management Institutes. Ms. Alvarado confirmed that they were.

² Code Civ. Proc., § 231.7.

³ Jerry Kang, "What Judges Can Do about Implicit Bias" (2021) 57 *Ct. Rev.: The Journal of the Am. Judges Assn.* 83.

Judge Gaab noted that all curriculum committees met this summer. Several committees had multiple meetings as they developed their recommendations for the 2022–2024 Education Plan. She said that the curriculum committees devoted significant work to creating this Plan.

Judge Mavis observed that a tremendous amount of effort went into this Education Plan. He said that the analysis was thoughtful, thorough, and far exceeded that by other entities with which he is involved, including the law school where he teaches. He said that thought should be given about how CJER will deal with its programming given that the pandemic is continuing.

Ms. Alvarado said that the good news is that CJER now has experience delivering almost all programs remotely (with the obvious exception of the Judicial College), and that CJER has restructured processes and operations to support remote delivery. Although CJER plans to return to in-person delivery in January 2022, it is well-positioned to quickly pivot to remote delivery without any delays if needed.

Ms. Alvarado pointed out an error in row 108 of the draft Education Plan. The intended audience for that product is juvenile judges, not probate judges. That row will be corrected.

Ms. Alvarado stated that again, the goal of today’s discussion is to vote to finalize the 2022–2024 Education Plan (including the correction to row 108), which will then go to the Judicial Council for its consideration and approval.

Judge O’Malley moved to approve the 2022–2024 Education Plan. Judge Mavis seconded the motion. The motion passed unanimously.