

COMMENTS FROM NEW LAWYERS SECTION

The MSBA New Lawyer Section Council reviewed the petition regarding removal of the limit for credit hours earned through on-demand CLE instruction. The New Lawyer Section Council supports the removal of the limit for CLE credit hours earned through on-demand instruction.

Removing the current cap on on-demand CLE hours allows attorneys, to include those licensed in multiple states, to obtain CLE credit hours through pertinent and timely on-demand courses. With increasing focus within our profession on time management, lawyer well-being, and the utilization of technology to deliver effective and efficient legal services to our clients, taking advantage of on-demand and dynamic opportunities to obtain CLE credit hours is a logical and necessary advancement.

Some may raise legitimate concerns as to the effectiveness of on-demand CLE instruction in comparison to live instruction, both online and in-person. It is our opinion that very little substantive difference exists between CLE instruction provided live online, for which there is no limit on credit hours earned, and those received through on-demand pre-recorded instruction. The only significant difference exists not in substance but in the opportunity to directly interact with instructors through questions and dialogue. However, it is our experience that most CLE presenters provide contact information and other opportunities for follow-up and clarification which satisfactorily resolve the shortcomings of on-demand CLE instruction.

On-demand CLE instruction is also unlikely to fully replace or otherwise render in-person and live instruction obsolete. Removing the cap for on-demand CLE credit hours only further provides opportunities for out-state, solo, and diverse groups of attorneys to obtain CLE credit through convenient and pertinent programming that work within the limits placed upon us all by time, geography, and many other limitations. In particular, on-demand CLE instruction is of particular importance and usefulness to those with special needs, parents on maternity or paternity leave, or members of the Armed Services on active duty or deployed overseas.

The MSBA New Lawyer Section Council therefore recommends adoption of the proposed rule change, thereby removing the cap for on-demand CLE credit hours.

The following Section member comments were received:

I grew up in Minnesota, but have been practicing law at a large New York law firm as a member of the New York bar for the past sixteen years. During the past year and a half, I had considered relocating to Minnesota for family reasons (to care for my elderly parents who then resided in Minnesota), and so waived in to the Minnesota bar to prepare myself for a potential move. As my family's circumstances have changed (with my father passing away and my mother moving into assisted living near me in the past few months), I decided not to move back to Minnesota at this time and continue to practice in New York. But I would like to maintain my Minnesota license to preserve the option of moving back someday.

Under New York's CLE rules (FAQ linked below), an experienced attorney such as myself can satisfy my CLE requirement either by attending live courses or electronic courses (e.g., online, videotaped or audiotaped), so long as the provider is accredited. I typically satisfy my CLE obligations using online courses offered by the Practising Law Institute (PLI), supplemented by live training (typically conducted in-house by my colleagues). But because I practice in New York, none of the live courses offered by my firm are accredited for CLE in Minnesota.

https://ww2.nycourts.gov/attorneys/cle/attorney_faqs.shtml#s1_q1

It is highly impractical for me, as a busy lawyer practicing out-of-state, to either search for local providers offering live CLE classes accredited in Minnesota, or to travel to Minnesota to attend accredited courses in-person. As such, the cap on the use of on-demand programs to satisfy Minnesota CLE requirements effectively forces me to go on "voluntary restricted status." I respectfully submit that it would make eminent sense to allow practicing attorneys—at least those who live and practice out-of-state—to satisfy all of Minnesota's CLE requirements using online courses accredited by Minnesota.

Thank you for your time and consideration.

-- William H. Wagener

(212) 558-7945

Please direct the following comment for consideration in the on-demand CLE rule change that has been proposed:

I write in support of the proposed amendment to remove the cap on on-demand CLE hours. As someone who is barred in both Minnesota and Wisconsin, I can tell you that from experience, there is no difference between a live and an on-demand CLE when viewing remotely. Due to the nature of my employment, I obtain nearly all of my CLE credits, for both Minnesota and Wisconsin, online. Unfortunately, the live online selection is incredibly limited and at times where I am in court. B

The significant difference between live-online CLEs and on-demand is the inability to ask questions, however, most if not all CLEs, provide the instructors contact information, allowing for questions to be submitted after the CLE. Similarly, in a live setting, there is rarely time for questions at the end. Most questions are asked privately of the instructor following the seminar.

