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Growth and Change: The Development of Specialty Continuing Legal Education

JUDICIAL EDUCATION IN INDIANA: AN OVERVIEW AND A PROPOSAL FOR CHANGE

Earl G. Penrod*

I. INTRODUCTION

The purpose of this Article is to provide an overview of judicial education in Indiana as it relates to the Mandatory Continuing Legal Education requirements set forth in Rule 29 of the Indiana Rules of Admission and Discipline. The Article focuses on the efforts of the Indiana Judicial Center, as the staff agency for the Judicial Conference of Indiana, to produce and sponsor judicial education and training programs for Indiana judicial officers.¹ The Article briefly sets forth the historical underpinnings of the present day Indiana Judicial Center and addresses the role of the judiciary in providing its own education and training through the Judicial Education Committee.² The Article concludes with a proposed amendment to Rule 29 as it relates to Indiana judicial officers.³

II. JUDICIAL OFFICERS AND MANDATORY LEGAL EDUCATION

Rule 29 of the Indiana Rules of Admission and Discipline requires all judicial officers in Indiana to obtain thirty-six hours of continuing legal education ("CLE") in a three-year period.⁴ The mandatory legal education requirement applies to all state judicial officers, including non-attorney judges serving in limited jurisdiction courts, such as city and town courts and the Marion County Small Claims Court.⁵ Indiana exempts federal judges and full time magistrates from the mandates of Rule 29, noting that the educational requirements imposed upon these

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¹ See *infra* Parts II, III.

² See *infra* Parts III, IV.

³ See *infra* Part X.

⁴ IND. ADMISSION & DISCIPLINE R. 29 § 3(a).

⁵ *Id.*

judicial officers satisfy the requirements of the rule.⁶ Unlike a number of states,⁷ Indiana does not identify or authorize continuing judicial education (“CJE”) hours for judicial officers. Instead, judges are required to obtain the same number of continuing legal education hours as are required of other attorneys. In fact, judicial officers are permitted to satisfy the mandatory education requirement of Rule 29 in exactly the same manner and through the same programs as attorneys.

However, Indiana Mandatory Continuing Legal Education is not without substantial judicial branch involvement and influence. The Indiana Commission for Continuing Legal Education is appointed by the Indiana Supreme Court and includes members of the Indiana judiciary, although none of the eleven commissioners are required to be judicial officers.⁸

Also, the Indiana Commission for Continuing Legal Education is granted the power and duty to approve programs and sponsors of legal education programs, but Rule 29 specifically provides that the Judicial Conference of Indiana and all seminars conducted by the Indiana Judicial Center are approved for CLE credit.⁹ Further, as listed on the CLE Commission website, numerous providers of judicial education, including the National Judicial College and the American Academy of Judicial Education, are approved CLE sponsors.¹⁰

Although a number of Indiana judicial officers attend and teach at numerous legal and judicial education programs elsewhere, it is through the Indiana Judicial Center that the vast majority of judicial officers meet the mandates of Rule 29. But, in its service to the judiciary, the Indiana Judicial Center provides far more than a mechanism by which CLE requirements can be met. In fact, although it is virtually unknown to the Indiana Bar and the general public, the Indiana Judicial Center, as the staff agency for the Judicial Conference of Indiana, is an essential part of the judicial branch of government in this state.¹¹

⁶ *Id.* § 8(b).

⁷ *See, e.g.*, NEB. SUP. CT. R. FOR MANDATORY JUD. BRANCH EDUC.; N.D. SUP. CT. ADMIN. R. 36; WASH. G. R. 26.

⁸ IND. ADMISSION & DISCIPLINE R. 29 § 4(a)-(b).

⁹ *Id.* § 6(a)(2).

¹⁰ Indiana Comm’n for Continuing Legal Educ. Approved CLE Sponsors, www.in.gov/judiciary/cle/attorneys/sponsors.html (last visited Nov. 14, 2005).

¹¹ *See* IND. CODE §33-38-9-4 (2004).

