

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

Petition to Amend Rule 21 Section 4.08
To Increase the Amount of Distance Learning Credits
Applicable per Year from Six (6) to Eight (8)

The Tennessee Commission on Continuing Legal Education and Specialization (the “Commission”) hereby petitions the Supreme Court of Tennessee to amend Rule 21 Section 4.08 by increasing the the amount of distance learning hours that may be earned through distance learning activities from six (6) to eight (8) per year. In support of this Petition, the Commission states:

1. The purpose of Tennessee’s Rule for Mandatory Continuing Legal Education (MCLE) is to increase the competence and professionalism of Tennessee attorneys through a requirement of regular participation in an established amount of continuing legal education. The Commission’s responsibilities include monitoring the operation of the Rule and recommending modifications.
2. In recent months, the Commission undertook to review the role of distance learning in Tennessee’s MCLE program. The Commission researched the role of distance learning in the MCLE programs of other states and learned that perhaps as many as 25 of the current 42 MCLE jurisdictions allow all requirements to be earned in what Tennessee would consider distance learning formats. In 2006, approximately 1/3 of all attorneys required to earn CLE credits participated in some form of distance learning, but less than 7% reached the current six-hour cap.
3. The Commission also conducted surveys of Tennessee attorneys about distance learning. The Commission even surveyed attorneys who have not participated in distance learning to obtain their views. The results of these efforts and an analysis of the pros and cons of increasing or even removing the cap on distance learning hours were formulated by the Commission’s staff into a paper entitled “Weighing the Arguments on Removing the Distance Learning Cap”, attached as Exhibit A.
4. In addition to considering the opinions of attorneys, the Commission wished to consider any feedback that major CLE providers might have. “Weighing the Arguments on Removing the Distance Learning Cap” was therefore sent to those providers who supply a significant number of CLE hours for Tennessee attorneys each year. The Commission received comments from provider supporting increasing or even removing the cap. Other providers opposed the views of attorneys who have participated in the programs and recommended against any increase. All responses from providers are included in Exhibit B.
5. The Commission also took into consideration the expanded role that distance learning has come to play in both formal education and in the business world. See, for example, the August 14, 2007 edition of the *Wall Street Journal* contained an article

entitled "Firms Go Online to Train Employees" about the value of online training in the business world. Here are key and representative paragraphs:

“A few years ago, David Dam, head of sales development for Golden Harvest Seeds Inc., was frustrated with his company's sales-training program for 250 employees and 2,000 independent crop-seed dealers. Mr. Dam would rent meeting rooms for 30 people, and only 15 would show up. He had trouble finding great trainers. Fuel prices were making travel more expensive, and the sessions took valuable time out of workers' days.”

“But in the spring of 2004, Mr. Dam's company tried planting some seeds in a new field -- online training.”

“Golden Harvest hired [EJ4 LLC](#), a video-based online trainer in St. Louis, to produce and post online videos for teaching sales reps how to sell Golden Harvest seeds. Mr. Dam tracked the results and found that employees were watching the videos, mostly on Saturdays or Monday mornings. Sales increased, as did demand for more courses, and training costs fell to less than \$100 per person from between \$175 and \$200.”

“‘This would have been next to impossible if we had just standard [face-to-face] training,’ Mr. Dam says. Now, Golden Harvest, of Waterloo, Neb., offers about 120 training courses on its internal Web site, with 2,000 page views a month. ‘We're getting more done with less money,’ he says.”

“Such training galvanized Golden Harvest workers, Mr. Dam says. The company set records in new customer acquisitions and new dealer recruitments. In 2005, the first full year of the online training, the company's revenue jumped 14%, or about \$30 million.”

6. At the conclusion of this process, the Commission considered the matter at a meeting on August 21, 2007. After discussion, the Commission determined that, despite evidence and arguments which might support a large increase or even removal of the cap on distance learning hours, the wiser course is a more modest increase. In this fashion, the Commission can continue to monitor the contribution of distance learning to the education of Tennessee lawyers as well as its impact on live programs and the benefits to collegiality that may be a part of such programs. The Commission voted to petition this Court for a two (2)-hour increase in the distance learning cap from the current six (6) hours to eight (8) hours.

