

# JUDICIAL EDUCATION REQUIREMENTS STUDY COMMITTEE

## Report and Recommendations

### Committee Members

- Judge David A. Hardy, Chair
- Judge Carolyn Ellsworth
- Judge Patrick Flanagan
- Judge Elizabeth Gonzalez
- Judge Jerry A. Wiese
- Judge Jim Wilson
- Jessica Anderson
- Michael Carman
- Dennis L. Kennedy
- Ryan MacDonald
- Leon F. Mead II
- John Petty
- David Gordon, Manager of Judicial Education Unit, Nevada Administrative Office of Courts

### Executive Summary

The Judicial Education Requirements Study Committee (the “Committee”) recommends that the Administrative Office of Courts (“AOC”) begin transitioning from event-based planning to curriculum-based education. This transition will be a long-term project requiring continuous substantive efforts. Accordingly, the Committee recommends that the AOC increase staffing for the Judicial Education Unit (“JEU”) by at least one full-time attorney who will be responsible for curriculum design, course development, and faculty training. Additional staffing may be necessary to maintain the program at a high level of effectiveness. In addition to the funding required to add staff, the Committee recommends that the AOC also increase funding by an amount sufficient to enable each judge to attend one National Judicial College (or comparable) course each year. The Committee further recommends that the Nevada District Judges Association formalize and strengthen its Education Committee in order to contribute to this program.

### Work of the Committee

The Committee was established by Nevada Supreme Court Chief Justice James Hardesty in October 2015. The Committee was charged with examining Nevada judicial education and making recommendations for improvement. Its first meeting was held in Las Vegas on November 6, 2015. It met telephonically on December 4, 2015, January 16, February 13, and March 11 and April 1, 2016. Its final meeting took place on April 15, 2016, at which time this Report was adopted

by unanimous vote. The Committee reviewed judicial education literature and improvement efforts from other states including Ohio, which is one of the more progressive states in judicial education. The Committee heard a presentation from Ohio Judge Anthony Capizzi and Christy Tull, Director of the Ohio Judicial College. The Committee also sponsored an electronic needs assessment survey, which is discussed in another section of this report.

### Overview of Nevada Judicial Education

The Chief Justice of the Nevada Supreme Court is the administrative head of the Nevada court system. NEV. CONST. art. VI, § 19. The Nevada Supreme Court appoints the State Court Administrator, who serves as Director of the AOC. Nevada law provides that the State Court Administrator shall, at the direction of the Chief Justice, arrange for education instruction at “appropriate intervals.” NRS 3.027. The statute further prescribes that new judges attend specified courses at the National Judicial College and National Council of Juvenile and Family Court Judges. After completing their initial education, District Judges must complete a minimum of 12 continuing legal education hours per year, including 2 hours of ethics.<sup>1</sup> These credits can be earned through a variety of means.

Under the direction of the Supreme Court, the State Court Administrator created the JEU as a component of the Judicial Programs and Services Division of the AOC. The JEU is operated under Policies and Procedures approved by the Judicial Council of the State of Nevada.<sup>2</sup>

The JEU provides assistance to the Nevada District Judges Association and the Nevada Judges of Limited Jurisdiction Association. It has a four-person staff, which is proportionally smaller than judicial education departments in other states. It plans and coordinates the Annual District Judges Seminar, Annual Family Law Judges Conference, New Judge Orientation (conducted periodically as new judges are appointed or elected), and similar education for limited jurisdiction judges.<sup>3</sup> Education provided by the JEU is funded by administrative assessment fees. NRS 176.059.

The Annual District Judges Seminar occurs in the spring of each year. It typically begins mid-morning on Thursday and ends at noon on Saturday. It is

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<sup>1</sup> The Nevada Supreme Court previously ordered an unspecified amount of judicial education on the causes, effects, and dynamics of domestic violence. ADKT 168 (August 17, 2006). Further, the Court is required to order “mandatory training concerning complex issues of medical malpractice litigation.” NRS 3.029. All lawyers, including judges, are required to take courses related to substance abuse, addictions, and mental health. SCR 210.

<sup>2</sup>The policies and procedures are attached to this report. There is limited funding for independently sponsored educational courses. Some of the policies and procedures are related to how the JEU reviews requests from judges to fund attendance at these independently sponsored courses.