III. THE JUDICIAL CONFERENCE OF INDIANA, THE INDIANA JUDGES ASSOCIATION, THE INDIANA JUDICIAL CENTER, AND THE INDIANA JUDICIAL COLLEGE: WHY THE CONFERENCE IS NOT THE MEETING AND THE CENTER IS NOT THE COLLEGE

Pursuant to statute, the “judicial conference consists of the following: (1) All justices of the supreme court. (2) All judges of the court of appeals. (3) The judge of the tax court. (4) All circuit, superior, probate, and county court judges. (5) All municipal court judges who are serving on a full time basis. (6) Any retired judge who serves as a special judge and notifies the conference of the service.”¹²

Indiana law sets forth the duties for the judicial conference as follows:

- (1) Promote an exchange of experience and suggestions regarding the operation of Indiana’s judicial system.
- (2) Promote the continuing education of judges.
- (3) Seek to promote a better understanding of the judiciary.
- (4) Act as administrator for probationers participating in the interstate compact for the supervision of parolees and probationers under IC 11-13-4-3.
- (5) Act as compact administrator for probationers participating in the interstate compact on juveniles under IC 11-13-4-3.¹³

The activities of the Judicial Conference are directed by a board of directors and the Chief Justice of Indiana is designated as board chairperson.¹⁴ Through its board of directors, the Judicial Conference has established a staff agency called the Indiana Judicial Center, with all personnel appointed by the Chief Justice of Indiana.¹⁵ In short, all designated judicial officers are members of the Judicial Conference of Indiana, and the Indiana Judicial Center is the staff agency for the Judicial Conference, as it endeavors to carry out its statutory duties, including promoting the continuing education of judges.

The relatively straightforward identification of the Judicial Conference and the Judicial Center is made somewhat less comprehensible by similarly named and related entities. In addition to being a member of the Judicial Conference of Indiana by virtue of office, a state judicial officer may voluntarily join the Indiana Judges Association, which is governed by a separate board of managers.

¹² *Id.* § 33-38-9-3.

¹³ *Id.* § 33-38-9-6.

¹⁴ *Id.* § 33-38-9-4.

¹⁵ *Id.* § 33-38-9-4(b).

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The Indiana Judges Association was established in 1934 by a group of judges at an Indiana State Bar Association meeting.¹⁶

The original purpose of the Association continues to date: to cultivate the acquaintance of Indiana judges; to assist each other in mutual problems; to work with representatives of the state agencies for the improvement of Indiana government; to provide a source of judicial membership for committees outside the Association and to exert a coordinated effort toward better and simpler administration of justice and clearer, more uniform procedure in all courts.¹⁷

Just as it does for the Judicial Conference of Indiana, the Judicial Center serves as the staff agency for the Indiana Judges Association.

Further confusion stems from various educational opportunities offered to judicial officers. As required by statute,¹⁸ the Judicial Conference must meet on an annual basis during which numerous judicial education and training programs are offered. Because the meeting is held annually, it is often referred to as the annual conference, although it is more properly called the annual meeting of the Judicial Conference of Indiana. Also, in its efforts to assist in educating Indiana judges, the Judicial Center has created a formal education program entitled the Indiana Judicial College, which is comprised of 120 hours of designated judicial education.

In summary, the Judicial Conference of Indiana meets annually, during which the Indiana Judges Association also has its annual meeting. As the staff agency for the Judicial Conference, the Judicial Center offers education sessions during the annual meeting for which judicial officers receive credit toward the hours mandated by Rule 29, and, as appropriate, toward the Indiana Judicial College program.

IV. BRIEF HISTORY OF THE JUDICIAL CENTER

The Indiana Judicial Center traces its roots back to December of 1971, when Indiana became one of the first states to heed the call of United States Supreme Court Chief Justice Warren Burger, who recommended

¹⁶ Printed Program, 71st Meeting of the Indiana Judges Association (Sept. 15, 2005) (on file with author).

¹⁷ *Id.*

¹⁸ IND. CODE § 33-38-9-5(a).

at the 1971 National Conference on the Judiciary that the states establish judicial education and service agencies to improve the administration of justice in state courts.¹⁹ Through the efforts of a consortium of representatives from the four Indiana law schools and with funding from the Law Enforcement Assistance Administration through the Indiana Criminal Justice Planning Agency, the Center for Judicial Education came into existence.²⁰

