

A PROPOSAL FOR MINIMUM CONTINUING LEGAL EDUCATION IN CONNECTICUT

The Continuing Legal Education Committee of the Connecticut Bar Association, having studied the issue of minimum continuing legal education (CLE), recommends that Connecticut should join the vast majority of jurisdictions that have some form of mandatory minimum CLE.

The practice of law today is more complex than ever. Both the common and statutory law are changing at an ever-increasing rate. This in turn means that for attorneys to practice at a high level and live up to their ethical commitments, attorneys need to devote significant time and attention to keeping up with recent developments. Further, increases in the filing of grievances and defalcations in clients' funds accounts alone make obvious the need for at least some level of mandatory ethics training.

For those reasons and others, virtually every state in the nation recognizes that voluntary continuing legal education does not produce an acceptable level of competence, ethical behavior, and professionalism among members of the bar and have adopted mandatory CLE programs.

A. Overview of CLE in the United States

The vast majority of states (42) now require some form of mandatory minimum CLE. Three other states, Hawaii, Maryland, and New Jersey, have no mandatory minimum CLE requirement, although all three have some required training programs. Hawaii and Maryland require a "professionalism" course for new lawyers. New Jersey

has a three-day course for new attorneys. The District of Columbia requires newly admitted attorneys (and reinstated attorneys) to attend a course on rules of conduct and local practice within the first year after admission.¹ Only five states — Connecticut, Massachusetts, Michigan, Nebraska, and South Dakota — have no required training or minimum CLE.

The requirements vary widely from state to state in terms of the amount of CLE credits required, the period of time in which to fulfill the requirement, the reporting date and the content or subject matter for the necessary CLE credits.

Generally, CLE is an annual requirement. Twenty-six states presently require some level of annual CLE commitment from members of the bar. The most common annual CLE requirement is twelve credit hours, a program adopted by eleven states. Eight states require fifteen hours of CLE per year. Other variations include twelve and one-half hours (Kentucky and Louisiana), eleven hours (Maine), ten hours (Rhode Island), and fourteen hours (South Carolina).

The remaining seventeen states with a mandatory CLE requirement use a multi-year system. The typical multi-year CLE requirement involves some variation on the twelve- or fifteen-hour annual minimum. Four states mandate attendance at forty-five hours of CLE over a three-year period. Three states require twenty-four hours of CLE over two years, and one, Indiana, requires thirty-six hours over three years. Other

¹ Alaska has no mandatory CLE requirement, but attorneys may participate in a voluntary CLE program that earns participating attorneys a reduction in bar dues and listing in a publication of compliant attorneys. Alaska requires a twelve-hour per year commitment from participating attorneys.

variations include thirty hours over three years (Florida and Idaho), thirty hours over two years (Illinois and Wisconsin), twenty hours over two years (Vermont), and forty-eight hours over three years (North Dakota). California requires twenty-five hours over three years. New York has the most complicated CLE requirement in the nation. Attorneys practicing less than two years in New York (or less than five years in another jurisdiction immediately preceding admission to the New York bar) must complete thirty-two hours of “transitional education” within the first two years after admission to the New York bar. Sixteen hours of CLE must be completed in each year. All other attorneys must complete twenty-four hours of CLE over a two-year period.

The variations in CLE credit hours are matched by variations in reporting procedures. There is no consistency in the reporting requirements across the states. Some states use January 31 as the reporting date, some use December 31, some use March 1, and some use June 1, while others use August 1 or July 31. Maine requires that completion of the CLE requirement be reported along with the annual submission of bar registration forms. Texas permits reporting before the end of the attorney’s birth month. States that require reporting on a multi-year basis may use an assigned month (Florida), a date based on the attorney’s date of admission (Idaho), or a rolling reporting period with no fixed date (Colorado).

