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Holly B. Fisher

Kansas State University, hollybfisher@earthlink.net

W. Franklin Spikes

Kansas State University, wfs3@ksu.edu

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Recommended Citation

Fisher, Holly B. and Spikes, W. Franklin (2017). "Exploring Programmatic Issues which Affect Continuing Legal Education in Kansas," *Adult Education Research Conference*. <https://newprairiepress.org/aerc/2017/papers/32>

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Exploring Programmatic Issues Which Effect Continuing Legal Education Practice in Kansas

Holly B. Fisher and W. Franklin Spikes
Kansas State University

Abstract: This mixed methods research study identified current mandatory continuing legal education (MCLE) practices by Kansas providers and evaluated these against established adult and continuing education best practices.

Keywords: Continuing legal education, mandatory continuing legal education, continuing professional education

Study Background and Purpose

In 2014, the Kansas CLE Commission launched its Education Initiative to develop a deeper and more useful long-term understanding of the impact that MCLE has on the practice of law in the state and to improve continuously the delivery of such instruction in the future. A review of the literature found a dearth of empirical research about the effectiveness of continuing legal education programs (Daley, 2001; Grigg, 1998; Harris, 2006; Ziegler & Kuhn, 2015). Nor was there much information to draw upon from CLE best practices or measured tools related to the effectiveness of CLE programs for improving the practice of the law in Kansas or any other state.

The purpose of this new study was to provide an evidence-based, context-specific understanding of the current practices of Kansas MCLE providers and to identify opportunities to apply adult and continuing education theory as a means of enhancing MCLE practices within the state. Utilizing the existing data collected through the Education Initiative provider survey conducted in 2015 and focus group sessions in 2016, this research posed two questions:

1. What are the current program planning and design, delivery, and evaluation practices for MCLE of continuing legal education providers in Kansas?
2. How do these practices compare with best practices or proven theories and methods for any learning effort, as established by adult and continuing education research and theory?

Theoretical Framework

The researchers relied on number of theoretical frameworks to direct their analysis, justify their interpretation of findings, and guide their recommendations. First, this study applied essential elements of grounded theory method to code and categorize common themes from the qualitative data and to develop substantive theories on how the practice of MCLE within Kansas could be improved (Charmaz, 2014; Corbin & Strauss, 2008; Ravitch & Carl, 2016). Second, current MCLE provider practices uncovered from all data sources were compared to continuing professional education best practice theory (Bierema, 2016; Daley & Cervero, 2016; Houle, 1980; Knox, 2016; Nowlen, 1988; Schön, 1983; Tisdell, Wojnar, & Sinz, 2016). Finally, data on provider program evaluation practices were analyzed using two different frameworks (Cervero, Dimmock, & Rottet, 1986; Phillips & Phillips, 2007).

Research Methods

This research design involved the mixed-methods analysis of an existing data set gathered during by the Education Initiative using two data collection tools, (1) a CLE provider survey to gather information on common practices, the purpose of CLE, and providers' views on CLE's impact on practice and, (2) focus group sessions in which providers discussed survey results and other CLE program topics.

In the quantitative portion of the mixed-methods data analysis, the researchers captured descriptive statistics and conducted inferential tests (ANOVA, Chi-Squared, and Poisson) to evaluate of the numerical data captured through the provider survey. For the qualitative data analysis, the researchers utilized grounded theory methods for coding and category development using the survey open-ended question responses, focus group session recordings and transcriptions, and notes from theoretical sampling interviews. Then, as the codes and categories became saturated, and the quantitative analysis indicated commonalities or relationships within the numerical data, the researcher identified and defined emerging theoretical concepts.

The participants for this study comprised a sample of the total population of the 698 unique provider organizations that were delivering CLE to Kansas attorneys at the time the survey was conducted in January of 2015. Of the 260 providers who responded to the Education Initiative survey, 198 completed it fully. In addition, 22 providers attended three focus groups conducted in December 2015 and January 2016. These provider participants varied along demographic parameters such as organization structure (for-profit, nonprofit) and organization size as measured by number of CLE course offerings and number of CLE staff.