Wherefore, the Commission petitions this Court for an Order amending Rule 21, Section 4.08 by increasing the the amount of distance learning hours that may be earned through distance learning activities from six (6) to eight (8) per year.

Respectfully submitted,

Randy N. Chism, Esq.
Chairperson

Certificate of Service

I certify that a photocopy of this Petition and Attachments was mailed, first class postage paid, to the attached list of individuals and organizations, and was posted on the Commission's web site, www.cletn.com, this __ day of August, 2007.

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Exhibit A

Weighing the Arguments on Removing the Distance Learning Cap

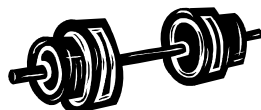
The Tennessee Commission on Continuing Legal Education and Specialization began testing distance learning as a component of our MCLE program in 1996. In 1999 we recommended a rule change to the Supreme Court to make permanent a provision allowing distance learning for MCLE compliance. A 1999 report on attorney reactions to distance learning described support for the program as “overwhelming”, and that support remains strong today.



In a recent survey of Tennessee attorneys who had participated in distance learning within the last year, 97% of the respondents said their distance learning experiences were as good as or better than traditional, site-based CLE programs. This result is consistent with the expanded role distance learning has assumed in recent years in all realms of education.

In our original, experimental period, only four hours of distance learning was allowed. With the permanent rule change in 1999, that amount was increased to six hours per year. Today, it is time to

consider whether that limit should be removed entirely.



In an effort to make a decision based on data, the Commission has investigated the positions and experience of other mandatory states and conducted surveys of Tennessee attorneys, both those who have participated in distance learning activities and those who have stuck to traditional, site-based programs exclusively. As already mentioned, 97% of Tennessee attorneys responding to our survey indicated their distance learning experiences were as good as or better than traditional, site-based CLE programs. 88% said the number of hours allowed through distance learning should be increased, and more than half (52%) said the cap on distance learning credits should be removed completely.

What about attorneys who have not participated in distance learning activities? What would they say? Again, we conducted a survey. Over 400 attorneys responded who had never participated in distance learning activities. When asked what factor the Commission should weigh

most heavily in deciding whether to raise or remove the cap, the top choice out of five choices was “How attorneys who have participated in distance learning programs rate them compared to traditional CLE programs” at 43%. Even without knowing the extremely positive rating participants give distance learning CLE, 49% of the non-participating attorneys thought the cap should be raised or removed.

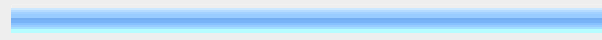
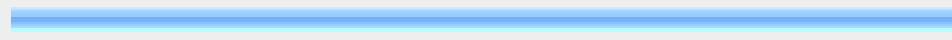

The next two pages of this paper show the graphical results of key questions from the surveys of participants and of non-participants. After that is a table that lists, weighs, and analyzes the arguments for and against removing the cap.

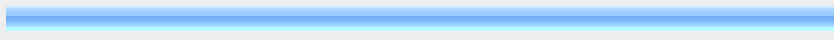
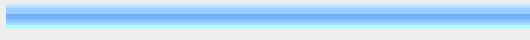



On balance and after due consideration, the Commission recommends that Supreme Court amend Rule 21, §4.08 as follows:



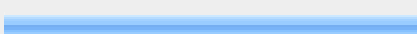
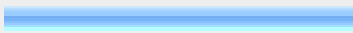
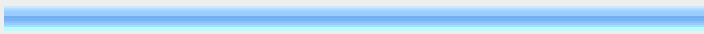


4.08 A maximum of **[to be determined]** hours of credit per year earned in a distance learning format approved by the Commission pursuant to section 5.01(f) may be applied to the annual requirements.