There is one aspect of minimum CLE requirements that is consistent across the states: the expectation that every attorney will attend courses on ethics or

professionalism. Forty-two states² require that some number of hours within the CLE requirement be spent in courses on ethics or professionalism.³ The exact nature of the requirement varies, with some states lumping ethics with professional responsibility, substance abuse, or ADR courses. Other states require additional ethics courses for newly admitted attorneys (Louisiana requires eight hours of ethics, professionalism, or law practice management for newly admitted attorneys; New York requires three hours per year in each of the first two years after admission). Generally, states require one or two hours of ethics seminars, regardless of whether the state has a one-year or multi-year reporting system. Montana requires five hours of ethics courses in every three year period in addition to the annual CLE requirement of fifteen hours. Colorado has the largest requirement within its reporting window—seven hours in legal ethics/professionalism are required in each three-year reporting period (forty-five hours of total CLE required).

A few states have particular wrinkles to their CLE requirements. Most of these special requirements focus on newly admitted attorneys and consist of either a “basic skills” course or extra “ethics and professionalism” training (Delaware, Florida, Georgia, Idaho, Kentucky, Louisiana, Missouri, and New York all have special requirements for new admittees). Oregon requires one hour of CLE on child abuse reporting laws and

² Delaware is the only state with mandatory CLE that requires special ethics courses only for new attorneys. Four hours of ethics courses in a three-day series are required within four years of admission to the Delaware bar.

³ This includes Alaska, which requires one hour of ethics CLE for attorneys participating in the voluntary program.

three hours pertaining to racial and gender issues. Minnesota requires two hours of CLE on the elimination of bias and permits a maximum of six hours of CLE in law office management.

There does not seem to be any consensus on how to resolve the tension between ensuring CLE compliance (best done by requiring attendance at live CLE courses) and accommodating the realities of legal practice (done through flexible options for completing the CLE requirement). According to the American Bar Association, approximately 60 percent of jurisdictions allowed some form of self-study in 2001, whether via the Web, phone, audiotape or videotape. In-house training was permitted in 90 percent of jurisdictions and satellite or video replay was permitted in thirty-nine states. Live Web casting was accredited in twenty-four states and using a CD-Rom for self-study was allowed in twenty-six states.

B. Illinois (A Case Study)

On September 29, 2005, Illinois became the most recent state to enact a mandatory CLE requirement.⁴ The Illinois Supreme Court's reason for instituting a mandatory minimum CLE requirement was to "assure that those attorneys licensed to practice law in Illinois remain current regarding the requisite knowledge and skills necessary to fulfill the professional responsibilities and obligations of their respective practices and thereby improve the standards of the profession in general."⁵

⁴ See Article VII, Part C, Rules 790–798 of the Illinois Supreme Court Rules.

⁵ Article VII, Part C, "Preamble," Illinois Supreme Court Rules.

The Illinois Supreme Court created a nine-member board consisting of interested lawyers who have practiced for at least ten years, one person appointed by the supreme court, one non-attorney, and at least one state court judge. The board was charged with the recommendation of rules and regulations governing the CLE program, implementation of the rules and regulations, and responsibility for CLE finances.

The CLE requirement crafted in Illinois reflects many of the specific policy debates regarding how to craft an appropriate CLE program. All attorneys admitted to practice after December 31, 2005, are required to complete a “Basic Skills Course” of at least fifteen hours within one year of admission. Topics covered in the Basic Skills Course include: local court rules, filing requirements of government agencies, instruction on drafting pleadings, practice techniques and rules of conduct, use of trust accounts, and other “rudimentary” elements of practice. Once the Basic Skills Course is completed, newly admitted attorneys are grouped alphabetically by last name into two groups, with group A-M required to complete the two-year CLE requirement in even numbered years and group N-Z assigned to odd numbered years. Attorneys who complete the Basic Skills Course are then responsible for the normal CLE requirement, consisting of thirty hours completed over two years (minimum of four hours in professionalism, diversity, mental illness/addiction, civility, or legal ethics). Attorneys may complete the thirty hours in any split during the two-year period; a maximum of ten hours (if more than thirty are earned in the two-year period) may be carried over into the next two-year cycle, excluding professional responsibility credits.