Findings and Conclusions

The findings of this research study provided detailed, "rich data" (Charmaz, 2014) about the current practices of Kansas CLE providers and insights into the contextual realities that influence those practices. These results also revealed the providers' views on the purpose and effectiveness of their programs.

Program planning and design. The results of the data analyses indicated that most providers are designing CLE curricula that would be categorized as the formal, instruction learning mode according to Houle (1980) or the update model as described by Nowlen (1988) and others (Bierema, 2016; Daley & Cervero, 2016). This was evident in that at least two-thirds of the providers described using law code or regulatory changes; mandated topics set by CLE organizations such as ethics; or hot topics, recent court cases and developments to identify potential CLE topics. This focus on keeping attorney skills and knowledge up-to-date is not surprising, given that many of the provider participants listed this outcome as one of the most important purposes for and more effective outcomes of CLE in Kansas.

In contrast, it was relatively rare for providers to report using attorney developmental benchmarks and competency models or attorney performance evaluations with identified gaps in skills or knowledge to identify CLE curriculum needs, as is recommended in the CPE literature (Bernhard, 2010; Daley & Cervero, 2016; Knox, 2016; Nowlen, 1988). Yet, most providers described a key purpose of CLE to be improving the practice of the law through enhanced attorney competence across a wide-range of capabilities. Given the fractured structure of MCLE in Kansas, with ownership of the attorney learning experience split across regulators, providers,

attorneys, and employers, expanding the use of these best-practice sources for curriculum planning presents a challenge. It may only be achievable for larger, for-profit providers or those who are housed within law firms to establish the partnerships with employers that would be necessary to gather these development and performance inputs. This might explain why the inferential statistical analysis showed that larger providers with more than 100 course offerings use these sources more frequently than do smaller organizations.

However, it is also clear that many providers are seeking to understand curriculum and attorney learning needs early in the program planning process by collaborating with other stakeholder groups in the Kansas MCLE space. For example, most of survey and focus group respondents reported involving planning committees, section leaders, attorneys, and their employers in program planning and review sessions. In addition, statistical tests indicate that providers who view particular stakeholder groups as extremely important to the planning process are also likely to include them in the effort. By doing so, these providers go directly to those players who will be highly attuned to the gaps in lawyer performance or knowledge that require education.

Therefore, Kansas CLE providers demonstrate some of the best practices suggested by Knox (2016) such as developing shared expectations, being responsive to participants' expectations, and addressing gaps between current and desired proficiencies (p. 5–7, 49). These providers are also employing the multi-stakeholder planning that authors have frequently recommended in the literature and research on CPE and practice change (Bierema, 2016; Cervero & Daley, 2016; Queeney, 2000; Tisdell et al., 2016). However, some providers face challenges when they encounter the law profession's cultural preference for traditional approaches to learning, especially when working with long-standing program committee members who are comfortable planning CLE the way it has always been done. Also, negative attitudes about MCLE, heavy caseloads, and the focus on billable hours, can restrict learners or leaders from participating in CLE program planning, even if providers desire their input.

Program delivery. The importance of interactive delivery methods that engage learners, enable meaning making, and help professionals link new content to practice experience is a common theme in the literature on continuing professional education. For example, several authors suggested tools such as case studies, concept maps, group discussion, mentoring, reflective journals, or action planning (Bierema, 2016; Biggs, 1990; Daley & Cervero, 2016; Knox, 2016). However, in this study, the researcher found that CLE in Kansas is delivered primarily using more didactic methods such as instructor or speaker presentations, Q&A sessions, expert panels, and course materials or handouts. Yet, a portion of the providers who were surveyed reported using some of these best-practice methods such as networking; mock trials; discussions, bulletin boards, or chat rooms; and time for practice at least occasionally. In addition, statistical test results showed that larger providers, with more than 100 course offerings, are able to implement these practices more frequently than their smaller colleagues, perhaps because of the greater resources or reach that these organizations possess.