Attorneys who have participated in distance learning CLE:

On the whole, how have distance learning activities been for you as a learning experience?			
		Response Percent	Response Count
Better than traditional, site-based CLE		37.2%	484
About the same as traditional, site-based CLE		59.3%	772
Worse than traditional, site-based CLE		3.5%	46
<i>answered question</i>			1302

Do you think the Commission should petition the Supreme Court to increase the current 6-hour cap on distance learning credits?			
		Response Percent	Response Count
Yes, the cap should be increased to the full 15-hour requirement		52.3%	680
Yes, the cap should be increased, but not all the way to 15 hours		33.4%	434
No, the cap should remain where it is		13.4%	174
No, the cap should be lower than 6 hours		0.9%	11
No, distance learning credits should not be accepted for CLE compliance		0.1%	1
<i>answered question</i>			1300

Attorneys who have NOT participated in distance learning CLE:

Do you think the Commission should petition the Supreme Court to increase the current 6-hour cap on distance learning credits?			
		Response Percent	Response Count
Yes, the cap should be increased to the full 15-hour requirement		26.8%	111
Yes, the cap should be increased, but not all the way to 15 hours		22.2%	92
No, the cap should remain where it is		44.3%	184
No, the cap should be lower than 6 hours		3.6%	15
No, distance learning credits should not be accepted for CLE compliance		3.1%	13
<i>answered question</i>			415

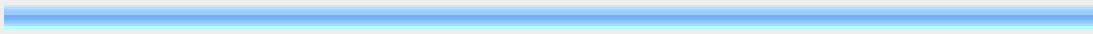
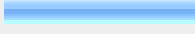
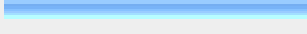



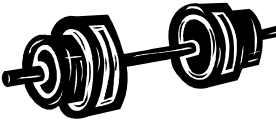
If Tennessee's MCLE Rule were changed to allow you to earn all your CLE requirements through distance learning, how would this affect your participation in distance learning programs?			
		Response Percent	Response Count
I do not think a change in the cap on distance learning credits would affect my behavior substantially		68.5%	293
I would be much more likely to participate in distance learning programs		12.2%	52
I would be somewhat more likely to participate in distance learning programs		19.4%	83
<i>answered question</i>			428

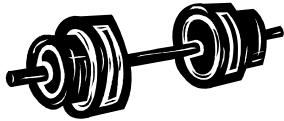
Table of Arguments and Analysis

Effect on Learning		
	Pro Arguments	Con Arguments
<p data-bbox="302 363 537 402">Pro Analysis</p>  <p data-bbox="485 448 638 557">This analysis assumes most lawyers are interested in maintaining competence and use CLE to that end. This assumption is supported by our survey findings over the years of the extent to which Tennessee attorneys approve the MCLE program. In addition, the Tennessee Bar Association surveys of the reasons why lawyers choose certain CLE programs indicate that content is the dominant consideration.</p> <p data-bbox="186 1219 638 1404">We can also improve the learning effect of DL programs by providing a mechanism for attorneys to rate such programs.</p>	<p data-bbox="690 472 972 610">Lawyers can attend highly specialized programs that are not available in TN.</p> <p data-bbox="690 656 1010 902">On deadline, lawyers can participate in DL programs relevant to their practice rather than attend whatever site-based program is available.</p> <p data-bbox="690 948 1003 1232">Because DL programs are prepared in advance and available for extended times, they can be more carefully designed and implemented to achieve learning objectives.</p>	<p data-bbox="1394 363 1644 402">Con Analysis</p>  <p data-bbox="1394 448 1803 711">Any temptation of lawyers to “multi-task” can be minimized by working with providers to improve and increase interactivity components.</p> <p data-bbox="1394 756 1864 1057">Many live programs do not include question and answer sessions. Further, telephone conference programs and webcasts can include Q&A. Some online programs use email questions or bulletin boards.</p> <p data-bbox="1394 1102 1864 1252">Finally, a component of the learning through interchange with other lawyers is now supplied by listservs, etc.</p>

<p style="text-align: center;">Pro Analysis</p>	<p>Effect on Collegiality</p>		<p>Con Analysis</p>  <p>First, the primary objective of CLE is to increase attorney competence. Collegiality is a benefit, and perhaps promotes competence, but it is secondary and collateral.</p> <p>Second, removing the distance learning cap would likely have a minimal effect on collegiality. The best indication we have, both from our surveys and from states that allow total DL compliance, is that a large majority of attorneys would still get a significant portion of their CLE credits at traditional, site-based seminars.</p>
	<p style="text-align: center;">Pro Arguments</p>	<p style="text-align: center;">Con Arguments</p> <p style="text-align: center;">Attorneys who are participating in DL are not interacting with other attorneys in ways that promote collegiality.</p>	

<p style="text-align: center;">Pro Analysis</p>  <p>Very substantial support for this consideration in the survey results.</p>	Effect on Attorneys		Con Analysis
	Pro Arguments	Con Arguments	
	<p>Allows greater choice in meeting CLE requirements.</p> <p>Very beneficial for common practice areas and rural attorneys.</p> <p>Reduces direct and indirect costs of CLE compliance.</p>		

Pro Analysis



Effect on the Marketplace

Pro Arguments

Our experience over the last 10 years has given in-state providers a chance to adjust.