Rosemary Adams Huffman was named the first executive director of the Center by the Board of Governors, which consisted of four members of the Indiana judiciary, a representative from each of the four Indiana law schools, and Ben J. Weaver, who was president of the Indiana Continuing Legal Education Forum and president-elect of the Indiana State Bar Association.²¹ The four members of the judiciary appointed by Indiana Supreme Court Chief Justice Norman F. Arterburn to the first Board of Governors were Judge D. William Cramer, Presiding Judge of the Marion County Municipal Court; Judge William T. Sharp of the Owen Circuit Court; Judge George B. Hoffman of the Indiana Court of Appeals; and Judge James J. Richards of the Lake Superior Court, who was elected as the Board's first chairperson.²²

Reorganized in 1974 so that judges took primary responsibility for expanded program activities, the agency was renamed the Indiana Judicial Center, and Professor William A. Kerr of the Indiana School of Law at Indianapolis was appointed to serve as the Center's Executive Director.²³ In 1977, the Indiana Judicial Center became an official state agency designated to serve as the staff agency for the Judicial Conference under the direction of the Indiana Supreme Court.²⁴ In 1981, after ten years in existence, the Indiana Judicial Center was granted full state funding by the Indiana General Assembly.²⁵ In August of 1986, Professor Kerr was succeeded as Executive Director by George Glass, who served until his retirement in 1997. Michael J. McMahon served as acting Director for approximately one year, until August of 1998, when

¹⁹ See Benchmarks: Bulletin of the Indiana Judicial Center (1982) (on file with the Indiana Judicial Center).

²⁰ Constance Dove, *Indiana Center for Judicial Education is Opened*, RES GESTAE, Mar. 1972, at 8, 9.

²¹ See Benchmarks, *supra* note 19.

²² Dove, *supra* note 20, at 8-9.

²³ See Benchmarks, *supra* note 19.

²⁴ *Id.*

²⁵ *Id.*

present Executive Director Jane Seigel was appointed to the position by Chief Justice Randall T. Shepard.

From the time of its creation, the Indiana Judicial Center has taken as its purpose the improvement of Indiana courts through service to the judicial branch of government as a whole and to judicial officers individually. Presently, the Judicial Center offers assistance and services in such areas as research, juvenile services, legislation, probation, court alcohol and drug programs, security, and, as emphasized since 1971, judicial education and training.²⁶

V. THE INDIANA JUDICIAL CENTER EDUCATION DEPARTMENT

All attorneys know of the existence of the State Board of Bar Examiners and the Commission for Continuing Legal Education because these entities address the educational achievements necessary to become and remain a member of the bar. Because judicial education has no direct application to the vast majority of the members of the bar, the Indiana Judicial Center works in virtual anonymity within the legal profession.

However, members of the Indiana judiciary are well aware and extremely appreciative of the efforts of the entire Judicial Center staff, a number of which began serving the judiciary well before the commencement of mandatory continuing legal education in Indiana in 1986. Many of the services provided by the Judicial Center involve education and training in a broad context, but the responsibility for traditional judicial education activities rests with the Judicial Center Education Department, led by Education Director Cathy Springer, Assistant Director Vicki Davis, Program Attorney Anne Jordan, and other center support staff, such as Logistics Administrator Jenny Kidwell.²⁷

Prior to the implementation of Rule 29 in 1986, judicial officers were mandated to attend the annual meeting of the Judicial Conference where education sessions were presented, but attendees were not required to attend a specific number of education sessions. With the advent of mandatory CLE, the type of judicial education programs and the number of hours presented took on particular significance for judicial officers,

²⁶ Indiana Judicial Center Website, www.in.gov/judiciary/center/contact.html (last visited Nov. 14, 2005) (Michael J. McMahon is the Research Director, Jeffrey Bercovitz is the Director for Juvenile & Family Law, and Catherine M. Springer is the Education Director).

²⁷ *Id.*

and as a result, education offerings from the judicial center have increased substantially.

For example, in the 1986–87 fiscal year, the Indiana Judicial Center presented seven education programs that were attended by 654 judicial officers, which included 268 different judges.²⁸ However, in the fiscal year 2004–05, the Judicial Center presented twenty-one days (177.3 hours) of continuing judicial education with a total attendance of 1,756 judicial officers.²⁹ At the 2004 annual meeting of the Judicial Conference of Indiana held in Evansville, 427 judicial officers attended the three-day meeting where up to eleven hours of CLE credit could be earned.³⁰

In addition to the annual meeting held in September, the Judicial Center offers a variety of judicial education programs, including the December “Winter Conference” (alas, a conference that IS a meeting) and the Spring Judicial College program in April. Also, the Center regularly presents a multi-day orientation program for newly elected or appointed judicial officers and also presents and sponsors a number of jurisdiction specific programs such as the Juvenile Court Judge’s Annual Meeting and the City and Town Court Judges Annual meeting.

