

STATE OF MINNESOTA  
IN SUPREME COURT  
ADM09-8008



**ORDER SETTING HEARING DATE AND DEADLINE  
FOR SUBMITTING WRITTEN COMMENTS ON THE  
PETITION OF THE MINNESOTA STATE BOARD OF  
CONTINUING LEGAL EDUCATION AND THE  
PETITION OF FIVE LICENSED ATTORNEYS TO  
PERMIT CONTINUING LEGAL EDUCATION  
CREDIT FOR ON-DEMAND COURSES**

The Minnesota Board of Continuing Legal Education has filed a petition proposing amendments to the Rules of the Minnesota State Board of Continuing Legal Education (“the Rules”) to permit Minnesota-licensed lawyers to satisfy a portion of their continuing legal education (CLE) requirements through on-demand programming. Five licensed Minnesota lawyers have also petitioned to amend the Rules to allow Minnesota-licensed lawyers to obtain CLE credits through accredited on-demand programming. Copies of these petitions are annexed to this order.

**IT IS HEREBY ORDERED THAT:**

1. A hearing will be held before this court to consider the petition of the Minnesota Board of Continuing Legal Education and the petition of Five Licensed Attorneys to amend the Rules of the Minnesota State Board of Continuing Legal Education to permit Minnesota-licensed lawyers to obtain CLE credits through accredited on-demand programming. The hearing will take place in Courtroom 300, Minnesota

Judicial Center, 25 Rev. Dr. Martin Luther King Boulevard, St. Paul, Minnesota, on May 29, 2013, commencing at 2:00 p.m.

2. Any person or organization desiring to make an oral presentation at the hearing in support of or in opposition to either petition shall file a request to make an oral presentation, along with fourteen copies of the material to be presented, with Bridget C. Gernander, Acting Clerk of Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155. The request and written materials must be received by 4:30 p.m. on April 30, 2013.

3. Any person or organization desiring to provide only written comments in support of or in opposition to either petition shall file fourteen copies with Bridget C. Gernander, Acting Clerk of Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155. Written comments must be received by 4:30 p.m. on April 30, 2013.

Dated: February 28, 2013

BY THE COURT:

/s/

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Lorie S. Gildea  
Chief Justice

FEB 14 2013

FILED

STATE OF MINNESOTA  
In Supreme Court

FILE NO. ADM-09-8008

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**Petition of the Minnesota State Board  
of Continuing Legal Education for Amendment  
of the Rules of the Minnesota State Board of  
Continuing Legal Education**

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**PETITION FOR  
RULE AMENDMENT  
ON-DEMAND CLE**

**TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:**

By this Petition the Minnesota Board of Continuing Legal Education (“Board”) proposes amendments to the Rules of the Minnesota State Board of Continuing Legal Education (“Rules”) to permit Minnesota-licensed lawyers to satisfy 15 hours of their 45-hour<sup>1</sup> continuing legal education (CLE) requirement by viewing or listening to on-demand programming. Under the Board’s current Rules, lawyers may only participate in a pre-recorded CLE if the programs are replayed “live.” The program is considered “live” if it is presented at a particular date and time and in the presence of a faculty member or moderator who can answer questions on the presentation topic.<sup>2</sup>

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<sup>1</sup> Under the Rules of the Minnesota State Board of Continuing Legal Education, lawyers must report 45 continuing legal education hours every three years.

<sup>2</sup> There is an exception in Rule 5A(11) that permits lawyers who live or work out-of-state to obtain their two elimination of bias credits through on-demand programming.

The Board appointed a special committee in 2009 to study the possibility of approving on-demand programming, and gather information about how such programming is handled in other jurisdictions. The Board's study was prompted by inquiries from Minnesota-licensed lawyers who expressed an interest in on-demand programming as a more convenient and cost effective alternative to live CLE. The Board sought to ensure that the on-demand method of presenting CLE courses is consistent with national trends and that approving such courses would not undermine the availability of high quality continuing legal education.

In July 2012, a petition titled "Petition of Five Minnesota-licensed Attorneys" was filed with the Minnesota Supreme Court seeking amendments to permit lawyers to participate in an unlimited number of hours of on-demand programming to fulfill CLE requirements. Since July, the Board has continued to gather information about on-demand delivery of CLE programs and has solicited comments from other CLE regulators and several local CLE providers. Based on all information gathered, the Board made a determination in December 2012 not to support the Petition for unlimited on-demand credits but instead, to submit this petition to the Court and recommend a rule amendment that would permit lawyers to claim CLE credit for as many as 15 hours of on-demand CLE in each 3-year reporting cycle.

The Board respectfully petitions this Court to amend the Rules to permit limited on-demand CLE programming and to implement other amendments as are described below. In support of this Petition, the Board asserts the following:

1. The Minnesota Supreme Court has the exclusive and inherent power to regulate the practice of law in Minnesota. Minn. Stat. §481.01 (2012).
2. Under the supervision of the Court, the Board is responsible for ensuring that lawyers who are admitted to the Bar of Minnesota continue their legal education and professional development throughout their active practice of law.
3. The State of Minnesota is one of 45 jurisdictions that require lawyers to continue their legal education as a condition of licensure.<sup>3</sup> The national average for required CLE hours is 12.2 hours per year. Minnesota requires 45 hours every three years, including 3 hours of approved courses in ethics or professional responsibility and 2 hours of approved courses in the elimination of bias in the legal profession and in the practice of law.
4. Currently in Minnesota, all 45 credits must be taken “live” with the limited exception that lawyers living or working outside of the state may fulfill their two hours of elimination of bias by viewing or listening to prerecorded CLE programs on-demand without requiring the presence of a faculty member or live moderator.
5. Under Rule 5A(5), all courses, including those presented through electronic transmission, must have a faculty member or moderator present who is knowledgeable in the topic or topics addressed by the course and can guide the discussion and answer questions related to the material presented. Under this provision, electronic programming, including live webcasts, webinars, video replays,

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<sup>3</sup> The jurisdictions that have not adopted mandatory CLE requirements are Connecticut, Maryland, Massachusetts, Michigan, and South Dakota.

and teleconferences, is already eligible for credit so long as the program has a designated start and stop time and a live moderator present.

6. While most jurisdictions permit lawyers to participate in on-demand programming, only nine (9) jurisdictions permit an unlimited number of on-demand CLE hours, which the five lawyers' petition seeks. The most common percentage of permissible on-demand programming is approximately 50% of the total CLE requirements. Attached as **Exhibit A** is a chart showing the number of on-demand courses allowed in each jurisdiction. The exhibit demonstrates the amount of variance among jurisdictions in defining on-demand, categorizing the on-demand credit, and what is included in the same cap as on-demand. Some jurisdictions define "non-traditional programming" to include on-demand. Within the definitions for "non-traditional programming" there is also variance in that some jurisdictions include live webcasts as "non-traditional programming" while others do not. Other jurisdictions define "self-study" and include on-demand as a type of self-study. The extent to which definitions vary across jurisdictions makes comparison difficult.
7. In addition to studying the on-demand CLE requirements in other jurisdictions, the Board spoke to regulators and met with several CLE providers who offered opinions about whether high quality legal education can be maintained when CLE presentations are available on-demand. Although regulators have told the Board that on-demand programming has been successful in other jurisdictions, some regulators cautioned the Board against permitting an unlimited number of credits. Virginia began permitting unlimited on-demand programming in 2001 but in 2011, it instituted a cap

on the number of on-demand courses lawyers could report, in part because of concerns about the proliferation of on-demand programming and concern about the quality of some online programs that were delivered on-demand.<sup>4</sup>

8. The Board's committee to study on-demand programming met with several CLE program sponsors and discussed issues including whether on-demand programs might decrease program quality or otherwise negatively impact CLE in Minnesota. Generally, the sponsors were in agreement that lawyers should be permitted to receive only a limited portion of credit hours through on-demand programming.<sup>5</sup> The sponsors expressed concern that permitting lawyers to report an unlimited number of on-demand programming hours might attract vendors known to present low quality programs. Those vendors may produce programs that would be in technical compliance with the Board's Rule requirements, but may be without educational content.<sup>6</sup>
9. In addition to quality concerns, the Board considered whether on-demand programming would reduce the market for live CLE programming in Minnesota. The number of live courses, including live webcasts and teleconferences, the Board approves each year suggests a robust market for CLE in Minnesota. In 2012, for example, the Board office approved nearly 15,000 courses that were presented by

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<sup>4</sup> Telephone conversation with Gayle Cartwright, Virginia's Mandatory Continuing Legal Education Director, November, 12, 2012.

<sup>5</sup> One sponsor recommended no more than 6 credits be permitted to be viewed on-demand, while another sponsor recommended 50% of the CLE requirement be viewed on-demand.

<sup>6</sup>One of the CLE sponsors referenced a vendor who provides prerecorded programming available on-demand that consists of a person reading the Rules of Civil Procedure.

more than 1,000 CLE sponsors within and outside of the state of Minnesota. This number of approved programs offered in one year's time affords variety and diversity in CLE programming that benefits the entire Bar and affords lawyers an array of courses to choose from throughout the year. The Board is concerned that unlimited on-demand may result in a decrease in the number of live CLE courses presented in the state. Virginia CLE office reports that the number of live courses decreased as the number of on line courses increased. This was one of the reasons that Virginia reinstated a cap on on-demand credit.<sup>7</sup>

10. In considering whether or not a cap on on-demand courses might be appropriate, the Board was cognizant of the needs of lawyers in greater Minnesota, as well as those who live and work in the metropolitan area of the state. Under current rules, lawyers in greater Minnesota may view webcasts and participate in teleconferences without needing to travel to the metro for CLE. In 2012, 2,294 live webcasts and 1,001 live teleconferences were approved by the Board. Being able to obtain another 15 hours of CLE on-demand will serve the interests of non-metropolitan lawyers by increasing their range of options for obtaining CLE credit.

11. The Board believes that live CLE programs presented at a particular point in time afford lawyers the best learning environment because they can engage with other lawyers in a collegial setting. The informal learning that occurs when lawyers come

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<sup>7</sup> Telephone conversation with Gayle Cartwright, Virginia's Mandatory Continuing Legal Education Director, February 13, 2013. Ms. Cartwright also mentioned concern over the advent of CLE program aggregators – organizations that obtain recordings of CLE programs (often not covering Virginia law) and then re-sell them on line as on-demand programs.

to a live program is a valuable adjunct to the formal curriculum. Professional interaction distinguishes live CLE programs from self-study or the experience that lawyers would have when viewing on-demand programs.

12. On balance, the Board determined that permitting lawyers to take 15 hours of CLE courses on-demand would be a benefit in convenience and cost savings to the bar while not resulting in negative consequences as might occur if an unlimited number of on-demand hours were permitted.

13. The Board does not wish to change the fundamental nature of CLE in Minnesota in a way that might have unforeseen consequences. While the Board accepts technological delivery options for CLE, it recommends proceeding slowly and deliberately with on-demand programming so as not to undermine the quality or quantity currently available in live CLE offerings in Minnesota.

#### AMENDMENTS TO DEFINITIONS (RULE 2O-2W)

14. The Board proposes to define an “on-demand course” in Rule 2Q as “archived CLE programming that meets all the requirements of Rule 5A<sup>8</sup> and is available to participants at any time.”

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<sup>8</sup> Although this petition proposes amendments to Rule 5A, the traditional standards for approval of a CLE course set forth in existing Rule 5A(1) – (4) include the following: 1) the course have significant intellectual or practical content; 2) the course shall deal primarily with matter directly related to the practice of law, the professional responsibility or ethical obligations of lawyers, the elimination of bias in the legal profession and in the practice of law, law office management, or the professional development of lawyers; 3) the course shall be taught by faculty members qualified by practical or academic experience to teach the specified subject matter. Legal subjects shall be taught by lawyers; and 4) any written materials should be thorough, high quality, readable, carefully prepared, and distributed to all participants at or before the time the course is offered.