Increased competition should result in higher quality programs.

Increased demand for DL programs could promote superior design and implementation by providers.

Con Arguments

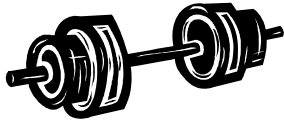
Removing attorneys from the market for live programs will reduce the resources providers put into those programs and increase costs.

Con Analysis

No suggestion in our experience thus far or in the experience of states that allow total DL compliance that this effect is even measurable, much less substantial.



Pro Analysis



Effect on the Complexity of Compliance

Pro Arguments

Eliminates an entire tracking component, thereby substantially simplifying compliance logic and reducing systems design and maintenance costs.

Reduces demands on attorneys to understand detailed requirements.

Eliminates need for sponsors to communicate to attorneys about a DL limit.

K.I.S.S.

Con Arguments

Con Analysis

Overall Analysis of Arguments Pro and Con for Removing the Cap on Distance Learning Credits



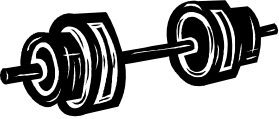

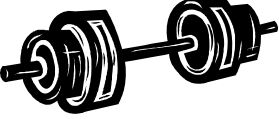


PRO	Con
 Effect on Learning	Effect on Learning 
 Effect on Attorneys	Effect on Collegiality 
 Effect on the Marketplace	Effect on the Marketplace 
 Effect on the Complexity of Compliance	

Exhibit B



TENNESSEE BAR
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August 22, 2007

Mr. David Shearon
Executive Director
Tennessee Commission on Continuing Legal Education
and Specialization
221 Fourth Avenue North, Suite 300
Nashville, TN 37219

Dear David:

Please allow this letter to revise, extend, and formalize the comment which we made to the Commission in support of elimination of, or significant increase in, the six-hour cap on distance learning credits in Tennessee.

The Tennessee Bar Association wholeheartedly supports the elimination of, or significant increase in, the cap on distance learning credits because the distance learning program provides significant advantages in learning, accessibility, and cost.

Tennessee lawyers continue to support mandatory continuing legal education and believe in its value in assuring lawyers who are better prepared for representation of Tennessee clients. The most oft-cited reason for attending CLE is the course content, not the need to satisfy some arbitrary requirement. These are the findings from the TBA's most recent, 2006, membership survey.

In preparing to comment on its support for the proposal, the TBA reviewed the CLE evaluations which we conduct to find what program improvements can be made to better serve our members. These evaluations show that the distance learning programs which we conduct consistently achieve comparable ratings with onsite programs on all scales. This includes whether the program held attention, whether the content had substance, whether the course material was helpful, and whether new insights were gained. In addition, the CLE

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evaluations for the online video programs using a standard national matrix indicate that of those taking the online video programs, 85% rate the overall quality of the program at very good or excellent. These findings seem to confirm the impressions given to the Commission through its survey that the distance learning experience is comparable to experience of onsite programs.

A frequent reason cited by our members in support of distance learning programs is their accessibility. While the TBA strives to make sure that its programs are widely available in each grand division, the cost of live programming makes delivery of every program in every judicial district prohibitive. Even if programs were made even more widely available, they would never be as accessible as the constant availability 24 hours a day, 7 days a week, 365 days a year for the online distance programs. A lawyer who may have a specific conflict on the day a program is presented misses that opportunity unless there is a distance alternative.