VI. INDIANA JUDICIAL EDUCATION COMMITTEE

To assist and augment the Judicial Center’s efforts at improving the administration of justice, the Judicial Conference has created several state-level judicial committees and the Indiana Supreme Court has established a number of commissions and boards. These committees, commissions, and boards are comprised of trial and appellate court judges along with attorneys and members of other professions as appropriate.³¹

The Judicial Education Committee is comprised of Indiana trial and appellate court judicial officers appointed by the Chief Justice in his role as chair of the Board of Directors for the Judicial Conference. The committee works in conjunction with the Judicial Center Education Department to assess and meet the education and training needs of the state’s judiciary.

²⁸ Program Materials, 1987 Annual Meeting of the Judicial Conference of Indiana 3 (Sept. 16, 1987) (on file with author).

²⁹ Staff Agency Report, 2005 Annual Meeting of the Judicial Conference of Indiana (Sept. 2005) (on file with author).

³⁰ *Id.*

³¹ Indiana Judicial Committees and Commissions, <http://www.in.gov/judiciary/committees> (last visited Oct. 25, 2005).

The stated mission of the Judicial Education Committee is “to provide education of such depth, breadth, and quality to continually develop Indiana’s judicial branch as a learning institution.”³² In attempting to accomplish the stated mission and goals, the committee assists the Judicial Center education department in three primary functions: “[t]o schedule and develop curriculum for judicial officer education; [t]o identify[sic] and train the faculty for judicial officer conferences; [t]o develop a long-term vision for judicial education.”³³

VII. THE CHALLENGE OF JUDICIAL EDUCATION IN INDIANA

Developing and implementing an effective education and training curriculum for the Indiana judiciary means more than offering hours of legal education in a variety of subject areas. Considerable time and energy is necessary to ensure that the education and training needs of the judicial officers are effectively met.

In an effort to assist in the field of judicial education, the National Association of State Judicial Educators (“NASJE”), through its Standards Committee, created and approved *The Principles and Standards of Judicial Branch Education*.³⁴ These guidelines provide an excellent framework for addressing issues relating to judicial education, but the standards cannot address all unique or unusual problems that arise in a particular state.

One of the significant challenges in providing education and training to Indiana’s judiciary is that the audience is less homogeneous than might be assumed. In addition to the various learning styles and the variety of individual preferences and circumstances, the Indiana judiciary is a relatively diverse lot in regards to their needs and wants in training and education.

Unlike some states, Indiana does not have a unified, state wide court system with consistent subject matter jurisdiction or standardized procedures. Because circuit courts are provided for in the Indiana Constitution but superior courts are created by the General Assembly, specific court jurisdiction is impacted by local preferences. Also, county based funding and considerable local autonomy in the operation of the

³² Judicial Education Committee, <http://www.in.gov/judiciary/center/ed/committee.html> (last visited Oct. 25, 2005).

³³ *Id.*

³⁴ NATIONAL ASS’N OF STATE JUDICIAL EDUCATORS, *THE PRINCIPLES AND STANDARDS OF JUDICIAL BRANCH EDUCATION* (2001).

courts allows considerable independence and substantial variation in approach and procedure from one courtroom to the next.

It may be that Indiana's lack of an integrated court system fosters a greater "king of the kingdom mentality" than is found in other states. Although it is not suggested that judicial officers or practicing attorneys habitually ignore substantive provisions of the law, it would not be an overstatement to posit that the resolution of some trial court proceedings may be more dependent upon local custom and tradition than upon statewide rules or appellate court precedent.

Special challenges in state wide judicial education also stem from the diversity of courts served by the Indiana Judicial Center. Unlike those states in which there are different associations and conferences by court type, the Judicial Conference of Indiana is comprised of all trial and appellate court judicial officers. Therefore, judicial education and training programs presented by the Judicial Center must ideally have some appeal and relevance to all statewide judicial officers.

Judges face different issues because some courts have limited or inadequately trained staff or may be located in an area with little access to social services and other support agencies. Some judicial officers face a high volume, relatively specialized docket, while others sit in a lower volume, general jurisdiction court where every type of case will eventually land. Therefore, some judicial officers must have a very strong command of a relatively specialized area while others need a more generalized understanding of numerous areas of the law.