15. While permitting on-demand programming in most settings, the Board recommends an amendment to Rule 2O that excludes the “law and literature courses” from being offered on-demand. Law and literature courses are interactive sessions in which faculty facilitate a discussion among participants using an assigned literary text that participants have read in advance. Participants earn CLE credit for engaging in the interactive discussion, not for merely viewing or listening to the course. The discussion sessions that are essential to the law and literature program would be difficult to capture in an on-demand format.

16. Rule 2, letters Q, and Rule 2W, should be re-lettered to remain alphabetical.

#### FEES FOR APPLYING FOR CREDIT (RULE 4A(8))

17. The course application fee is \$35 under the Board’s current Rules. A fee is not required if the course is 60 minutes or less, or if the course is a video of a previously approved course, re-played in its entirety at a later specific date and time with a live moderator present through the program.

18. The Board expects that its staff will review each on-demand course for which credit is sought in order to ensure that the course meets all rule requirements. Accordingly, the Rule 4A(8) amendments require that applications for on-demand course credit, no matter the length, must be submitted along with a \$35 application fee.

19. The Board also proposes a minor amendment to Rule 4A(8)(a) that reinforces the requirement that video replays must have a faculty member or moderator present at the replayed course and the faculty member or moderator must remain in attendance

throughout the course. This provision is intended to ensure that video replays have the same possibility for interactivity among faculty and participants as do live courses.

#### STANDARDS FOR COURSE APPROVAL (RULE 5A)

20. The Board recognizes that quality programming should be a priority in the design and presentation of all CLE courses, whether live or on-demand. To prevent course content from becoming stale, the Board recommends inserting the word “current” into Rule 5A(1) explicitly requiring that programs be current with respect to the law and policy presented. Staff will deny any course, whether live or on-demand, the content of which may have become outdated due to changes in the law. This requirement will encourage course presenters to periodically review and update their pre-recorded courses.

21. The additional amendments to Rule 5A(1) articulate a more explicit statement of quality than the previous rule language. The quality standard set forth in Rule 5A(1) requires that all CLE courses meet that standard if CLE approval is to be granted. The proposed Rule 5A(1) language states as follows:

The course shall have current significant intellectual or practical content and shall be presented in a high quality manner permitting participants to hear all of the audio and see all the video portions of the program, including presentations, audience questions, responses to questions, embedded videos, and other program materials.

This provision is intended to prevent accreditation of prerecorded courses in which segments of the program are unintelligible because of poor technical quality of the audio or because videos are embedded within other videos, rendering the re-recorded

segments unintelligible. Another quality problem this amendment would address is that of a prerecorded course that does not include an audible recording of the entire question and answer session.

22. The Board proposes amendments to Rule 5A(5) to permit on-demand or podcasts of courses that comply with new Rule 6E, as discussed below.

23. The Board recommends deleting Rule 5A(11), the provision that permits lawyers who reside or work outside the state of Minnesota to satisfy elimination of bias credits by viewing prerecorded material. If rule amendments permitting all Minnesota-licensed lawyers to participate in on-demand courses are adopted, Rule 5A(11) is no longer needed.

#### SPECIAL CATEGORIES OF CREDIT (RULE 6)

24. Minor grammatical revisions are recommended to Rules 6A and 6B. The new Rule 6E, read in conjunction with the on-demand definition in Rule 2Q, states the requirements for accrediting on-demand courses and the circumstances under which lawyers may claim credit for attendance. Rule 6E limits credit for on-demand courses to 15 hours per reporting period, 33% of the total requirement. This limit is consistent with the percentage required in neighboring jurisdictions Wisconsin and North Dakota.

25. The Board does not wish to limit the type of credit that may be obtained through participation in on-demand courses. Availability of on-demand ethics credits and on-demand bias credits will assist out-of-state and greater Minnesota lawyers to achieve

timely CLE compliance, freeing them from having to wait for a live course. Nothing in these proposed rules precludes on-demand courses from satisfying any of the three credit types: standard, ethics, or elimination of bias.

26. Rule 6E(4) provides that approval of an on-demand course expires 24 months after the date of the Board's approval. This addresses the concern that an approved on-demand course may become outdated if it is approved for an indefinite period of time.

27. Rule 6E(2) requires that sponsors of on-demand courses make available for the 24 month period during which the course is approved, one or more faculty members who will be accessible via electronic or other means to answer audience questions. This provision is intended to afford on-demand attendees the option of contacting and interacting with the course faculty, giving on-demand attendees a similar degree of interactivity with presenters as live attendees have, thereby enriching the educational experience.

#### TEACHING CREDIT (RULE 7)

28. Under current rules, only the lawyer who makes the live presentation of the course may claim teaching credit. The presenter may also claim credit for the time spent preparing for the presentation. The Board's recommended amendment to Rule 7A would add the phrase "live (not previously recorded)" to the description of teaching credit and exclude "teaching credit" from being given to lawyers who prepare and present on-demand courses. Teaching credit will continue to be permitted for teaching a live program. The Board makes this recommendation because of the difficulty of

determining who is the “teacher” in the creation of an on-demand production and what constitutes “preparation” for an on-demand course, especially when multiple parties may have collaborated on the creation of the program and no one lawyer is presenting the course in a live format.

#### AFFIDAVIT OF CLE COMPLIANCE (RULE 9)

29. The proposed amendments to Rule 9A and 9B list on-demand credits as being among the special CLE credit types a lawyer may report on the attendance affidavit.

#### DIRECTOR’S DETERMINATIONS AND BOARD REVIEW (RULE 10)

30. The proposed amendment to Rule 10A uses the phrase “participating in” rather than “attending” to describe when a lawyer may receive credit for a CLE course.

#### RESTRICTED AND INVOLUNTARY RESTRICTED STATUS (RULE 12)

31. The proposed amendment of Rule 12A re-letters Rule 2V as Rule 2U.

#### COURSE ACCREDITATION FORM (APPENDIX I)

32. Minor amendments are proposed to the Course Accreditation Form to make it consistent with the Rule 4A(8) amendments. The word “live” is included in both of the exceptions from the fee payment requirement. A category and column for “on-demand” courses is added to the type of courses for which a sponsor may request credit.

## AFFIDAVIT OF CLE COMPLIANCE (APPENDIX III)

33. Minor proposed revisions to the Affidavit of CLE Compliance are made to include a reference to on-demand courses. Because courses approved as professional development are not subject to any minimum or maximum attendance requirements, the proposed form calls for both standard and professional development credit to be reported in the same column.

34. In order to implement the cap on the number of hours permitted for on-demand courses, a new check box for “on-demand” programming is added to the reporting form. The Board’s information system will be reprogrammed accordingly.

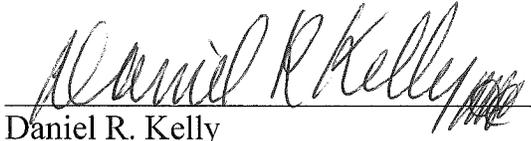
### CONCLUSION

While on-demand courses may have cost and convenience benefits, the quality and the effectiveness of the educational experience lawyers obtain through continuing professional education are paramount. The Board concludes that some on-demand programming is appropriate and not inconsistent with the rules of a majority of mandatory CLE jurisdictions. But the Board believes that limiting on-demand courses to 15 hours per reporting period and limiting the period of approval to 24 months is preferable to permitting lawyers to view an unlimited number of on-demand courses that are approved without a time limit. The Board does not want lawyers to obtain their entire professional educational requirement without interacting with other lawyers or without attending any live courses. The Board wishes to proceed slowly in permitting on-demand programming and hopes that approving on-demand courses does not lead to a reduction

in the quality of programming or a reduction in the number of live courses presented in the state. The Board recommends only incremental changes to the manner that CLE is offered and delivered to Minnesota lawyers.

For the foregoing reasons, the Board respectfully requests that the Court adopt the proposed Rules that would permit Minnesota-licensed lawyers to satisfy one-third of their CLE obligation through on-demand programming and such other rule amendment recommendations as are set forth in the attached **Exhibit B**.

Dated: Feb 14, 2013

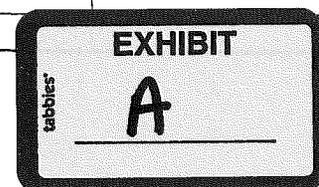


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<u>State</u>	<u>Cap on On-demand Courses</u>	<u>Total CLE Requirement</u>	<u>Permitted % of On-demand</u>
Alabama	6 annually	12 credits annually	50.00%
Alaska	No cap	12 credits annually	100.00%
Arizona	5 annually	15 credits annually	33.33%
Arkansas	does not allow	12 credits annually	0.00%
California	50% of requirement satisfied through	25 credits over a 3 year period	50.00%
Colorado	no cap	45 credits over a 3 year period	100.00%
Connecticut	NO CLE REQ		
Delaware	12 credits per two year period	24 credits over 2 year period	50.00%
Florida	no cap	30 hours over 3 year period	100.00%
Georgia	6 annually	12 credits annually	50.00%
Hawaii	No cap	3 credits annually	100.00%
Idaho	15 credits	30 credits over a 3 year period	50.00%
Illinois	No cap	30 credits over a 2 year period	100.00%
Indiana	6 credits per three year period	36 credits over 3 year period	16.67%
Iowa	6 annually	15 credits annually	40.00%
Kansas	5 annually	12 credits annually	41.70%
Kentucky	6 annually	12.5 credits annually	50.00%
Louisiana	4 annually	12.5 credits annually	33.33%
Maine	5.5 annually	11 credits annually	50.00%
Maryland	NO CLE REQ		
Massachusetts	NO CLE REQ		
Michigan	NO CLE REQ		
Minnesota	doesn't allow	45 credits over a 3 year period	0.00%
Mississippi	6 annually	12 credits annually	50.00%
Missouri	6 annually	15 credits annually	40.00%
Montana	5 annually	15 credits annually	33.33%
Nebraska	5 annually	10 credits annually	50.00%
Nevada	no cap	12 credits annually	100.00%
New Hampshire	6 annually	12 credits annually	50.00%
New Jersey	12 credits per two year period	24 credits over 2 year period	50.00%
New Mexico	4 annually	12 credits annually	33.33%
New York	Experienced attorneys - no cap	24 credits over 2 year period	100.00%
North Carolina	4 annually	12 credits annually	33.33%
North Dakota	15 credits per three year period	45 credits over a 3 year period	33.33%
Ohio	6 credits per two year period	24 credits over 2 year period	25.00%
Oklahoma	6 annually	12 credits annually	50.00%
Oregon	no cap	45 credits over a 3 year period	100.00%
Pennsylvania	4 credits per reporting period	12 credits annually	33.33%
Rhode Island	3 annually	10 credits annually	30.00%
South Carolina	6 credits per reporting period	14 credits annually	42.86%
South Dakota	NO CLE REQ		
Tennessee	8 annually	15 credits annually	53.30%
Texas	no cap	15 credits annually	100.00%



Utah	12 credits per two year period	24 credits over 2 year period	50.00%
Vermont	10 credits per two year period	20 credits over 2 year period	50.00%
Virginia	8 annually	12 credits annually	66.70%
Washington	22.5 credits per three year period	45 credits over a 3 year period	50.00%
West Virginia	12 credits per two year period	24 credits over 2 year period	50.00%
Wisconsin	10 credits per two year period	30 credits over 2 year period	33.33%
Wyoming	5 annually	15 credits annually	33.33%
			2356.22%

## Rule 2. Definitions

\* \* \*

O. “Law and literature course” means a live (not previously recorded) course otherwise meeting the requirements of Rules 4D and 5A, based upon a literary text and designed to generate discussion, insight, and learning about topics such as the practice of law, the history and philosophy of law, rhetoric, lawyers’ professional or ethical responsibilities, professional development, and the elimination of bias in the legal profession and in the practice of law.

\* \* \*

Q. “On-Demand course” means archived CLE programming that meets all the requirements of Rule 5A and is available to participants at any time.

*Re-letter definitions Q-W so the definitions remain in alphabetical order.*

\* \* \*

## Rule 4. Applying for Credit

\* \* \*

A.(8) Fee in the amount of \$35. This fee may be subject to waiver under the provisions of Rule 3D(1). A fee is not required when submitting an application for either of the following types of courses meeting Rule 4 and Rule 5 requirements:

- (a) A previously approved course that has been recorded and is replayed ~~at a later date~~ in its entirety with a live moderator present throughout the program; or
- (b) A live course 60 minutes or less in duration.

