

NEW JERSEY STATE BAR ASSOCIATION

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February 9, 2009

Stephen W. Townsend, Esq.
Clerk of the Supreme Court
Richard J. Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625-0970

Dear Mr. Townsend:

Thank you for the opportunity to comment on the final report and recommendations of the Supreme Court's Ad Hoc Committee on Continuing Legal Education ("Committee"). The Supreme Court's action in response to the Committee Report will have a significant impact upon the over 16,000 members of the New Jersey State Bar Association ("NJSBA" or "Association"), who will be among the ultimate users of the system. Because of this, the Association submitted extensive comments to the Committee during its initial phase, as well as comments on its draft report. The Association also offered testimony before the Committee twice, and was fortunate enough to have a representative on the Committee itself. I thank the Court and the Committee for permitting the Association to provide such extensive comments on this important report.

The NJSBA commends the Committee for its outreach to the legal community. Some of those efforts are contained in the Appendix to the Committee's report. Nonetheless, despite concerns raised by the NJSBA and other interested organizations, the final Committee Report was almost identical to its initial draft. In fact, none of the NJSBA's most recent comments and concerns were even included in the Appendix to the Committee's Final Report. We understand that the Supreme Court will give due deference to the Committee's recommendations. Still, we ask the Court to weigh carefully the concerns articulated by the NJSBA and its member attorneys as proposed consumers of the system. In that vein, we respectfully request the Court to consider altering the proposal as outlined in this letter and in our previous submission to the Committee.

The New Jersey State Bar Association has advocated and continues to advocate that any Mandatory Continuing Legal Education (MCLE) Program ("Program") must be fair, flexible, reasonable and time and money-conscious. The NJSBA has serious concerns about: (1) projected costs and staffing, especially in the current economy; (2) the need to expand opportunities for credit; (3) the elimination of Skills and Methods courses and the need to include basic courses for newly admitted attorneys; and (4) the need to "grandfather" education credits and carry them over to the implementation date.

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This letter is meant to highlight those concerns for the Court and supplements the NJSBA's September 9, 2008 submission to the Committee.

1. Costs and Staffing

The NJSBA applauds the overarching concept of utilizing electronic resources and harnessing technology in order to implement and administer the Program and to make it consumer-friendly and easy to navigate. However, the NJSBA has serious concerns about whether the fee schedule proposed by the Committee will cover the cost of administering the proposed program.

The Committee has recommended that a comprehensive and user-friendly, on-line database should be offered, similar to those offered in Pennsylvania, Tennessee, Florida and Texas. The Committee estimates that 6-8 staff members will be required to administer the program, and recommends that the database be funded through charges to providers, plus a \$1-2 fee per credit per attorney. The Committee estimates that, with 83,000 licensed attorneys, there will be between \$996,000 and \$1,992,000 to support the staffing and operational needs of the system.

For multiple reasons, we question the Committee's underlying assumptions and calculations as well as its call for a vast, expensive database to monitor the minutiae of individual attorneys' attendance and Program compliance.

First, the Committee bases its funding estimate on the 83,000 licensed lawyers listed on the Supreme Court roll in New Jersey even though it is likely that the actual number of attorneys complying with MCLE requirements will be much less (due to factors that may render various attorneys ineligible to practice such as failure to pay requisite fees, retirement, suspension or military duty). It is difficult to estimate the attrition that will result from out-of-state and part-time attorneys who will simply discontinue their New Jersey licenses as a result of the new mandatory CLE requirements. Statistics from the New Jersey Lawyer's Diary, which are derived directly from the Administrative Office of the Courts, indicate that there are approximately 63,000 active attorneys in New Jersey (including out-of-state attorneys with active New Jersey licenses); we submit that this is a more prudent and realistic number on which to base funding estimates.

Second, the Committee points to Tennessee for support of its estimate of 6-8 staff persons needed to administer the program. In Tennessee, six people administer a program for 14,500 attorneys. The NJSBA believes strongly that more staff will be needed to administer a program for about 40,000 more attorneys. In contrast, Pennsylvania has 12 staff members to administer a program for 60,500 attorneys and appears to be a more practical ratio of staff to program participants so as to develop and administer a comparably-sized program in New Jersey. By noting this, the NJSBA is not advocating for additional staff, rather the Association questions the staffing estimate provided by the Committee, and believes that the Program can be designed, as explained below, so as to require less staff support.

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Finally, the NJSBA notes that there are no provisions for any start-up costs, which are certain to be quite high, particularly in light of the technological features of the Program proposed by the Committee.

For these reasons, and with due respect to the Committee and its labors, the NJSBA believes the Program envisioned by the Committee is arduous, overly-complicated and too costly to pursue for the average attorney in New Jersey.

As an alternative, the Association urges the Court to consider establishing a self-reporting system as is successfully used in New York. Indeed, we have reviewed and considered the New York model in-depth and, under the rubric of what is not broken need not be fixed, we see little reason to substantially deviate from that successful program (except as we note herein). There, attorneys are responsible for tracking their own CLE activity and submitting certifications of compliance to the MCLE regulator. As officers of the Court, attorneys are required to certify any number of things to the Court at any given time. There does not appear to be any reason to treat MCLE compliance any different. Self-reporting serves to eliminate the need for a costly central database envisioned by the Court's committee, and should reduce the number of staff necessary to administer the program. It will significantly reduce the need for start-up costs, particularly in the area of technology. The NJSBA also suggests that the self-reporting form be included in the annual Client Security Fund mailing as a way to further economize on the administration of the MCLE program. Particularly in this bleak economic climate, the NJSBA urges the Court not to embark on a complicated, costly reporting system when there are proven alternatives.

