



National Judicial College of Australia



Winter
Newsletter



INSIDE

- New dates announced for *Artificial Intelligence and the Courts*
- Oral Decisions
- Spotlight on Writing Better Judgments II
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Leading judicial
education for an
Australian judiciary



Setting the standard in judicial excellence

Welcome to our newsletter for Winter 2023. It has been a busy couple of months with programs in Sydney, Melbourne and Canberra.

The NJCA was delighted to be asked to design, develop and deliver two specialty programs in June for the Federal Circuit and Family Court of Australia. During each program, I was struck by the shared objective of participants, intent on getting the work done to a standard that enhances public confidence in the court as a whole. While there is certainly a strong sense of personal independence, both senior registrars and judges alike welcomed critiques of their own decisions and judgments.

This strong shared objective can also be seen in our spotlight on *Writing Better Judgments II* in this edition of the newsletter. The program, with its focus on judicial productivity, provides participants with system-based strategies and skills to tackle difficult issues, such as what to do when your management of procrastination fails.

The *NJCA/ANU Joint Conference* for 2024 will be one that you will not want to miss. While the legal community in Australia has been agile in seeking to protect legal values, it is undeniable that Artificial Intelligence (AI) has now added a new layer of complexity and admissibility challenges in the courtroom with the rise of AI-generated evidence. How do you manage the risks that affect the transparency, authenticity and reliability of evidence? Of course, these new challenges posed by AI also come with new opportunities, such as automated e-filing which can improve access to justice. The two-day joint conference, to be held in Canberra next April, will explore the issues of AI and the courts with sessions led by experienced members of the judiciary, leading academics from Australia and overseas, policy makers and specialised experts in their field. Interested in attending? Visit our webpage for more details.

Speaking of which, our new website now includes more detailed individual program information, five year calendars with additional useability and functionality in the form of a search function for particular programs, and the ability for all judicial officers to build and print their own individual judicial learning plans. More information about these can be discovered inside.

Hope you are all staying warm.



Chief Executive Officer, NJCA



National Judicial College of Australia



Australian
National
University

SAVE THE DATE

NJCA/ANU Joint Conference

6-7 April 2024, Canberra

Artificial Intelligence - new opportunities, new challenges

Artificial Intelligence (AI) is everywhere - in our cars, our homes and our courtrooms where, in the latter, it is posing difficult questions around the performance of the judicial function, the administration of justice and the operation of the wider justice system. What happens when machine-learned and AI-generated data enters the courtroom?

The NJCA/ANU Joint Conference 2024 will bring together experienced members of the judiciary with leading academics, policy makers and experts in their field to consider current AI issues and future challenges for both the judiciary and the wider legal community.

Registrations are now open.

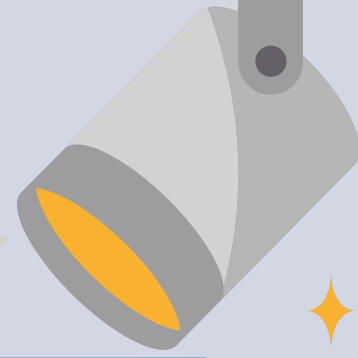


Register now at

www.njca.com.au/judicial-education-programs/



Spotlight on Writing Better Judgments II



"I learnt so much in the first course, but that was really cemented in the WBJ II course. I was extremely grateful to have such personalised coaching, especially now that I have been in the job for 3 years."

WBJ II Participant, June 2022



**Acting Justice Monika
Schmidt, Chair of WBJ II**

Recently, the NJCA distributed a survey to every judicial officer that had participated in an NJCA program. Results from both superior and intermediate courts clearly identified judgment writing as the topmost subject where there was the highest level of interest. For this reason, the NJCA has developed a judgment writing pathway for judicial excellence that is designed to give a structured and transparent approach to the training and ongoing professional development of judicial officers in the art and craft of judgment writing throughout their judicial careers. The Writing Better Judgments II two-day program (**WBJ II**) is the second program in the pathway.

WBJ II is currently chaired by NJCA life member and Acting Justice Monika Schmidt. We take this opportunity to congratulate Acting Justice Schmidt on her phenomenal achievement of 30 years service on the bench.

WBJ II - **meeting the increasing challenges of judgment writing** - is recommended for participants who have attended *Writing Better Judgments I* and have 3-5 years of experience on the bench.