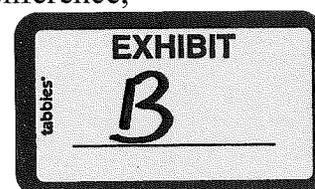
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## Rule 5. Standards for Course Approval

A. (1) The course shall have current, significant intellectual or practical content and shall be presented in a high quality manner permitting participants to hear all of the audio and see all of the video portions of the program, including presentations, audience questions, responses to questions, embedded videos, and other program materials.

\* \* \*

(5) The course shall be presented and attended in a suitable classroom or laboratory setting. A course presented via video recording, simultaneous broadcast, teleconference,



or audiotape or available on-demand or by podcast, may be approved provided that it complies with Rule 6E and a faculty member or moderator is in attendance at all presentations, is accessible to all participants, either in person or via electronic means, ~~or through live transmission~~, allowing all participants to hear and have access to and participate in the question and answer session. No course will be approved which involves solely ~~television or video viewing in the home or office, or correspondence work or self-study, including online self-study.~~

\* \* \*

~~(11) Lawyers residing or working outside of the State of Minnesota during the CLE reporting period who, because of no residence are unable in good faith to attend courses approved as "elimination of bias" as defined in these Rules, may receive up to 2 hours of credit in fulfillment of the elimination of bias requirement by viewing a video or webcast of a course or courses that otherwise meet the requirements of these Rules. If a lawyer is a participant in an elimination of bias course not previously approved for credit under these Rules, the lawyer may seek approval by completing and submitting an application for course approval as described in Rule 4A.~~

#### **Rule 6. Special Categories of Credit**

- A. Ethics and Professional Responsibility. To be approved for ethics credit the course or session within the course must meet the following requirements in ethics or professional responsibility:
- (1) ~~Must Be~~ Be at least 30 minutes in length; and
  - (2) ~~Must Be~~ Be separately identified as ethics or professional responsibility on the course agenda and on the Course Approval Form at Appendix I.
- B. Elimination of Bias in the Legal Profession and in the Practice of Law. To be approved for elimination of bias credit, the course or session within such courses approved as courses in the elimination of bias in the legal profession and in the practice of law must meet the following requirements:
- (1) ~~Must be~~ Be at least 60 minutes in length;
  - (2) ~~Must Be~~ Be identified on the application as fulfilling the elimination of bias requirement and be accompanied by a narrative describing how the course or segments of the course meet one or more of the learning goals as described in the Course Approval Form at Appendix I;
  - (3) ~~Must Focus~~ Focus on issues in the legal profession and in the practice of law and not issues of bias in society in general; and
  - (4) ~~Must Not~~ Not include courses on the substantive law of illegal discrimination unless such courses meet one or more of the learning goals for elimination of bias courses set forth in the Course Approval Form at Appendix I.

\* \* \*

E. On-Demand Courses. A lawyer may claim up to 15 hours of credit within the 45 hour CLE period for on-demand courses as defined in Rule 2Q, subject to the following provisions:

- (1) The course meets all other requirements of Rules 2, 5 & 6;
- (2) The course sponsor agrees to have one or more faculty members accessible to all participants via electronic or other means throughout the 24 month period during which the program is approved;
- (3) The course sponsor or course applicant completes and submits to the Board an Application for Course Approval; and
- (4) The approval for on-demand course is viable for 24 months following the date of approval by the Board office.

### **Rule 7. Other Credit**

- A. Teaching Credit. Credit for teaching in an approved, live (not previously recorded) course shall be awarded to presenting faculty on the basis of one credit for each 60 minutes spent by the faculty preparing the presentation and materials for the course and teaching the course. No credit shall be awarded for teaching directed primarily to persons preparing for admission to practice law. A lawyer seeking credit for teaching and preparation for teaching shall submit to the Board all information called for on the Affidavit of CLE Compliance at Appendix III.

\* \* \*

### **Rule 9. Affidavit of CLE Compliance**

- A. Contents of Affidavit. To maintain active status, a lawyer shall report attendance or participation in no fewer than 45 credit hours of approved continuing legal education courses within a single reporting period which are in compliance with the provisions of Paragraph Rule 9B. A lawyer may report the credits through the Board's Online Lawyer and Sponsor Integrated System (OASIS) or by Affidavit of CLE Compliant (Appendix III). Effective July 1, 2010, the Affidavit of CLE Compliant (Appendix III) must be accompanied by a \$10 processing fee. There is no processing fee for submission through OASIS.
- B. Special Categories of Credit. Lawyers must report:
- (1) no fewer than 3 hours of approved courses in ethics or professional responsibility;
  - (2) no fewer than 2 hours of approved courses in the elimination of bias in the legal profession and in the practice of law;
  - (3) no more than 6 hours of approved courses in law office management;
  - (4) no more than 6 hours of credit for pro bono legal representation provided pursuant to Rule 6D and reported by Appendix II; and
  - (5) no more than 15 hours of credit for on-demand courses.

\* \* \*

**Rule 10. Director's Determinations and Board Review**

- A. Director's Determinations. The Director has the following authority and responsibility:
- (1) To respond in writing to written requests for course approval, giving reasons for the determination;
  - (2) To grant credit to lawyers for ~~attending~~ participating in or teaching approved courses;
  - (3) To grant or deny requests for transfer, waiver, extension of time deadlines or interpretation of these Rules; and
  - (4) To inform the Board about determinations made since the Board's last meeting, together with observations and comments relating to matters under the Board's jurisdiction.

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**Rule 12. Restricted and Involuntary Restricted Status**

- A. Election of Restricted Status. A lawyer duly admitted to practice in this state may elect restricted status as defined in Rule 2UV by sending written notice of such election to the Director, except that a referee or judicial officer of any court of record of the State of Minnesota or lawyer employed and serving as lawyer or legal counsel for any employer, including any governmental unit of the State of Minnesota, is not eligible to apply for restricted status. A lawyer on restricted status shall not be required to satisfy the educational and reporting requirements of these Rules.

**FILED**

July 16, 2012

**OFFICE OF  
APPELLATE COURTS**

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**STATE OF MINNESOTA  
IN SUPREME COURT**

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In re: Changes to the Rule Regulating General Standards for Continuing  
Legal Education Course Approval

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**PETITION OF FIVE LICENSED ATTORNEYS**

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TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

### **BACKGROUND**

Forty-five states currently impose mandatory continuing legal education (MCLE) requirements on attorneys. Of these states, forty-one allow legal practitioners to satisfy some or all of these requirements through on-demand online programs. Minnesota is not one of them. Instead, Minnesota is one of only four states whose rules require that an online continuing legal education (CLE) program be listened to as a live webcast in order to receive accreditation.<sup>1</sup> Lawyers in Minnesota, in other words, can receive CLE credit for listening to a particular online program at its scheduled time, but cannot receive credit for the exact same program if they download it and listen to it the next day.

In drawing the distinction between live and on-demand webcasts, Minnesota lags behind the vast majority of states, whose rules have been updated to account for the technological advances of the past decade. Minnesota also requires its attorneys to complete forty-five CLE credits every

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<sup>1</sup> *See generally CLE Requirements*, West LegalEdcenter, <http://tinyurl.com/CLEREquirements> (last visited May 31, 2012). *See also* Exhibit A (a compilation of the MCLE requirement data found at *id.*).

three years, placing it among those states with the heftiest credit requirements as well.<sup>2</sup>

The Rules of the Minnesota Board of Continuing Legal Education (Board) were not always behind the times. In fact, Minnesota led the original charge in accrediting online CLE. This Court altered the Board's rules in 2000 to allow for accreditation of live webcasts when such a policy was not the norm: as of 2002, two years after the rule change, only twenty states allowed for accreditation of online programs.<sup>3</sup> As technology continued to improve to allow not only for improved webcasts but also for improved on-demand options, other states took the lead in updating their rules. By 2006, twenty-four states had accredited live webcasts, and twenty-three of them had accredited on-demand programming.<sup>4</sup>

Nowadays, every state with MCLE requirements accredits live webcasts and nearly all allow accreditation for on-demand programs as well.<sup>5</sup> Even the American Bar Association offers on-demand CLE.<sup>6</sup> Minnesota stands among a handful of outliers that don't accredit on-demand CLE.

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<sup>2</sup> *Id.*

<sup>3</sup> Harry J. Haynsworth, *Post-Graduate Legal Education in the United States*, 43 S. Tex. L. Rev. 403, 404 (2002).

<sup>4</sup> Peter Glowacki, *Celebrating Twenty Years of Continuing Legal Education*, 40 Val. U.L. Rev. 543, 551 (2006).

<sup>5</sup> *See generally CLE Requirements*, *supra* note 1. *See also* Exhibit A, *supra* note 1.

<sup>6</sup> *CLE Downloads*, American Bar Association, <http://tinyurl.com/ABA-CLE>

When the Board's rules were changed in 2000 to allow credit for live webcasts,<sup>7</sup> members of the Board explained that "these changes have served to clarify and adapt the Rules in light of new developments in technology; they do not represent major changes in what is required for attorneys to earn CLE credit."<sup>8</sup> In other words, according to the Board, the new rules only applied preexisting principles of CLE to new technology. What is of fundamental importance to CLE, in this understanding, is not that a webcast be live, but that it preserves (1) the principle of the Rule 2Q requirement that an attorney be "actively engaged in the subject matter being presented,"<sup>9</sup> (2) the principle of the Rule 2E requirement that the setting of the presentation of the CLE event is "exclusively devoted to the educational activity being

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(last visited June 25, 2012).

<sup>7</sup> Order Promulgating Rules of the Minnesota Board of Continuing Legal Education, No. C2-84-2163 (Minn. Apr. 17, 2000), at [www.mncourts.gov/rules/cle\\_prom\\_rules\\_set.doc](http://www.mncourts.gov/rules/cle_prom_rules_set.doc). Although paragraph (5) of Rule 5A has since undergone a few slight changes in phrasing and grammar, the 2000 updated version of paragraph (5) is substantively identical to the current version for all of this petition's practical purposes. Rule 5A(5) was updated to its current exact wording by Order Promulgating Amendments to the Rules of the Minnesota State Board of Continuing Legal Education, ADM09-8008 (2010), at <http://tinyurl.com/Rule-5A-5>. This version, being the current one, will be cited throughout, although it is worth noting that the substance of the law has not changed in over a decade.

<sup>8</sup> David L. White & Margaret Fuller Corneille, *CLE Credit for Teleconference and Webcast Courses*, Bench & Bar of Minnesota (August 2001), at <http://tinyurl.com/White-Fuller> (Exhibit B).

<sup>9</sup> Minn. Bd. of Continuing Legal Educ., Rules of the Minnesota State Board of Continuing Legal Education, R. 2(Q) (2010), at <http://www.mbcle.state.mn.us/MBCLE/pages/rules.asp>.

presented,”<sup>10</sup> and (3) the underlying principle of both rules—that “the attorney must be focused solely upon the learning activity.”<sup>11</sup>

Petitioners believe these principles can be served just as well by on-demand CLE options as by live options. For the reasons presented below, it is now time for this Court to amend the Board’s rules to recognize the numerous benefits of on-demand CLE.<sup>12</sup>

### **REQUEST**

Petitioners respectfully request this Court modify Rule 5A of the Rules for the Minnesota Board of Continuing Legal Education (Board)<sup>13</sup> (set forth in its current form in Exhibit C) by adopting the changes proposed in a redline version of Rule 5A in Exhibit D. As the 2000 rule change did, this change would serve, in the words of the Board, “to clarify and adapt the Rules in light of new developments in technology” and would “not represent major changes in what is required for attorneys to earn CLE credit.”<sup>14</sup>

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<sup>10</sup> *Id.*, R. 2(E).

<sup>11</sup> White & Corneille, *supra* note 8.

