

FILED

December 22, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8008

**ORDER PROMULGATING AMENDMENTS TO THE
RULES OF THE MINNESOTA STATE BOARD OF
CONTINUING LEGAL EDUCATION**

Five licensed Minnesota lawyers filed a petition on August 7, 2019, asking the court to amend Rule 6D of the Rules of Continuing Legal Education to allow Minnesota-licensed lawyers to satisfy all of a lawyer's continuing legal education (CLE) requirements through on-demand or archived programming. Currently, Minnesota lawyers can report up to 15 hours of on-demand CLE programming during the 3-year, 45-credit CLE reporting period. *See* Minn. R. Continuing Legal Educ. 6D, 9B. We opened a public comment period and scheduled a public hearing on the petition and the proposed amendment. In addition to the petition, the court received written comments from the Board of Continuing Legal Education and seven other interested organizations and attorneys. Representatives of three organizations, the Director and the Chair of the Board of Continuing Legal Education, and one of the petitioners spoke at the public hearing on January 29, 2020.

On March 18, 2020, we temporarily suspended the current 15-credit limit for on-demand CLE programming, in light of the 2020 COVID-19 pandemic and the ensuing restrictions on public activities. *See Order Establishing Temporary Exception to Rule 6D*

of the Rules of the Minn. State Bd. of Continuing Legal Educ., No. ADM09-8008 (Minn. filed Mar. 18, 2020). That suspension remains in effect until further order of this court.

The court has reviewed the petition and the oral and written comments. Based on our inherent authority to regulate the practice of law, we conclude that the petition should be granted, but the transition to unlimited on-demand CLE reporting will be phased in over three years and will be subject to consideration whether to retain a lower limit for on-demand CLE credits if a showing of good cause to do so is made as set forth below.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The petition filed by Five Licensed Attorneys on August 7, 2019, is granted. Effective as of the first reporting period that follows this order, and through December 31, 2023, Minnesota licensed lawyers can satisfy continuing legal education requirements by viewing and reporting up to 30 credits of on-demand CLE programming. Effective as of the first reporting period after January 1, 2024, Minnesota licensed lawyers can satisfy 100 percent of their continuing legal education requirements through on-demand CLE programming viewed and reported after January 1, 2024, unless good cause is shown on or before September 30, 2023, for the court to retain the 30-credit on-demand CLE programming limit.

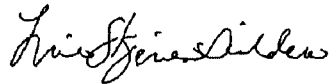
2. The order of March 18, 2020, authorizing a temporary suspension of the 15-credit on-demand CLE limit is rescinded, effective January 1, 2021. Category 3 lawyers who received an extension to comply with CLE reporting obligations for the period July 1,

2017 to June 30, 2020, may report CLE credits for on-demand courses viewed prior to the date of this order.

3. The attached amendments to the Rules of the Minnesota State Board of Continuing Legal Education are promulgated effective as of January 1, 2021.

Dated: December 22, 2020

BY THE COURT:



Lorie S. Gildea
Chief Justice

MOORE, III, J., not having been a member of this court at the time of submission, took no part in the consideration or decision of this case.

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8008

MEMORANDUM

PER CURIAM.

Minnesota lawyers are required to report attendance every three years for “45 credit hours of approved continuing legal education courses,” including 3 hours of approved ethics courses and 2 hours of elimination of bias credits. Minn. R. Continuing Legal Educ. 9A-B. As of July 2014, Minnesota lawyers could satisfy up to 15 credits of the 3-year, 45-credit CLE requirement with on-demand CLE programming. *See* Minn. R. Continuing Legal Educ. 6D; *see also Order Promulgating Amendments to the Rules of Minn. State Bd. of Continuing Legal Educ.*, No. ADM09-8008 (Minn. filed Dec. 6, 2013).¹ Thus, for the last 6 years, Minnesota lawyers have reported CLE credits for attendance at a live program, either in person or via webcast; viewing pre-recorded CLE programs at which a faculty member or moderator is present to answer questions on the program topic; or viewing on-demand archived programming. *See* Minn. R. Continuing Legal Educ. 5A(5) (requiring CLE courses to be presented “in a classroom or laboratory setting,” or “via video recording, simultaneous broadcast, teleconference, or audiotape, or available on-demand or by

¹ “On-demand” CLE programming is “archived CLE programming that meets all the requirements of Rule 5A [of the Rules of Continuing Legal Education] and is available to participants at any time.” Minn. R. Continuing Legal Educ. 2R.

podcast”); *id.*, Rule 9A (requiring lawyers to report “participation in no fewer than 45 credit hours” for CLE requirements).

