

A legal note from Marshal Willick about the inadequacy of CLE in Nevada to actually serve its intended purpose – and a couple of proposals for doing something about it.

Two things led to this note. First, one of my associates taught an introductory level family law class a year or two ago. He reported that most of those attending read newspapers or cruised the internet throughout the seminar – and that several others simply signed in and left, never to return. All of them had apparently signed up only because they had to “get their credits” before the end of the year. These lawyers were missing the point of mandatory CLE, and to the degree that the bureaucracy administering CLE tolerates such behavior, it is part of the problem. At minimum, it is not furthering its stated purpose for existing.

The second reason for this note was the difficulty I recently had trying to be patient during a motion hearing as my opponent made jaw-droppingly inane assertions relating to the military retirement system (most of which he appeared to be just making up). Comedian Ron White was right when he famously asserted that “You can’t fix stupid.” However, we *can* do something to actually enhance the level of information that lawyers should be required to have – or be gone.

Making CLE meaningful will take a little gumption by those in positions of authority. It remains to be seen whether there really is a commitment to stated policy, and if the willpower exists to do something to further that policy.

I. THE CONCEPT OF CONTINUING LEGAL EDUCATION

Nevada Supreme Court Rules 205 through 215 govern continuing legal education (“CLE”) requirements for Nevada lawyers. “Purpose” is set out in rule 206:

It is of primary importance to the state bar and to the public that attorneys continue their legal education throughout the period of their practice of law or judicial service. Failure to do so constitutes grounds for action by the board, the court, and the state bar as provided herein. It is the purpose of these rules to establish minimum requirements of continuing legal education for attorneys subject to these rules and the means by which those requirements are to be enforced.

The very first Rule of Professional Conduct requires “competence.” But the existing CLE rules require only “attendance” at accredited course of continuing legal education. Noticeably absent from those rules is any requirement that lawyers actual *learn* – or even listen to – anything being taught. In fact, a lawyer can send in the money for CLE on disk, and throw the disks in a desk drawer. CLE credit is given so long as the check clears.

For many years, the statement of purpose quoted above has been ridiculed by some members of the Bar as mere lip-service, or, worse, just an excuse to raise some extra money in CLE fees. Rebutting that cynicism requires that the “continuing legal education” received actually improve the education of the members receiving it.

II. HOW COULD CLE BE MADE ACTUALLY MEANINGFUL?

Those lawyers who actually have a desire to improve their professional skills will seek out information and education necessary for that purpose – attending courses, doing reading, studying, and generally continuing to *learn* meaningfully of developments in their chosen field.

There are lawyers who don't have any desire to learn anything. To them, "I've got my ticket" means achievement of a license to extract money from the public by way of access to a monopoly to which they make no meaningful contribution, and from which they seek no further knowledge. These lawyers will do the minimum required of them to maintain their access to the money-spigot.

Both in common perception, and to my direct observation, some, and perhaps most, of current supposed "CLE" is a sham. Money changes hands, and "credits" are duly tracked and recorded. An entire sub-bureaucracy of the Bar is supported. And, to what effect?

Is there *anyone* who believes that the general educational level of the Nevada Bar is meaningfully improved through what most consider to be the charade of the current CLE system? If the answer to this question is "no" – which I believe it to be – the next question is what can and should be done about it.

The self-centered opportunism of some lawyers is beyond the skill of anyone to fix. But perhaps even avaricious self-interest can be re-directed to serve the common good of ensuring that those with the monopoly of access to the legal system retain a currency of education and training deserving of profiting from that monopoly. And that is accomplished by raising the bar of "CLE" from mere attendance to demonstrated knowledge. In a word: testing.

III. WHY TEST CLE ATTENDEES?

There is an old saw in the literature of management and efficiency writers: "What gets measured gets done." If CLE is *truly* considered "of primary importance" as the Nevada Supreme Court and the State Bar have proclaimed, then they should do something about making sure that CLE actually accomplishes something. Or they should quietly repeal the requirement as hypocrisy, designed for appearance, and not for substance.

The current policy of "confidentiality" of who has attended what CLE facilitates the sham. The *first* stroke that should be issued is a rule change making the full records of CLE attendance of every member of the Bar open to public inspection – and posted on the State Bar website. Perhaps, just the embarrassment of being found out to be an uneducated dweeb in one's chosen field could be sufficient motivation for some to seek meaningful CLE training. And the public deserves to know the post-law-school education of the lawyers they seek to compare.

But, given the utter shamelessness of some members of the Bar, that is not enough. Con artists relying on lowest-common-denominator advertising to keep a line of suckers showing up at the door are unlikely to be motivated by mere public access to information showing that they don't actually

know anything except bean-counting.

IV. PRACTICALITIES

This is pretty simple. All CLE providers should be required to administer, grade, score, and report the results of a test covering the subject matter of the CLE course provided. No pass, no credit. This means a little more work for CLE providers, but nothing major.

In one fell swoop, the farce of those who check in but do not actually stay, and those who attend, but who pay zero attention, is solved.

Could there be continuing sham “CLE” that promises nothing but zero-effort credits? Sure. It becomes part of the job of the CLE Board to actually do its job by making sure those *purporting* to convey meaningful education are actually *doing* so.

If this proposal gains any traction, I expect some lawyers to howl how “unfair” it is that they be expected to actually learn anything at CLE, and the bureaucrats to bleat how “impossible” it would be to actually ensure that their job produces any meaningful improvement in the real world. I’m not terribly sympathetic to either.

Lawyers – holding a privileged license and monopoly – should either know what the hell they are doing, or stop pretending to be providers of “legal services.” And as to the bureaucrats, they should actually *really* provide a service ultimately useful to the public, or our Bar dues should stop being used to fund their jobs.

These proposals may sound harsh. But that is the way to *actually* serve the public interest – which the Bar/Judicial complex should either do, or stop pretending that it is doing. In short, CLE should be made meaningful, or the mandatory CLE requirement should be eliminated because it is just a public relations sham and fund-raising device.

V. TIMING

This is one of those situations in which “the proof is in the pudding.” If there is any appetite to make the Nevada “CLE” requirements actually *mean* anything, rule changes to accomplish that end could be proposed and submitted within thirty days, starting with open public access, and phasing in meaningful testing within the next year.

If *nothing* is done to improve the likelihood that “CLE” actually means that anyone actually learns anything, the silence will speak quite loudly, too.

VI. QUOTES OF THE ISSUE

“To know that we know what we know, and that we do not know what we do not know, that is true knowledge.”

– Henry David Thoreau.

“The price one pays for pursuing any profession, or calling, is an intimate knowledge of its ugly side.”

– James Baldwin.

“Hypocrisy, the only evil that walks

Invisible, except to God alone.”

– J. Milton, Paradise Lost, book. 3., line 683 (1667).

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