<sup>12</sup> This Court has shown similar flexibility in amending rules regulating CLE. In 2003, it allowed for unlimited credit for courses in professional development, and in 2008, for credit for pro bono service. Order Promulgating Amendments to the Rules of the Minnesota State Board of Continuing Legal Education, No. C2-84-2163 (Minn. Dec. 10, 2003), at <http://tinyurl.com/C2-84-2163> and Order Promulgating Amendments to the Rules of the Minnesota State Board of Continuing Legal Education, No. C2-84-2163 (Minn. Jan. 31, 2008), at <http://tinyurl.com/01-31-2008>.

<sup>13</sup> Minn. Bd. of Continuing Legal Educ., *supra* note 9, R. 5(A).

<sup>14</sup> White & Corneille, *supra* note 8.

## ARGUMENT

Petitioners present two arguments. First, Petitioners argue that the vastly expanded library of course options that accredited on-demand CLE brings with it allows more convenient and more relevant CLE choices for attorneys as well as greater educational and economic value for the CLE program as a whole. Secondly, Petitioners argue that, although there may have been reason in 2000 to believe that principles of educational value such as those embodied in the Board Rules could be honored only by live CLE programs, improvements in technology have made on-demand CLE, including podcasts, substantially identical to live webcasts in terms of adherence to standards of educational value.

### **I. ON-DEMAND CLE OFFERS OPTIONS THAT ARE MORE NUMEROUS, CONVENIENT, RELEVANT, AND VALUABLE THAN THOSE OFFERED BY LIVE WEBCASTS.**

#### ***A. On-demand CLE allows for more expansive course offerings than live webcasts are capable of producing alone.***

A defining difference between live and on-demand webcasts is that live webcasts expire after only one webcast whereas on-demand webcasts can be accessed multiple times for months or even years. It follows from this that at any given point in time there are more on-demand options than live ones even if the same number of each type of program was created. Furthermore, at any given time, the vast majority of Minnesota-accredited course offerings

are inaccessible, their live webcasts scheduled months in the future, whereas on-demand courses are all available at any time.

To see these effects in action, compare the online courses accredited in Minnesota with those accredited in Colorado. Colorado's population<sup>15</sup> and its number of lawyers<sup>16</sup> are roughly the same as Minnesota's, and Colorado's and Minnesota's requirements both average fifteen hours of CLE per year.<sup>17</sup> Significantly, however, Colorado allows all of these credits to be earned through on-demand CLE, including podcasts. If one examines the available offerings of popular CLE provider West LegalEdcenter on a single, given date (for example, on June 11, 2012), courses accredited in Colorado (which include both live and on-demand webcasts) total 6,046, whereas Minnesota-accredited courses (which are exclusively live webcasts) scheduled for that day total a mere six.<sup>18</sup> Attorneys in Colorado have access, on any given day, to more than one thousand times the accredited online CLE options available to attorneys in Minnesota.

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<sup>15</sup> U.S. Census Bureau, Population Estimates, at <http://tinyurl.com/Col-census>

<sup>16</sup> U.S. Bureau of Labor Statistics, Occupational Employment and Wages, May 2011. See details imbedded in map at <http://tinyurl.com/lawyers-census>.

<sup>17</sup> See generally *CLE Requirements*, *supra* note 1. See also Exhibit A, *supra* note 1.

<sup>18</sup> See generally *Online Continuing Legal Education*, West LegalEdcenter, <http://westlegaledcenter.com/home/homepage.jsf> (last visited June 8, 2012).

***B. More expansive offerings of accredited courses increase convenience to attorneys.***

The greater number of available on-demand courses carries many benefits for attorneys. The most obvious of these benefits is that on-demand courses allow lawyers to participate in CLE at their convenience.

***1. Busy attorneys benefit from more convenient CLE.***

Busy lawyers need to schedule CLE around their business rather than their business around CLE. They often cannot afford to sacrifice time working with their clients or preparing for their cases to take CLE courses. During any given free hour in an attorney's day, it is fairly likely that no live webcast is being presented, while thousands upon thousands of on-demand options would be available to meet Minnesota lawyers' requirements at any hour of any day if such courses could gain accreditation. Even when a live webcast is offered at a time available to a particular lawyer, such as over the lunch hour, it would be far more convenient for the lawyer to have the option of taking the course at another time—at home or on the morning bus ride, for instance—if it works better for his or her schedule.

***2. Out-state and out-of-state attorneys benefit from access to more convenient CLE.***

The additional educational value accompanying on-demand options is especially important for the many Minnesota attorneys operating outside of the Twin Cities. As Peter Glowacki, former Director of the American Bar

Association Center for CLE, points out, online CLE may be the only option for lawyers attempting to meet requirements in rural or remote locations without easy access to live conferences. The enormous expansion of relevant CLE options that would accompany accreditation of on-demand CLE would equalize opportunities for such lawyers, placing them on a more even playing field with their metropolitan counterparts.<sup>19</sup>

On-demand CLE is even more valuable to Minnesota-licensed attorneys working outside of the state or country. Consider the case of an attorney on active military duty. Such an attorney could very likely be stationed overseas, in a dramatically different time zone, for an entire compliance period, with limited bandwidth and limited access to civilian Internet connection. In such an environment, the chance to take a live webcast course in the midst of military operations is slim to none, while downloading an on-demand course for later use is far more feasible. Paragraph (11) of Rule 5A of the Board Rules seems to acknowledge the difficulty out-of-state lawyers face in finding live credits for the Minnesota-specific “elimination of bias” requirement, allowing such lawyers to get two elimination of bias credits by taking courses with no live component whatsoever.<sup>20</sup> But attorneys on active military duty have the same difficulty accessing *any* live courses—and if on-demand

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<sup>19</sup> Glowacki, *supra* note 4, at 550.

<sup>20</sup> Minn. Bd. of Continuing Legal Educ., *supra* note 9, R. 5(A).

options are sufficient, as Rule 5A(11) suggests, for elimination of bias, there is no reason they should not be sufficient for all credits. While Rule 9F allows lawyers “called to active duty military service” to request an extension on the compliance period from the Board<sup>21</sup>, it would be more convenient for all parties involved to allow lawyers serving active duty to complete on-demand CLE courses as the opportunity arises. The ability to extend the compliance period fails to address the problems faced by those who serve in the military.

*C. More expansive course offerings increase the relevance of CLE.*

Another benefit of on-demand CLE’s expansion of options over exclusively live CLE is the increased relevance of CLE to each particular attorney. When as few as six accredited CLE options might be available on any given day, the odds that any of them deal even tangentially with a given lawyer’s area of specialty are remote. Indeed, West LegalEdcenter, which often begins advertising Minnesota-accredited live webcasts more than six months in advance of their scheduled date, currently displays no offerings scheduled at any time in the foreseeable future in many of the legal categories it allows users to search by, including such large and prominent practice areas as asset forfeiture and juvenile law, to name only two.<sup>22</sup> For Minnesota lawyers in these fields and a host of others, online CLE credit

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<sup>21</sup> *Id.*, R. 9(F).

<sup>22</sup> *See generally Online Continuing Legal Education*, *supra* note 18.

relevant to their actual practice is often unobtainable. In Colorado, to use the same examples, on-demand and podcast options total three in the area of asset forfeiture and eleven in juvenile law.<sup>23</sup> Furthermore, because the Colorado courses are on-demand, they are available to attorneys immediately. Expansive on-demand libraries guarantee relevant courses for attorneys practicing in all specialties within the legal profession.

*D. More relevant course offerings increase the educational value of the CLE program as a whole.*

If attorneys have access to accredited CLE options with greater relevance to their own practices, the CLE program as a whole will be better equipped to deliver a meaningful learning experience to legal practitioners. That CLE in Minnesota currently falls short of its educational potential can be seen clearly in how it is advertised by Minnesota CLE, a major provider of live conference, video replay, and live webcast CLE courses. In light of the June 30 end-of-compliance period, for example, Minnesota CLE presented lawyers with its “June Webcast Extravaganza,” a collection of thirty-five webcasts that Minnesota CLE suggests be purchased all together as a substantially reduced-cost bundle to net a lawyer 45.5 credits (just over the

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<sup>23</sup> *Id.*

three-year requirement of forty-five credits).<sup>24</sup> The fact that Minnesota CLE markets to lawyers who have yet to earn a single credit one month before the end of a three-year compliance period suggests many lawyers regard CLE as a mere burden rather than as a resource for updated legal information or a genuine provider of beneficial education.<sup>25</sup> By contrast, on-demand options would allow attorneys to earn credit for courses that truly interest them and inform their particular practices, increasing the educational value of CLE.

*E. On-demand CLE increases the economic value of the CLE program as a whole.*

Because there is such a low marginal cost to the production of on-demand CLE—all of the expense is in the production of the original live webcast—individual on-demand courses can be sold at lower prices than their live counterparts, for which the entire expense must be recouped in a single session. According to low-cost-CLE provider Richard Clem, while the going rate for podcast courses is about \$10 per credit hour, the going rate for live courses is often around \$50-60 per credit hour. Even Clem’s low-cost business

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<sup>24</sup> Exhibit E. A similar advertisement that includes Minnesota CLE’s “May Webcast Extravaganza” is available at *Seminar Detail*, Minnesota CLE, <http://tinyurl.com/Minn-CLE> (last visited June 12, 2012).

<sup>25</sup> The same can be seen in the large attendance at Kinney & Lange’s annual intellectual property CLE (Kinney & Lange, *Seminar Offerings*, <http://www.kinney.com/seminars/index.html> (last visited June 25, 2012)), attended by some lawyers who do not specialize in intellectual property due to its proximity to the end of the compliance period and its being free of charge. Telephone Interview with Richard Clem, Richard Clem Continuing Legal Education (June 25, 2012).

model must charge around \$25 per credit hour for his live telephone conference call programs in Minnesota due to the increased expenses associated with them. In states such as California, where all CLE credits can be earned through on-demand courses, it is possible, according to Clem, for lawyers to earn all or most of their credits for free without difficulty,<sup>26</sup> through such services as 4 Free CLE.<sup>27</sup>

The many lawyers who subscribe to an online CLE provider's entire catalog for a single fixed rate also stand to benefit economically from the accreditation of on-demand CLE. Such subscriptions often already include the provider's on-demand options,<sup>28</sup> such that Minnesota lawyers with subscription services currently pay for access to thousands of courses that they cannot take for credit. Allowing for accreditation of on-demand CLE would allow these attorneys to benefit fully from the services that they already pay for.

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<sup>26</sup> Telephone Interview with Richard Clem, *supra* note 25.

<sup>27</sup> 4 Free CLE, <http://www.4freecle.blogspot.com> (last visited June 25, 2012).

<sup>28</sup> *See, e.g., Learn about subscriptions (solo small info)*, West LegalEdcenter, <http://tinyurl.com/CLE-subs> (last visited June 29, 2012) (documenting that West LegalEdcenter's subscriptions are a national product—they contain all courses regardless of state of accreditation—giving lawyers in Minnesota who buy the subscription access to the entire library of on-demand courses despite their lack of accreditation in Minnesota).

## II. THERE IS NO LONGER ANY SIGNIFICANT DIFFERENCE IN EDUCATIONAL STANDARDS BETWEEN LIVE AND ON-DEMAND WEBCASTS.

### *A. Continuing education requirements for other professions recognize on-demand courses.*

To oppose accrediting on-demand CLE is to say that the professional standards good enough for Minnesota's law enforcement are not good enough for the state's lawyers. The Rules of the Board of Peace Officer Standards and Training (POST) allows for on-demand continuing education courses,<sup>29</sup> and services such as Police Accredited TRaining OnLine (PATROL) provide Minnesota police officers with online training courses that are available for credit on-demand for months at a time.<sup>30</sup>

Minnesota medical professionals also frequently use on-demand programs for the fulfillment of continuing education requirements. The Board of Medical Practice allows doctors to earn continuing medical education (CME) credits through any course sponsored by an organization accredited by the Accreditation Council for Continuing Medical Education (ACCME)<sup>31</sup>, and ACCME accredits on-demand "enduring materials" such as videos or

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<sup>29</sup> See Minn. R. 6700.0900 (2011).