The petition now before the court asks us to re-visit the 15-credit limit for on-demand CLE programming. Asserting that Minnesota’s limit for on-demand CLE credits is out of step with national trends and fails to accommodate practice and geographic differences across the state, the petitioners state that the benefits of on-demand CLE programming are preferred, and needed, by members of the Minnesota bar whose practice or personal lives make traditional CLE formats challenging. Petitioners also contend that removing the 15-credit limit for on-demand CLE programming will expand educational opportunities for lawyers without a measurable impact on the quality of that programming or lawyers’ compliance with CLE requirements.

Most of the public comments rejected these arguments. Those who oppose any further increase in the allowed hours of on-demand CLE programming contend that the on-demand format can undermine some of the broader goals of a mandatory CLE requirement, such as ensuring the availability of high-quality CLE programming, some of which is focused solely on Minnesota law. In addition, comments uniformly voiced support for in-person CLE programs as an important component in the well-being of Minnesota’s lawyers. Proponents of limiting the reportable hours for on-demand CLE programming contend that live, in-person CLE programming promotes interpersonal interactions among members of the Minnesota bar, which allows lawyers to reduce stress, isolation, and loneliness while fostering connections and wellness within the Minnesota bar. The CLE Board, however, suggested that an increase in on-demand CLE credits, from

15 of 45 hours (33.33 percent), to 22.5 of 45 hours (50 percent), would be appropriate. In addition, the Minnesota State Bar Association conceded that the reasons for increasing the permitted hours for on-demand CLE programming are “strong.”

Each position has merit. Continuing legal education “improve[s] lawyers’ knowledge of the law,” continues their professional development, and “address[es] the special responsibilities that lawyers as officers of the court have to improve the quality of justice administered by the legal system and the quality of service rendered by the legal profession.” Minn. R. Continuing Legal Educ. 1. But these objectives are not met solely by live programming; in fact, Minnesota lawyers have fulfilled CLE requirements by viewing webcasts or recorded CLE programs for almost 20 years. These options have provided necessary flexibility for Minnesota lawyers, and on-demand programming similarly allows Minnesota lawyers to better manage the individual challenges—personal, practice, or geographic—that can make attending in-person or other remote programs burdensome.

Each form of programming—whether in-person, remote, or archived—fulfills the objectives of mandatory CLE as long as each individual lawyer respects the responsibilities and obligations that come with admission to the bar. *See, e.g.*, Minn. R. Continuing Legal Educ. 2S (defining a “participant” in a CLE program as a licensed Minnesota lawyer “actively engaged in the subject matter being presented”); *see also* Minn. R. Prof. Conduct 1.1, cmt. 8 (“To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law” including by “engag[ing] in continuing study and education”). We must assume that Minnesota lawyers do so. Further, we acknowledge that the differences

in individual circumstances that make up the collective practices of the Minnesota legal profession require access to a wide array of CLE programming delivered in a broad array of formats. In other words, no one format (at least, of those before us) is better than another; rather, different formats fulfill different functions for different lawyers at different times.

We also note that access to legal programming and legal services has changed substantially since this petition was filed. Of course, the petition now before us was not filed *because of* the 2020 COVID-19 pandemic. But we cannot ignore the substantial impact of a global pandemic on the work of the Minnesota bar—whether providing legal representation, providing CLE programming, or fulfilling CLE requirements—and the transformation in the delivery of legal services and justice that has unfolded in a matter of months. Thus, we conclude that now is not the time to stay the course simply because we know that course works well; rather, now is the time to move forward, by recognizing that CLE requirements must be met and can be met, through live, recorded, or on-demand programming.

