

UTAH STATE BAR OPERATIONS REVIEW

Continuing Legal Education

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The Utah Supreme Court sets the Continuing Legal Education (CLE) requirements and monitors compliance with these requirements. The Utah State Bar Commission has the responsibility “to promote professionalism, competence and excellence in those practicing law through continuing legal education and by other means.” R. of Prof. Pract. 14-102. The members of the Bar generally do not understand this division of authority and responsibility. In the 2009 Annual Utah State Bar Survey of Membership, many of the commenters expressed frustration with requirements set by the Utah Supreme Court for CLE. The Bar Commission and the Bar would likely benefit from clarifying the Commission’s role to its members in its materials and its presentations.

I. Mandatory Continuing Legal Education (MCLE):

The Utah Supreme Court sets all of the CLE requirements. These rules are set forth in the Rules of Professional Practice Rule 14-401 et seq. Currently, active attorneys must receive 24 hours of CLE every 2 years.¹ R. 14-404. Two of the 24 hours must be for Ethics/Professional Responsibility; one of the 24 hours must be for Professionalism.

¹ MCLE will change the end of the reporting year to June to coordinate with Bar licensure. Ms. Sydnie Kuhre thinks June is an easier time of year for people to do extra CLE as necessary as opposed to December. This adjustment will begin in 2009 and complete in 2011. R. 14-404(b). During the change the Court has reduced the MCLE requirement proportionally. Id.

Id. A lawyer can obtain twelve of the 24 hours through self-study. R. 14-409, 14-413. Self-study credit is given for watching web casts (live or replay), podcasts, videos, and DVDs, listening to tapes, and preparing to speak at a CLE. Id.

These requirements are overseen by Sydnie (Syd) Kuhre at MCLE (mandatory continuing legal education). She is a Court employee housed at that Law and Justice Center. The Court pays rent to the Bar and reimburses the Bar for her salary. Ms. Kuhre determines whether a person has met CLE requirements or not. She is also the person who generally approves whether a program gets CLE credit or not.

The Supreme Court appoints lawyers to the Utah State Board of Mandatory Continuing Legal Education. R. 14-403. This Board reviews offerings from non-approved CLE sponsors to determine whether to grant CLE credit. R. 14-411. The Board can grant CLE credit for the entire program or only for one attorney who attends the program. For example, while a seminar for police officers may not receive general CLE credit, an individual lawyer may get credit for the CLE if s/he practices in the area and her/his law practice will benefit from the training. This Board also may give waivers or extensions of time for individual lawyers to comply with CLE requirements. Mary Corporon is the current Chair of this Board. Committee members serve 3 year terms and can stay on the Committee for 2 terms.

A CLE sponsor who provides CLE for a fee must pay a \$25 accreditation fee. (Web Application, form 3.) This accreditation fee goes to the MCLE Board. (R. 14-417.) In addition the applicant must pay \$1.50 per attendee per credit hour to a maximum of \$15 per attendee. (R. 14-417.) The Supreme Court sets this fee. When a Bar member

fails to comply with the CLE requirements on time, MCLE receives the late fees. (R. 14-417.) MCLE is revenue neutral.

Upcoming, MCLE expects to allow lawyers to view their CLE reports on line to see how many CLE credits they have at any time.² MCLE is also considering allowing active CLE credit for live web cast CLE. Currently people who attend such CLE can only receive self study credits.

ANY CHANGES TO MCLE WOULD BE SUGGESTIONS TO THE SUPREME COURT. The Bar cannot change any of these requirements.

II. Continuing Legal Education (CLE) at the Bar:

The Bar is a presumptively approved CLE provider. (See R. 14-412.) It provides the CLE for the Annual Convention, Spring Convention, Fall Forum, and New Lawyer Continuing Legal Education (NLCLE). In addition, throughout the year the Bar co-sponsors luncheons and other CLE with various Bar sections. For the 2007-2008 year the Bar was involved in presenting approximately 326.5 CLE credit hours. (Bar Report-removing double counts).

In addition to live CLE, the Bar maintains an on-line library of CLE. (<http://www.legalspan.com/utah/catalog.asp>) Attorneys can watch these presentations on computer or download them to an MP3 player. The attorney purchases the CLE for approximately \$31.50/credit hour and is e-mailed a password to access it. The attorney has 90 days to view the CLE. 95% of the way through the program the viewer is given

² This change will satisfy the concerns expressed by a number of the commenters on the 2009 Annual Utah State Bar Survey of Membership.

the ability to print a compliance certificate. Immediate notification is sent to the Bar of completion. The Bar pays \$1.50 of each credit hour to MCLE. This CLE comes from various Bars around the country and other CLE providers in addition to Bar programs. Some states charge as much as \$120/ credit hour for these programs. The University of Utah has a substantial CLE library it would like to make available to Utah attorneys.

Connie Howard oversees the Bar's CLE offerings with the assistance of Marion Eldredge and Megan Facer. Ms. Howard attends the National Convention for Legal Educators every summer and the ABA Consumer Assistance Program. Ms. Howard would like assistance on ideas for the 2nd year of CLE for new lawyers now that NCLE is being replaced in the first year by the New Lawyer Training Program (NLTP).