<sup>30</sup> See *Frequently Asked Questions*, PATROL, <http://tinyurl.com/Patrol-FAQ> (last visited June 27, 2012).

<sup>31</sup> Minn. R. 5605.0300 (2011).

recordings of previous live webcasts.<sup>32</sup> The Board of Dentistry also allows for the use of on-demand programs for professional development credits,<sup>33</sup> and dentists can get credit from taking webcast courses recorded years ago, such as the Clinical Grand Rounds webcasts offered by the University of Minnesota School of Dentistry.<sup>34</sup>

If on-demand programs meet the educational standards to which Minnesota holds police officers, surgeons, and dentists, it is difficult to conceive of them falling short of the educational standards to which the state holds attorneys. Furthermore, petitioners' requested rule change does not include any change to the fundamental test of CLE quality: the requirement that the content of each course be approved by the Board.

***B. Due to advances in network technology, there is no difference between environments in which live webcast can be accessed and environments in which on-demand webcasts can be accessed.***

In 2000, restricting online CLE to live webcasts may have initially ensured a particular classroom setting—a desktop computer in an office with an internet connection—but in 2012, it is possible to listen to a live webcast in nearly any environment. Almost every coffee shop and restaurant now provides its customers with free Wi-Fi access, and most cellular networks are

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<sup>32</sup> See *Enduring Materials: Definition and Requirements*, ACCME, <http://tinyurl.com/ACCME-1> (last visited June 27, 2012).

<sup>33</sup> See Minn. R. 3100.5100 (2011).

<sup>34</sup> See *Continuing Dental Education*, University of Minnesota, <http://tinyurl.com/Dental-CE> (last visited June 27, 2012).

now powerful enough that a lawyer could participate in a live webcast on a smartphone anywhere—even in the absence of a Wi-Fi connection. In this day and age, lawyers can listen to a live webcast in a car, train, or airplane as easily as in a traditional office setting. In this respect, on-demand webcasts or podcasts are truly no different from their live counterparts.

*C. On-demand CLE programs can provide participants the same benefits as live programs.*

Online communication and file-sharing now allow on-demand CLE to provide the benefits of question-and-answer and discussion in a classroom setting. Petitioners' proposed amendment includes requiring access to the presenter or moderator by voicemail, email, or online discussion forum.

As early as 2006, Peter Glowacki, then Director of the American Bar Association Center for CLE, proposed several options for designing on-demand CLE to imitate live question-and-answer.<sup>35</sup> Among them, Glowacki suggested questions could be recorded on a telephone system and answers recorded and sent back via a dropbox-type file-sharing system—a sort of online voicemail. Another perhaps simpler solution would be to simply allow CLE participants to email the instructor questions for the duration of time that the program stays on-demand. The instructor could then send an email response to just the participant asking the question or to a list of previous

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<sup>35</sup> Glowacki, *supra* note 4, at 548.

participants who have indicated that they wish to have access to subsequent discussion of the topic, contributing to the classroom-like experience.

According to Clem, who has used email as a means of answering questions for participants in his Wisconsin podcast courses, this method is a perfectly capable recreation of live question-and-answer. In general, Clem has found that podcasts provide an educational experience equal to that of live programs, and that participants in his podcast courses are fully engaged in the learning process.<sup>36</sup>

The benefits of a traditional classroom experience can also be gained by adding, as West LegalEdcenter does to its podcast application, an online discussion forum, where participants can discuss the course material with one another. According to West Professional Development, the intention behind this function is to ensure that podcast CLE “recreat[es] an already existing experience”<sup>37</sup> of live and webcast CLE. An instructor or moderator could also have access to and participate in such a forum, which would allow the forum to function as a vehicle for question-and-answer.

On-demand programs can also keep track of program participants.

Online CLE providers, such as West LegalEdcenter, advertise their

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<sup>36</sup> Telephone Interview with Richard Clem, *supra* note 25.

<sup>37</sup> Gina Roers & Kevin McCormack, *Mobile CLE – Lessons From the Development Trenches*, West LegalEdcenter, 2 (October 2010), <http://tinyurl.com/c39wme5> (follow “Mobile CLE—Lessons From the Development Trenches” hyperlink) (Exhibit F).

willingness to adapt their programs to the demands of different state regulations,<sup>38</sup> and the requirement of paragraph (7) of Rule 5A that a list must be kept of program participants<sup>39</sup> is as easily accomplished with on-demand CLE options as with live ones. In the same way that a provider is able to keep track of who orders and completes a live webcast, a provider can track who downloads and completes an on-demand webcast or podcast program for verification purposes.

*D. Podcast programs allow access to the same visual materials available through video webcast courses.*

When an on-demand program is presented through a smartphone application, that course is often referred to as a podcast. Podcasts are capable of providing access to course materials—such as slideshows or written handouts—in the same way live webcasts provide them: through downloadable files. West LegalEdcenter, for example, includes access to downloadable course materials right next to access to its online discussion forum in its podcast application,<sup>40</sup> producing the same effect already found in many live webcasts.

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<sup>38</sup> See *id.*

<sup>39</sup> Minn. Bd. of Continuing Legal Educ., *supra* note 9, R. 5(A).

<sup>40</sup> See Lee Ann Enquist, *Lawyers Enjoy New Level of Productivity With iPhone Technology*, West LegalEdcenter, 2, <http://tinyurl.com/3x6ppcb> (follow “Lawyers Enjoy New Level of Productivity With iPhone Technology” hyperlink) (last visited June 25, 2012) (Exhibit G).

## PETITIONERS

The five petitioners are attorneys licensed in Minnesota. Each has a unique practice and experience, and each has his or her own particular reasons to support the accreditation of on-demand CLE.

Kent Laugen is a solo practitioner in Red Wing who has been licensed to practice in Minnesota since 1988. As he believes is the case with many of his out-state counterparts, he earns all his CLE credits through online courses. The hassle of attending live events—most often held in the Twin Cities area—is more than he cares to deal with: fuel costs, downtown parking, and travel time all make online CLE a much more appealing option for attorneys living out-state, especially considering the current economic conditions in out-state areas. The market conditions of the last few years have hit Red Wing especially hard, and, according to Laugen, out-state lawyers are still struggling. The lower costs of on-demand CLE would make meeting the state's requirement less onerous for out-state lawyers. Laugen also finds that he learns more from the webcasts he accesses through West LegalEdcenter than he ever did at conferences; he finds he is able to pay much better attention and has access to a wider course selection. Live webcasts are far from perfect, however. In addition to being hard to schedule, Laugen says that the live requirement unnecessarily limits the available online options that are so critical to the continuing legal education of out-

state attorneys. Laugen finds that he is unable to earn credit for many courses that would be truly valuable for his practice only because he is not available at the scheduled time. In this way, he believes the live requirement sells the educational potential of CLE short.

Nicole Concordia is a solo estate planning attorney and a mother, who works from her home office in Minnetonka. In 2010, she opened Concordia Law Group, PLLC, while expecting the birth of her first child, so she could craft her own flexible work schedule while being the primary caretaker of her daughter. Estate planning was the perfect fit for Concordia: as much of the practice is transactional in nature, she can do it whenever the opportunity arises—during her child’s nap time, in the evenings, or on weekends. Live CLE presents a challenge for Concordia, since she cannot often predict when her daughter will need her attention. The ability to hit the pause button on a podcast, attend to her baby, and later return to the lecture, would present an invaluable opportunity to integrate CLE into her busy schedule. Many parents face the same dilemma as Nicole. In this day and age when flexible schedules, flexible office locations and other accommodations are being made to reduce the burden of being an engaged parent and having a career, on-demand CLE is a logical step in helping Minnesota lawyers have both.

Peter Swanson has been licensed in Minnesota since 1994. During that time, he has spent seven years in active military service. He served as a

judge advocate in the Army from 1995-2000. First deployed to the Balkans in May 1998, his first CLE reporting year, Swanson recalls spending the last night before he left for pre-deployment processing finalizing a CLE affidavit. As a reservist, he was mobilized to active duty and deployed in July 2007, also a reporting year. He experienced difficulty trying to take live courses in an overseas military environment. Largely as a result of the mobilization process, Swanson completed only six hours of CLE between July 2006 and September 2008. Working around military operations in a different time zone, he was rarely in a position to take live courses. He would have greatly benefited from the convenience of on-demand CLE. Currently, Swanson is a Master of Science in Teaching candidate at the College of Saint Scholastica. His program utilizes traditional classes, as well as on-demand coursework and discussion forums like those advocated in this petition. On-demand CLE would allow Swanson to balance his CLE education with his reserve, career and education obligations.

Kristian Dahl is a partner with the law firm of McGuire Woods LLP in Richmond, Virginia. His practice focuses on energy regulatory issues at the state and federal levels. He has been a member of the Minnesota Bar since 1996 and has met his MCLE requirements as an out-of-state attorney since 1997. Meeting these requirements often includes preparing and filing for approvals for individual CLE courses at his own time and expense, or

traveling to Washington, D.C., Chicago and elsewhere—at considerable costs of time and money that could be avoided with accredited on-demand CLE. Moreover, Dahl would benefit from a greater variety of course options because his practice is specialized. Dahl counsels clients on a range of energy issues before the Federal Energy Regulatory Commission (FERC) and state commissions on issues such as utility rates, natural gas pipelines and distribution and energy regulatory aspects of transactions for the financing, development, acquisition and disposition of energy assets—a comparatively specialized practice area for which more expansive CLE offerings would aid in terms of relevance. Dahl’s firm also mandates his participation in the Practising Law Institute’s (PLI) “Privileged Member” programs,<sup>41</sup> for which he is assessed several hundred dollars annually. PLI’s programs include both live and web-based CLE seminars, and through its “CLE Now” on-demand CLE courses, PLI offers on-demand CLE programs often more specific and helpful to the individual needs of his practice and clients than what is offered live or locally in Virginia. PLI even offers elimination-of-bias CLE programs on-demand, for which suitable courses are particularly difficult for out-of-state attorneys licensed in Minnesota, such as Dahl, to find. However, because Dahl can only fulfill his Minnesota CLE requirements through live

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<sup>41</sup> See *Continuing Legal Education Seminars, Treatises, and Webcasts*, Practising Law Institute, <http://www.pli.edu> (last visited July 2, 2012).

course work, the PLI membership, with its expansive on-demand CLE offerings, is of little practical use for meeting the Minnesota MCLE requirements. Dahl's practice, and thus his clients, would benefit from access to more convenient, relevant courses through accredited on-demand CLE.

Seth Leventhal is a litigator in Minneapolis whose business depends on his hard-working nature, extensive knowledge, and price-competitiveness. Formerly a partner at Dorsey & Whitney, he opened his solo practice, Leventhal, PLLC, in 2010. He takes pride in being the only attorney to work on his clients' cases, but the busy schedule of a solo practitioner leaves Leventhal little spare time during the business day. Without other attorneys in his office, his clients have no one to turn to when he must take time out of his work day for live CLE. If he could receive credit for on-demand CLE, he could devote his entire work day to his busy practice and get his credits in the evenings at home. As a solo litigator, Leventhal's knowledge of the law must be extensive enough for his whole practice, and with on-demand access to thousands of accredited course options, he would gain knowledge most relevant to his cases. Moreover, Leventhal not only strives to offer his clients the same quality litigation experience as larger firms, but offers it at less than half the hourly rate that larger firms expect. Leventhal, and, ultimately, his clients would benefit from lower CLE costs if less-expensive on-demand options were accredited.

## CONCLUSION

The time has come for Minnesota's rules to recognize the wisdom that forty-one of this country's forty-five states with MCLE have: accredited on-demand CLE would benefit lawyers by making CLE offerings more expansive, convenient, relevant, and, therefore, more valuable. Furthermore, these benefits can be reaped without loss of educational rigor, as there is no significant difference between the inherent educational values of live webcasts and that of their on-demand counterparts. As has been recognized in many other professions, any relevant technological difference that may have ever existed between the two no longer exists, with modern technologies and designs allowing on-demand courses and podcasts to perform every important educational function of live webcasts.

For the foregoing reasons, Petitioners respectfully request that the Court modify the Standards for Course Approval as set forth in Exhibit D in this Petition to greatly expand the accredited educational opportunities available to Minnesota lawyers.