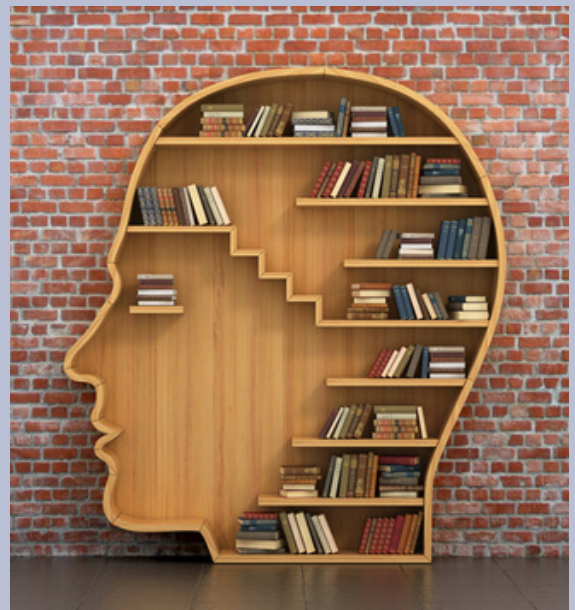
The objective of timeliness remains both fundamental to the judicial function and to societal expectations and public confidence in the courts.

WBJ II has been designed with these factors in mind. The program will enhance participants' knowledge and skills and improve the strategies they utilise to meet the cumulative challenges of judgment writing. It will also help participants pursue a systems based approach to delivering their judgments, while building both their practical skills and strategies which will help them to meet ongoing judgment writing challenges.

The program includes small group sessions in which participants have the opportunity to reflect on their work practices and to enhance their skills, in order to continue delivering coherent, timely, complex judgments in their busy lists.

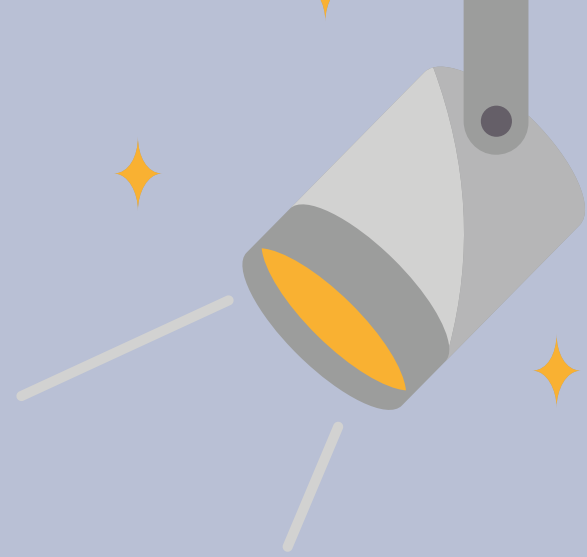
The longer term goal of the program is to help support both judicial longevity and continuing judicial productivity.

WBJ II will be held in Sydney
from
13-14 June 2024.
Registrations are now open.



Over the page...

The visual representation of the NJCA judgment writing pathway shown on the following page outlines the rationale for four distinct programs, a high level description of the judicial learning outcomes and the recommended experience of participants pertinent to each program.



PATHWAY TO EXCELLENCE IN JUDGMENT WRITING



	Writing Better Judgments I	Writing Better Judgments II	Writing Better Judgments III	Appellate Judgment Writing
PROGRAM RATIONALE	A judicial officer-centric program to promote participants' ability to write issues based, well structured judgments in a timely fashion	A small group, individualised feedback driven judgment writing program to promote and enhance the production of judgment writing excellence	A writing program designed to bring greater context to judicial reasoning and the production of strong and effective judicial writing	An intensive program to develop specialist judgment writing skills for judges who hear and determine appeals
WHAT WILL I LEARN?	Identify and practise the skills to achieve clear, concise, comprehensive, coherent and convincing judgment writing which is delivered expeditiously	Develop high level skills in writing a convincing narrative, ensuring readability and navigating sensitivities in judgment writing	Master judgment writing using point first writing. Learn to edit judgments to promote timeliness. Deal with media summaries, lengthy trials and sensitive topics	Collaborate in a small group dynamic, the intricacies of collaborative decision making, opinion writing and judgment management
RECOMMENDED EXPERIENCE	Judges Magistrates Tribunal Members 0 to 3 Years Prerequisite: None	3 to 5 Years Prerequisite: Recommended for those who have attended WBJ I	5 years Prerequisite: Recommended for those who have attended WBJ I & WBJ II or who have extensive experience	Members of appellate court and judges who hear appeals at other levels