By having a cap on on-demand, I am forced to seek out and watch live online CLEs that are completely unrelated to my area of practice and do not serve any greater good for myself, my employer, or my clients. By removing the cap, I, and attorneys like me, will have the ability to obtain our CLE credits in a cost-effective and time-efficient manner in fields that are related to my area of practice.

There no longer exists a reasonable basis to distinguish between “live” and “on-demand” CLEs any longer. Therefore, I strongly recommend you adopt the new rules and remove the cap.

Please contact me if you have any questions,

Evan W. Cordes

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Employees of Liberty Mutual Group, Inc.

I am writing about the MSBA New Lawyer Section Council recommendation to remove the cap for on-demand CLE credit hours. The Council correctly concludes that telecommunications would improve access to CLE. Please permit me to both echo and expand upon the Council’s cogent analysis of the benefits:

1. Telecommunications can support deep learning. The ability to control the flow of the presentation (e.g., pause, rewind) supports diverse learning styles.
2. For the hard of hearing, a remote presentation can be much easier to follow. A remote presentation improves comprehension by reducing background noise, making it easier to lip read (e.g., close in shots), and to deploy adaptive technology (e.g., auto-captioning, amplification).
3. Telecommunications and later playback allow for audience aggregation, which provides an incentive to explore a broader range of topics. For example, the annual Agricultural Law Institute draws a respectable audience, but perhaps a tenth of the practitioners, who spread across hundreds of miles. The Institute is the only substantive discussion of agricultural law issues because of the difficulties in aggregating an audience. This does not make the pressing legal topics in agriculture any less relevant, merely harder to identify and address.
4. For new lawyers, the cost of in-person instruction is a real issue. With sizable student loan commitments and diminished career prospects, every dollar counts. In-person participation includes not only the cost of the program but also meals, lodging, and transportation for most lawyers not located in the Twin Cities or adjacent to a remote playback location.
5. Remote presentations need not be passive. The technology exists to make remote presentations highly interactive (e.g., polls, adaptive hypotheticals that vary based on learner input).
6. Technology can promote the Bar by allowing Minnesota to show off its best-in-class CLE to a broader audience.
7. The inherent flexibility of technology can enrich instruction by increasing opportunities for leading voices to be brought to Minnesota lawyers by reducing the barriers presented by location and tight schedules.

These are the benefits. Now let's discuss the fears. The first fear is that removing the cap will reduce in-person contact and crucial conversations. As our broader experience demonstrates, telecommunications has made us more, not less, social. Our use of text messaging, video chat, and social media has increased conversations over coffee, dinners with friends, and business connections.

The second fear is so powerful we have not dared discuss it openly. Our collective experience with telecommunications (especially the one-way variety) informs us that increased socialization comes with a potential downside. Consequently, if the cap is lifted, we fear the Bar will become balkanized and less civil.

How content is delivered does not determine our conduct. Technology is not destiny. We lawyers should not be Luddites for fear of our base instincts. Instead, we must learn from other fora and choose to be interactive. We must choose to place renewed emphasis on genuine, authentic, and civil interaction.

Remote presentations and the underlying technology are not going away. Moreover, remote presentations are reflective of how our clients are interacting with us and how public debate is conducted. We should not attempt to turn back the clock because of misguided fears. We, lawyers, excel at effectively advocating, communicating, and educating regardless of circumstances or the medium.

Removing the cap, done with full respect for the challenges, can and will support our humanity and our professionalism.

