Symposium: Celebrating Twenty Years of Continuing Legal Education: The Art and Science of Educating Attorneys

Accreditation of Technology-Based Continuing Legal Education

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ACCREDITATION OF TECHNOLOGY-BASED CONTINUING LEGAL EDUCATION

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The following Article, developed by the ABA Standing Committee on CLE, the ABA Center for Continuing Legal Education ("ABA-CLE"), the American Law Institute-American Bar Association ("ALI-ABA"), the Practicing Law Institute ("PLI"), the Association of Continuing Legal Education ("ACLEA"), and the Professional Development Consortium, describes many adult education principles that these groups identified through their experiences in CLE as being key components to an educated bar. While technology is constantly changing and new features and tools are developed, individuals continue to use a variety of core methods to develop a comprehensive understanding of a specific subject matter, from participating in live in-person sessions, to viewing and listening to programs transmitted over the Internet, to reading relevant law related articles. Each format, based upon how an individual best learns, has its merits.

Many of the technologies highlighted in this Article continue to serve as relevant examples based upon the logic and analysis used in determining the most effective method of delivering needed legal content, thus assisting in promoting increased professional competence. This blended approach, taken by providers and learners, assists individuals in using the most helpful means to develop an understanding of a specific subject matter in a timely fashion, which permits them to serve their clients well with current and relevant knowledge.

Each delivery mode possesses strengths that the other formats may not possess to the same degree and thus forces groups to consider the traits and goals of a course closely. The continued introduction of new technologies requires producers of CLE to constantly review their offerings and adjust them to capitalize on those positive traits and to develop a curriculum that educates the widest group with the most diverse adult learning requirements. For example, using the interactive traits of a live-in-person course to develop hands on experience through workshops focused on negotiations and bankruptcy provisions allows the learner to further develop his skills by running through custom simulations with his fellow learner and continues to meet a specific set of learning objectives effectively. On the other hand, meeting the need to quickly understand and disseminate new legislative or government changes in the bankruptcy laws

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could be accomplished through the use of distance learning technology to educate a broad group of lawyers. The lawyers that need this information on the legislative changes may not have the time or resources to travel before their next set of clients require their expertise on the matter. Combine the two methods, and lawyers can obtain the information in a timely fashion and learn how to be specialists in the area through subsequent in-person sessions that allow them to develop a deeper understanding of all that is involved. However, they all must be versed in all areas of the law to some extent consistent with bar requirements, which proves to be more challenging as the law adapts and grows.

While the following piece was created in 2001, the core concepts continue to apply. Beyond reviewing the adult learning styles and the analytic process for matching delivery format with learning objectives, this Article provides a brief summary of the goals of MCLE and the history of the ABA Model Rule, which has been amended since 2001 to recognize that an Elimination of Bias credit is being considered by many states. This Article also includes a summary of many states' review processes of the accredited formats as of 2001, with Kansas and Ohio, for example, following suit in reviewing and evaluating the accreditation of CLE delivered via technological means since the paper was published. This Article encourages all MCLE jurisdictions to review the full range of possible formats and to recognize the strengths and objectives that these alternative technologically-based CLE programs can assist in reaching. It details how offering attorneys a variety of approved formats is beneficial to developing professional competence of lawyers.

On behalf of the ABA Center for Continuing Legal Education, we appreciate the consideration and discussions that are taking place regarding these alternative formats and are more than happy to assist in providing any further information that we may have on the subject. We hope this Article is beneficial to the discussion.

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON CONTINUING
EDUCATION OF THE BAR
MCLE SUMMIT 2001[†]

I. POSITION

The organizations listed below represent the forefront of continuing legal education in the United States. Those organizations have joined together in the interests of a better educated bar, to seek greater access of all lawyers to the full variety of high quality CLE. The below organizations believe in and support live conferences and other traditional formats for providing continuing legal education to lawyers. They also understand, however, that many lawyers are restricted in their access to needed enriching and relevant educational experiences due to a number of factors, including limited availability of the full range of learning methods; inability to choose time and content; physical challenges; travel expense; and time away from the office. We therefore, recognize the need for and promote alternate approaches to the delivery of CLE. We recognize that, in an age when time is compressed and demands are great, technology-based CLE overcomes barriers and maximizes the opportunity to increase lawyer education and competence. In the interests of promoting greater access and use of CLE and to further the goal of a well-educated bar and the delivery of higher quality legal services, we therefore encourage all MCLE jurisdictions to fully approve and accredit the range of formats comprising technology-based CLE.