Forthcoming Programs



National Magistrates Orientation Program
03-08 September 2023, Brisbane

The National Magistrate Orientation Program primary goal is to assist newly appointed magistrates with their transition to the bench by facilitating the development and refinement of the skills, knowledge, and attributes necessary for effective judging and the management of judicial proceedings. The program provides new appointees the opportunity to benefit from the knowledge and experience of senior magistrates who attend the program as speakers and facilitators, as well as allowing an exchange of ideas and experiences among participants.



Writing Better Judgments I
11-13 October 2023, Canberra
28 Feb-1 March 2024, Sydney
26-28 June 2024, Perth

The popular *Writing Better Judgments I* program is designed to enhance participants' judgment writing skills through analysis, discussion and rewriting of judgments in small groups. This program provides judicial officers with practical tools and tips; a high level of interactivity including group workshops; and individual feedback. Topics include preparation and planning for judgments; issue identification and resolution; writing judgments that are clear, comprehensive, concise, coherent and convincing.



National Judicial Orientation Program
12-17 November 2023, Sydney
17-22 March 2024, Brisbane
10-15 November 2024, Perth

The primary goal of the National Judicial Orientation Program is to assist newly appointed judicial officers with their transition to judicial office by facilitating the development and refinement of the skills, knowledge, and attributes necessary for effective judging. The program provides new appointees the opportunity to benefit from the knowledge and experience of senior judicial officers.



Forthcoming Programs



Writing Better Judgments II 13-14 June 2024, Sydney

At WBJ II, the overarching theme of the program is judicial productivity. Participants are given both the knowledge, skills and strategies to meet the increasing challenges of judgment writing. Time on the bench and corresponding experience often means the lists are longer, cases allocated are more complex and a wearying load of judgments have already been delivered. This program provides practical skills and strategies to help better meet the ongoing challenges in the years ahead, by revisiting and improving judgment writing practices with renewed vigour.



NJCA/ANU Joint Conference 2024 6-7 April 2024, Canberra

What happens when machine-learned and AI-generated data enter the courtroom?

The NJCA/ANU Joint Conference 2024 will bring together experienced members of the judiciary with leading academics from both Australia and overseas, policy makers and experts in their field to consider current AI issues and future challenges for both the judiciary and the wider legal community.



Heads of Jurisdiction - Leadership 16-17 October 2024, Adelaide

This invitation-only program is open to heads of jurisdiction and heads of specialist courts. Leaders come together to examine their own leadership style, consider their impact as a transformative leader of their court and how they can lead most effectively, using power to drive innovation and to manage change in the dynamic environment in which courts operate.

The program includes presentations from and discussions with some of Australia's most well regarded leaders, from government, and the corporate world including social enterprises.

Register now at

www.njca.com.au/judicial-education-programs/



Did you know that the NJCA can design and deliver bespoke programs that are tailored for your court?

In June, the NJCA was invited by the Federal Circuit and Family Court of Australia to present two short programs: to their judges on writing judgments and to their senior judicial registrars (SJRs) on managing a busy list.

The College brought in our most experienced presenters from around Australia to introduce participants to issues-based judgment principles, judgment architecture and editing before they were coached in small groups through an exercise rewriting one of their own judgments. Those SJRs in the latter workshop focussed on developing courtcraft skills, especially around pre-hearing preparation, managing a rowdy courtroom, self-care, and utilising technology to assist with organising information and delivering decisions.



Managing a Busy List with Senior Registrars | 21 June 2023, Melbourne

Do these short programs work/hit home? In the post-program survey, 100% of respondents thought the writing program was "excellent" in terms of usefulness, relevance, learning design and delivery. One wrote, *'Such a great program. I have already re-started a judgment - removing substantial chunks of unnecessary narrative and substantially shortening the whole thing.'* Another commented: *'Great course. Great facilitators.'* In answer to the question 'what is the most valuable thing you learned?' the answers included *'making the judgment issues-based and working with the practitioners to bed down the issues during the trial'*. Another wrote *'To be more certain and confident in my writing style and to put more structure into my writing', while another learned 'strategies to assist with the overall task.'*

If you would like the NJCA to design a specialty program for your court, please contact our Education Director, Karen.Gregory@anu.edu.au.