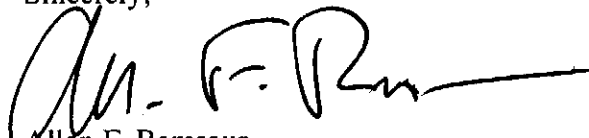
While the price of continuing legal education courses has remained relatively steady, the cost of Tennessee lawyers to comply with mandatory continuing legal education continues to rise. The price of CLE courses in this analysis is the fee charged by the provider. The price has remained relatively stable in part because of competition, but also because the providers have been able to become more productive at marketing and communications. However, the real cost of compliance for mandatory continuing legal education in Tennessee is the time which Tennessee lawyers must devote to this endeavor, time which they cannot devote to billable client matters. Even the lawyer who simply has to leave their office and walk down the street to attend a one-hour lunch and learn program not only devotes that one hour for the program, but also devotes as much as an additional one hour in transaction time going to and from the program. Distance learning means that the lawyer can remain in their office until the time the program starts, participate in the program, and complete the one-hour program without ever having to leave their desk. In addition, a lawyer can use after hours and weekend time more productively by taking an online course when convenient to them and when client demands are not tugging on them.

Time and again we hear from practitioners that taking a whole day out of the office to drive to one of the major metropolitan areas to get their hours is an enormous expense. Increased distance learning could bring this cost down significantly. If just 5,000 Tennessee lawyers took 2 additional hours of distance CLE saving each lawyer an average of one hour of transaction time per hour of programming at a conservative rate of \$150 an hour, the compliance cost for Tennessee lawyers for mandatory continuing legal education in Tennessee would drop by \$1.5 million.

For the reasons stated above, the TBA supports elimination of the distance learning cap or in the

alternative a significant increase in the cap. If there is anything further which the TBA can do in providing information in support of the Commission's examination of this issue, we are ready and willing to assist.

Sincerely,

A handwritten signature in black ink, appearing to read "Allan F. Ramsaur", with a long horizontal line extending to the right.

Allan F. Ramsaur
Executive Director

- C: Marcy Eason, President
- Buck Lewis, President-Elect
- Gail Vaughn Ashworth, Vice President
- Angelia Nystrom, Chair, TBA CLE Committee
- Barry Kolar, Assistant Executive Director
- Therese Byrne, CLE and Meetings Director



Established in 1897

EXECUTIVE DIRECTOR
Lynda Minks Hood

August 21, 2007

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Dave Shearon
Executive Director
Tennessee Commission on
Continuing Legal Education & Specialization
221 Fourth Avenue North, Suite 300
Nashville, TN 37219

Re: Opposition to Amending Tennessee Supreme Court Rule 21, Section 4.08

Dear Dave:

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President, Young Lawyers Division

On behalf of the Chattanooga Bar Association, thank you for the opportunity to comment on the issue of whether to recommend that the Tennessee Supreme Court amend Rule 21, Section 4.08 to increase or eliminate the “cap” on the number of distance learning credit hours that can be applied to meet annual mandatory continuing legal education requirements.

The Chattanooga Bar Association opposes the amendment of Tennessee Supreme Court Rule 21, Section 4.08 to remove the mandatory CLE cap on distance learning credit as well as any alternative amendment which would increase the distance learning cap to more than (6) hours of annual mandatory CLE credit.

We agree with the Memphis Bar Association in that it will give a competitive advantage to the for-profit providers, particularly national providers as well as the TBA, who already have an extensive catalog of distance learning courses. Without some financial assistance to buy the needed technology, we are extremely concerned that all the local bars will be at a competitive disadvantage!

We join the Knoxville Bar Association and Memphis Bar Association arguments in favor of “live” programming. There is a concern that lawyers are becoming increasingly isolated from one another by email and other electronic advancements. Live seminars is one method of ‘forcing’ lawyers to see one another in an context other than in court, depositions, or other adversarial situations. Furthermore, it gives lawyers the opportunity to network and to learn from each other from comments and/or questions that might arise.