II. ADULT LEARNING STYLES

As we know, all adults do not learn in the same way. Different techniques are being used in the educational marketplace at all levels in recognition of this. Adult learning research shows that adults learn better when they have choices and input into their own education. Any activity that increases involvement and interactivity in the learning process increases retention.

The traditional lecture approach has served many lawyers well throughout numerous years of education, and they are comfortable with this format. However, law schools are now graduating lawyers who are equally comfortable with new technology-based learning formats, and many more seasoned lawyers are also becoming proficient in and seeking a fuller CLE curriculum.

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III. New Learning Formats

Technology-based CLE is not a substitute for classroom or conference-style seminars. In-person programming will continue to be an important component of any well-balanced CLE system. Recent technological advances, however, have made distance learning an excellent additional vehicle for the delivery of relevant information quickly, precisely, and reliably. Technology-based seminars can communicate changes in the law almost immediately while a live seminar typically takes months to develop. Delayed in-person conferences are better suited to address the applications of legal changes and nicely complement the earlier technology-based dissemination of information about new laws or landmark decisions.

Technology-based formats include programs or activities presented by technological transmission including audiotape, videotape, teleconference, satellite simulcast and replays, video conference, Internet simulcast, online seminars and services, CD-ROM and DVD, and audio on demand programs (e.g., telephone on demand, web cast on demand). Given the dramatic changes in technology and its impact on the practice of law, accreditable CLE options must likewise continue to evolve in order to meet the needs of lawyers and their clients and public they serve.

IV. The Goal of MCLE

The goal of MCLE is to increase professional competence. As demands on the profession increase and lawyers' time is more limited, this goal can be met using a variety of CLE delivery formats—traditional formats and technology-based. It is important to focus on the different means by which lawyers learn and to pursue and develop methods that appeal to those varied learning processes. We must ensure that CLE is relevant to a lawyer's individual needs—convenient, reasonably priced, and available in a variety of formats that are more likely to satisfy the diverse preferences and learning proclivities of lawyers everywhere. The more self-selected the educational program, the more likely it is to meet the specific needs of each lawyer.

Many MCLE accrediting bodies and their governing boards already take this comprehensive view of their responsibility to educate the profession and recognize the high quality, reliability, interactivity, and increased opportunities afforded for dissemination of course materials, for ongoing updates, and for other positive features and functions of technology-based CLE.

V. RELEVANT HISTORY OF THE ABA MODEL RULE AND STATE RESPONSES

The Model Rule of the American Bar Association on MCLE provides guidance to states that are or will be developing standards for MCLE.

1988–1989: the House of Delegates adopted the Model Rule (Resolution #115) at the ABA Annual Meeting in 1988. Concerns raised at the time of adoption resulted in a proposed amendment to section 7 (g) which was adopted at the ABA Midyear Meeting in 1989 (Resolution #114). Section 7 (g) states: Subject to Section 8, and except for courses or activities offered by professional organizations primarily or exclusively for the education of their members and courses or activities offered primarily or exclusively for government lawyers, the course or activity must be open to any lawyer thought to be interested in the subject matter. (Note: Section 8 is concerned with approval for credit of In-House CLE)

1996:   Since the adoption of the Model Rule, technology-based continuing legal education increasingly became more available to lawyers. The ABA's Standing Committee on Continuing Education of the Bar then decided to re-examine the Model Rule with Comments and established the Task Force on CLE and Technology, comprised of members of the Standing Committee and representatives from ABA-CLE, ALI-ABA, ACLEA, and ORACLE.

In August 1996, the ABA House of Delegates amended the ABAs Model Rule on MCLE to include technology-based CLE delivery, including teleconferences, computer-based teaching, and other offerings taking place outside traditional classroom settings.

Arizona, California, Idaho and, most recently, Kentucky, are states that approve all formats of technology-based CLE outright. Other states have amended their rules but have qualified accreditation with a range of caveats (examples included below). Other states are still considering the issues.