"It really reinforced the need to develop your own strategies that work for you, to make use of all the tools available to you and to ensure your own wellbeing is attended to." Participant, June 2023



Writing Better Judgments with the FCFCoA 22-23 June 2023, Melbourne

Did you miss the NJCA/ANU Therapeutic Jurisprudence Joint Conference 2023?

Watch the recordings of each incredible session on the the NJCA website

<p>I KNOW TJ WHEN I SEE IT OR DO I?</p> <p>Session 1</p> <p>CHAIR - MAGISTRATE PAULINE SPENCER, MAGISTRATES COURT OF VICTORIA</p> <p>PRESENTERS - MAGISTRATE AEL KING, MAGISTRATES COURT OF VICTORIA</p> <p>44:33</p> <p>Session 1_1</p> <p>Crux Media</p>	<p>THE LAW IN ACTION: A TEAM PERSPECTIVE</p> <p>Session 2</p> <p>CHAIR - CHIEF MAGISTRATE LOURRAINE WALKER, MAGISTRATES COURT OF THE AUSTRALIAN CAPITAL TERRITORY</p> <p>PRESENTERS - MS KESIE CAMERON, DEPUTY CHIEF MAGISTRATES COURT OF VICTORIA MR JESSE KENNEDY, FORENSIC AND CLINICAL MR STAFFORD WHITFIELD AND MS KYLIE STITT, DIRECTOR OF PUBLIC PROTECTION OFFICE MS COLLEEN DUFFY, LEGAL AID OFFICE MR DAN VICK, POLICE FEDERAL POLICE</p> <p>40:00</p> <p>Session 2_1</p> <p>Crux Media</p>	<p>INTERGENERATIONAL TRAUMA, INTERGENERATIONAL STRENGTH</p> <p>Session 3</p> <p>CHAIR - DR ANTHONY HOPKINS, ASSOCIATE PROFESSOR, AND SPECIAL MAGISTRATE, MAGISTRATES COURT OF THE AUSTRALIAN CAPITAL TERRITORY</p> <p>PRESENTERS - MAGISTRATE LOUISE TAYLOR, MAGISTRATES COURT OF THE AUSTRALIAN CAPITAL TERRITORY MS VANESSA POWERS, CONSULTANT PSYCHOLOGIST HUNGRY MARY, FHS AM FEDERAL POLICE OFFICE OF AUSTRALIA</p> <p>43:44</p> <p>Session 3_1</p> <p>Crux Media</p>
<p>KEYNOTE ADDRESS: TOWARDS AN EVIDENCE BASED CRIMINAL JUSTICE SYSTEM</p> <p>CHAIR - PROFESSOR LORANA BARTELS, AUSTRALIAN NATIONAL UNIVERSITY</p> <p>PRESENTER - THE HONOURABLE ROBERT TICKNER AO, CHIEF OF THE JUSTICE BRITAIN</p> <p>45:08</p>	<p>ON THE STEPS OF THE COURT: THERAPEUTIC JURISPRUDENCE AND THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)</p> <p>Session 5</p> <p>CHAIR - DR ANNE MACDOUFF, AUSTRALIAN NATIONAL UNIVERSITY</p> <p>PRESENTERS/PANEL - PROFESSOR TANIA SOURDIS, DEAN AND HEAD OF SCHOOL, NATIONAL UNIVERSITY OF AUSTRALIA PROFESSOR STAFFORD WHITFIELD, CENTRE FOR PROFESSIONAL LEGAL</p> <p>42:10</p>	<p>RECOGNITION, RESPECT & SUPPORT: SUPPORTING JUSTICE FOR PEOPLE WITH LIVED EXPERIENCE OF DISABILITY</p> <p>Session 6</p> <p>CHAIR - MAGISTRATE ROSLYN PORTER, MAGISTRATES COURT OF VICTORIA</p> <p>PRESENTERS - MR SPEN WINFORD, ASSOCIATE DIRECTOR OF RESEARCH AND INNOVATION OF RESEARCH INSTITUTE FOR DISABILITY RIGHTS, SUPPORTING JUSTICE PROJECT MS DOBROTTA BONG, ACCESS AND PEER SUPPORT FOR A CENTRE</p> <p>51:14</p>

Oral Decisions | 29-30 June 2023, Sydney

"The program was really special and every one of the presenters and organisers was kind, welcoming, skilled and encouraging." Participant, June 2023



Above: Good company, good conversations - the program dinner with *Oral Decisions* participants, program committee and facilitators.