A. Substance:

The Bar has brought in Lawyers Helping Lawyers, Utah Land Use Institute, and Judge Benson and Mr. Mangum to do yearly presentations in their areas of expertise. The Bar generally stays away from offering personal injury seminars since the Utah Association for Justice covers that area well. Ms. Howard would like to have Marsh do a CLE on Malpractice. Another content idea for the future includes: "What to do with your law degree: Exit Strategies for Retirement." A common request is for the Bar to offer more non-litigation CLE. The Bar does not currently offer much "advanced" CLE. Because so many national organizations do this well, some people question whether the Bar should try to offer these too.

B. Conventions:

The Bar President chooses the spring convention chairs; the President-Elect chooses the summer convention and Fall Forum chairs. These chairs receive no training per se and receive most of their advice from Ms. Howard. The involvement of the President and President-Elect on these committees varies according to the interest of the person in the position. Ms. Howard, while not "responsible" for the conventions, provides significant assistance with CLE presentation planning. The spring and summer conventions and Fall Forum are made up of appointed representatives of bar sections and committees. The Bar also advertises these as committees that people can apply to join like any other Bar committee. Much of the time spent in committee is devoted to finding keynote and luncheon speakers. Committee and section representatives are asked to put on presentations. People are often not enthusiastic about doing this. Many sections perceive themselves as lacking the money necessary to provide such CLE. The Bar provides little direction or oversight on what the presentation should include. Presenters are asked for material ahead of time for printing/posting purposes. No significant pre-monitoring of the presenters, presentation, or materials exists. The effectiveness of these committees varies significantly depending on the committee members. The social/vacation aspects of these conventions are thought by many to serve as the primary reason people attend the conventions. Many people perceive the CLE at conventions to lack substance (some substantive offerings, but not enough to fill one's entire schedule).

Ms. Howard organizes the Fall Forum. It focuses on providing substantive CLE for solo and small firm attorneys. It has had great success and continues to grow. Last

year was the first year a social/educational event was offered the night before. This extension of the Fall Forum was well received, and Ms. Howard hopes to do something similar this coming year. Ms. Howard tries to vary the presentations by rotating the sections/committees asked to make presentations.

C. NLCLE:

Given the transition to NLTP, the New Lawyer CLE (NLCLE) will go through a significant revamp in the coming two years. Because of the impending changes, we have not studied what has happened previously.

D. Money:

For the last six years, CLE has been a revenue center for the Bar. The May 2009 balance sheet suggests CLE made a net profit of \$13,653 for 2008-2009. The Bar offers a variety of free CLE throughout the year, *i.e.* Day at the Legislature, Blackberry training, YLD's family law training. The University of Utah offers much free CLE throughout the year. When sections or other entities co-sponsor CLE with the Bar, the co-sponsor assumes all risk of monetary loss.³ Any profit on the CLE is split 50/50 with the Bar. The Bar charges the co-sponsor for the time spent by Bar employees assisting in the activity. These activities include: taking registrations, payments, sending out postcard and CLE reminders, ordering lunch, copying materials, creating certificates, etc. The Bar can cost-effectively videotape and web stream presentations in Salt Lake City. The Bar has not looked into whether this can also be done cost effectively at the Conventions.

³ This policy appears inconsistent with the Bar Commission Policy on Co-sponsorships with Other Organizations that requires a sharing of expenses and profits. Utah State Bar Commission Policies & Procedures A(3)(a).

E. Marketing:

The CLE calendar on the website posts Bar sponsored or Section sponsored activities only. The Conventions and Fall Forum place pull-out advertising in the Bar Journal. The Bar promotes some CLE through its monthly e-blast. Ms. Howard would like assistance with better marketing CLE.

III. SUGGESTIONS FOR IMPROVING CLE:

1) The Bar should create a standing CLE committee to oversee CLE and conventions for continuity and quality. The existing conventions, Fall Forum, and NCLE committees should become subcommittees of the CLE committee. If the Commission adopts this suggestion, it will need to modify the Utah State Bar Commission Policies and Procedures D(1)(f).

- a) The CLE committee should have two chairs that serve for three years. The terms should be staggered so that the Committee will always have one experienced chair. The Bar President should appoint the initial co-chairs with the approval of the Bar Commission. After the initial appointment, the co-chairs should be elected by the Committee and approved by the Bar Commission.
- b) The Committee should have at least one member from each Bar section. In addition the Committee shall recruit members from the general membership of the Bar Commission. In recruiting members from the general membership, the Bar should attempt to include members from other legal organizations that provide

regular CLE, i.e. Inns of Court, Utah Association for Justice, Utah Attorney General's Office. Committee members shall commit to serve for three years.