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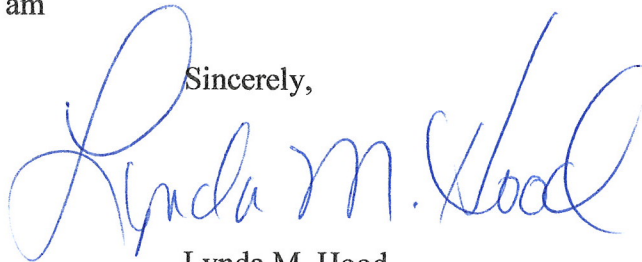
Page 2
August 21, 2007

The Chattanooga Bar Association respectfully submits this letter in opposition to amending Tennessee Supreme Court Rule 21, Section 4.08 to remove the mandatory CLE cap on distance learning credits. I will be available by phone today at 423-756-3222 in case you have any questions.

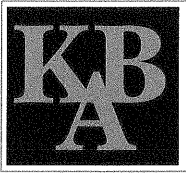
As always, we appreciate the opportunity to comment on proposed changes to the rules made known by the Tennessee Supreme Court.

With kindest regards, I am

Sincerely,

A handwritten signature in blue ink that reads "Lynda M. Hood". The signature is fluid and cursive, with the first name "Lynda" being the most prominent part.

Lynda M. Hood
Executive Director



**Knoxville
Bar
Association**

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Lawrence P. Leibowitz



August 16, 2007

VIA EMAIL & U.S. MAIL

Mr. David Shearon
Tennessee Commission on
Continuing Legal Education & Specialization
221 Fourth Avenue North, Suite 300
Nashville, TN 37219

Re: Opposition to Amending Tennessee Supreme Court Rule 21, Section 4.08

Dear Mr. Shearon:

Thank you for the opportunity to comment on the issue of whether to recommend that the Tennessee Supreme Court amend Rule 21, Section 4.08 to increase or eliminate the "cap" on the number of "distance learning" credit hours that can be applied to meet annual mandatory continuing legal education ("MCLE") requirements. The Knoxville Bar Association submitted your email dated July 20, 2007 and the attachment entitled "Weighing the Arguments on the Distance Learning Caps" to our CLE Committee for review. I have attached a copy of the Committee's recommendation which was adopted by the KBA Board of Governors at its meeting on August 15, 2007.

The Knoxville Bar Association respectfully submits the attached comments for the Commission's consideration. As always, we appreciate the opportunity to comment on proposed changes to the rules promulgated by the Tennessee Supreme Court.

With kind regards,

Sincerely yours,

Ruth T. Ellis, President
Knoxville Bar Association

cc: **Members, Tennessee Commission on CLE & Specialization**

- Randy N. Chism, Esq. (Chair)
- Gregory M. Duckett, Esq.
- DeCosta Jenkins (Treasurer)
- Edward T. Kindall, Esq.
- Roger W. Dickson, Esq.
- John C. "Jack" Burgin, Esq.
- Paul E. Prather, Esq.
- Joy B. Day, Esq.
- John D. Pellegrin, Esq.
- Marcy Walker, Esq.
- Dalton L. Townsend, Esq.
- Justice Gary R. Wade

MEMORANDUM

To: Knoxville Bar Associate Board of Governors

From: Susan P. Herndon, Co-Chair, Knoxville Bar Association CLE Committee
Amanda M. Busby, Co-Chair, Knoxville Bar Association CLE Committee

Re: Opposition to the amendment of Tennessee Supreme Court Rule 21, Section 4.08 to remove the mandatory CLE cap on "distance learning" credit as well as any alternative amendment which would increase the distance learning cap

Date: August 14, 2007

The Tennessee Commission on Continuing Legal Education and Specialization ("Commission") has requested input from the Knoxville Bar Association, before the Commission's next meeting on August 21, 2007, on the issue of whether to recommend that the Tennessee Supreme Court amend Rule 21, Section 4.08 to increase or eliminate the "cap" on the number of "distance learning" credit hours that can be applied to meet annual mandatory continuing legal education ("MCLE") requirements (*See* E-mail from David Shearon with attached Commission document). Supreme Court Rule 21, Section 4.08 currently provides that "[a] maximum of six (6) hours of credit per year earned in a distance learning format may be applied to the annual requirements" (*emphasis added*). The Commission is reviewing the Rule's distance learning cap and has indicated a predisposition to increase or eliminate it.