At the NJCA's *Oral Decisions* program in late June, participants shared their experiences of significant workloads and time management pressures in their respective jurisdictions. To that end, the value of delivering short, accurate and precise oral decisions to manage such workloads was front of mind in terms of the learning outcomes of this program.

The *Oral Decisions* program is designed to give judges, magistrates and tribunal members the skills and increased confidence to dispose of more matters through *ex tempore* reasons. Participants are given the opportunity to engage with theory, combined with practical activities. The program is purposely designed to support and inform the practice of giving oral decisions while also receiving real-time advice and feedback from experienced judges and magistrates to develop, enhance and refine their oral preparation and communication skills. Participants also received individual, hands-on advice on developing their confidence and authority in delivery from experienced voice coaches.

Effective Judicial Presentations 08-09 June 2023, Sydney

"The program was just brilliant and, unknown to me before it commenced, much-needed. Hats off to all involved! Thank you so much."
EJP Participant, June 2023

One of the NJCA's strategic objectives is to develop and support judges and magistrates to design and deliver educational experiences for their peers, both as part of the NJCA's suite of judicial educational and training programs and in their own courts. To that end, the *Effective Judicial Presentations* program was run over two days by the NJCA this year in June in Sydney.

This program focuses on contemporary adult learning theory, principles and tools and encourages participants to apply these specifically to judicial education and training. Participants work through the theory behind designing a program, from the development of program rationale and essential questions, to identifying and articulating learning outcomes and how these outcomes will be evaluated.

At the end of the program, participants 'pitched' their program proposal, demonstrating how they had addressed the adult learning theories, concepts and ideas presented throughout the program, taking on board feedback from their peers.

The NJCA is excited to see how participants' programs develop. We also welcome experienced judicial presenters who can participate as leaders in other programs for EJP next year.



"This was an extremely helpful and uplifting program. I think it will greatly improve my confidence in presenting, not only for NJCA but in my jurisdiction. I am very grateful to NJCA to have been invited to participate."
EJP Participant, June 2023

Commonwealth Sentencing Database Update — Winter 2023

The Commonwealth Sentencing Database is a project of the NJCA (the **Database**). Access to the Database is via the NJCA website.

The Database was originally established in 2005. Since that time, faculty from the ANU College of Law have been involved in creating the Principles & Practice and Case Summaries sections of the Database and timely updates to the content in the Database are done by the NJCA's CSD research team on advice from the Academic Panel.

The Database aims to promote consistency and quality in the sentencing of federal offenders. A sentencing benchbook, summaries of recent sentencing decisions, and comparative sentencing tables are available through the Database at csd.njca.com.au.

In 2021, additional Commonwealth funding was approved for the creation of Comparative Sentencing Tables, which launched in 2022.

[Changes to Principles & Practice Commentary \(May/June 2022\)](#)

Parity— new page covers the principle of parity concerning the sentencing of different offenders for the same or related offences.

White-Collar Offences — new page provides commentary on the sentencing of individuals for white-collar offences including offences against the Corporations Act 2001 (Cth), tax fraud offences, cartel offences, and bribery offences.

Sentencing Corporations— page restructured for better coherence with new White-Collar Offences commentary. The new structure focuses on the determination of maximum penalties applicable to corporations and the sentencing principles applicable when sentencing corporations.

Commencement of Sentences — restructured for greater clarity and updated to reflect recent case materials, including *R v Hudson* [2016] SASCFC 60 and *Ribbon v The Queen* [2022] SASCA 15. Also updated to reflect the introduction of the Sentencing Act 2017 (SA) in South Australia.

Release on Parole or Licence — page updated to reflect the December 2021 repeal of Crimes Act 1914 s 19AA which previously provided for 'clean street time' sentence reductions.

[Upcoming Updates to Principles and Practice Commentary](#)

The CSD is in the process of creating a series of new pages concerning sentencing for various financial and dishonesty offences, including tax fraud and social security fraud. A new approach to the sentencing options available under the Crimes Act 1914 (Cth) for offenders with mental illnesses and intellectual disabilities is also in the process of being developed.

