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## MANDATORY CONTINUING LEGAL EDUCATION AND THE INDIANA PRACTICING ATTORNEY

Jack W. Lawson\*\*

### I. INTRODUCTION

In 1986, the Indiana Supreme Court promulgated Indiana Rule for Admission to the Bar and the Discipline of Attorneys Number 29 (“Rule 29”), which created Mandatory Continuing Education. Prior to 1986, continuing legal education was a voluntary system in Indiana. Pursuant to Rule 29, “[e]very Attorney . . . shall complete no less than six (6) hours of approved continuing legal education each year and shall complete no less than thirty-six (36) hours of approved continuing education each [three year period].”<sup>1</sup> At least three of the hours must be comprised of approved seminars in professional responsibility.<sup>2</sup> Many lawyers have debated whether mandatory continuing legal education (“MCLE”) is necessary or desirable. Two issues always arise in conversations about MCLE: competence and professional responsibility.<sup>3</sup>

Part II of this Article discusses continuing legal education prior to Rule 29, addresses the movement toward the rule and debate surrounding implementation of the rule, and gives insight based on interviews with attorneys practicing before and after implementation of

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# This Article was prepared with the assistance of Jeremy L. Reidy, an associate with the Fort Wayne law firm Beckman Lawson, LLP.

<sup>1</sup> IND. ADMISSION & DISCIPLINE R. 29.

<sup>2</sup> *Id.*

<sup>3</sup> Rocio T. Aliaga, *Framing the Debate on Mandatory Continuing Legal Education (MCLE): The District of Columbia Bar’s Consideration of MCLE*, 8 GEO. J. LEGAL ETHICS 1145, 1146 (1995).

the rule. Part III discusses the effect the rule has had on the legal profession, describes what the future holds for continuing legal education, and makes suggestions to improve continuing legal education. Finally, Part IV concludes that MCLE has had, and will continue to have, a positive impact on the legal profession and lawyers.

## II. BACKGROUND

Continuing legal education has changed profoundly since I was admitted to the Bar in 1961. As discussed more fully below, continuing legal education seminars were used primarily for relaxation and networking prior to the enactment of Rule 29 in 1986. The Indiana Continuing Legal Education Forum was not yet formed in 1961, and the Indiana Bar Foundation was just beginning to focus on continuing education.

### A. *Continuing Legal Education in Indiana Prior to 1986*

Prior to the promulgation of Rule 29, continuing legal education was completely voluntary in Indiana. Despite the voluntary nature of continuing legal education, since 1964, Indiana has had the benefit of one of the nation's preeminent systems for continuing legal education, the Indiana Continuing Legal Education Forum ("ICLEF").<sup>4</sup> ICLEF's roots trace back to the Indiana Bar Foundation, beginning in 1950.<sup>5</sup> In 1956, the Valparaiso University School of Law held the very first seminar for ICLEF's predecessor, A Legal Institute on Municipal Planning and Zoning.<sup>6</sup> Soon thereafter, ICLEF began to produce deskbooks to supplement the various seminars it produced.<sup>7</sup>

Prior to the promulgation of Rule 29, lawyers often treated continuing legal education as an opportunity to get away from the office. In order to entice lawyers and judges to attend continuing legal education seminars, social events such as golf outings would be combined with the seminars. Seminars were held out of state in order to entice attorneys and judges to participate in continuing legal education. Even today, ICLEF continues to combine seminars with trips to Mexico and the Caribbean. Such seminars have always been well-attended.

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<sup>4</sup> Thomas H. von Kamecke, *ICLEF: Providing Continuing Education for 32 Years*, RES GESTAE, Sept. 1996, at 36.

<sup>5</sup> Ind. Bar Ass'n, *ICLEF: A Milestone in Indiana Bar Foundation History*, RES GESTAE, July 2000, at 15.

<sup>6</sup> *Id.*

<sup>7</sup> Von Kamecke, *supra* note 4.

B. *Events Leading to the Promulgation of Rule 29*

Several events led states to establish rules for mandatory continuing legal education. Among those events, three are listed frequently. First, continuing legal education was established as a priority in this country after World War II “to acclimate attorneys returning to practice after a lengthy absence in the military and to meet the needs of increased numbers in the profession.”<sup>8</sup> Second among the reasons cited for the rise in interest for MCLE was a negative public attitude toward the legal profession during the 1970s.<sup>9</sup> During this time, Chief Justice Warren Burger expressed his opinion of the quality of the legal profession, stating that the bar should “face up to and reject the notion that every law graduate and every lawyer is qualified, simply by virtue of admission to the bar, to be an advocate in trial courts in matters of serious competence.”<sup>10</sup> Finally, the Watergate scandal caused a public distrust of the legal profession.<sup>11</sup>