The education and training needs of judicial officers also vary considerably depending upon the age of the judicial officer and the stage of his career when he assumes the bench. Although not unique to Indiana, it may be that the issue is more pronounced because of the chronic salary woes faced by this state's judiciary. Because of the relatively low salary and lack of consistent salary adjustments, Indiana may have greater turnover than other states. Further, the relatively poor salary structure may result in less experienced attorneys or more attorneys in the twilight of their legal career considering judicial service. Regardless of the age of the judicial officer or the stage of his career upon taking the bench, the amount of actual courtroom experience also varies considerably.

As is true in other jurisdictions, the length of service on the bench impacts judicial education and training needs. The newly elected or

appointed judicial officer, often an extremely willing judicial education student, has significantly different needs than the relatively experienced judicial officer. In addition to increased turnover, the chronic problems faced by Indiana's judiciary may result in more pronounced cases of "burnout" for the experienced judicial officers who remain on the bench.

Because experience is considered such a valuable teacher, time on the bench for some judges is accompanied by a level of intellectual snobbery that results in an inability to fully appreciate the value of continuing and continuous education. Having "seen it all" over the years, these judicial officers are unable or unwilling to recognize that there might be something to learn beyond the local courtroom. They not only fail to appreciate how much new information there is to learn, they also fail to understand that much of what they presently know is inaccurate.

Judicial education in Indiana is further complicated by the practical issues of scheduling and the availability of appropriate facilities. There are occasions when an educational program may accommodate a few hundred judicial officers, while other sessions permit a much more limited enrollment. Unlike some states, neither the judicial branch of Indiana nor the Indiana Judicial Center has classroom or meeting space in which to conduct education programs. As a result, virtually all sessions are conducted in hotel convention and meeting facilities that are not necessarily conducive to all types of presentations and programs.

Because of these and other circumstances, a comprehensive and integrated judicial education program requires ongoing efforts by the entire Indiana Judicial Center, particularly the Center's Education Department. Although addressing judicial education in Indiana carries a myriad of responsibilities, this Article focuses attention on the fundamentally important task of developing, planning, and scheduling a well-balanced judicial education curriculum.

VIII. CURRICULUM DEVELOPMENT

The Indiana judiciary is fortunate that judicial education in this state consists of far more than substantive and procedural law updates. Although they are a legitimate part of the curriculum, such "information from the mountaintop" programs cannot adequately and properly address all matters of importance and interest to judicial officers.

There are a number of practical matters and procedural issues that are essential to the judiciary and some of those matters will arise only

within the confines of an actual courtroom with real individuals battling over a genuine controversy. A broad based judicial education program must be flexible enough to identify and address these practical, day-to-day issues that cannot be properly covered through “top-down sessions” by an “expert” presenter doling out textbook answers to stock problems or theoretical issues.

But worthwhile and effective judicial education is not simply a matter of providing answers to participant’s concerns and questions or presenting the mechanics of “how to be a judge.” A legitimate and vital part of any education program, including judicial education, is raising issues and teaching about matters that have yet to, or may never be, confronted by the participants. Educating judicial officers about significant, “big picture” issues and emerging areas of the law, in addition to raising unfamiliar problems and unknown pitfalls, can present a challenge, particularly with the more experienced judicial officer, as noted previously.

To meet the unrelenting and critical challenge of developing, planning, and scheduling a curriculum that is relevant and meaningful to a relatively diverse judiciary, it is imperative that state judicial educators maintain regular interaction with the judicial officers served. It would be presumptuous to believe that judicial education programs can be as effective as possible without meaningful communication and feedback from program participants.

In addition to solicited feedback and suggestions from the judiciary as a whole, the Judicial Center Education Department receives assistance and guidance from the Judicial Education Committee. As the liaison for the entire Indiana judiciary, the Judicial Education Committee spends the bulk of its energies on assisting the Judicial Center in trying to meld the theoretical with the practical and balance participants’ wants with participants’ needs. Further, in simple, inelegant terms, the committee offers input on the difference between judicial education “must haves” and “nice to haves” coupled with suggestions and ideas on the most effective and efficient manner in which to present both.