Sincerely,
Eberle Anderson
eanderson@bancregs.com

COMMENTS FROM PROBATE and TRUST LAW SECTION

**To: MSBA Assembly
Nancy Mischel (nmischel@mnbars.org)**
From: MSBA Probate and Trust Law Section Council
Re: Petition Regarding Removal of 15-hour Limitation for on Demand Courses
Date: November 26, 2019

A Petition for Rulemaking from Five Licensed Attorneys dated August 1, 2019 ("Petition") was filed with the Minnesota Supreme Court requesting that the state's Mandatory Continuing Legal Education requirement be changed to allow Minnesota attorneys to fulfill all of their required CLE attendance with on-demand CLE credits. On demand CLEs are pre-recorded CLE courses that attorneys may download and view at their convenience, as opposed to live CLEs, which attorneys must attend in person or by video- or teleconference and which occur at a particular date and time and in the presence of a faculty member or moderator who can answer questions on the presentation topics. Currently, Minnesota attorneys are permitted to fulfill no more than 15 CLE credits per three-year reporting period (1/3 of all credits) with on demand CLE credits.

The Probate and Trust Law Section Council ("Council") was asked to determine whether to provide a recommendation and report to the MSBA Assembly regarding whether the MSBA should file

comments on the Petition and the substance of those comment on or before November 29, 2019. The Education Committee of the Council was asked to study the proposal and make a recommendation to the Council at the Council meeting on November 21, 2019. A copy of the Education Committee's report is attached. (The Council would like to recognize the excellent work of the Education Committee, comprised of Adam Rohne, Joel Sommers, and Caitlin Abram.)

The Council approved support for the position allowing attorney to fulfill all required CLE credits with on demand CLE programing. There was no opposition to the motion, with one Council member abstaining due to the member's role with a local bar association.

The reasons expressed in support of the motion are presented in the Education Committee's report. Specific comments made in discussion by Council include:

- On demand program quality is not inferior to other programming options.
- On demand programing has not resulted in a decrease in live programing options.
- On demand programing, by its nature, limits attendee's ability to ask question, and there is a preference to provide alternative options to facilitate questions between on demand viewers and presenters, if more on demand CLE programs are allowed for credit toward CLE requirements.
- On demand program options provide increased flexibility to attorneys with substantial commitments outside of the practice of law (e.g., attorneys who are parents) and younger attorneys who are accustomed to streaming technology.
- On demand program options provide increased flexibility to attorneys who work in less populated areas or who live outside of Minnesota.

To: MSBA Probate and Trust Law Section Council
From: Education Committee
Re: Petition Regarding Removal of Cap on On-Demand CLE Credits
Date: November 21, 2019

Dear Council Members:

A Petition for Rulemaking from Five Licensed Attorneys dated August 1, 2019 (the "Petition") was filed with the Minnesota Supreme Court requesting that the state's Mandatory Continuing Legal Education requirement be changed to allow Minnesota attorneys to fulfill all of their required CLE attendance with on-demand CLE credits. On-demand CLEs are pre-recorded CLE courses that attorneys may download and view at their convenience, as opposed to live CLEs, which attorneys must attend in person or by video- or teleconference and which occur at a particular date and time and in the presence of a faculty member or moderator who can answer questions on the presentation topic.

Currently, Minnesota attorneys are permitted to fulfill up to 15 CLE credits per three-year reporting period (1/3 of all credits) with on-demand CLE credits. The Education Committee has been asked to study a proposal and make a recommendation to the Section Council. As discussed in further detail below, based on our review of the proposal and other submissions, the Education Committee recommends that (a) our Section support an increase in the number of required CLE credits that Minnesota attorneys may fulfill through on-demand programming, up to potentially all credits and (b) the Council discuss this issue to determine the extent of the increase, if any, that it is willing to support.

Background

The same five attorneys brought a petition to the Minnesota Supreme Court in 2012 requesting the same rule changes. At the time, Minnesota attorneys were not allowed to fulfill any of their required CLE credits with on-demand CLEs. A subsequent petition was filed by the Minnesota Board of Continuing Legal Education (the "Board") proposing an amendment to the CLE rules to allow attorneys to fulfill 15 of their required 45 hours of CLE credit per reporting period with on-demand credits.