In 1975, Minnesota and Iowa became the first states to require their attorneys to attend continuing legal education.<sup>12</sup> Many other states followed suit and instituted their own rules for MCLE. The majority of states with rules for MCLE require attorneys and judges to attend a minimum of twelve hours of continuing legal education per year.<sup>13</sup> Further, a majority of those states require that a certain number of hours concentrate on legal ethics.<sup>14</sup>

C. *The Current Status of CLE and How Mandatory Continuing Legal Education Has Impacted the Legal Profession*

The vast majority of states now have mandatory continuing legal education. Through 2004, forty-one states had rules pertaining to mandatory continuing legal education.<sup>15</sup> Because nearly all states

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<sup>8</sup> Lisa A. Grigg, *The Mandatory Continuing Legal Education (MCLE) Debate: Is it Improving Lawyer Competence or Just Busy Work?*, 12 BYU J. PUB. L. 417, 418 (1998).

<sup>9</sup> John S. Roth, Note, *Is Mandatory Continuing Legal Education Valid Under the United States Constitution?*, 11 WHITTIER L. REV. 639, 641 (1989).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*; see also Aliaga, *supra* note 3, at 1150.

<sup>12</sup> Aliaga, *supra* note 3, at 1147.

<sup>13</sup> See NEW YORK STATE BAR ASS'N, COMPARISON OF THE FEATURES OF MANDATORY CONTINUING LEGAL EDUCATION RULES IN EFFECT AS OF JULY 2004 5-9 (2004).

<sup>14</sup> *Id.*

<sup>15</sup> See *id.* at iv. Alaska, Connecticut, Illinois, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, and South Dakota do not have rules for mandatory continuing legal education. *Id.* However, in Alaska, if an attorney reports a minimum of twelve hours, he

require it, continuing legal education is now available on demand throughout the country. Since the promulgation of Rule 29 and similar rules in other states, a plethora of commercial ventures and bar association groups have been organized to take advantage of the opportunity to serve attorneys and judges.<sup>16</sup> Attorneys can find a course on any legal topic, in any location, and they can participate at the most convenient time. Courses can be taken via the Internet or conference call, by video, or in person.<sup>17</sup>

The on-demand nature of continuing legal education has advantages and disadvantages. The obvious advantage is convenience. Often, attorneys can take a course at any time of day on any subject they choose. Furthermore, experts from around the country can reach a larger audience by presenting at far-reaching seminars. Many would argue that MCLE increases the overall value that the profession can provide the public. ICLEF now conducts over 155 live seminars in any given year.<sup>18</sup> However, there are disadvantages to on-demand continuing legal educations. For example, live courses offer the opportunity to network with other attorneys and judges that practice in the same area of the law.

MCLE has afforded Indiana attorneys and judges the opportunity to participate extensively in seminars as presenters and authors. Also, the onslaught of seminars has connected the expertise of specialists from across the country to attorneys and judges in Indiana. There are now seminars for alternative dispute resolution that allow attorneys to become certified mediators. All of these have had a positive impact on the legal profession in Indiana.

One final impact that MCLE has had on the profession is the potential punishment for failure to comply with the rules.<sup>19</sup> Fees begin to accrue for attorneys who have not complied with Rule 29 by January 1st of each year.<sup>20</sup> If attorneys have not come into compliance by April 1st, a list of those attorneys "will be submitted to the Supreme Court for

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or she qualifies for incentives, such as discounted bar dues and inclusion on a list of compliant attorneys. *Id.*

<sup>16</sup> For a complete list of Indiana Commission for Continuing Legal Education approved CLE sponsors, see Indiana Courts, [www.in.gov/judiciary/cle/attorneys/sponsors.html](http://www.in.gov/judiciary/cle/attorneys/sponsors.html) (last visited Jan. 20, 2006).

<sup>17</sup> See Robert J. Ambrogi, *Correspondence Courses for the Digital Decade*, RES GESTAE, Nov.-Dec. 1998, at 51.

<sup>18</sup> Von Kamecke, *supra* note 4.

<sup>19</sup> IND. ADMISSION & DISCIPLINE R. 29(10).

