

MANDATORY ETHICS CLE

By

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Recently, the Lawyers Professional Responsibility Board and the Office of the Director of Lawyers Professional Responsibility held their annual professional responsibility seminar. What originated as simply a training session for district ethics committee (DEC) investigators has expanded over the years to include substantive presentations on the Rules of Professional Conduct and other topics of general interest to those who work in the legal ethics field. No longer confined to just Lawyers Board members and DEC investigators, the seminar is opened to other invitees as well. For the most part, current or former Board members and attorneys in the Director's Office make the presentations. Attendees are eligible for Continuing Legal Education (CLE) ethics credits.[Ftn 1](#)

When the Board and Director's Office first held their annual seminar in 1983, it was one of very few events offering CLE credits for a program devoted exclusively to issues of professional responsibility. Far more common at that time were day-long seminars that covered some substantive area of law with a 30-minute or one-hour presentation on ethics (as related to that particular field). In 1996, the CLE rules were amended and a mandatory ethics CLE requirement was established.[Ftn 2](#) Since then, attorneys have been required to include three hours of ethics credits as part of the 45 credits they are obliged to earn every three years.

Ethics Explosion

With the 1996 amendment, an explosion of short, one- and three-credit ethics-only courses began. The Board of Continuing Legal Education reports that in the last year there were approximately 160 three-credit ethics-only CLE courses offered in Minnesota (including seminars that are repeated via videotape), an average of almost three per week! In addition, well over 150 one-hour (or 1.25- or 1.5-credit-hour) "lunchtime" presentations were offered last year dealing with ethics. Another approximately 1,500 CLE seminars on other substantive topics included some ethics credit, sometimes as a breakout session choice. This does not even include the vast array of ethics credits available through national seminars or online webcasts that may be approved. An entire industry has grown up around mandatory CLE in general and for the special area of legal ethics.

The attorneys and paralegals in the Director's Office appear at many such seminars annually — as a group averaging 75 speaking appearances per year — and take on additional speaking engagements for civic

groups or students that do not qualify for CLE credit. In the years before and immediately after the adoption of amendments to the Rules of Professional Conduct in October 2005, our office's attorneys "hit the road," offering an even larger number of courses highlighting the new rule changes. Some of the private attorneys who practice extensively in the area of professional responsibility and professional liability are on the faculty of just as many CLE seminars as the director's staff attorneys. They are very generous with their time and expertise.

According to the American Bar Association, 41 jurisdictions have a mandatory Continuing Legal Education requirement, with 37 of them including some form of ethics requirement. The number of total credit hours required per year for ethics varies (in several states ethics is combined with other related areas such as professionalism or professional liability), though most require the same number of ethics hours that Minnesota does.

In 2006, Tennessee conducted an online survey of its state's attorneys concerning their satisfaction with mandatory CLE. [Ftn 3](#) Tennessee's survey found that a large majority of responding lawyers generally approve of mandatory CLE and believe the number of credit hours required, including for ethics, is "about right." While the number responding, not surprisingly, was not particularly large, respondents, at a minimum, did not indicate dissatisfaction. The survey cited to an earlier Minnesota survey, taken before ethics CLE became mandatory here, which found similar satisfaction ratings by lawyers in Minnesota.

Is It Working?

After more than ten years, can we judge how well mandatory ethics CLE is actually working? Are Minnesota lawyers somehow any more ethical? Should that be the test? Based on Lawyers Board budget figures, today there are, very roughly, 5,000 more attorneys actively practicing in Minnesota than in 1996. Despite an increase in the past year and a half, the number of complaints received by the Director's Office annually has decreased since 1996. [Ftn 4](#) Intuitively one senses that mandatory ethics CLE, together with greater emphasis on ethics education in the law schools, has played a significant role in preventing more complaints. One positive result from ethics CLE, at least those programs at which members of the Lawyers Board or attorneys from the Director's Office appear, is that attendees are almost always reminded about the advisory opinion service offered by the Director's Office. The advisory service has been another factor in reducing complaints. While character issues such as dishonesty likely are not susceptible to education, many other types of potential misconduct may be avoidable.

My own perception is that many more lawyers are aware of problem areas such as conflicts of interest, trust account recordkeeping, and other professional responsibility issues than previously. This perception is shared by others. One legal ethics expert summarized the impact of mandatory ethics CLE as follows:

Nearly every American jurisdiction now requires lawyers to earn CLE credits. ... CLE requirements typically include a minimum number of hours yearly in legal ethics. That requirement is certainly good. Here's why. Lawyers don't think of themselves as practicing legal ethics. They don't think they must stay current in the area of lawyer regulation. They practice

antitrust law, bankruptcy law, or criminal law, and they know they must know about developments in those fields, but without a CLE ethics requirement, many would ignore the subject. ... Perhaps this is understandable. Everyone is busy. But it's unfortunate. I applaud the CLE ethics requirement because, however modestly, it means lawyers will learn important information that they otherwise would not.[Ftn 5](#)

Step by Step

I recently spoke to a group of immigration lawyers who are very experienced in their particular area of law. This was a one-hour presentation on ethics issues related to immigration law, but my point could apply to any other area of law as well. After the session, lawyers who certainly knew far more about their substantive area of law than I did told me that they had not been fully aware of some of the details of the Rules of Professional Conduct concerning candor to the tribunal and when withdrawal was or was not a sufficient response to a client's misrepresentations to a tribunal. Perhaps they had a vague recollection of these topics from law school or from studying for the bar exam — but that was how many years ago? What might they have done if presented with such a situation prior to this seminar? Now, however, they knew how best to proceed. One small step at a time, mandatory ethics CLE appears to be working.

Notes

1 The term “ethics” is used in the Rules of the Minnesota Board of Continuing Legal Education (RMBCLE) along with “professional responsibility.” Nevertheless, “ethics” has become far more commonly linked with CLE courses dealing with this area of law, even though professional responsibility is a more comprehensive term for the area of law concerning the Rules of Professional Conduct and their application.

2 See Rules 6 and 9, RMBCLE. Required reporting of having taken ethics credits began in 1999.

3 A copy can be found at: <http://cletn.com/Documents/MandatoryCLESurveyAnalysis2006.pdf>.

4 In 1996, the Director's Office received 1,438 complaints, compared to 1,222 in 2006. The number of complaints generally decreased until 2002, then remained level until this most recent increase.

5 Prof. Stephen Gillers (NYU), Symposium: “Twenty Years of Legal Ethics: Past, Present and Future.” *Georgetown Journal of Legal Ethics*, vol. XX, No. 2, Spring 2007, p. 325.