The research staff is also working on updates to Custodial Sentences, Totality, One Transaction Rule, and Victim Impact Statements.

[Recent Case Highlights](#)

[Homewood v The King \[2023\] NSWCCA 159](#) – Offender sentenced for two offences, one of which was a minimum-parole offences under s 19AG of the Commonwealth Criminal Code. Total effective sentence was 1 year and 11 months imprisonment. Later modifications to the sentencing orders were made *functus officio*.

Offender appealed on the grounds of manifest excess and that the judge erred in failing to impose an Intensive Corrections Order. Ierace J (Beech-Jones agreeing at [1]–[8], Cavanaugh J agreeing at [78]) held that the manifest excess ground was made out as the sentencing judge used as their ‘starting point’ the maximum sentence for the offence despite finding the objective seriousness to not be at the highest level; and that s 20AB(6) of the Crimes Act 1914 precludes an ICO being made in respect of a minimum-non-parole offence as defined in s 19AG.

[Al-Kutobi and Kiad v The King \[2023\] NSWCCA 155](#) – Offenders were sentenced to 20 years imprisonment with a non-parole period of 15 years for terrorist acts under the Commonwealth Criminal Code.

Offenders appealed on the ground that the sentencing judge made a *Xiao* error in failing to fully take into account the utilitarian value of their guilty pleas. Button J (Kirk JA and Hamil J agreeing) held that the error was made out by the sentencing judge’s failure to account for the time and resources saved by avoiding a criminal trial.

[R v Waters; Ex parte CDPP \[2023\] QCA 131](#) – Offender sentenced to 2 years and 19 months imprisonment to be served by way of recognizance for dishonestly obtaining a gain from a Commonwealth entity in the order of \$178,548.70.

The Crown appealed on the grounds that the sentence was manifestly inadequate and that the judge erred in considering the offender’s mental condition. Henry J (Bowskill CJ and Morrison JA agreeing) held that psychologist’s report could not provide a foundation for the degree of mitigation permitted by the judge where it failed to purport to provide authoritative diagnoses or identify a causal explanation between offender’s mental condition and the offending.

New functionality on the NJCA website

Planning your own judicial education and training using detailed information about our programs

Writing Better Judgments II, June 2024

Judicial officers surveyed by the NJCA in our Judicial Education Needs Survey in 2022 unequivocally identified a judgment writing as their most demanding unmet need.

This program provides an opportunity not only for participants to revisit the principles of issues based judgment writing, but to enhance production of timely, well-crafted legal writing and reasoning.

Why you should attend this program?

This program is open to those judicial officers who have previously completed Writing Better Judgments I and have 3-5 years of experience on the bench.

Sessions will focus on the writing process through which correct, clear, concise, coherent and convincing judgements are delivered, refining skills with assistance and feedback from experienced judges and authors. Along with this, there will be a focus on practical tools for effective judgment writing, as well as the critical thinking always necessary.

How will these skills help your in court?

The objective of timeliness remains both fundamental to the judicial function and to societal expectations and public confidence in the courts.

A court "speaks" through its judgments as they are records of the legal, social and political history of the time. But judgments must be just, efficient, timely and cost-effective but this program recognizes that being "quick" does not come naturally to any judicial officer. In recent decades there has been a discernible shift at, notably, the high and intermediate court levels in discourse around judicial delay in the production of judgments. While the judgment writing process has evolved so as to be considered as both an art and craft, the overarching need for both speed and correctness are now paramount.

What will you learn at this program?

By the end of this Program, participants will:

- Evaluate the institutional and community pressure upon the modern judge for speedier justice
- Demonstrate an increased awareness of careful planning and reflection
- Identify and apply the means of writing with both speed and correctness
- Illustrate an appreciation for judicial productivity
- Exercise the requisite amount of sensitivity in judgment writing
- Frame and resolve factual and legal issues, including by use of effective architecture;
- Employ the right tone and authorial voice;
- Identify and apply effective tools to manage judgment load, procrastination and timely judgment delivery.

Program inclusions



Program calendar

Five year calendars with search functionality

Program calendar



ORIENTATION PROGRAMS



SPECIALITY PROGRAMS



LEADERSHIP PROGRAMS

2023 2024 2025 2026 2027

January

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				