The Judicial Education Committee began assisting the Indiana Judicial Center in matters relating to judicial education well before the implementation of mandatory legal education in 1986, and a number of past and present members of the Indiana judiciary have served with distinction on the committee throughout the years. However, in 1998,

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the Education Committee completed a particularly significant and worthwhile project in the area of curriculum development.

Under the direction of Chair Nancy Vaidik, the Judicial Education Committee, in conjunction with the Judicial Center Education Department, specifically identified five categories of program offerings, along with the proper percentage from these categories, which would insure a balanced and integrated judicial education curriculum for Indiana.³⁵ The curriculum categories were identified as legal ability, judicial skills, personal health and growth, contemporary and interdisciplinary, and judicial authenticity.³⁶ It was determined that an appropriately balanced curriculum would include forty to fifty percent legal ability, twenty-five to thirty percent judicial skills, and twenty-five to thirty percent of material from the three remaining categories.³⁷

With some modifications and refinements, the five-category curriculum grid continues to be utilized as a guide for course offerings on an annual basis as well as for long term planning purposes.³⁸ For example, in calendar year 2004, the Indiana Judicial Center presented approximately 127 hours of judicial education credit.³⁹ Of those hours, forty percent were classified in the legal ability category, thirty-five percent in judicial skills, nine percent in personal growth, ten percent in contemporary/interdisciplinary, and six percent in the judicial authenticity category.⁴⁰

IX. INDIANA JUDICIAL COLLEGE, THE GRADUATE PROGRAM FOR INDIANA JUDGES AND THE JUDICIAL COLLEGE MASTER'S CERTIFICATE PROGRAM

Although the curriculum grid was an important project, it was not the only structured program or tool developed for judicial education in Indiana. In fact, the first formalized judicial education program for Indiana judicial officers predates mandatory continuing legal education

³⁵ Minutes of the 1998 Judicial Education Committee Retreat (Feb. 20-21, 1998) (on file with author). Nancy Vaidik is currently Judge of the Indiana Court of Appeals and formerly Judge of the Porter Superior Court.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Minutes of the 2005 Judicial Education Committee Meeting (Jan. 28, 2005) (on file with author).

³⁹ *Id.*

⁴⁰ *Id.*

by a decade, as it was started in the 1970s by Indiana Judicial Center Executive Director William A. Kerr.⁴¹

Called the Indiana Judicial College, Professor Kerr developed the program to promote judicial education and to provide recognition to judicial education participants.⁴² The program provided a basic academic structure that required the completion of 120 hours of continuing judicial education programs presented by the judicial center.⁴³ The requirements can generally be met during the judicial officer's first six-year term, but many participants have not graduated from the Indiana Judicial College within six years.⁴⁴ There have been some minor adjustments and modifications over the years, but the basic structure of the Indiana Judicial College program remains generally unchanged from the days of its creation by Professor Kerr.

All active judicial officers are automatically enrolled in the college and may claim credit for attending designated Judicial College sessions.⁴⁵ In an effort to maintain the original purposes of the Judicial College program, credit has not been granted for every education session hour sponsored by the judicial center. In fact, some sessions that entitle the judicial officer to claim mandatory legal education credit under Rule 29 have not been eligible for judicial college credit.

In addition to the Indiana Judicial College program, judicial officers are afforded the opportunity to attend a more intensive and in-depth learning experience known as the Indiana Graduate Program for Judges. This program, which began in 1996, requires the completion of one week of intensive course work for two consecutive summers. Each graduate program class is limited to thirty interested judicial officers who must apply for acceptance.⁴⁶

The Indiana Judicial Center launched another educational program in September of 2002, entitled the Indiana Judicial College Master's Certificate Program. This program provides academic structure and opportunity for further recognition for more experienced judicial

⁴¹ Indiana Judicial College Master's Certificate Program, http://www.in.gov/judiciary/center/ed/docs/masters_summary.pdf (last visited Oct. 25, 2005).

⁴² *Id.*

⁴³ Judicial Education Credit Options/Requirements, <http://www.in.gov/judiciary/center/ed/credit.html> (last visited Oct. 25, 2005).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

officers. Any judicial officer who graduates from the Indiana Judicial College is eligible to participate in the Master's Certificate Program.