After meeting to consider this matter, the Knoxville Bar Association Continuing Legal Education Committee ("CLE Committee") voted to recommend to the Board of Governors that the Knoxville Bar Association register its opposition with the Commission to any proposal to amend Supreme Court Rule 21, Section 4.08 to eliminate the distance learning CLE cap as well as any alternative amendment which would increase the distance learning cap above the existing six (6) hours per year..

If the primary role of MCLE is to promote competence, then it is important to keep in mind the various functions of an attorney when considering whether distance learning provides the same educational benefits as live CLE seminars. The Preamble of Tennessee Supreme Court Rule 8 provides several insights into a lawyer's role: "A lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service and engaging in these pursuits as part of a common calling to promote justice and public good" (Preamble [1]). "As a representative of clients, a lawyer performs various functions. . . . advisor, . . . advocate, . . . negotiator, . . . intermediary, . . . evaluator" (Preamble [3]) "In all professional functions a lawyer should be competent, . . ." (Preamble [4]). "A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. . . . A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. . . ." (Preamble [5]).

The Knoxville Bar Association has a long history as a successful provider of high quality CLE programs utilizing various live and distance learning formats. Throughout this process, the Association has consistently sought and received feed-back from program participants as part of the CLE planning process to ensure a quality learning experience. Based upon this history, the CLE Committee believes that numerous factors weigh heavily in favor of keeping the distance learning cap at the existing six (6) hours.

In terms of positive effects on learning, live programs offer a better, more immediate, and responsive forum for question-and-answer sessions during a seminar, a factor that greatly enhances the quality of the learning experience. During live programs there is more give-and-take and often other experts who are attending the program share new insights to add to those of program presenters. Many distance learning programs do not offer any question-and-answer opportunities during the initial session.

Live programs also offer a forum that encourages and facilitates face-to-face dialogue between lawyers and the judiciary outside of the courtroom in a manner that cannot be duplicated by distance learning. Live programs are not only the best, but are often the only CLE forum to help teach competence in the area of local rules and practices. It is unlikely that large for-profit CLE providers would find enough financial incentive to offer such programs and it is unlikely that local non-profit providers would be in a position to afford providing such programs in a distance learning format.

Live programs offer a better and more realistic forum for trial practice demonstrations where a three-dimensional view is necessary to fully appreciate the skills demonstrated. Live programs offer the opportunity to touch and feel (and smell) demonstrative exemplars (such as weapons, bones, mechanical parts and products) in a manner that cannot be duplicated by technology.

Live programs offer a better and more realistic forum for client communication demonstrations where once again a three-dimensional view is necessary to fully appreciate the skills demonstrated. Competency in client service is an essential skill for lawyers.

Because distance learning courses are prepared in advance and are generally available for extended times, they are often not as timely as live programs. Distance learning programs often do not incorporate recent changes in the law. Live programs offer the most up-to-date format for enhanced learning and in the ever-changing legal field this is a crucial part of maintaining competence.

Live programs offer a forum that encourages and facilitates face-to-face dialogue between lawyers and other lawyers in a manner that cannot be duplicated by distance learning. A lawyer's duty of competence extends to his role as negotiator, intermediary and advocate, all of which require the ability to effectively communicate with others lawyers face-to-face. Such "people

skills" are better learned in live programs rather than through distance learning formats. This is more than simply the positive effect of collegiality on learning; it is a matter of competence and professionalism in areas that are essential to the underlying roles of attorneys. This also facilitates mentoring within the profession, which promotes competence.

Practicing lawyers have little spare time and many only attend the minimum required number of MCLE courses each year. It is the experience of the Knoxville Bar Association as a CLE provider that most distance learning courses are taken at the end of the year, during the holiday season, under the pressure of a deadline at a time when the quality of learning would be adversely impacted by the various pressures and many times the courses taken do not even correspond with the actual practice areas of the attorneys. Under these circumstances, removal of the distance learning cap would not serve to better promote competence.

The effect on the marketplace of removing the cap on distance learning would appear to favor large for-profit CLE providers with more resources over small non-profit CLE providers. For the Knoxville Bar Association, increases in the use of distance learning programs accompanied by decreases in attendance for live programming would have an adverse impact on the Knoxville Bar Association's CLE budget.