Illinois adopted a very broad approach to participation in and accreditation of CLE courses. Courses must have “significant intellectual, educational or practical content” that is primarily geared to increasing the professional competence of participating attorneys. Any method of delivery — including all available forms of technology — are permitted so long as the course is “interactive,” meaning, for example, that a faculty member is present; that questions can be submitted electronically, in writing or via the phone; or that Web links to relevant supporting materials are available. Illinois also permits “non traditional” CLE, such as in-house programs (with at least five attorneys present), law school courses, certain bar association meetings, teaching CLE or law school classes, writing legal scholarship, running pro bono training programs, and attending capital litigation training classes. Bar review courses and reading legal journals do not earn credit.

The board was also directed to develop a financial hardship policy to assist attorneys who cannot pay the costs of the new requirement.

Attorneys report compliance by completing and submitting provided forms no later than July 31 of the assigned reporting year. Failure to report compliance triggers a grace period until September 30 to complete the requirement. Failure to complete the requirement at the end of the grace period leads to removal from the “master roll” of attorneys. Reinstatement is possible if the attorney completes the requirement and files a certification with the board, along with payment of a fee set by the board. Certain attorneys, including inactive attorneys, disabled attorneys, and judges, are exempt from the CLE requirement. Also, an attorney who practices in another state and is also a

member in Illinois can be exempt if he or she can show that he or she is regularly engaged in practicing law in another state and that she is in full compliance with the CLE requirements of his or her state. Temporary exemptions are also available.

C. Voluntary CLE in Connecticut

The CBA estimates that the number of attorneys participating in CBA-sponsored CLE is less than 30 percent of the total number of practicing attorneys in Connecticut. The CBA estimates that approximately forty-seven people attend the average CLE seminar, with a total of 3,500 members attending CBA-provided seminars during the course of the CLE year, which typically runs from September to June (these figures do not account for attendance by individuals at multiple seminars). This year, the CBA has scheduled sixty seminars. There were fifty-eight CLE seminars in the 2004-2005 year.

The CBA is not the only CLE provider in the state. The local bar organizations have increased their own CLE offerings in recent years. Also, independent CLE providers (the ABA, insurance carriers, other professional organizations, etc.) offer seminars in Connecticut.

Despite relatively low overall participation in CLE programs statewide, the development of the highly successful *Basic Practice Series* by the Young Lawyers Section has greatly increased both the participation and demand among newer attorneys for CLE. In 2005–2006, eleven *Basic Practice Series* courses were offered, with a total of 544 attendees.

D. Mandatory CLE in Other Professions in Connecticut

If Connecticut adopts mandatory CLE, attorneys will join the diverse group of Connecticut professionals that are required to keep current in their occupations. For example, pursuant to Conn. Gen. Stat. § 20-600, the Commission of Pharmacy may not renew a pharmacist's license (which expires annually) unless the pharmacist "submits a statement signed under the penalty of false statement that the pharmacist has satisfactorily completed not less than fifteen contact hours of accredited continuing professional education in the previous calendar year." Recognizing the unique value of live attendance at educational sessions, § 20-600 further requires that "[n]ot less than five contact hours of the annual continuing education requirement [] be earned by attendance at a live presentation of an accredited continuing professional education program. At least one of the fifteen contact hours shall be on the subject matter of pharmacy law or drug law."

Dentists also are required to stay current in their field. An act passed in October 2005 provides that "beginning on and after October 1, 2007, a licensee applying for license renewal shall earn a minimum of twenty-five contact hours of continuing education within the preceding twenty-four-month period. Such continuing education shall (1) be in an area of the licensee's practice; (2) reflect the professional needs of the licensee in order to meet the health care needs of the public; and (3) include at least one contact hour of training or education in infectious diseases" 2005 Public Act 213, Section 11. The Act allows this requirement to be satisfied with online courses, and a certain amount of the requirement may be satisfied through volunteer work. *See id.* Sec. 11(b) (3) ("Eight hours of volunteer dental practice at a public health facility, as defined

in section 20-126l of the general statutes, as amended by this act, may be substituted for one contact hour of continuing education, up to a maximum of ten contact hours in one twenty-four-month period”).

Other professionals in Connecticut ranging from real estate professionals (*see* Conn. Gen. Stat. § 20-319) to landscape architects (*see* Conn. Gen. Stat. § 20-374) to massage therapists (*see* Conn. Gen. Stat. § 20-206f) must remain up to date in their knowledge of their occupation to renew their licenses.