Dated: July 13, 2012

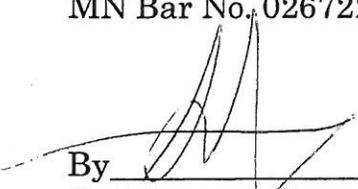
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## **EXHIBITS**

## EXHIBITS

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State MCLE requirement data Found at WestLegalEdcenter.....	Exhibit A
David L. White & Margaret Fuller Corneille <i>CLE Credit for Teleconference and Webcast Courses</i> Bench & Bar of Minnesota August 2001.....	Exhibit B
Minnesota Board of Continuing Legal Education Rule 5A Current Version.....	Exhibit C
Minnesota Board of Continuing Legal Education Rule 5A Proposed Redline Version.....	Exhibit D
Minnesota CLE June Webcast Extravaganza Advertisement.....	Exhibit E
Gina Roers & Kevin McCormack <i>Mobile CLE – Lessons From the Development Trenches</i> West LegalEdcenter October 2010.....	Exhibit F
Lee Ann Enquist <i>Lawyers Enjoy New Level of Productivity With iPhone Technology</i> West LegalEdcenter.....	Exhibit G

## Mandatory Continuing Legal Education (MCLE) Requirements by State

	Hours/year	Percentage of credits available online	Percentage of online credits available on-demand
Alabama	12	100%	50%
Alaska	12	100%	100%
Arizona	15	100%	100%
Arkansas	12	100%	0%
California	8.33	100%	100%
Colorado	15	100%	100%
Connecticut	N/A	N/A	N/A
Delaware	12	100%	50%
D.C.	N/A	N/A	N/A
Florida	10	100%	100%
Georgia	12	50%	100%
Hawaii	12	100%	100%
Idaho	10	100%	50%
Illinois	15	100%	100%
Indiana	12	17%	100%
Iowa	15	100%	0%
Kansas	12	42%	0%
Kentucky	12.5	100%	48%
Louisiana	12.5	32%	100%
Maine	11	100%	50%
Maryland	N/A	N/A	N/A
Massachusetts	N/A	N/A	N/A
Michigan	N/A	N/A	N/A
Minnesota	15	100%	0%
Mississippi	12	50%	100%
Missouri	15	100%	40%
Montana	15	100%	33%
Nebraska	10	50%	100%
Nevada	12	100%	100%
New Hampshire	12	100%	50%
New Jersey	12	50%	100%
New Mexico	12	100%	33%
New York	12	100%	100%
North Carolina	12	100%	33%
North Dakota	15	100%	33%

<b>Ohio</b>	12	25%	100%
<b>Oklahoma</b>	12	100%	50%
<b>Oregon</b>	15	100%	100%
<b>Pennsylvania</b>	12	33%	100%
<b>Puerto Rico</b>	12	33%	100%
<b>Rhode Island</b>	10	100%	30%
<b>South Carolina</b>	14	43%	100%
<b>South Dakota</b>	N/A	N/A	N/A
<b>Tennessee</b>	15	53%	100%
<b>Texas</b>	15	100%	100%
<b>Utah</b>	12	50%	100%
<b>Vermont</b>	10	100%	50%
<b>Virgin Islands</b>	12	100%	100%
<b>Virginia</b>	12	100%	67%
<b>Washington</b>	15	100%	50%
<b>West Virginia</b>	12	50%	100%
<b>Wisconsin</b>	15	100%	33%
<b>Wyoming</b>	15	100%	33%

“Hours/year” refers to the number of credit hours required per year of the compliance period.

“Percentage of credits available online” refers to the percentage of total credits that can be earned through online CLE programs of any sort.

“Percentage of online credits available on-demand” refers to the percentage of online credits that can be earned through on-demand webcasts.

“N/A” indicates a state without mandatory continuing legal education requirements.



LAWYER AT LARGE

## **CLE Credit for Teleconference and Webcast Courses**

*by David L. White and Margaret Fuller Corneille*

**I**n July of 2000, the Minnesota Supreme Court adopted new Rules for the Minnesota Board of Continuing Legal Education that change the way Minnesota attorneys can obtain their CLE credits. The new rules apply to courses presented on or after July 1, 2000.

Attorneys are now able to attend and get CLE credit for teleconference courses or webcast courses, *but only after meeting certain conditions*. The conditions balance attorneys' need to have easy access to CLE with the Board's interest in maintaining standards for CLE and preserving the collegial experience that is integral to professional education. Accordingly, an attorney can get CLE credit for electronically broadcast courses only when the course the attorney attends is "live." This concept bears further explanation.

### **Live Presentation and Live Attendance**

The Board Rule 5(A)(5) requirements make it possible to receive CLE credit for seminars webcast over the Internet. They can be approved so long as they are scheduled for and held on the particular day and time and are presented "live" or with a "live moderator." This is now also achieved by using either *audio or audio/video teleconferencing*. Both teleconference and Internet



MARGARET FULLER CORNEILLE is director of the Minnesota Board of Law Examiners, the Minnesota Board of Continuing Legal Education, and the Minnesota Board of Legal Certification. She received a J.D. degree in 1978 from the University of Akron School of Law. She is a member of the Ohio and Minnesota bars.



Twin Cities attorney DAVID WHITE is the immediate past chair of the Minnesota State Board of Continuing Legal Education. An ERISA attorney, he has also chaired the MSBA Employee Benefits Section and the

webcast courses can be approved, but they must be presented on a particular date and at a certain physical location that are specified in the application for accreditation. This means that wholly interactive Internet courses or audio or videotapes that are not scheduled for presentation at a particular time and place will not be accredited.

Minnesota Chapter,  
Midwest Pension  
Conference. He is a  
graduate of Ohio  
University and Harvard  
Law School.

Since the early 1980s, the CLE Rules have permitted CLE credit for video replay courses so long as there is a live moderator present either at the CLE location or through some type of telecommunications hook up. The new rules won't change that.

While the accredited program may be available for viewing at any time, the attorney can receive credit only if she views it during the *live* broadcast. This is an important distinction and one that is going to require clarification if attorneys are to understand the distinction. A replay at a later date without a live moderator will receive no credit.

### **Minnesota Accreditation Status**

Attorneys should beware when sponsors advertise a course as having a specific number of credit hours or a specific type of credit. Until a credit application is filed in the Board's office, reviewed and an accreditation determination made, the sponsor's statement of credits has no weight. It is important to check advertisements for the use of the words "credit applied for" or "credits granted." If the former language is used, there is no guarantee that the credits applied for will be granted. It may very well turn out that the program is not approved for the number of hours or the types of credits that the sponsor represents. The Board asks program sponsors to make every effort to have information about program credit accurately stated in the promotional material.

### **Presentations Viewed from Home**

While the new rules provide attorneys with many more options for attending courses by teleconference or webcast, a source of confusion arises concerning home viewing of video courses or webcast courses. Any advertisement or promotional material that states that

Minnesota lawyers can participate for credit in CLE seminars from their home or office is overstated. The Rules specifically prohibit CLE credit for self-study or home viewing.

## **"Classroom Setting"**

An example of the circumstances in which an attorney can, however, receive credit for CLE from home would be when the attorney conducts his/her practice from a home office and when that office qualifies as a "classroom setting" as newly defined by Rule 2D of the Board Rules. The Rule now states:

A classroom setting means a room, *including an office*, suitably appointed with chairs, writing surfaces, lecterns and other normal accouterments of a teaching room that is *exclusively devoted to the educational activity being presented*.

The Rule 2 provision which states that the office must be "exclusively devoted to the educational activity" means that the attorney who is seeking credit for participating in a CLE broadcast or webcast must stop making or receiving phone calls, and must not be reading or signing documents or otherwise conducting legal business while the program is being presented. Instead, as with any other CLE presentation, the attorney must be focused solely upon the learning activity. In addition, the area designated as the CLE classroom must meet the traditional classroom requirements of writing surfaces, etc.

## **"Participant"**

Rule 2(G) is also relevant to the definition of CLE. Rule 2(G) now defines "participant" to mean "a lawyer licensed in Minnesota attending an approved course and *actively engaged in the subject matter being presented*." This provision is meant to be read in conjunction with the new provision stating that the classroom setting is "exclusively devoted to the educational activity being presented."

Read together, the two rules are intended to require attorneys who are participating via the Internet or teleconference *touse their office exclusively for the CLE*

*event* during the time in which it is being presented. The attorney has to devote her attention as well as her office to the educational program. Similarly, the attorney cannot just pop a videocassette into the tape player in the home office and leave the room.

OVERALL, while numerous changes have been made to the Rules, these changes have served to clarify and adapt the Rules in light of new developments in technology; they do not represent major changes in what is required for attorneys to earn CLE credit. Readers are encouraged to visit the Continuing Legal Education Board's Web site at <http://www.mbcle.state.mn.us/mbcle/pages/home.asp> for additional information regarding new and old rule requirements and approved courses in all three (3) categories of credit -- standard, elimination of bias, and ethics CLE. Out-of-state lawyers have additional options for receiving credit for elimination of bias courses. These options are found at Rule 5A(11) of the CLE Rules.

Current Rule

Rule 5. Standards for Course Approval

A. General Standards. A course must meet the following standards before approval is granted.

- (1) The course shall have significant intellectual or practical content.
- (2) The course shall deal primarily with matter directly related to the practice of law, the professional responsibility or ethical obligations of lawyers, the elimination of bias in the legal profession and in the practice of law, law office management, or the professional development of lawyers.
- (3) The course shall be taught by faculty members qualified by practical or academic experience to teach the specified subject matter. Legal subjects shall be taught by lawyers.
- (4) Any written materials should be thorough, high quality, readable, carefully prepared, and distributed to all participants at or before the time the course is offered.
- (5) The course shall be presented and attended in a suitable classroom or laboratory setting. Courses presented via video recording, simultaneous broadcast, teleconference, or audiotape may be approved provided that a faculty member or moderator is in attendance at all presentations, either in person or through live transmission, allowing all participants to hear and participate in the question and answer session. Subject to the exception of paragraph (11) below, no course will be approved which involves solely television or video viewing in the home or office, or correspondence work or self-study, including online self-study.
- (6) Credit will not normally be given for speeches at luncheons or banquets.

(7) A list of all participants shall be maintained by the course sponsor and transmitted to the Board upon request, following the presentation of the course.

(8) Credit shall be awarded on the basis of one credit hour for each 60 minutes of instruction at an approved course.

(9) A lawyer shall not receive credit for any course attended before being admitted to practice law in Minnesota, but one so admitted may receive credit of one hour for each 60 minutes actually spent in attendance, for attending for credit or as an auditor, a regular course offered by a law school approved by the American Bar Association.

(10) Notwithstanding the provisions of paragraph (9) above, a person who takes approved courses or teaches in an approved course after sitting for the Minnesota Bar Examination, but before admission to practice, may claim credit for the courses taken or the teaching done, if he or she passes that bar examination.

(11) Lawyers residing or working outside of the State of Minnesota during the CLE reporting period who, because of nonresidence are unable in good faith to attend courses approved as "elimination of bias" as defined in these Rules, may receive up to 2 hours of credit in fulfillment of the elimination of bias requirement by viewing a video or webcast of a course or courses that otherwise meet the requirements of these Rules. If a lawyer is a participant in an elimination of bias course not previously approved for credit under these Rules, the lawyer may seek approval by completing and submitting an application for course approval as described in Rule 4A.

Proposed Rule

Rule 5. Standards for Course Approval

A. General Standards. A course must meet the following standards before approval is granted.

- (1) The course shall have significant intellectual or practical content.
- (2) The course shall deal primarily with matter directly related to the practice of law, the professional responsibility or ethical obligations of lawyers, the elimination of bias in the legal profession and in the practice of law, law office management, or the professional development of lawyers.
- (3) The course shall be taught by faculty members qualified by practical or academic experience to teach the specified subject matter. Legal subjects shall be taught by lawyers.
- (4) Any written materials should be thorough, high quality, readable, carefully prepared, and distributed to all participants at or before the time the course is offered.
- (5) The course shall be presented and attended in a suitable classroom or laboratory setting. Courses presented via video recording, simultaneous broadcast, teleconference, on-demand webcast, podcast, or audiotape may be approved provided that a faculty member or moderator ~~is in attendance at all presentations,~~ is accessible to all participants, either in person or through live transmission, voicemail, email, or online discussion forum, allowing all participants to ~~hear and have access to and~~ participate in the question and answer session. Subject to the exception of paragraph (11) below, no course will be approved which involves solely ~~television or video viewing in the home or office, or~~ correspondence work or self-study, including online self-study.