The grounded theory analysis revealed that real challenges restrict Kansas CLE providers from implementing more interactive methods, despite their recognition that such tools support learning transfer to practice. Providers contend with volunteer instructors who, although experts in the course content, have no formal teaching training and limited time for course preparation. Introducing interactive, meaning-making learning techniques into their classrooms is sometimes too far a reach for these instructors. Providers are also sometimes faced with resistant learners,

who might have a negative view of CLE overall, attend only to fulfill a requirement, do not pay attention in class, and are exhausted by heavy caseloads. Even the most interactive, reflective (Schön, 1983), performance-oriented course techniques (Houle, 1980; Nowlen, 1988), cannot affect practice change without a motivated, engaged practitioner. In addition, CLE providers deliver courses within a professional culture that tends to prefer the speaker–presenter model similar to the prevailing teaching methods used in law schools. Lastly, to implement teaching methods that link learning and practice change that are inherent in concepts such as evidence-based practice, constructivist, or transformative learning, there must be a link back to the workplace of the attorney. Again, in the multi-stakeholder structure of MCLE in Kansas, providers are not typically the employers of attorneys; therefore, they must rely on different players to execute some of these best practice approaches.

However, this researcher did uncover that about 50% of the providers of CLE for Kansas attorneys are attempting to adjust their course delivery to match the experience and expertise of those in attendance. As Bierema (2016) suggested in the T-shaped CPE framework and other authors (Knox, 2016; Queeney, 2000) recommended, CLE providers in Kansas seek to offer a mix of curricula to fulfill the needs of learners whose level of expertise ranges from novice to expert on a given topic. They also described adjusting their delivery method in class to be more interactive and collaborative with more experienced attorneys and covering more background material when teaching “baby lawyers.” Yet, attorney learners sometimes exclude themselves from more basic level sessions because of their egos and an overly high assessment of their competency or because the competitive nature of this professions culture makes it unlikely that they would admit the need to for help.

In addition, although only about a quarter of providers reported refining course delivery according to the individual learner’s style, several of the study participants described a keen awareness of the three different learner types who attend CLE events and their resulting varied levels of motivation to take something of value from the class into practice. In fact, some focus group members spoke about altering class delivery techniques, depending on which types of learners they have in attendance. In Cervero et al.’s (1986) CPE program evaluation framework, characteristics of the individual student, including his or her motivation for learning or disposition for change, are identified as important drivers of practice change. Therefore, by recognizing that the lawyers who attend their CLE classes are motivated by different things, and by adjusting the course delivery accordingly, these providers are exhibiting best practice.

In addition, evidence exists that the Kansas CLE Commission and its provider partners are increasingly viewing the attorney learner in a more holistic way; thus, they approve and offer course content to support practice success beyond “black letter law” updates. For example, the increasingly important role of Kansas MCLE in supporting practice management, ethical practice, enhanced client service, and attorney wellbeing was uncovered in both the survey and focus group data. Therefore, MCLE in Kansas delivery is at least beginning to move beyond the update model of CPE (Houle, 1980), to a more performance-oriented (Nowlen, 1988) approach by seeking to develop the broad attorney competency recommended in the literature (Bierema, 2016; Daley & Cervero, 2016; Tisdell et al., 2016), such as interpersonal and organizational skills, cultural knowledge, contextual sensitivity, and self-awareness.

Program Evaluation. The predominant use of post-course evaluations to measure learner reaction and satisfaction reported in survey responses, combined with study participant comments, indicates that more sophisticated forms of CLE program evaluation such as Levels 3,

4, and 5 from the Phillips and Phillips (2007) model might be a challenge to execute, even if they are strongly desired. Certainly, the practical consideration of having access to a multiparty training and evaluation partnership—involving state agencies, profit and nonprofit providers, professional groups, and law firms and organizations—plays a role. In most cases, those who evaluate CLE are distinct from the entities in which attorneys work from day to day. Thus, their opportunities to measure practice change depend on their relationships with and their access to those firms or companies in which attorneys actually practice. As some focus group participants explained, even with ideally designed and analyzed post-course evaluation surveys, only law firms and employers can truly measure and encourage practice change.