The NJSBA recognizes there may be some attorneys who would welcome a central database where they could check their MCLE status at any time without the need to keep paperwork themselves and we note that the free market already provides for this as more sophisticated service providers, such as the New Jersey Institute for Continuing Legal Education (NJICLE), already have the ability to maintain records of attendance and make them available online or through an easy-to-access system, so many records will be available to users anyway, but through commercial enterprises and not through a costly central administration.

2. Expanded Opportunities for Credit

The NJSBA applauds the Committee's recommendation that credits be permitted to be earned through a wide variety of media including web, audio, video and DVD. The NJSBA urges the Court to consider awarding credits for a similar berth of volunteer efforts that also incorporate a fundamental educational component. This will validate the value of current volunteer work being done and serve the Court's and NJSBA's concordant policy interest to encourage such work in the future. Specifically, the NJSBA recommends that:

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(a) teaching a legal seminar be eligible for earning credit on 3:1 basis, in recognition of the time spent on researching and preparing both written and lecture materials. The NJSBA notes that lecturers on panels actually undertake three different roles related to education: preparing for the class, lecturing the class, and attending the class during the other panelists' presentations. At least ten other states give triple credit for teaching and some give even more.

(b) service on a District Ethics Committee and service on a Fee Arbitration Committee be eligible for credit. In recognition of the time required for service and the amount of research and preparation necessary, we recommend that 1:1 credit be given for each hour of service, up to 12 hours per year, with the attorney self-certifying the number of hours of service.

(c) attorneys participating in mock trial or moot court programs offered through approved and accredited elementary schools, high schools, colleges, law schools and other post-graduate programs receive credit. All of these programs meet the educational goals of MCLE for their participants, as well as provide laudable services to various segments of the community. The NJSBA recommends that 3 CLE credits be given for coaching a mock trial or moot court team and 2 credits be given for judging a competition.

(d) courses given by Court-approved *pro bono* providers for the purpose of training attorneys to handle a *pro bono* case be eligible for MCLE credit without the need for providers or attendees to pay fees. Furthermore, the NJSBA recommends that attorneys attending the courses not be given credit for the course unless they then take a *pro bono* case. This would provide an additional incentive for attorneys, generally, to participate in *pro bono* work, and would offer an avenue to those attorneys who have limited funds to fulfill their requirements in exchange for helping to meet the public's unmet legal needs.

3. Including Required Basic Courses for New Attorneys

If the Court follows the Committee's recommendation to eliminate the current Skills and Methods program, the NJSBA urges the Court to consider replacing the program with a "101 Series" program, which would focus on teaching the most basic elements of a given substantive practice area. The cost to attend such courses should be significantly reduced so that they are affordable for newly-admitted attorneys. The NJSBA believes some form of "bridge the gap" programming is critical to prepare new lawyers entering the profession.

The NJSBA recommends that seventy-five percent (75%) of newly-admitted attorneys' MCLE credit hours be 101 Series courses in their first biennial reporting period. The courses should be designated as fulfilling the credits of a particular substantive practice area. The entity that is established to oversee the approval of courses should establish the substantive areas for the

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courses. Attorneys subject to these requirements should be required to take two (2) credit hours of a 101 Series course in three (3) substantive areas of law. This is to require attorneys to take courses in areas outside their particular practice area if they are specialists. The remainder of their 101 Series credits may be filled through any 101 Series course.

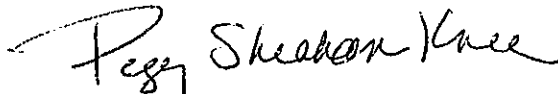
4. Grandfathering Credits and Increasing Carry-Over Credits

The NJSBA strongly urges the Court to consider "grandfathering" educational programs offered between the point MCLE is announced and implementation begins. For example, if MCLE is to become effective January 1, 2010, the Court should validate CLE credits for practitioners who attend CLE programs (approved in other jurisdictions) in 2009 and credit same to the practitioners for prospective requirements that will be mandated in 2010. That is, CLE credits received in 2009 should be carried over so there is no negative impact on CLE providers and attendees.

In addition, the NJSBA urges that up to half of the required credits (12 credits per cycle) be permitted to be carried over, not just one-quarter. The ability to carry over up to 12 credits will assist attorneys who, for extenuating circumstances, cannot meet the required minimum in any given year, and will encourage participation by attorneys in intensive advanced courses, such as week-long trial advocacy and the 40-hour mediation training.

On behalf of the Association, I again commend the Committee for its hard work in developing the Report and also thank the Court for the opportunity to provide comments on this proposed Program that will impact all of our members in a most fundamental way. The Association stands ready to assist the Court in implementing the MCLE program and we submit these comments and recommendation toward our mutual goal of creating a Program that is fair, flexible and reasonable and serves to better the practice of law and representation of clients in our state.

Respectfully yours,



Peggy Sheahan Knee
President

/sab

cc: Honorable Glenn A. Grant, Acting Administrative Director of the Courts
Honorable Peter G. Verniero, co-chair, Supreme Court Ad Hoc Committee
on Continuing Legal Education
Honorable Arthur N. D'Italia, co-chair, Supreme Court Ad Hoc Committee
on Continuing Legal Education