E. The Advantages of CLE

The clients we serve and the courts and agencies before which we appear deserve a maximum level of competence, which we believe cannot be maintained without regular participation in seminars and other training programs designed to keep the lawyer current with developments in his or her chosen field. And an attorney’s professional responsibilities cannot be reduced to following one’s moral compass — it is far more complicated than that.

Moreover, the law is one of the few professions that allows a new admittee to jump right in and start practicing their craft without any required “real-world” training — we wouldn’t want a doctor straight out of medical school to take out an appendix without first completing his or her residency program (and practicing the procedures with a seasoned surgeon a number of times).

F. The Disadvantages

The cost of compliance (both in time and money) is the often cited argument against minimum CLE. However, the committee believes that, upon closer examination, these purported disadvantages really should not hinder the adoption of minimum CLE in Connecticut.

(1) Time

The demands of a law practice today are undeniably great. Clients and courts often seem unreasonable in their requirements and expectations. It is, therefore, difficult to find the time to attend CLE courses and still meet all of our other professional, family, and personal commitments — there always seems to be something that takes priority.

But that is actually an argument for minimum CLE. Because the lawyer knows he or she must complete a minimum number of hours each year or other reporting period, he or she will make CLE a priority and will find the time to attend the courses. Further, minimum CLE may actually save an attorney time. Spending a few hours learning about developments in real estate law may actually allow an attorney to streamline his or her time in preparing for a closing. And, having the written course material on the shelf will allow an attorney to save valuable time independently researching and collecting material on a new legal development.

Today's technology can also be utilized to minimize time burdens. As discussed above, many states allow CLE credits to be obtained through Internet courses, telephone conference courses, and video conferencing.

(2) Cost

The standard CBA-member price for a CLE seminar is \$125 for a basic course and \$145 for an advanced course. Although this is real money, the net cost is actually lower (as CLE courses are deductible business expenses). Certain legal malpractice carriers offer a discount for attorneys who complete a certain amount of CLE courses.

Also, every attorney should remember that he or she has an enormous investment in a law degree obtained at a cost of \$100,000 or more today. Attorneys, therefore, owe it to themselves to protect that investment and not allow their skills to become outdated.

G. A Proposed Program For Connecticut

As noted in the introduction, it is the CLE Committee's belief that the time has come for Connecticut to adopt a minimum CLE requirement. Lawyers can no longer hope and expect that they will maintain their skill sets by simply practicing more law. The CLE Committee believes attorneys need formal training on an ongoing basis.

The CLE Committee recommends that any minimum CLE program for Connecticut should have the following characteristics and elements:

(1) **Phase-In.** To ease the adjustment from voluntary to mandatory CLE, the program should be phased in over three years. For example, only four hours would be required for the first year, eight hours the second, and twelve hours the third year.

(2) **Reporting Period.** Given the demands of the practice of law and allowing for temporary disabilities or long-term illness, a two-year reporting period would be preferable. Accordingly, every lawyer would be required to complete the established minimum amount of CLE during each two-year period.

(3) **Mandatory Professionalism Training.** The lawyer would be free to select the seminars and courses deemed most appropriate to his or her professional development, *provided, however*, that a minimum number of hours of legal ethics and professionalism be completed in each reporting period.

(4) **Faculty Credit.** To encourage lawyers to assume responsibility for teaching courses and to recognize the additional effort required to prepare a course (and the additional learning that results from that effort), faculty members should receive double CLE credit (i.e., if the attorney teaches a three hour course, the attorney would receive six hours of CLE credit).

(5) **Tuition Assistance.** Some form of tuition assistance should be available to help attorneys, in appropriate circumstances, to defray some (or all) of the costs of compliance.

(6) **Technology.** Some number of CLE credits should be able to be earned by participating in a non-traditional course setting (such as a video conference, Web cast, etc.).

(7) **New Lawyer Training Program.** A basic practice series should be required for all recent law school graduates within two years of graduation.

(8) **Enforcement.** Enforcement should be tied to reporting, with failure to complete minimum CLE resulting in a fine and, ultimately, suspension. Any enforcement mechanism should include a grace period and reinstatement procedure.

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CBA, CLE Committee