In reaching this decision, we acknowledge that in-person CLE programming has attributes that cannot be matched by archived, on-demand CLE programming. Further, to some extent, we impose CLE requirements because we expect those obligations and commitments to disrupt a lawyer's work day, to force the person to leave behind the distractions of work to focus on improving the lawyer's "knowledge of the law" and consider the lawyer's responsibility to "improve the quality of justice." Minn. R. Continuing Legal Educ. 1. We also endorse the value of in-person CLE programming as

an opportunity to foster lawyer wellness, reduce isolation, and provide needed engagement with peers and colleagues. We urge and encourage Minnesota lawyers to embrace these opportunities. But we reject the notion that a move to unlimited, on-demand CLE programming diminishes the importance of a mandatory CLE obligation, diminishes expectations for high-quality programming, or relegates CLE obligations to an after-hours only commitment.

We repeat what we said in 2013: Minnesota's CLE system is a success. That success results from the commitment of Minnesota's lawyers to their professional responsibility to continually improve their education, improve the quality of justice, and improve the quality of legal services. The success is also attributable to the high-quality programming from CLE providers. We have no reason to expect a decline in the state of Minnesota CLE's system simply because 100 percent of credit hours can be secured in one format—on demand programming—rather than another format, i.e., live programming.

Even so, we conclude that a gradual move to 100 percent of on-demand CLE credits is appropriate. Thus, in granting the petition today, we use a two-step process. First, we will increase the on-demand CLE credits that can be viewed and reported to 30 of 45 hours (66 percent) for three years beginning January 1, 2021. Second, we will automatically increase the on-demand CLE credits that can be viewed and reported to 100 percent of the 45-hour credit requirement, effective January 1, 2024, absent a showing of good cause not to do so, made on or before September 30, 2023.

DISSENT

HUDSON, Justice (dissenting).

The court's current 15-credit on-demand cap reflects the appropriate balance between on-demand convenience and collegial professional development. Accordingly, I respectfully dissent from the court's decision to abandon that cap. In comments at the public hearing on January 29, 2020, counsel for Minnesota Continuing Legal Education (MCLE) suggested that permitting lawyers to satisfy 100 percent of CLE requirements with on-demand programming might be a race to the bottom. That's exactly right; and the court's decision today ensures that the profession will arrive there in no time at all.

Little has changed since 2013, when we adopted the 15-credit cap for on-demand CLE programming. Then, as now, the petitioners asserted that the convenience of on-demand programs outweighs the benefits of in-person programs. Then, as now, the CLE Board did not support unlimited on-demand CLE credits, noting that such a rule might undermine other goals such as collegiality and high-quality programming. With the current petition, the CLE Board indicated that it would support an increase to 50 percent of on-demand CLE credits—i.e. 22.5 hours—putting Minnesota on par with the balance struck by several other jurisdictions. Ignoring the CLE Board's recommendation entirely, the court today increases on-demand CLE credits to 66 percent (30 hours) beginning January 1, 2021, and allows attorneys to fulfill 100 percent of their required CLE credits with on-demand programming, effective January 1, 2024. In doing so, we join a small group: only 14 other jurisdictions allow lawyers to report 100 percent of CLE credits from on-demand programming.

Just as our spending habits reflect our personal priorities, the balance we, on behalf of Minnesota's legal profession, strike between live, in-person CLE programs and on-demand programming reflects what we value as a profession. The balance struck today says we value convenience over engaged information-sharing, collegiality, and lawyer well-being. Allowing CLE requirements to be fulfilled solely with on-demand credits implicitly endorses the troubling notions that a lawyer's professional work is too important to be interrupted for education, and that the education provided through CLEs is not something attorneys need to focus on, but is something that can serve as background noise, or be paused and re-started while the lawyer tends to the tasks of daily life.

This is particularly troubling given that our continuing legal education obligations are not onerous—45 hours every three years. And one-third of those hours can already be secured via on-demand video presentations. It is not too much to ask that lawyers and judges take time away from their work day to interact with other members of the profession in order to enhance their skills and foster the relationships between members of the bar that are so critical to our profession.