<sup>3</sup> The JEU also sponsors computer-based training, which does not appear to be a well-developed option for District Judges.

planned jointly by the JEU and the then-serving leadership of the Nevada District Judges Association. (The role of the NDJA in planning the education program varies from year to year.) The Annual Family Law Judges Conference is held in Ely in conjunction with the Nevada State Bar's annual family law conference. It is planned by the JEU. It typically begins Tuesday afternoon and ends Wednesday at noon. The Annual District Judges Conference typically provides 12 hours of continuing legal education, whereas the Family Law Judges Conference provides 6 hours of continuing legal education.

The primary method of instruction at both events is a lecture in a plenary conference setting. The educational content is thematic and not skills-based. Written materials are generally subordinate to the lecture. There is no longitudinal linkage between courses or content. Many District Judges do not attend the Seminar. Attendance at the Family Law Conference is neither stable nor predictable, as many judges are unwilling to travel 8-10 travel hours for 6 hours of education.<sup>4</sup>

### Needs Assessment

The Committee determined that obtaining input from the District Judges would be helpful in formulating these recommendations. The Committee distributed an electronic needs survey to each District Judge on January 29, 2016. The 82% response rate represents a valid statistical sample of the various opinions held by Nevada judges. Of the 67 District Judges who responded, 76% are at least somewhat satisfied with the current judicial education offered by the JEU. The survey results are attached to this report.

The survey responses show that Nevada District Court Judges desire to receive Nevada-specific education on subjects which are both topical and useful to them. These subjects include, among others:

- evidence
- contempt issues
- technology
- economic and statistical data

Nevada District Court Judges prefer that the programs be taught by other Nevada judges, particularly subjects such as evidence, substantive law and procedure. The Committee agrees, and notes that instructors for other topics are generally available.

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<sup>4</sup> For example, there are 41 Nevada judges who preside over family law disputes. Only 23 attended the most recent Family Law Conference.

Nevada District Court Judges also identified the usefulness of written materials, particularly in a format which can be incorporated into existing bench books.

### Critical Judicial Education Concepts

Continuing professional education is complex, and educating judges can be especially complicated. The Committee submits that judicial education is most effective when it is taught by judges, equally balanced between skills and substantive legal knowledge, and includes experiential and discussion-based learning.

Any effort to improve judicial education should also include a mechanism to develop the skills of the teaching faculty. For example, the Ohio Judicial College sponsors a two-day faculty development course in which judges learn adult education theories, how to use curriculum, how to design their course, and other skills relating to delivery, effective use of audio/visual, and interactions with the audience. The judges also participate in mock sessions that are filmed and critiqued.

Nevada and many other states have historically provided event-based education in which the program is a single-themed, insular event without a broader career or systems context. These programs often focus upon popular topics, the desires of those temporarily in charge of planning, and the availability of faculty. An advantage of this education model is flexibility and the absence of administrative design costs.

In the opinion of the Committee, however, the preferred model is curriculum-based education in which an overarching plan provides for a full range of content, consistency and substantive depth. Curriculum models range from a list of topics to detailed course plans with materials.<sup>5</sup> The advantage of curriculum-based planning is that content is designed analytically and collaboratively. It is then taught over time according to a rotation schedule. Faculty becomes less important than substance. According to its proponents, curriculum-based planning provides greater quality, consistency, and continuity.

A common feature of curriculum-based education is the use of broad “Core Competency” categories populated by more specific substantive topics. For example, the Ohio Core Competencies are Legal Ability, Court Administration, Conduct, Integrity and Demeanor and Communication; the Michigan Core Competencies are Legal Ability, Administrative Capacity, Integrity & Demeanor, and Communication;

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<sup>5</sup> Ohio has developed a very detailed Juvenile Judges Curriculum. For illustration purposes, attached to this report is a portion of that curriculum related to Abuse, Neglect, and Dependency.

the Utah Core Competencies are Legal Knowledge; Case, Calendar and Courtroom Management; Judicial Decision Making; Ethics, Comportment and Behavior; and Personal and Professional Development. As discussed in the next section, the Committee recommends that Nevada adopt the following four Core Competencies: Judicial Office; Judicial Skills; Judicial Knowledge; and Judicial Administration.