Program requirements include the completion of an additional 120 hours of Judicial College credit courses, thirty of which must be "special master's credits." Also, the Graduate Program for Indiana Judges must be completed prior to, or during participation in, the master's program. Finally, the participant must submit an original writing or special project as approved by the Education Committee. Although considerable latitude is expected to be given in regards to the special project component, the project must be a substantial undertaking that is of benefit to the judiciary and suitable for publication or other dissemination.⁴⁷

In addition to these structured programs, the Indiana Judicial Center regularly offers a variety of education and training opportunities for Indiana judicial officers. The Judicial Center serves as a clearinghouse and conduit for information about other judicial education programs offered by such providers as the National Judicial College and the Judicial Division of the American Bar Association. In short, the Indiana Judicial Center continually strives to serve the state's judicial officers by providing worthwhile and effective judicial education opportunities.

X. RECOMMENDATIONS AND CONCLUSION

From this relatively brief review of judicial education in Indiana, it should be apparent that the Indiana judiciary benefited tremendously from the remarkable work of the Indiana Judicial Center. In spite of its relative anonymity within the legal community, the Judicial Center consistently provides excellent services, including top-notch education and training programs for the Indiana judiciary. For this exemplary service, the judiciary and the public owe a huge debt of gratitude.

A. *Mandatory Continuing Judicial Education ("MCJE")*

The Indiana judiciary would be well served if judicial education in this state continued on the present course, as charted by the various judicial education pioneers and as expertly maintained by the present Judicial Center staff. But even acknowledging the productiveness of the present approach and mindful of the perils of fixing that which is not broken, it is submitted that Indiana judicial education could benefit from an amendment to Rule 29. After twenty years of Mandatory Continuing

⁴⁷ *Id.*

Legal Education, it is time for Indiana to contemplate adopting separate standards and procedures for Mandatory Continuing Judicial Education ("MCJE") for all judicial officers subject to the mandates of Rule 29.

As noted above, all members of the Judicial Conference of Indiana are required by statute to attend the annual meeting of the Conference and are also required to comply with the education requirements of Rule 29. However, there is no requirement that judicial officers attend a minimum number of judicial education and training hours. Because the sessions are of high quality, convenient, and offered at no charge, most judicial officers meet their CLE requirements through the education programs sponsored by the Judicial Center. Although this means that the majority of CLE hours for Indiana judicial officers are in judicial education, Rule 29 should be amended to specifically designate and provide for MCJE.

It may be contended that if judicial officers generally meet the Rule 29 CLE requirement through judicial education hours, there is no reason to complicate the present approach by amending the rule to provide for MCJE. However, that same argument was made, and properly rejected, more than twenty years ago, during the discussion of whether continuing legal education should be mandated. It was argued, among other things, that a rule requiring continuing legal education was unnecessary, discomfoting, and a bit insulting because attorneys, as dedicated professionals, did not need to be ordered to do something that they were generally doing voluntarily.

However, continuing legal education was made compulsory because it was the right thing to do for the profession and for the public. Through its order, the Indiana Supreme Court made it clear that education and training were not merely laudable ideals, but critically important components of being a member of the legal profession. Just as the mandate underscored for the profession and the public the value of continuing legal education and training, the Indiana Supreme Court should unequivocally emphasize the importance and worth of on-going judicial education for members of this state's judiciary.

Mandating attendance at Indiana judicial education programs is not without precedent. In 2004, the Indiana Supreme Court accepted the recommendation of the Judicial Education Committee and entered an order requiring newly appointed or elected judicial officers to attend the orientation education programs conducted by the Judicial Conference of

Indiana through the Indiana Judicial Center.⁴⁸ Although the orientation programs consistently receive some of the highest evaluations of all sessions offered by the Judicial Center and most newly elected or appointed judicial officers need no prodding or incentive to attend, a few new judicial officers have declined the opportunity to participate.

For example, one newly elected judicial officer noted that it was politically imprudent to take a week off during the first month in office to purportedly learn how to do the job after an acrimonious campaign in which qualifications were the major issue. Another newly elected judicial officer noted that it would not be possible to take time off for the orientation program because the first month of his newly inherited court calendar had been purposely filled with contested hearings.