- (6) Credit will not normally be given for speeches at luncheons or banquets.
- (7) A list of all participants shall be maintained by the course sponsor and transmitted to the Board upon request, following the presentation of the course.
- (8) Credit shall be awarded on the basis of one credit hour for each 60 minutes of instruction at an approved course.
- (9) A lawyer shall not receive credit for any course attended before being admitted to practice law in Minnesota, but one so admitted may receive credit of one hour for each 60 minutes actually spent in attendance, for attending for credit or as an auditor, a regular course offered by a law school approved by the American Bar Association.
- (10) Notwithstanding the provisions of paragraph (9) above, a person who takes approved courses or teaches in an approved course after sitting for the Minnesota Bar Examination, but before admission to practice, may claim credit for the courses taken or the teaching done, if he or she passes that bar examination.
- (11) Lawyers residing or working outside of the State of Minnesota during the CLE reporting period who, because of nonresidence are unable in good faith to attend courses approved as "elimination of bias" as defined in these Rules, may receive up to 2 hours of credit in fulfillment of the elimination of bias requirement by viewing a video or webcast of a course or courses that otherwise meet the requirements of these Rules. If a lawyer is a participant in an elimination of bias course not previously approved for credit under these Rules, the lawyer may seek approval by completing and submitting an application for course approval as described in Rule 4A.

# JUNE WEBCAST

## EXTRAVAGANZA

**Get all 35 June webcasts and  
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### Torts in Court

Prof. Michael K. Steenson & Prof. David J. Prince  
**Friday, June 1 • 9:00 – 11:00 a.m. • \$135**  
 2.0 standard CLE credits

### The Fab Four and Attorney Lies: How the Beatles (and Other Events From Their Generation) Help Us Understand Misrepresentation

Stuart I. Teicher  
**Wednesday, June 6 • 9:00 – 10:00 a.m. • \$75**  
 1.0 ethics credit

### 21st Century Persuasive Writing: Short Writing

Stuart I. Teicher  
**Wednesday, June 6 • 10:30 – 11:30 a.m. • \$75**  
 1.0 standard CLE credit

### When Moonshine Loses Its Luster

Stuart I. Teicher  
**Wednesday, June 6 • 12:00 – 1:00 p.m. • \$75**  
 1.0 elimination of bias credit

### How to Avoid Hating the Law 10 Years From Now

Stuart I. Teicher  
**Wednesday, June 6 • 2:00 – 3:00 p.m. • \$75**  
 1.0 standard CLE credit

### iPads for Lawyers

Peter H. Berge & Todd C. Scott  
**Monday, June 11 • 9:00 – 10:00 a.m. • \$75**  
 1.0 standard CLE credit

### Elimination of Bias: Disabilities Related to Mental Health and Addiction

Joan Bibelhausen  
**Monday, June 11 • 12:00 – 2:00 p.m. • \$135**  
 2.0 elimination of bias credits

### Reading/Understanding Financial Statements and Tax Returns for Attorneys

Rick Berning & John Heidebrecht  
**Tuesday, June 12 • 12:00 – 2:00 p.m. • \$135**  
 2.0 standard CLE credits

### The 2012 Environmental Law Update

Thaddeus R. Lightfoot, Joseph G. Maternowski,  
 Steven W. Nyhus & Ann M. Seha  
**Wednesday, June 13 • 9:00 – 11:00 a.m. • \$135**  
 2.0 standard CLE credits

### New Lawyer Series: Handling Your First Consumer Law Case \*\*\*

Randall P. Ryder & Christopher S. Wheaton  
**Wednesday, June 13 • 12:00 – 1:00 p.m. • \$75**  
 1.0 standard CLE credit

### Sean Carter: Can't We All Just Get Along?

Sean Carter  
**Thursday, June 14 • 9:00 – 10:00 a.m. • \$75**  
 1.0 elimination of bias credit

### Sean Carter: It's Not the Fruit, It's the Root – Getting to the Root of Our Ethical Ills

Sean Carter  
**Thursday, June 14 • 10:30 – 11:30 a.m. • \$75**  
 1.0 ethics credit

### Business Issues in Divorce: A Case Study

Dan O'Connell & Jennifer L. Loeffler  
**Thursday, June 14 • 12:00 – 1:00 p.m. • \$75**  
 1.0 standard CLE credit

### Trust Account Questions Answered

Eric T. Cooperstein  
 Peter H. Berge (moderator)  
**Friday, June 15 • 9:00 – 10:00 a.m. • \$75**  
 1.0 ethics credit

### Appellate Practice: Potholes in the Road to a Successful Appeal – Common Issues to Recognize and Avoid

David Herr, Eric J. Magnuson & Cynthia L. Lehr  
**Friday, June 15 • 12:00 – 1:00 p.m. • \$75**  
 1.0 standard CLE credit  
 1.0 civil trial specialist credit

### New Lawyer Series: Advocating for Your Clients in Your First Family ADR Proceeding \*\*\*

Andrea K. Niemi, Zachary A. Kretschmer &  
 Jennifer E. Joseph  
**Monday, June 18 • 9:00 – 11:00 a.m. • \$135**  
 2.0 standard CLE credits  
 2.0 ADR credits

### Tax Compliance Issues and Challenges for Law Firms

Stephen (Pete) Peterson & Richard J. Nigon  
**Monday, June 18 • 12:00 – 1:30 p.m. • \$110**  
 1.5 law office management credits

### How Lawyers Suck at Social Media and How Not To

Sam Glover & Greg Luce  
**Tuesday, June 19 • 9:00 – 10:00 a.m. • \$75**  
 1.0 law office management credit

### Exempt or Non-Exempt? Classify Your Workers Correctly

Tracey H. Donesky, Mary M. Krakow & Laura A. Pfeiffer  
**Tuesday, June 19 • 12:00 – 1:00 p.m. • \$75**  
 1.0 standard CLE credit  
 1.0 labor and employment law specialist credit

### Documents Made Easy: Mission Statement, Articles of Incorporation and Bylaws for a Nonprofit Corporation

Heidi Neff Christianson  
**Wednesday, June 20 • 9:00 – 10:30 a.m. • \$110**  
 1.5 standard CLE credits

### Engaging Courtrooms: Courtroom Applications \*\*

David Mann  
**Wednesday, June 20 • 12:00 – 1:00 p.m. • \$75**  
 1.0 standard CLE credit  
 1.0 civil trial specialist credit

### New Lawyer Series: Your First DWI or Domestic \*\*\*

Joe Tamburino & Hillary Hujanen  
**Thursday, June 21 • 12:00 – 1:00 p.m. • \$75**  
 1.0 standard CLE credit  
 1.0 criminal law specialist credit

### Matt Homann: Building a Successful 21st Century Practice – General Principles \*\*\*\*

Matthew Homann  
 Peter H. Berge (moderator)  
**Friday, June 22 • 9:00 – 10:00 a.m. • \$75**  
 1.0 standard CLE credit

### Matt Homann: Building a Successful 21st Century Practice – Family Law \*\*\*\*

Matthew Homann & Panel  
**Friday, June 22 • 10:30 – 11:30 a.m. • \$75**  
 1.0 standard CLE credit

*Continued on reverse.*

Times listed are Central Time.  
 Credits indicate what has been applied for.

- \*\* Third in a series of three webcasts featuring communications consultant David Mann.
- \*\*\* Part of a series of nine webcasts designed especially for new attorneys.
- \*\*\*\* Part of a series of four webcasts featuring LexThink Founder Matt Homann.

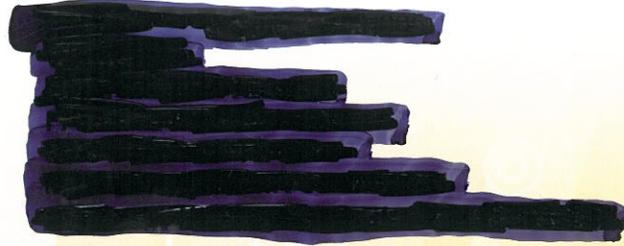


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# JUNE WEBCAST EXTRAVAGANZA

**Matt Homann: Building a Successful 21st Century Practice – Estate Planning/ Probate \*\*\*\***

Matthew Homann & Panel

Friday, June 22 • 1:00 – 2:00 p.m. • \$75  
1.0 standard CLE credit

**Matt Homann: Building a Successful 21st Century Practice – Business Law \*\*\*\***

Matthew Homann & Panel

Friday, June 22 • 2:30 – 3:30 p.m. • \$75  
1.0 standard CLE credit

**Megaupload.com and the Mega Conspiracy: When Copyright Infringement is Criminal**

Felicia Boyd, Andrew M. Luger & Bruce Little

Monday, June 25 • 9:00 – 10:30 a.m. • \$110  
1.5 standard CLE credits  
1.5 criminal law specialist credits

**Non-Competition Agreements in Action: TROs, Litigation and Negotiation Strategies**

Daniel R. Kelly & Jeffrey B. Oberman

Monday, June 25 • 12:00 – 1:30 p.m. • \$110  
1.5 standard CLE credits  
1.5 labor and employment law specialist credits

**Litigation for the Occasional Litigator**

Charles T. Hvass & Erica A. Weber

Tuesday, June 26 • 9:00 – 10:30 a.m. • \$110  
1.5 standard CLE credits  
1.5 civil trial specialist credits

**Computer Forensics for Lawyers**

Mark Lanterman

Tuesday, June 26 • 12:00 – 1:00 p.m. • \$75  
1.0 standard CLE credit  
1.0 civil trial specialist credit

**Retain Your Clients: A Roadmap to Effective, Ethical Client Service**

Roy S. Ginsburg

Wednesday, June 27 • 9:00 a.m. – 12:05 p.m. • \$195  
3.0 ethics credits

**Business Case for Diversity**

Roy S. Ginsburg

Thursday, June 28 • 8:30 – 10:30 a.m. • \$135  
2.0 elimination of bias credits

**Ethics: Who is Reading the Emails You are Sending to Your Client**

Eric T. Cooperstein  
Peter H. Berge (moderator)

Thursday, June 28 • 12:00 – 1:00 p.m. • \$75  
1.0 ethics credit

**Ethics: Retainer and Fee Agreements**

Eric T. Cooperstein  
Peter H. Berge (moderator)

Thursday, June 28 • 1:30 – 2:30 p.m. • \$75  
1.0 ethics credit

**Ethics: Lessons Learned From the Mistakes of Others – A Synopsis of Recent Minnesota Lawyer Discipline Cases**

Patrick R. Burns & Eric T. Cooperstein

Thursday, June 28 • 3:00 – 4:00 p.m. • \$75  
1.0 ethics credit

**How do I register?**

Webcast registrations are processed solely online. If you haven't done so already, you will first need to create a free Minnesota CLE login account. Simply go to [www.minncle.org](http://www.minncle.org) and click **LOGIN**. Proceed through the pages to create your login account. Once logged in, click any webcast title on the seminar roster for additional course information or to register.

**How do webcasts work?**

Webcasts can be viewed on a computer using your web browser and Windows Media Player. See a list of system requirements on our website at [www.minncle.org](http://www.minncle.org). Please check your system compatibility before you register for any live webcast. On the day of the webcast a link to join the webcast will appear on our homepage ([www.minncle.org](http://www.minncle.org)) shortly before the start of the program. You must be logged in to see this link. Simply click the link to join the live webcast. You'll see and hear the seminar, and will be able to e-mail questions to the presenter. If materials are available, a link to download, print or review them will become active on Minnesota CLE's homepage at [www.minncle.org](http://www.minncle.org) one day before the webcast. Adobe Reader may be required and is available for free at <http://get.adobe.com/reader/>

**New Lawyer Scholarship Program**

In recognition of the challenges facing lawyers entering the profession, Minnesota Continuing Legal Education has established a scholarship program for unemployed and underemployed lawyers admitted less than three years. Those wishing to apply for such assistance should contact Grant at [gdavies@minncle.org](mailto:gdavies@minncle.org) or 651-254-2111 for details.