### Recommendations

There are 82 District Judges in Nevada. Of that number, 41 serve in civil/criminal assignments, 26 serve in family division assignments, and 15 preside over civil/criminal cases and family disputes. The aggregate experience of the judiciary changes as judges progress through their careers. Accordingly, continuous effort must be made to ensure all judges enjoy education opportunities consistent with their experience and case assignments.

In order to implement the four core competencies identified above (Judicial Office; Judicial Skills; Judicial Knowledge; and Judicial Administration), the Committee makes the following specific recommendations:

1. Transition from event-based planning to curriculum-based education.

As noted above, previous judicial education efforts outside those statutorily mandated and delivered via the National Judicial College or National Council of Juvenile and Family Court Judges, have been through CLE courses taught at the various Nevada judicial conferences, or through conferences, seminars and other training offered by independent organizations both inside and outside Nevada. While this approach may offer excellent judicial education opportunities, it tends to be a “hit or miss” proposition, lacking the consistency of a curriculum-based approach. The Committee believes that a curriculum framework providing judicial education opportunities offered during the regularly scheduled and various judicial conferences and State Bar conferences (and maintained in an on-line accessible recorded format) will provide judges consistently high quality education relevant to their particular duties, responsibilities and docket assignments.

2. Develop methods to refine and prioritize substantive topics.

The Committee believes that specific curricula need to be designed to ensure consistent training year after year within all of the broad Core Competencies identified. To ensure a full range of content, consistency, and educational depth, detailed substantive topics must be collaboratively identified to ensure quality and continuity in education. The Committee therefore recommends the formation of an Educational Committee to develop a detailed curriculum core-based educational framework to offer training during the regularly scheduled and various judicial and State Bar conferences. To ensure quality, consistency, and continuity, the Committee recommends that such framework include appropriate lists of topics to be taught and detailed course plans and materials, to provide judges high quality

education relevant to their particular duties, responsibilities and docket assignments.

3. Cyclical Plan for Recurring Substantive Topics and Expansion of Educational Opportunities.

In an effort to supplement and increase the proficiency of the District Court Judges in Nevada, the Committee recommends that of the twelve (12) continuing education credits required for Judges and Attorneys each year, District Court Judges would be required to obtain eight (8) credits in the four Core Competencies. By allowing the Judges to select courses to attend each year, it is the intent of the Committee to allow Judges the freedom to take courses that will be most helpful and applicable to each Judge's specific calendar or assignment. If a Judge prefers to attend a Continuing Education Course not sponsored by the JEU, but would still like to obtain "Judicial Education" credit for such course, the Judge must have such course pre-approved by the Judicial Council State of Nevada Education Committee.

The Committee recommends that Judicial Education Courses be offered in conjunction with the District Judges Conference and the Family Court Conference each year. Because the Family Law Conference is primarily focused on CLE training for lawyers, and Judges may want to participate in some of these "lawyer focused" courses, the Committee recommends that the Judicial Education Courses be scheduled so as not to conflict with the "lawyer focused" courses, and that perhaps an additional day of education be offered for the Judicial Education courses. It is the intent of the Committee that such courses will be electronically recorded so that Judges who are unable to attend such conferences will still have the ability to earn "Judicial Education" credits by viewing the recorded courses. It is the further intent of the Committee that the Judicial Education Courses offered will rotate from year to year, to provide the District Court Judges with a variety of subjects which will offer each Judge the opportunity to gain additional education, insight, training, and expertise in subjects that each Judge believes would be most beneficial.

4. Developing Delivery Models; Identifying And Training Faculty.

The Committee recommends the development of alternative education delivery methods for Nevada judges. While the continuing education programs offered through the National Judicial College are widely respected among Nevada judges, the Committee's Judicial Education Requirements Survey also illustrated a preference for Nevada-focused and practical educational programs, provided by other Nevada judges. The Committee believes meeting this preference would encourage participation. In order to do this, Nevada judges who are willing and able to provide continuing education instruction must be recruited, and trained in adult education instruction (if necessary). Courses should be provided in a number of alternative delivery methods, such as live seminar instruction (with or without live

“streaming”), entirely internet based “webinars”, audio recordings, written articles, or other effective methods. Any live presentations should be captured for repeat use. These alternative education programs might be patterned after the Nevada State Bar’s continuing education programs offered on video, audio and as part of the Nevada Lawyer monthly magazine.