Nevertheless, some providers are stretching the use of the end-of course evaluation forms to capture practice-change data such as attorney expectations that their learning will influence practice, how much support they expect back at their firms for implementing the changes, and whether course objectives are being met. Doing so, these providers are looking more holistically at program evaluation, as suggested in the theories and model of Cervero (1986). However, Kansas providers described that the usefulness of data collected from any Level 1 tool is often limited by completion rates or quality, thus methods that predicate credit on evaluation completion or reward and encourage more detailed responses are important.

This study indicates that many of the metrics and much of the ROI analysis that is done by Kansas CLE providers focuses more on the “business” of delivering the training, rather than on quantifiable change in the practice of law. However, the vast majority of those participating in this research report a belief in the import of advancing the knowledge of attorneys, connecting them to their peers, ensuring ethical practice, and improving the profession’s reputation with the public. It is important then to replicate and expand on current best practices and to bring new ideas for increasing metrics-based MCLE evaluation. The Education Initiative captured ideas from Commission members and providers on metrics that might be useful in best practice Levels 4 or 5 assessments, such as collecting metrics on the number of malpractice suits over time, and evaluating any correlation between these and an attorney’s or a firm’s CLE compliance history.

Finally, an important insight related to CLE measurement is that, any implementation of a Level 2, learning-and-confidence, measurement effort within the context of continued legal education would likely be limited by a strong cultural bias against “testing” of attorneys. Testing, quizzes or other learning assessment in CLE courses was found to be used by only 5% of the respondents in this research with several comments from open-ended survey questions and focus group discussions stressing that the individuals and organizations involved would not accept these forms of program measurement. Commission members and providers alike spoke of the pride that attorneys hold in completing law school and passing the bar, suggesting that this group of professionals are highly resistant to “testing” or “judging” of their skills and knowledge. Lawyers are not alone in this view. Queeney (2000) claimed that, “subjecting themselves to testing throughout their careers is abhorrent to most professionals” (p. 378). Focus group members also spoke about the challenges of learning assessments within CLE classes, for there is often “no one right answer” for a given scenario and substantial subjectivity within the law.

Of course, online CLE courses are often designed to include knowledge checks and post-topic quizzes or tests. These seemed to be an acceptable application of Level 2 evaluation within CLE with providers indicating little resistance to experiencing these tools. However, a majority of CLE courses are yet delivered via traditional, in-person formats (79.66%), especially by smaller provider organizations; therefore, the addition of a testing process at the completion of such sessions is not probable. Yet, some providers reported using other methods for assessing

learning in their programs such as exercises, activities, or displaying a test question on the screen and then asking the attorneys to share their thoughts on the right answer via class discussion or within small group dialog, but without being graded. Expanding the use of these types of Level 2 assessments would be a reasonable action in some CLE course formats or settings to increase best practices in Kansas MCLE program evaluation.

Significance of the Study

This study adds to the general body of knowledge concerning MCLE's impact on the practice of the law in Kansas with contemporary research, a new focus on providers as the source of data, and the specific assessment of adult and continuing education best practices application in current practices. Also, the findings of this study may provide useful insights for MCLE regulators and providers in other states or CPE providers in other professions.

In addition, important implications for practice and research were identified through this study. First, the focus group participants and researchers generated a list of recommendations on how to expand using those innovative practices that some providers employ, and how to implement new, best practices for CLE program improvement. In addition, this study identified the advantages of or challenges in using providers as participants when conducting continuing professional education research. Second, this study reinforced, as many others have (Bierema, 2016; Daley, 2001; Knox, 2016; Nowlen, 1988; Queeney, 2000; Tisdell et al., 2016), the critical role that context plays in understanding and evaluating continuing professional education systems. Finally, this study reinforces some of the advantages of mixed-methods research designs, such as developing a more complex, context-specific understanding of provider practices, preferences, and limitations.

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