In-person CLEs are invaluable. As MCLE counsel aptly observed in his written comments, “[t]he opportunities to ask questions of faculty in real time, to listen to the questions posed by colleagues in the audience, and to hear the experiences of colleagues regarding the subject matter, enhance the ability of attendees to learn from the seminar. . . . Even those who do not ask questions themselves likely benefit from hearing their colleagues ask questions.” *Written Comments of Minn. Continuing Legal Educ.*, at 6 (filed Dec. 10, 2019). Minnesota CLE sold more than 26,000 on-demand CLE programs since

July 2014. *Id.* Tellingly, the total number of questions submitted by viewers of these programs in the last five years was ten. *Id.* In contrast, attendees at live CLE presentations routinely asked questions of faculty and/or met with faculty after the presentation. *Id.* at 5. Live CLEs offer the opportunity to learn from one another and to share common experiences. These invaluable, intangible, commodities are sacrificed on the altar of on-demand convenience.

I acknowledge that in some respects the train has already left the station because our current rules allow all 45 CLE credits to be obtained via webcasts. But not only are live webcasts more current than archived on-demand programs, they encourage questions from viewers and offer a more interactive experience than on-demand programs.

Finally, in my view, the court's endorsement of 100 percent on-demand CLEs credits undercuts our commitment to wellness in the legal profession. In August 2017, the American Bar Association (ABA) issued its ground-breaking task force report—*The Path to Lawyer Well-Being*. Summarizing data collected in a 2016 study by the ABA and Hazelden Betty Ford Foundation, the report highlighted the crisis in the legal profession of lawyers who suffer from high rates of problem drinking and depression, especially among younger lawyers in their first ten years of practice and those practicing in private firms. In response, we announced a “Call to Action” in February 2019 by hosting a conference to discuss the ABA task force report, and to share best practices. We endorsed the task force's statement that to be a good lawyer, one has to be a healthy lawyer; we encouraged employers to remove workplace barriers to well-being; and we made an on-going

commitment to provide proactive leadership in changing the culture of our profession to one that promotes lawyer well-being. Our decision today sends an entirely different signal.

Echoing *The Path to Well-Being* report, our colleagues at Lawyers Concerned for Lawyers caution that isolation in the legal profession is a significant risk-factor for mental health and substance abuse issues. Live CLEs reduce isolation as they provide opportunities for collegial interactions. Judge Donovan Frank, *Written Comments of Lawyers Concerned for Lawyers* (filed Dec. 10, 2019). “Lawyers benefit from sharing challenges as well as victories with others who understand what we do. Isolation and loneliness prevent us from feeling connected with and validated and supported by others.” *Id.*

I agree with the court that much has changed in our country and our world since the public hearing in January 2020. These circumstances, however, simply demonstrate the need for a balance between the values of convenience and in-person professional development. At a time when the connections and benefits of in-person interactions are widely sought across all segments of society—when safe and appropriate to do so—we should not endorse yet another step on the path to isolation through archived, on-line, programming.

In sum, as Sybil Dunlop aptly stated in a recent article: “[i]n an era when [we] purport to care more about attorney wellness, it seems troubling that we would eliminate a requirement that actually helps attorneys find communities and connection.” *Sybil Procedure: Eliminating in-person CLE is a Terrible Idea*, Minnesota Lawyer (Nov. 26,

2019). The court's order today does just that, and in my view, sanctions our race to the bottom.

**AMENDMENTS TO THE RULES OF THE MINNESOTA STATE BOARD
OF CONTINUING LEGAL EDUCATION**

In the following amendments, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

Rule 6. Special Categories of Credit

* * *

D. **On-Demand Courses.** A lawyer may claim up to ~~45~~30 hours of credit within the 45-hour CLE period for on-demand courses as defined in Rule 2R, 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 through the 24-month period during which the program is approved for Minnesota CLE credit;
- (3) The course sponsor or course applicant completes and submits to the Board an Application for Course Approval; and
- (4) The approval for an on-demand course is valid for 24 months after the date of approval by the Board office.

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Rule 9. Affidavit of CLE Compliance

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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 credit for pro bono legal representation provided pursuant to Rule 6~~D~~C and reported by Appendix II; and
- (4) no more than ~~45~~ 30 hours of credit for on-demand courses.

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