



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item #12

REQUESTED ACTION: Approval of Guidelines for Management of CLE Programming Involving Sections, Committees, and Subcommittees.

Attached are proposed guidelines to govern the management of CLE programs offered by NYSBA sections, committees and subcommittees. The purpose of the guidelines is to assist in coordinating CLE programming, assure compliance with regulating governing CLE programs, and manage human resources. As set forth in the report, three staff departments handle CLE programming: the CLE Department, the Meetings Department, and the Department of Section Services.

The Guidelines may be summarized as follows:

1. Sections, committees and subcommittees are encouraged to continue to generate live programs at annual and bi-annual meetings, for which the Meetings Department is accredited and staffed to manage these types of program.
2. Sections, committees, and subcommittees are encouraged to continue to work with the CLE Department to generate speakers and topics for programming accredited and managed by the CLE Department.
3. Any other CLE programming proposed by sections, committees and subcommittees should be submitted to the head of the Department of Section Services and the CLE Director for consideration. A questionnaire has been developed for this purpose. Programs must meet the following criteria:
 - Programs must provide a minimum of two credits.
 - Approval should be obtained at least three months prior to the program date.
 - Clearance should not be sought for programs to take place between November 1 and January 31.
 - Clearance should not be sought for programs to take place within 30 days of full-day or multi-day section meetings.

- Section staff liaisons will handle a maximum of three section/committee/sub-committee programs per month.
- In considering CLE programs, sections, committees and subcommittees should consider programs which offer a probability of generating net revenue.

4. Sections, committees and subcommittees are encouraged to appoint a member to serve as CLE chair to organize and implement programs and to become familiar with Association staff and policies.

5. The Association should provide increased recognition, guidance and training for leaders involved in CLE programming.

The report will be presented at the June 21-22, 2012 meeting by Thomas E. Myers in his capacity as a member of the subcommittee.

Report of Subcommittee on Section CLE

Guidelines for Management of CLE Programming involving Sections, Committees, and Subcommittees¹

Introduction

New initiatives, changing technologies, and increasing demands on Association staff during recent years by various Sections and Committees has prompted the Executive Committee to promulgate these Guidelines, which restate some longstanding Association policies and set forth some new ones.

By way of background, the Association's Continuing Legal Education ("CLE") programs involve work by three staff departments of the Association:

1. The NYSBA Meetings Department, with limited staff at this time, is managed by Meetings Director Kathleen Heider. It provides overall accreditation for live Section-produced CLE programs for Section members at annual and seasonal Section meetings, i.e. destination meetings. The Meetings Department also accredits CLE programs at periodic business meetings. The Meetings Department is an accredited provider for live programming only, including live webcasts and webinars.
2. The NYSBA Department of Section Services (DSS), with limited staff liaisons at this time, is managed by Richard Martin, Assistant Executive Director. It produces and facilitates Section-generated CLE programs not related to destination meetings. These programs are typically limited to one location. The liaisons work with their assigned Sections to produce these programs. Section programs are for the benefit of and marketed to their members as a member benefit. Accreditation is provided through the Meetings Department. Any net revenue generated from these programs accrues to the individual Sections.
3. The NYSBA CLE Department, with limited staff at this time, is managed by Douglas Guevara, Senior Director. The CLE Department produces CLE programming in collaboration with NYSBA Sections in a variety of substantive practice and law practice management areas. The CLE Department also produces programs apart from the Sections. These programs are typically presented in multiple statewide locations which afford maximum exposure to Sections. The Department is an accredited provider for all live, online and recorded formats and markets its programs to both Association members and non-members and the overall legal community. The CLE Department Staff administers and facilitates all programming, absorbing all expenses related to the programs. Any net revenue generated from Department programs accrues to the Association in order to cover overall administrative expenses, including all Liaison administrative expense.

¹ Many Sections, and some Committees, are involved with CLE programming. In addition, some committees and subcommittees within Sections are also involved with CLE programming. For purposes of these Guidelines, the phrase, "Sections, Committees, and Subcommittees," includes all of these entities.

In addition to serving as an authoritative source for legal education, CLE Department programs are used as vehicles to showcase Section expertise to the membership and overall legal profession while promoting Section and Association membership.