- c) At least one member of the committee and each subcommittee should be from outside of the Third District and meetings should be held to allow teleconferences and voting by phone. One of the struggles of rural attorneys is the availability of live CLE. Attending CLE in Salt Lake City is cost prohibitive because of the time and the cost of being away from the office. Representation on the Committee will help keep attention on what the Bar can do to better serve the outlining areas with CLE.
- d) CLE Director, Connie Howard, will facilitate the administration of the Committee and its subcommittees. In addition, Ms. Howard will ensure compliance of CLE with MCLE requirements and Bar policy and procedure.
- e) The Committee will act as gatekeeper. It will require people putting on Bar sponsored CLE to provide outlines of their presentations with handouts 2 months before the presentation. The Co-chairs of the Committee will assign committee members (based on area of expertise) to review those materials and provide comments/requests/suggestions for additional information, presenters, or handouts. This kind of assistance, monitoring, and preplanning will improve the quality of CLE offered. Should developments occur in the interim, speakers should be encouraged to address those in their presentations as well.
- f) After reviewing the materials, the Committee will assign all CLE a number to reflect its level of complexity. Introductory level CLE should receive numbers from 100 to 199; intermediate CLE should receive number 200 through 299; and

advanced CLE should receive a 300 through 399. For example, Introduction to Bankruptcy Law could be 101; Supreme Court Decisions Affecting Employment Law could be 205; Tax Implications of Aircraft Transactions 330. This numbering will provide quick reference to consumers about the level of complexity. In addition, at the end of the year the Committee and the Bar Commission will have an easy way to determine if they are providing a good mix of educational levels.

- g) The Bar should create a visible link on the Bar's web-page soliciting CLE ideas/requests that the Committee would receive. The Committee would then find presenters to make the valid suggestions reality.
- h) Part of the Committee's assignment would be to make sure the Bar offers an adequate number of upper level CLE, non-litigation CLE, professionalism CLE, other special requirement CLE if adopted, and CLE in areas outside of the Salt Lake valley.
- i) The Committee should also investigate more passive, self-study CLE options, such as tests after reading Bar articles or reading new cases that are mailed in for credit.
- j) The Committee would oversee the CLE presented in coordination with KCPW.
- k) The Committee would assist in developing new marketing opportunities.

2) To increase the variety of CLE offered the Bar should require each section to offer one CLE a year minimum and one CLE at a Bar convention every 3 years. The Committee understands that some sections will have difficulty providing CLE relevant to a broad audience and some will have difficulty attracting speakers given their lack of

financial resources. The Committee should pair such sections with other sections that might have broader appeal and greater financial resources. In addition, the Committee should assist in encouraging speakers to attend and developing resources to assist with attendance when and where appropriate. The Committee may grant exceptions to the Bar convention requirement for these sections if other efforts fail. To accommodate concerns about the expense of CLE, each section should offer at least one hour of free CLE, and the Bar should encourage sections to discount CLE for section members.

3) The Bar should raise prices of CLE given the prices charged by national and private CLE providers. Other private CLE providers charge significantly more money for CLE presentations. If the Bar provides high quality CLE, it should be able to charge more than it currently charges. If the Commission adopts this suggestion, it will need to modify the Utah State Bar Commission Policies and Procedures B(1)(b)(3).

4) The Bar should begin encouraging sections and other CLE providers to offer CLE on the elimination of bias in the profession. Given Utah's unique demographics, culture, and the results of the WLU Survey on the Retention and Advancement of Women in the Profession, education about bias is one of the few ways to combat discrimination in Utah. During the first year of offering such CLE, the Bar should publicize its intent to ask the Supreme Court to require attorneys to get an hour of CLE on elimination of bias in the profession every 2 years. Following that first year of such offerings, the Bar should petition the Supreme Court for such a requirement. If the Court makes such a change, the change should be well-publicized prior to implementation and should be put in place at the beginning of the compliance year.

5) The Bar should ask the Supreme Court to require attorneys to get an hour of CLE on substance abuse/mental illness that impairs performance as an attorney every two years. Lawyers Helping Lawyers and Blomquist Hale could use this opportunity to make money allowing the Bar could reduce/eliminate its contribution to these entities while increasing awareness of the problems. Given that Lawyers Helping Lawyers and Blomquist Hale have been offering such programs consistently over the last few years, the Bar does not need to wait to make this petition to the Supreme Court. If the Court makes such a change to CLE requirements, the change should be well-publicized prior to implementation and should be put in place at the beginning of the compliance year. [The Committee split 3 to 2 on this recommendation.]

6) The Bar should support Ms. Howard's networking/investigation of CLE opportunities whether through memberships in national organizations or subscriptions to listserves, publications, etc. The Committee should advise on how to support Connie Howard in this way.

7) On-line CLE should receive a more prominent display on the Bar's home page, and an article should run in the Bar Journal explaining the availability of on-line CLE and how it works. The Bar should coordinate with the University of Utah to make its CLE library available to Bar members. Likewise, the Bar should investigate whether Brigham Young University has a similar resource from which Bar members could benefit.

8) The Bar president should provide CLE on professionalism and civility every year to increase the number of available CLE credits on the topic and make clear the Bar's commitment to professionalism and civility.