5. Increase staffing at the AOC Judicial Education Unit.

The Committee recommends that the AOC increase staffing for the JEU. Current JEU staff consists of a Manager, a Judicial Education Program Specialist III, a Conference Planner I, and a Training Assistant III. They are called upon to oversee (among other things) the following events and other services:

- Nevada District Court Judges Annual Seminar
- Nevada Limited Jurisdiction Judges Winter Seminar
- Nevada Limited Jurisdiction Judges Summer Seminar
- Nevada Family Judges Conference
- Nevada Judicial Leadership Summit
- Nevada Specialty Court Conference
- Nevada Court Staff Conference
- New Judge Orientation
- Law Clerk Orientation
- Distance Learning <sup>6</sup>
- Emergent Trainings
- CLE Accreditation
- Maintain and provide Annual Reports of Judicial Education Records
- Process expenditure requests to fund judicial education offered through other sources
- Distribute information on judicial education opportunities to Nevada judges
- Grant writing
- Staff assignments to committees relating to judicial education

As noted earlier in this report, current judicial education content is mostly event-based, (although curriculum-based education has been present to a degree<sup>7</sup>). In the Committee’s view transitioning to, and settling on, a full curriculum-based judicial education program to address core competencies will require a dedicated focus on course design and faculty development. Accordingly, the Committee

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<sup>6</sup> Distance learning includes recorded webcasts, online self-paced courses, and session materials. JEU offers 38 distance education opportunities, but this could be expanded with additional resources.

<sup>7</sup> For example, presentations by the same faculty on recent Nevada Supreme Court civil and criminal opinions, as well as recent opinions by the United States Supreme Court, are routinely given at district court seminars.

recommends that the AOC increase staffing for the JEU by at least one full-time attorney who will be responsible for curriculum-based course design, course development, and on-going faculty training. It is also contemplated that this staff attorney should be trained in the relevant skill sets necessary to video-record education sessions for later use by district court judges to meet their core competency requirements.<sup>8</sup>

#### 6. The Role of the Nevada District Judges Association

The Committee believes that the Nevada District Judges Association plays an important role in the process of judicial education. In order to fulfill that role, the Committee suggests that the NDJA create an education committee. A proposed NDJA bylaw amendment creating an education committee and prescribing its functions is attached to this report.

#### 7. Continued AOC Funding for NJC Courses.

As stated above, one of the primary sources of judicial education in Nevada is the National Judicial College. The Committee recommends that the AOC provide additional funding sufficient to enable each judge to attend one NJC (or comparable) course each year. This is because: 1) NJC (and comparable) programs have a more in-depth skill building focus than the usual AOC sponsored education; 2) NJC (and comparable organizations) have the resources and experience to attract and train the best faculty from around the country; 3) exposure to judges from around the country helps Nevada judges stay abreast of national trends and issues; 4) many specialized NJC (and comparable) programs are impractical to offer on an in-state basis because only a few judges may be interested in working on a specialized topic like judicial writing, search and seizure, or best practices with self-represented litigants; and 5) judges responding to the Judicial Education Requirements Study Committee Survey reported favorably on the value of NJC (and comparable) courses.

#### Authorities and Resources

The National Center for State Courts has compiled some information on each state's judicial education efforts. National Center for State Courts, Judicial Administration, State Links, <http://www.ncsc.org/Topics/Judicial-Officers/Judicial-Administration/State-Links.aspx?cat=Judicial%20Education%20Programs>.

Canada's National Judicial Institute provides information about judicial education and international collaboration. NATIONAL JUDICIAL INSTITUTE, <https://www.nji-inm.ca/> (last visited March 10, 2016).

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<sup>8</sup> The Committee recommends that this staff attorney be directed to investigate the feasibility of establishing a central depository for materials and other information (such as law review articles) which would be available to judges as a resource in the performance of their duties.



Three States—Ohio, Michigan, and Utah—have made great progress in improving the curriculum and delivery of continuing judicial education. See OHIO JUDICIAL COLLEGE, <http://www.supremecourt.ohio.gov/Boards/judCollege/default.aspx>; MICHIGAN JUDICIAL INSTITUTE, <http://courts.mi.gov/education/mji/pages/default.aspx>; Utah Judicial Institute; Utah Curriculum Development Project (Utah R. J. Admin. 4-403).