The attached document entitled "Weighing the Arguments on Removing the Distance Learning Cap" lists the "Effect on the Complexity of Compliance" as an argument supporting the removal of the cap on distance learning. However, the CLE Committee did not understand how removing the cap on distance learning in order to reduce the "Complexity of Compliance" would promote attorney competence (the goal of continuing legal education). If there are questions as to the definition of which courses qualify as "distance learning" CLE, then it would appear that the answer would be for the Commission to revise the rules to be more specific and/or to better inform providers and attorneys of the rules.

The Knoxville Bar Association has offered Online CLE programs since 2001 and the CLE Committee supports the inclusion of distance learning courses as an important option for meeting a portion of the MCLE requirements. However, live CLE programs offer many benefits that cannot be duplicated by distance learning. The CLE Committee believes that live seminars offer significant advantages over distance learning courses in helping attorneys maintain and improve their expertise in the law as they fulfill their various roles as advisors, advocates, negotiators, intermediaries and evaluators while pursuing the learned art of law in the service of clients and the public good. Thus, the CLE Committee submits that a combination of live and distance learning MCLE (with a preference for live programs) would best serve to promote over-all attorney competence.

Accordingly, the CLE Committee recommends that the Knoxville Bar Association register an objection with the Commission to any proposal that would eliminate the distance learning MCLE cap or raise the distance learning MCLE cap above the existing six (6) hours per year. Please let me know if you need any further information from the CLE Committee regarding this recommendation.

Distance Learning

Provider Comments

Allan Ramsaur, Executive Director for the TBA has asked to talk with the Commission and will be attending a portion of the meeting.

Don Paine

I suspect you may have received correspondence from Mr. Paine. Here are my quick notes of our phone call on 8/13.

Court is the last arbiter. Commission can do what it wants. Practical effect would be to put Tennessee providers out of business. I'm against it. Reminded me of the history of TLI paying fees early during the Commission's first year to help with financial needs. Asked for list of Commissioners which I emailed.

West LegalEd:

Mr. Shearon: With over 1100 hours of online CLE content accredited in Tennessee, we certainly support an increase in the current cap on distance learning credits. We would encourage you to join the majority of states (25 of 42) who currently allow all MCLE hours to be earned through some form of online education, including interactive live webcasts.

Your findings support our own conclusions-- drawn from a combination of customer surveys and industry analysis. We would only add that your findings did not address another area of learning that is in fact *better* served by online programs. We have seen a tremendous increase in the past year in "hot topic" live webcasts. These programs allow us to quickly bring together key players from across the country immediately after a "hot topic" event (e.g., a key change in SEC regulations, important Supreme Court ruling). We have had participants in Supreme Court cases discussing the impact within days of the ruling being issued. Obviously, a live event could not be organized in that time frame-- or as well attended.

We would be happy to respond with a more formal submission if the issue remains under consideration. Thank you.

Kathy Kline, Esq.
Director, Content and Business Development
West LegalEdcenter

SBI Seminars:

I have waited a bit to respond in order to "mull it over" and I think it is a great suggestion. Thanks.
John Gormley

East Tennessee Legal Aid

I can support all the way to 15. If it is appropriate for some, then it should be appropriate for as many as an attorney sees fit. I see it as a tremendous benefit for rural attorneys. I do have a concern for local bar associations who support bar activities with CLE programs, but I am confident that they will find a way for this to work for them.

David R Yoder
Executive Director
Legal Aid of East Tennessee

Thompson

Hi David,

I submitted a survey as a CLE provider, but as a licensed attorney, I think raising the cap on distance learning hours is a great idea!

Susan Reale, Esq.

Thomson West
Westlaw Government Account Manager -- TN & KY
9431 Westport Plaza, Suite 139
Louisville, KY 40241

University of Tennessee

Hi Dave: While I offer both, and the DL programs satisfy the "real" learning experience of the in person seminars SOMEWHAT by including a test for each on-line consumer, I must say that other considerations documented under the Con side in "Effect on Learning," "Effect on Collegiality," and "Effect on Marketplace" make me agree with the 44% (largest percentage) of attorneys who said the cap should remain "where it is."

Real life tells you the same thing, Dave: you can't just sit in front of a computer and learn about LIFE or any aspect of it!

Your pal,
Micki Fox
Director of CLE Programs
University of Tennessee
College of Law