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VI. FEATURES OF IN-PERSON SEMINARS AND WAYS TECHNOLOGY
ADDRESSES THOSE FEATURES

Issues	Features of In-Person Seminars	Technology-Based CLE Corollaries
QUALITY CONTROL CRITERIA	1. Information from experts in the field.	*Experts* can appear via telephone, satellite, text, audio and/or video delivered real time and archived from an online service via the Web, tele/videoconference, or by video from CD-ROM or DVD.
	2. The opportunity to ask questions and receive answers	*Questions* can be asked real time during and throughout distributed programs such as satellites, tele/videoconferences; inquiries can also be recorded on a telephone system and answers recorded and sent back to the sender (mimicking voice mail). Questions can be e-mailed to experts with responses returned, either during a program or after its completion. Answers can be circulated to an individual or a listserv. Distance delivered programs can include a companion online discussion group while the program is in progress or after the live session is completed, capable of being archived.
	3. Thorough written materials.	*Materials* can be delivered via hard copy, via fax, disk, CD-ROM, or downloaded from a bulletin board or Internet site. They can also be updated with relative ease following the initial program, as developments occur. 50 state and worldwide compendia can be included in electronic material, where costs in printed materials can prohibit such comprehensiveness. Updates can also be electronically maintained and distributed.

	4. The opportunity to discuss the subject with others who have an interest.	*Networking* among interested group members is easily achieved on bulletin boards, or online services.
ABILITY TO MONITOR ATTENDANCE (and PARTICIPATION)	Certificates of Attendance, Registration Lists, Sign-In Sheets, and Program Evaluations by participants (instrumental in monitoring attendance, though not necessarily participation).	Computers can be programmed to report exactly how much time the user spent reviewing the material or viewing/listening to a program, print out a report of use, identify time spent, or even what material the user reviewed. The program can include a shut-off feature that closes the program unless the computer prompts for action are responded to in a timely fashion. Similar technology can be used to monitor attendance on live teleconferences where the provider can repeatedly prompt the user for a response in order to assure attention. Interactive educational software (e.g., computer-based teaching programs) that provide specific and continuous feedback can also perform calculations or computations, or can evaluate the users' learning, through quiz formats. Another example is the download or review of archived discussion groups, which is the functional equivalent of a written transcript of a program with broad audience participation. In this case, the transcript provides documentation of when a lawyer participated, can show the nature of the participation, and can even identify times and dates of questions or comments as well as the text of the comments. Online time can also be reported.

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VII. HOW TECHNOLOGY-BASED CLE MEETS SPECIAL NEEDS

- Lawyers, by reason of physical or economic disability, cannot all attend in-person seminars. Technology permits lawyers to undertake training without the expense of travel or extended time out of the office.

- Lawyers, by nature of their practice or location, may need special training not readily available. Technology significantly expands subject matter availability and equalizes rural or remote geographic locales that do not tend to draw in-person CLE opportunities.

- Lawyers, by reason of family and other demands, may have scheduling difficulties. Technology offers scheduling flexibility and time-shifting opportunities for lawyers around the globe.

VIII. RECENT RULE SHIFTS TOWARD ACCREDITATION OF TECHNOLOGY-BASED CLE FORMATS

There has been progress in favor of wider accreditation of technology-based CLE, though complexities abound. For example:

- New York accredits all formats for attorneys in practice more than two years and up to 12 hours of credit via non-traditional formats, even for the newer attorneys if practicing abroad.

- Recent rule changes in Minnesota, effective July 2000, now permit lawyers to earn MCLE credit from their offices. This was achieved by redefining classroom setting to include an office. In so doing, web-based CLE is now accredited in Minnesota, which is a significant breakthrough. However, Minnesota does not accredit self-study, and thus requires that the office be exclusively devoted to the educational activity being presented and that a faculty person is in attendance at all presentations, allowing all seminar participants to hear and participate in the question and answer session.

- As of January 1, 2001, Georgia began accrediting teleconferences and webcasts as participatory in-house study credit. A group setting is no longer required, though a maximum of 6 credit hours is permitted each calendar year.

- As noted, Kentucky accredits all formats of technology-based CLE (also limited to 6 hours) but does not allow self-study. It thus will

accredit live webcasts, for example, as in-person programming and on demand web casts as technology-based programming.

- Other states, such as Delaware, Iowa and Louisiana, are currently reviewing their existing rules to address the role of the Internet and e-learning, which will require a shift away from the concept of attending a CLE program to that of completing a course of study for CLE.