Conference Report, National Association of State Judicial Educators, Curriculum Development: What is it? Why do it? And, how is it done? (Fall 2010), <http://nasje.org/curriculum-development-what-is-it-why-do-it-and-how-is-it-done/>.

National Association of State Judicial Educators, Principles and Standards of Judicial Branch Education (December 2001), previously available at <http://nasje.org/resources/principles.pdf>.

National Association of State Judicial Educators, Competency Guidelines Study Committee, Recommended Core Competencies for Judicial Branch Education (July 30, 2014), <http://nasje.org/wp-content/uploads/2011/05/2006NASJECoreComp.pdf>.

Diane E. Cowdrey, Teaching New Judges what it Means to “Be” a Judge, 4 J. INT’L ORG. FOR JUDICIAL TRAINING 82 (2015).

Conference Report, American Judges Association, Curriculum-Based Education in Ohio (October 2015), <http://amjudges.org/conferences/2015Annual/Materials/Curriculum-Based-Education-Ohio.pdf>.

T. Brett Dawson, Crafting Judge-Led Judicial Education: Partnering with Educators, 4 JUD. EDUC. & TRAINING 107 (2015) (discussing effective ways judges can partner with educators in the design and delivery of judicial education).

T. Brett Dawson & Natalie Williams, Innovations in Judicial Education: Preventing Wrongful Convictions, 1 JUD. EDUC. & TRAINING 59 (2003) (analyzing a National Judicial Institute course designed using the model of judge-led, judging-focused and experiential judicial education).

Ann A. O’Connell & Joy Edington, Impact Evaluation of Judicial College Education for Juvenile Court Judicial Officers, 1 J. INT’L ORG. FOR JUDICIAL TRAINING 123 (2013) (analyzing needs assessment data from Ohio Judicial College to establish best practice guidelines for judicial education).

Education Committee of seven (7) members to develop for District Judges throughout the State educational resources and programs including the following subject areas:

*Insert list of subjects*

The Education Committee shall develop the annual continuing legal education seminar providing sufficient credits to allow members to fulfill all continuing legal education requirements mandated by the Nevada Supreme Court Rule 210.

The Education Committee shall develop an annual continuing judicial education seminar providing sufficient credits to allow members to fulfill all continuing judicial education requirements mandated by the Nevada Supreme Court *Rule ??? (or ADKT)*

The Education Committee shall be composed of the President and six Education Committee Members elected by the active Members.

(a) Only active Members in good standing at the time of the Annual Meeting are eligible for election to the Education Committee.

(b) The term of Education Committee Members shall be three years. Seats A and D shall be a representative from the Second Judicial District Court, Seats B and E shall be a representative from the Eighth Judicial District, and Seats C and F shall be a representative of the remaining districts in the State. All Education Committee Members must be active Members in good standing in the Association to be eligible to hold office.

(c) Education Committee Members shall be elected on a staggered basis, with one-third of the Directors (excluding the President elected each year. At the first Annual Meeting after adoption of the Education Committee, six Education Committee Members will be elected as follows:

Two Directors for a one-year term (Seats A and B)

Two Directors for a two-year term (Seats C and D)

Two Directors for a three-year term (Seats E and F)

(d) At each subsequent Annual Meeting, Education Committee Members shall be elected by the Members to replace those Education Committee Members whose terms are expiring. In addition, an Education Committee Members shall be elected to fill the remaining term of a vacancy required to be filled under Section 5.5 of this Article. The affirmative vote of a majority of those active Members present and voting is required to elect.

Vacancies. A vacancy on the Education Committee shall be filled by a vote of the active Members at its Annual Meeting next following the creation of the vacancy. The President may appoint an active Member to serve as an Education Committee Member until the vacancy is filled by election at the next Annual Meeting. An Education Committee Member who is no longer serving as a District Court Judge shall no longer be eligible to serve as an Education Committee Member and shall be deemed to create a vacancy on the Education Committee. The election of an Education Committee Member as President shall be deemed to create a vacancy on the Education Committee Member.