<sup>20</sup> *Id.*

immediate suspension from practice of law.”<sup>21</sup> A suspension for failure to comply with Colorado’s MCLE rule was challenged on constitutional grounds in *Verner v. Colorado*.<sup>22</sup> In *Verner*, the Tenth Circuit Court of Appeals reasoned that there was precedential support to prescribe minimum levels of legal competency in the context of the bar examination.<sup>23</sup> The court of appeals went on to hold that “a state can require an attorney to take reasonable steps to maintain a suitable level of competency, so long as such requirements have a ‘rational connection with the [attorney’s] fitness or capacity to practice law.’”<sup>24</sup>

Studies from other states have shown that the vast majority of practicing attorneys agree that continuing legal education should be mandatory.<sup>25</sup> In fact, the conclusion of the California MCLE Evaluation Commission Report was that the issue should be closed.<sup>26</sup> The report asserted that “[i]t would be cavalier, if not shocking, were . . . lawyers excused from the obligation to continue to learn, while all . . . other . . . professionals . . . are required to discharge it.”<sup>27</sup>

### III. ANALYSIS

#### A. *What Does the Future Hold for Continuing Legal Education?*

Attorneys and judges will increasingly rely upon continuing legal education seminars as a source of information. The ABA Task Force on Law Schools and the Profession: Narrowing the Gap, chaired by Robert MacCrate (“MacCrate Report”) identified four “values toward which lawyers should aspire: (1) providing competent representation; (2) striving to promote justice, fairness and morality; (3) striving to improve the profession and (4) professional self-development.”<sup>28</sup> Two of the values identified by the MacCrate Report are directly related to continuing legal education: providing competent representation and professional self-development.<sup>29</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> 716 F.2d 1352 (10th Cir. 1983).

<sup>23</sup> *Id.* at 1353.

<sup>24</sup> *Id.*

<sup>25</sup> See The State Bar of Cal., *MCLE Evaluation Commission Report 4*, available at [http://calbar.ca.gov/calbar/pdfs/reports/2001\\_MCLE-Report.pdf](http://calbar.ca.gov/calbar/pdfs/reports/2001_MCLE-Report.pdf) (last visited Sept. 1, 2005) (stating that “only 8% said no MCLE hours should be required”).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Ellen Lieberman, *Professional Responsibility and Continuing Legal Education*, 69 N.Y. ST. B.J. 16 (1997).

<sup>29</sup> *Id.*

Continuing legal education is of special importance to new lawyers making the transition from law school to practice.<sup>30</sup> Indeed, attorneys that recently graduated from law school are taking advantage of the myriad of opportunities available since the advent of MCLE. For new lawyers starting a small or solo law practice, the seminars can fill the void of a mentor who would teach them some of the practical aspects of practicing law. Furthermore, experienced attorneys who wish to practice in a new area of the law can take advantage of the various opportunities for continuing legal education that have arisen since the promulgation of Rule 29.

*B. Some Suggestions for the Future of Continuing Legal Education*

Continuing legal education has come a long way in the twenty years since the implementation of Rule 29. However, there are several areas that could be improved upon or incorporated into the mandatory continuing education of lawyers, particularly with regard to young lawyers. Among the possible improvements are a state sponsored, mandatory mentorship program and mandatory practical application courses for new lawyers. A section of the Indiana State Bar Association, the Professional Legal Education, Admission & Development Section ("PLEADS"), has incorporated and attempted to implement many of these suggestions.<sup>31</sup>

The State of New York has established a Committee on the Profession and the Courts that issues reports detailing recommendations for training new lawyers.<sup>32</sup> The Committee's 1995 Craco Report<sup>33</sup> made the following recommendations for the training of new lawyers:

- (1) requiring new lawyers to take a course in law office management and client relation skills at the time of admission;
- (2) establishing a skills training requirement as part of the bar admission process or shortly thereafter similar to that in other states . . . and
- (3) creating internship programs for law students and mentoring programs for recently admitted practitioners.<sup>34</sup>

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<sup>30</sup> See *id.*

<sup>31</sup> See Jeffrey A. Lind, *PLEADS: The Home for Discussion That Leads to Change*, RES GESTAE, Dec. 2004, at 36.

<sup>32</sup> Lieberman, *supra* note 28, at 17.

<sup>33</sup> The Committee was named after its chairman, Louis A. Craco.

<sup>34</sup> Lieberman, *supra* note 28, at 17.

As MCLE moves forward, the focus should be on new attorneys. Due to their hectic schedules, older, experienced attorneys find it more difficult to find the time to properly mentor young attorneys. Continuing legal education could help to bridge the gap between law school and the practice of law by the implementation of some of the suggestions listed above.

#### IV. CONCLUSION

MCLE has had an enormous impact on the legal community in Indiana. It has played an important role in promoting and enhancing professional responsibility in the legal profession. Seminars provide practicing attorneys with forms and practical tips for application in their practices. Case law updates help attorneys and judges stay current with the ever-changing law. With all of the various and sundry opportunities for legal education and continuing professional responsibility seminars, as well as the guidance presented by continuing legal education today, MCLE improves and enhances the entire legal profession in the state of Indiana.