Even so, the Indiana Supreme Court recognized that the importance of judicial education for newly elected or appointed judicial officers transcended the explanations and rationales for not attending. The Indiana Supreme Court order mandating attendance not only emphasized to the judicial officer the value of participation, but it also confirmed for any naysayer or doubter that the orientation programs are not merely desirable, but a necessary part of serving in the judiciary. In similar fashion, the importance of judicial education for all judicial officers should be recognized and underscored by the adoption of a mandatory judicial education requirement in Indiana. While it would be beneficial for Indiana to evaluate the advantages of adopting a separate commission structure for continuing judicial education, at a minimum, mandatory continuing education for Indiana judicial officers should be specifically identified and approved as judicial education.

B. Credit for Continuing Judicial Education

Further, although judicial officers would continue to receive the bulk of their required educational training through the Indiana Judicial Center, CJE credit should be approved on a basis other than the present language of Rule 29 granting automatic credit for “the Judicial Conference and all seminars conducted by the Judicial Center.” Rule 29 should be amended to specifically provide that CJE credit shall be granted for sessions presented by the Judicial Conference of Indiana and the Indiana Judicial Center *to the extent determined proper* by the Indiana Judicial Center.

⁴⁸ In re Mandatory Attendance of Judicial Conference Orientation for New Judges, No. 94S00-0411-MS-472 (Ind. Nov. 12, 2004).

Presently, if the Judicial Center offers a one-hour session on judge's retirement benefits during the annual meeting of the Judicial Conference, it might be argued that an attendee is automatically entitled to CLE credit pursuant to the language of Rule 29. However, the Judicial Center has the inherent right to decide that the session does not merit CLE credit because the topic relates to purely personal issues and is not connected to professional development. Rule 29 should be amended to make it clear that the Judicial Center has not only the right, but the *responsibility* to report for credit only those continuing judicial education and training hours that are truly related to professional development.

Regardless of whether a session on retirement benefits would result in CLE credit, an attendee of such a session would not be given judicial college or judicial college master's certificate credit. Although granted more liberally in recent years, judicial college credit is not automatically awarded for every session offered by the Judicial Center. For example, a session on computer basics will not result in judicial college credit, although a course on computer aided legal research (LexisNexis or Westlaw) would likely qualify for credit.

The awarding of education credit for various purposes is puzzling in its inconsistency. Mandatory continuing education hours should receive greater scrutiny than hours for a voluntary program such as the Indiana Judicial College. However, because of the present language of Rule 29, seminars sponsored by the Judicial Center are entitled to automatic CLE credit even though the sessions may be found unworthy of judicial college credit.

An administratively convenient remedy for this anomaly would be to award credit for all judicial conference or judicial center programs for all purposes. However, a more effective response would be an amendment to Rule 29 requiring judicial officers to receive specifically designated and approved CJE credit hours.

As noted, it may be that Indiana would benefit from a separate Judicial Education Commission structured along the lines of the present Continuing Legal Education Commission and as utilized in a number of states. With this approach, all issues of judicial education, including accrediting judicial education hours by various providers, tracking compliance, or granting exemptions, could be addressed in a systematic and consistent fashion. With the creation of a separate commission, neither the Indiana Continuing Legal Education Commission nor the

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Indiana Judicial Center would be burdened with the additional responsibilities of a separate and distinct program.

However, because of the efficacy of the present Indiana Continuing Legal Education Commission structure, the creation of a separate Judicial Education Commission may be deemed unwarranted. Nevertheless, Rule 29 should be modified to require that all judicial officers meet the mandatory continuing education requirement by attending CJE hours. The mandates and procedures of Rule 29 would remain unchanged except that judicial officers would be required to complete thirty-six hours of CJE instead of CLE.

C. A More Modest Proposal

Should a total transition to mandatory continuing judicial education hours be determined unwieldy or inadvisable for any reason, a less sweeping modification of Rule 29 is advocated. Specifically, Rule 29 should be amended to require judicial officers to complete no less than twenty-four CJE hours as part of the mandatory thirty-six hours of CLE. The twenty-four hours of CJE credit would be sponsored and specifically approved for credit by the Indiana Judicial Center as the staff agency for the Judicial Conference of Indiana. The remaining required education hours for judicial officers could be obtained through other approved providers of continuing legal or judicial education.

XI. CONCLUSION

A conversion to mandatory continuing judicial education in Indiana would have a modest practical effect, as most judicial officers presently earn all or a majority of their mandated hours through the Indiana Judicial Center. However, after twenty years of mandatory CLE, a move to CJE would dramatically symbolize the importance and value of an integrated and specialized education curriculum for Indiana's judiciary.