Several other stakeholders, including bar associations and CLE sponsors, filed position statements in response to the two petitions. The Board and nearly all of those who filed position statements acknowledged that on-demand CLEs would likely increase accessibility and decrease costs for attorneys and supported allowing at least some portion of the required CLE credits to be fulfilled with on-demand CLEs, but opposed allowing attorneys to fulfill all of their CLE credits with on-demand CLEs. Arguments against allowing attorneys to fulfill all required CLE credits through on-demand programming focused chiefly on two arguments related to the quality of on-demand programming:

1. On-demand programming would be of inferior quality because it would lack interaction among lawyers, lack input from the bar in general, and prevent a variety of opinions and interpretations to be shared through group discussion, all of which can only occur in live CLEs and are a valuable aspect of the learning experience.

2. On-demand programming would result in a proliferation of CLEs sponsored by national providers at a much cheaper cost and lacking local content, which would ultimately supplant locally produced and focused CLEs.

The MSBA also argued that live CLEs encourage attorneys to come together and promote civility and respect within the profession, and these values would be compromised as live CLEs are replaced by on-demand CLEs.

Ultimately, the Court ordered a change to the rules allowing attorneys to fulfill 15 of their required CLE credits through on-demand programming. The Court also ordered the Board to monitor the implementation and impact of the rule change and report the impacts to the Court. The Board filed its reports on January 7, 2016 and June 30, 2017. The Board's notable findings and conclusions include:

- The number of on-demand courses does not appear to impact the number of live courses offered.
- A significant number of lawyers are taking on-demand courses, but very few lawyers are taking the maximum number of on-demand credits.
- The highest percentage of lawyers attending on-demand CLE courses are those who have been admitted to practice less than 10 years.
- Lawyers are attending elimination of bias and ethics courses in on-demand formats in the greatest numbers.
- Lawyers responding to the Board's survey expressed an interest in increasing the number of credits lawyers are permitted to take through on-demand programming.
- Administratively, the process is working well.
- On-demand programming in Minnesota has been successfully implemented.

While the reports list the sponsors offering the most on-demand programming during the reporting period and the location of those sponsors (which are both inside and outside of Minnesota), the report does not explore whether the content offered was of a local or non-local nature. Moreover, the national CLE sponsors listed in the reports also offer a substantial number of live CLEs in Minnesota, so it does not appear that the availability of the on-demand CLE format in Minnesota is the deciding factor for whether a national CLE sponsor offers CLEs in the Minnesota market.

The Petitioners now request the cap of 15 on-demand CLE credits be removed and Minnesota lawyers be allowed to fulfill all of their CLE credits through on-demand programming. The Petitioners make the following arguments in support of their Petition:

- On-demand CLEs benefit attorneys because on-demand CLEs are more convenient for their schedules and locations, more relevant to their areas of interest and practice because they can select the CLEs based on their interests instead of whether the CLE fits in their schedule or is otherwise accessible to them, and far more numerous and easily available than alternative forms of CLE.

- Data from the Board's reports, as well as evidence of on-demand CLE's success in other states, should serve to alleviate any remaining concerns about the quality, educational value, relevance, or effect on the current CLE market of on-demand CLE courses.

Findings and Recommendations

This Committee finds the Petitioner's arguments persuasive and believe the Board's reports demonstrate that concerns expressed regarding on-demand CLE programming leading up to the 2013 rule changes have been proven largely unfounded. On-demand CLE programming has become a valuable educational tool in Minnesota, and the Committee recommends that the limit on the number of required CLE credits that Minnesota attorneys may fulfill through on-demand programming be increased because:

- On-demand CLE programming promotes accessibility of CLEs to attorneys in Greater Minnesota, attorneys with disabilities who may have difficulty attending live programs, attorneys with family obligations who work from home, and attorneys with busy schedules. The current system essentially penalizes attorneys with less flexibility by treating the same CLE program differently depending on when an attorney watches the program on the computer. For example, a CLE with identical content offered as an on-demand program versus a webinar program is treated differently depending on the number of CLE credits the attending attorney has already obtained through on-demand programming.
- It appears that on-demand CLEs have improved accessibility to less prevalent elimination of bias and ethics CLEs, which are incredibly important to the profession.
- On-demand CLE can provide access to a greater variety of programs and a larger number of programs providing in-depth education regarding a specific topic, which is a significant benefit when limited CLE content is available due to the specialized nature of a practice area.
- The difference between watching a live webinar and a recorded version of the same program is not sufficient to warrant treating them differently for CLE credit purposes, especially if questions, answers, and discussions are included in the recording produced for on-demand viewing or the presenter's email address is made available for follow-up communications from on-demand viewers.
- Live CLE and on-demand CLE programming must meet the same standards of content and quality in order to qualify for CLE credits under current rules.
- There is no evidence that on-demand CLE programming has affected the availability of or attendance at live CLE programming or the demand for such locally-produced and focused programming.
- On-demand CLE programming is likely to result in greater enrollment in our Section's sponsored CLEs, as our live CLEs may be recorded and offered as on-demand programming to attorneys who were unable to attend the live programs.

Accordingly, we recommend that our Section support an increase in the number of required CLE credits that Minnesota attorneys may fulfill through on-demand programming, up to

potentially all credits. We recommend that the Council discuss this issue to determine the extent of the increase, if any, that it is willing to support.

COMMENTS FROM GREATER MINNESOTA PRACTICE SECTION

From: Ashley Bollig <abollig@mnbars.org>
Sent: Monday, December 2, 2019 12:24 PM
To: Nancy K. Mischel <nmischel@mnbars.org>
Subject: RE: Regarding Petition to Remove Limit for On-Demand CLE courses

Hi Nancy,

Here is the final statement from the Greater MN Practice Council: "Due to the substantial economic burden to Greater Minnesota Practice Section members in complying with current CLE requirements, the petition to remove the limit for On Demand CLE is wholeheartedly supported."

Thank you.

Sincerely,
Ashley

Ashley Bollig | Member Services Manager
612-278-6353 | abollig@mnbars.org

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COMMENTS FROM CIVIL LITIGATION SECTION

The MSBA Civil Litigation Section Council has reviewed the petition to remove the limit for On Demand CLE credit. While the Council does not feel that the limit should be completely removed, the Council does support increasing the limit to more than 15.

Allowing for a higher limit of On Demand CLE credit would allow for all attorneys to be more mindful about taking CLE courses that are most appropriate for them, not just CLEs that happen to be available when their schedule allows.

Additionally, consideration should be given to how attorneys in Greater Minnesota can access their required CLE credits. Due to their location, they likely do not have access to the high frequency of in-person CLEs that an attorney in the metro area has so the current limit may make fulfilling their credits each reporting period difficult. Again, by allowing for a higher limit of On Demand CLE credit, attorneys in Greater Minnesota would have greater and more equal access to fulfilling their CLE credits. Since the Minnesota State Bar Association places such a high emphasis on diversity and equity, it makes sense to take thoughtful consideration to the needs of Greater Minnesota attorneys in this case.

**Chair Judge Wahl and Council Member Judge Mahler have abstained from voting on this statement.*

Comments from Civil Litigation Section Members:

I agree with raising the limit, but not eliminating the cap. I think there is also value in forcing attorneys to physically come together and discuss important issues facing their practices. We are human and if the requirement were not there, many would likely never step foot into an in-person presentation and benefit from talking with one's peers.

Patricia J. Stotzheim

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I read the proposed section submission to the Supreme Court. I do not like the limitation on how CLE's are viewed at all. In the age of electronics, in-person and on-demand videos should be equally weighted. At a minimum, the last paragraph, regarding outside the metro attorneys rings true: I do not appreciate having to get a hotel room in Minneapolis so I can attend a CLE course. I would do it anyway for certain conferences but I think the limitation applied to attorneys outside the metro is discriminatory against those attorneys (especially those further out than St. Cloud where I am based). For those not driving in the metro as a routine, driving into the metro is a problem.