IX. OVERVIEW OF ACCREDITATIONS BY FORMAT

As the above examples illustrate, there is semantic inconsistency as to core definitions and sub-categories of technology-based CLE, in-house and self-study credit. Nonetheless, the following grid attempts an overview of the status of the accreditation of each of the distance learning formats in the forty MCLE jurisdictions:

	CATEGORIES	FORMATS	# OF STATES ACCREDITING	% OF STATES
A	Live	Satellite Live	40	100%
		Video Live	38	95%
		Phone Live	34	85%
		Web Live	24	60%
B	Replay	Satellite Replay	39	98%
		Video Replay	39	98%
C	Audio-Video Tape (Group)	Audio-Video Tape (Group Setting)	40	100%
D	Computer-Based (Disk or CD-ROM)	Computer Disk or CD-ROM	26	65%
E	In-House Training	In-House Training	36	90%

		Video tape	27	68%
F	Self-Study	Audio tape	25	63%
		Online Seminar	24	60%
		Phone On-Demand	23	58%
		Web On-Demand	23	58%
		Online Interactive	23	58%
		Internet Audio	22	55%

X. ADDITIONAL COMPLEXITIES

Some states (e.g., Ohio, North Dakota) permit self-study, such as via webcast, yet disallow computer-based instruction via disk or CD-ROM. Others, such as Kansas, accredit computer-based instruction in a classroom setting but disallow self-study of any kind. Utah will determine on a case-by-case basis if computer-based disks or CD-ROMs will be accredited.

Similar vagaries arise as to in-house training: Utah accredits in-house training as self-study, but require it be open to outside attendance except for special cases; Montana accredits all delivery formats and permits self-study, but requires prior approval for in-house programs, which must have an instructor and a minimum of four participants (hard to predict in advance as a practical matter).

The full 40-jurisdiction grid, showing accreditations and particularities, is also being provided, in that it is more than difficult to succinctly summarize its array of detail in a truly helpful manner.

XI. PRACTICAL CONCERNS ASSOCIATED WITH CHANGE

MCLE regulatory groups are operationally organized to administer the states' respective MCLE rules and regulations. Nevertheless, staffing constraints are common, with many states having but one or two full-time staff. Courts and governing boards in such states not presently accrediting technology-based CLE offerings may be concerned with the additional workload that would be involved in administering the increased level of accredited programming. However, that load could also be decreased significantly with the elimination of caveats qualifying accreditations and with the streamlining of definitions and terms.

Conceivably, the national organization representing the 40 MCLE jurisdictions, the Organization of Regulatory Administrators for CLE ("ORACLE"), would be a tremendous help here. Though each of the states maintains its MCLE rules and regulations, ORACLE, in addition to maintaining an informational website with links to the states' websites, also provides a uniform accreditation application and certificate of attendance which can be used in all 40 MCLE states. If technology-based formats were more widely accredited, ORACLE would be in the perfect position to provide a wealth of consistent resources to all CLE providers for their constituencies. This development also decrease the time needed to determine accreditation of offerings in each state and reduce the corresponding customer service resources presently required.

XII. CONCLUSION

As the bar becomes more technologically sophisticated, CLE must also branch out to meet the varied learning styles of the 21st century lawyer. So, too, must CLE, in order to be both valuable and relevant, take full advantage of the benefits offered by technology. In this manner, technology-based CLE will supplement—not supplant—traditional CLE options. New methods of CLE delivery enrich the learning environment through:

- Additional time with speakers online

- Review of programming at the lawyer's own pace and format preference

- Scheduling flexibility

- Ability to partake of CLE in smaller lessons rather than during a multi-day conference-style event

- Access for greater numbers of participants, including those with specialized needs, the disabled, and those in remote areas beyond the reach of traditional CLE.

The high quality of adult learning that technology-based offerings provide, add the corresponding ability to monitor usage and learning, make these highly interactive and accessible forms of CLE a valuable and essential component of the full CLE curriculum.

We encourage all jurisdictions to acknowledge the role of technology in today's legal practice and in today's society and to embrace this change by

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allowing attorneys to take accredited advantage of these new opportunities. Moreover, we encourage all jurisdictions to eliminate the current confusion created by the many variations and vagaries of CLE accreditation of technology-based CLE, thereby best serving the legal profession today and in the years ahead.

> American Bar Association Standing Committee on Continuing Education of the Bar ("SCCEB")
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> Professional Development Consortium ("PDC")