**Questions?**

Contact customer service at [cservice@minncle.org](mailto:cservice@minncle.org) or call 651-227-8266 or 800-759-8840.

# MOBILE CLE – LESSONS FROM THE DEVELOPMENT TRENCHES

BY GINA ROERS AND KEVIN McCORMACK, WEST PROFESSIONAL DEVELOPMENT

Traditionally, the only way for attorneys to earn credit on the go was with a downloadable podcast, or audio or videotapes. While these methods are certainly handy, the MCLE credit available was limited to self-study in some states, with other states ruling out credit altogether. Now, with mobility becoming ever more critical to successfully practicing law, along with the increasing technical aptitude among legions of attorneys who have embraced smart phones (particularly the iPhone), it was just a matter of time before our key customers started demanding alternatives to the traditional delivery of CLE content.

At West LegalEdcenter, we've been hearing from scores of attorneys about how the iPhone is making it easier to practice law. The much-buzzed-about Apple device has gathered huge numbers of devoted fans, including attorneys who appreciate the phone's Web browsing capabilities and ever-expanding catalog of apps. And with online communities of iPhone-centric lawyers forming around blogs like iPhone J.D. and The Mac Lawyer, it's easy for novice iPhone users to learn how to use their new devices in a professional capacity.

## **The advent of CLE for the smart phone**

The iPhone's elegance and ease of use makes it a natural platform for CLE delivery, and the industry is beginning to pay attention. Pioneers in this space include a tracking app from "Law on My Phone" that allows attorneys in five states to stay on top of their CLE credits. Some CLE providers are also starting to offer podcasts through iTunes, which may be available for limited credit in states that allow self-study.

Thomson Reuters joined the ranks last year when it introduced a BAR/BRI app, which offers students access to the bar prep course and study materials via their iPhone. The latest milestone was West LegalEdcenter's introduction of CLE Mobile in December 2009, the first and only (to date) mobile CLE app that provides attorneys with the same experience they would have if they chose to complete a course on their desktop computer.

## **The challenge – Recreating an online experience for the tiny screen**

Although the legal industry isn't yet dominated by the iPhone, attorney adoption of the device is increasing at a rapid pace. The challenge to the legal industry – and CLE providers in particular

– is to develop applications that echo the iPhone’s elegance and simplicity to create meaningful experiences for attorneys.

“CLE is complicated enough,” stated Lee Ann Enquist, vice president for West Professional Development. “We need to make the user experience as simple as possible, and the iPhone and iPad are making the industry take a second look at how legal education providers deliver content. No longer can we make the delivery method fit the content. We need to turn our thinking upside down and ask ourselves: How can we make the content fit the delivery method?”

Watching what users do with their mobile devices is a simple but effective way to address the issue of content versus delivery platform. This process was instrumental in West LegalEdcenter’s creation of CLE Mobile.

“It’s ironic that CLE Mobile, while it seems so high-tech, was largely influenced by an informal, very human way of testing each build,” said Michelle Cabbage, director of product management during the development of CLE Mobile. “We downloaded the application for anyone in the office who had an iPhone, asked them to play with it for a while and then talk to us about what worked, what didn’t work, what would be good to add, subtract or change.”

While technology seems to change at the speed of light, regulation of CLE moves at a more conservative pace. In 2001, only 23 states allowed attorneys to complete CLE credits online. Slowly over the next nine years the rest of the country adopted similar rules. In recognizing this traditionalist mindset, we added another “very human” element to our development process: inviting select state regulators to get an early look at the app before it was deployed. Through WebEx seminars, we introduced the mobile CLE concept to them, responded to their questions and reaffirmed that, while we were applying CLE to the latest technology, all regulatory safeguards would be in place, from polling to tracking and interactivity.

More than a dozen regulators were invited to the seminars. To be on the safe side, we chose regulators in states that enforce the most limitations to online CLE experiences. When shown that the app tracks and ensures that users are listening to a program, randomly verifies interaction with the program in states that require this feature, and allows attorneys access to a discussion forum, regulators responded favorably. Involving regulators at a fairly early stage in the development process reaffirmed our belief that when building a CLE application with new technology, it’s vital to make sure regulators understand that you are recreating an already existing experience. To change the experience in anyway may otherwise result in having to apply for approval of the technology all over again.

### **The next challenge – Capturing attorneys’ attention**

Finally, the “build it and they will come” philosophy didn’t apply at all to announcing the CLE Mobile launch. As cool and sexy as the development and marketing teams thought the application was, we also knew that attorneys are seldom out there looking for new ways to get

CLE programming. Their lives are busy enough. What's more, we first rolled out the mobile app on the verge of the busiest compliance month of the year – December. The annual scramble that attorneys embark upon to meet deadlines among inevitable holiday vacations presented an unusually high amount of noise into which we had to deliver our messages.

The challenge was amplified by our not knowing with certainty when Apple would approve the mobile app; we had to be ready to deliver our marketing materials at a moment's notice so that we did not miss our audience during an incredibly busy time of year.

Fortunately, lawyers are practical people. Once they are informed about how content delivery is evolving to help them become better lawyers with the least inconvenience possible, they are quick to adapt. Therefore, our marketing messages centered around themes of flexible options to earning CLE and learning hot topic information. Showing attorneys how something new and savvy was going to make their professional lives more convenient resonated particularly well.

"The app made it easy to be productive," stated Lisa Keys, professional development partner at King and Spalding in Atlanta, who completed a CLE program on her iPod Touch while sitting in a hospital waiting room. "I normally don't have 90 minutes in my day to do a CLE program."

The response from our customers has been gratifying, since there is little excitement around most CLE programs, which have a reputation for being fairly dry. They told us that the mobile app can add gloss to the flat finish of a CLE program. Yes, the same information is presented, but there is something about using the latest technology to access this information that elevates the experience to the next level.

The ready adoption of mobile technology by attorneys clearly illustrates the opportunity that we, as CLE providers, need to seize if we want to maintain -- and enhance -- our reputation as legal industry leaders. The iPhone was introduced to the market more than three years ago. Two years later, we are just now beginning to tap into the platform for content delivery. As CLE providers, it's our obligation to increase the availability of, and access to, educational products and services within platforms that are convenient, affordable and easy to use. Let's work together to shorten the time lag between technology innovation and CLE delivery so we can better meet our customers' training and information needs.

## LAWYERS ENJOY NEW LEVEL OF PRODUCTIVITY WITH IPHONE TECHNOLOGY

BY LEE ANN ENQUIST, VICE PRESIDENT OF PROFESSIONAL DEVELOPMENT  
AT WEST LEGALEDCENTER, A THOMSON REUTERS BUSINESS

From large law firms to solo/small practitioners, attorneys across the country are discovering a new level of productivity and mobility when they combine the functionalities of phones, computers, GPS systems, calendars, MP3 players, digital cameras and other business tools in one easy-to-use format – the iPhone. Who would have thought that the tradition-bound practice of law could be shaken up in such a short period of time? Recently, four attorneys shared with me their views about how iPhones are impacting their professional lives.

A self-proclaimed news junkie, Kate Nilan, an associate at the Minneapolis law firm Gray Plant Mooty, had downloaded “basically every news app under the sun” and listens to news podcasts during her daily bus commute. And as a frequent user of apps for social networking platforms like Facebook, Twitter and LinkedIn, Nilan finds that “to be able to update on the fly is great. I don’t have to update while I’m doing billable work.”

Mark Smallhouse, the president of New Venture Attorneys, uses a variety of legal and general apps to manage his Reno, Nev.-based practice. He finds **Legal Edge** (free; [jdsupra.com](http://jdsupra.com)) to be a helpful tool in keeping up with industry white papers, news alerts and other legal content, and **Dictamus** (\$9.99; [jotomi.com/dictamus](http://jotomi.com/dictamus)) allows him to record and send notes directly to his secretary.

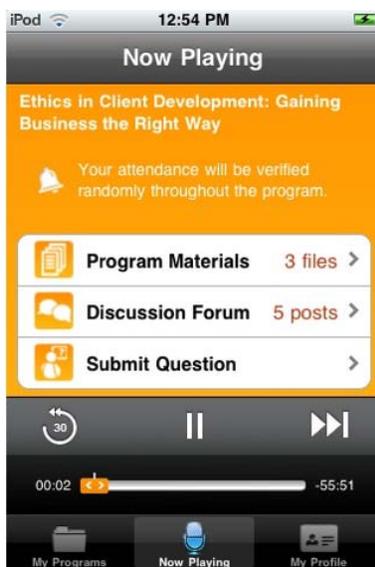
For Lisa Della Rocca, general counsel for Black Diamond Data and SigniaDocs, the freedom to leave her computer at the office each night lightens her load, both literally and figuratively. “I never feel out of the loop. It’s the best thing ever for a lawyer,” she said.

The opportunity to earn CLE credits using mobile apps also makes the iPhone an attractive option for attorneys.

West LegalEdcenter launched **CLE Mobile** (free; [westlegaledcenter.com/splash/index.htm](http://westlegaledcenter.com/splash/index.htm)) in December 2009. It allows iPhone and iPod touch users to download more than 2,000 audio courses and earn CLE credits or listen to programs covering the hot law topics of the week.

“The reason I bought the iPhone is the CLE app,” Smallhouse said. “I can do CLE on the go.”

Della Rocca found the ability to complete CLE credits using her iPhone to be invaluable as she rushed to meet her compliance deadline for the California Bar Association. With more than 20 credits to earn in the week before her Jan. 31 deadline, Della Rocca used a combination of online and mobile CLE programs to avoid penalties for incompletion. “I had just bought my iPhone on Dec. 30 and thought, ‘OK, it’s do or die.’ I could sit in front of the computer all day or download the app. That app made it possible for me to meet that requirement,” she said.



CLE Mobile gives you more than 2,000 downloadable audio courses to earn CLE credits on the go.

CLE Mobile also allows attorneys to make their downtime more efficient. Lisa Keyes, professional development partner at King and Spalding in Atlanta, recently completed a CLE program on her iPod touch while sitting in a hospital waiting room. “The app made it easy to be productive. I normally don’t have 90 minutes in my day to do a CLE program,” she said.

The increasing prevalence of iPhones in the legal world is causing law firm information technology departments to rethink their mobile support strategies. When Nilan joined Gray Plant Mooty in January 2009, she was only the second attorney to have an iPhone. A year later, she’s one of about a dozen lawyers at the firm who have chosen to use an iPhone, and Gray Plant Mooty’s IT department has worked with her to ensure the device is compatible with her office technology. King and Spalding has also begun to support the iPhone.

“We have to keep up with technology, and the iPhone seems to be where technology is going,” said Della Rocca.

Tech analyst firm Frost & Sullivan projects that within five years, virtually all phones sold in the U.S. will be smartphones. The adoption of mobile technology by attorneys has grown about as fast as the iPhone –the world’s leading smartphone. Since mobility is so critical to successfully practicing law today, it is incumbent upon the legal industry to create meaningful applications for attorneys that echo the iPhone’s elegance and simplicity.



**Lee Ann Enquist**  
**Vice President, Professional Development**

Lee Ann Enquist is vice president of professional development. In her role, Lee Ann leads the development and execution of Thomson Reuter's Professional Development strategy and tactics, encompassing West LegalEdcenter, West Legalworks, Federal Publications and Required.

Under her direction, West LegalEdcenter has shifted its strategic focus away from a single-minded approach to online continuing legal education (CLE) toward a notion that true learning is about delivering various forms of professional development content along different platforms, formats and venues. Her leadership helped create an integrated basket of programs that offer training opportunities for legal professionals at all levels, following them at all stages of their careers, providing complete training solutions.