Paul Jeddeloh, Attorney



Please count me as a member who is in favor of the change. It makes a lot of sense in this day and age and for purposes of helping out those in Greater Minnesota. I would also point out that online CLE's can often be viewed by multiple persons for a single charge and that they are therefore cheaper Which helps solo and small practitioners.

Ken Edstrom kene@sapientialaw.com

COMMENTS FROM INDIVIDUAL MSBA MEMBERS

From: Sen. Mark Johnson <sen.mark.johnson@senate.mn>

Sent: Wednesday, November 27, 2019 10:01 AM

To: Nancy K. Mischel <nmischel@mnbars.org>
Subject: ADM09-8008 CLE 15-hour on-demand comment

Dear Ms. Mischel,

Thank you for the opportunity to comment on case number ADM09-8008 potentially abolishing the 15-hour cap for on-demand cle credit hours. I strongly encourage MSBA to abolish this onerous cap.

As a rural practitioner in northwest Minnesota, I and the many attorneys who practice in my area have five to seven-hour drives to reach the MNCLE classrooms for the seminars and classes. Even when the classes are offered at remote sites like Bemidji or Moorhead, attorneys need to drive several hours for those "local" classes.

These long commutes mean, rural attorneys must take at least one day off work and book a hotel just to get into a course. Because of this burden, many of the classes which may only be an hour long, but of relevance to the practitioner, is not practical to attend. By lifting the cap on credit hours, the access to resources for rural attorneys would be balanced better with their urban counterparts.

As a basic matter of equity, the cap needs to be lifted.

Thank you again.

Mark Johnson

Senator SD1

From: Pechous, Matthew <MPechous@borgelt.com>
Sent: Friday, November 22, 2019 9:31 AM
To: Nancy K. Mischel <nmischel@mnbars.org>
Subject: Comment in Support of Proposed Abolishment of 15-Hour Cap on On-Demand CLE

Ms. Mischel,

I would like to make the following comments in support of the proposed removal of the on-demand CLE cap.

My firm has high billable hour requirement, and I have a wife and two young children (both under 4 years old). Attending live CLEs, either in person or via webinars, presents additional burdens in getting the necessary hours and being able to spend time with my family. On-demand CLEs, which allow me to attend at night or during weekends, provide the flexibility I need to be able to stay on-top of recent developments in the law without putting additional strain on my already limited time. Given the bar's increased focus on attorney well-being in recent years, allowing this additional flexibility for attorneys to meet our ethical and professional requirements seems a logical course of action.

Thank you.

Sincerely,

Matthew D. Pechous

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From: Charlotte Culbertson <cculbertson@fluegellaw.com>
Sent: Wednesday, November 6, 2019 8:15 AM
To: Nancy K. Mischel <nmischel@mnbars.org>
Subject: On-demand CLE petition

Ms. Mischel – I am writing to comment on the petition regarding the limit for on-demand CLE credits. As you can see from my signature line below, I practice out-state Minnesota. The opportunities to attend CLE's locally in person are non-existent. In order for me to obtain credit for in-person attendance I have to drive at a minimum an hour one way and those are often limited, off-topic from my practice and conflict with my schedule. The Twin Cities opportunities are abundant but that is a 3-hour trip one-way so really it is a two-day process. Very difficult to say the least. Having the cap lifted would be a tremendous benefit especially for those of us who cannot afford to spend a day or two away from our practice to attend an hour long seminar for CLE credit.

I often read articles about how serving the out-state communities is a challenge. I would agree. I am the only lawyer in about a 30 mile radius practicing family law and I am also the County public defender. I feel I am doing all I can to provide my legal services to the community. It would be a great benefit if the bar would make it a bit easier for me to fulfill my CLE requirements using the modern technology and not taking me away from my practice.

Thank you.

Charlotte Culbertson, Esq.
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