Factors Considered in Promulgating these Guidelines

In developing these Guidelines, the following factors have been identified, which are intended to guide current and future Section and Committee leaders, Association management, and staff in implementing these Guidelines:

1. CLE for members and attorneys generally is a significant part of the Association's mission and widely perceived as a significant member benefit;
2. The Association's Sections and Committees play integral roles in fulfilling the Association's mission generally, in attracting and retaining Association members, and in generating quality CLE programming for the Association and its members. At the present time, the Association's Sections have 467 active Committees; this does not include the Association's stand-alone Committees;
3. All Association CLE programming should be coordinated, managed and monitored to harmonize programming by groups within the Association, to maintain quality, and to assure compliance with all applicable laws, including New York State CLE Board rules and regulations;
4. The Association's Department of Section Services, CLE Department, and Meetings Department have limited financial and human resources which need to be managed to avoid, or at least minimize, duplicative and inefficient programming;
5. The CLE market is, and will remain, highly competitive, and the Association needs to protect its reputation for high quality, reasonably priced CLE programming;
6. On average, the Association has received approximately \$1,050,000 in annual net revenue from CLE Department operations over the past 4 years;
7. An express Objective in the Final Report of the Association's Strategic Planning Committee is stated as follows: "Objective: Strengthen the Association's CLE programming and delivery and maintain the Association's market leader position by providing quality, targeted and affordable CLE that is accessible through multiple delivery systems (p. 4); and
8. Another "Objective" in the Final Report of the Association's Strategic Plan is to "strengthen the Association's Sections to add benefit to the members." In addition to the "Guidelines" work of this Subcommittee, one recommended "Action Step" for this "Objective" is to "coordinate CLE and Section-based CLE programming to avoid conflicts and duplication of efforts." As stated in the Association's Strategic Plan, "there is strong identification of value with the Association's CLE programs. The 2010 Member Satisfaction Survey provided

clear evidence that members and prospective members appreciate the Association's CLE offerings." ²

The CLE activities of the Association's Sections and Committees were evaluated in a 2007 report entitled, "Recommendation Regarding New Agreements with Sections and Committees concerning their CLE Activities and their Relations."

Proposed Guidelines

GUIDELINE #1. SECTIONS, COMMITTEES, AND SUBCOMMITTEES ARE ENCOURAGED TO CONTINUE TO GENERATE LIVE CLE PROGRAMS AT THEIR ANNUAL AND BI-ANNUAL MEETINGS, FOR WHICH THE ASSOCIATION'S MEETINGS DEPARTMENT IS ACCREDITED AND STAFFED TO ASSIST SECTION, COMMITTEE, AND SUBCOMMITTEE LEADERS IN MANAGING THIS CATEGORY OF CLE PROGRAMMING.

CLE programs produced by Sections, in association with their annual and bi-annual destination meetings, provide Section members with an opportunity to meet other Section members and to enhance their knowledge of particular areas of practice while serving as an incentive to attend the meetings. These programs are considered a Section member benefit which serves to retain membership. The Meetings Department staff is highly experienced in assisting Sections to produce meetings and CLE programs in this category.

Historically, Section-generated live CLE programs have not been recorded and made available to NYSBA members generally because the Meetings Department was not accredited for other than live formats. In 2011, the NYSBA Executive Committee approved a Pilot Program, administered through the CLE Department, which recorded two Section CLE programs associated with destination meetings and posted them for sale on the NYSBA website in online video and audio streaming formats. Four CLE programs from the 2012 Annual Meeting have been added to the Pilot Program. The intent is to test the possibility of preserving previously unrecorded Section CLE content in consultation with the individual Sections while evaluating a profit-sharing formula that would allocate net revenue (after considering direct and indirect production and marketing costs) from the sale of these recorded programs to both the Sections and the Association. The sales of these programs are being monitored with a report due back to the Executive Committee later in 2012.

GUIDELINE #2. SECTIONS, COMMITTEES, AND SUBCOMMITTEES ARE ENCOURAGED TO CONTINUE TO WORK WITH THE CLE DEPARTMENT TO

² Another listed strategy to achieve this objective is "to integrate the CLE provided by the Sections at all meetings with the CLE provided by the CLE Department." The Strategic Planning Final Report further recommends that "the CLE providers," namely the CLE Department and the Meetings Department, be "merged or coordinated by an overarching CLE committee of staff and volunteers (p. 6)." The management and personnel ramifications incident to these recommendations are beyond the scope of this Subcommittee's assignment. These recommendations should be addressed by the Executive Director and the Executive Committee.

GENERATE SPEAKERS AND TOPICS FOR CLE PROGRAMMING ACCREDITED AND MANAGED BY THE CLE DEPARTMENT.

According to the Association's Strategic Plan, "at present, 75% of the annual topics presented by the CLE Department are developed in cooperation with Sections; the remaining 25% are developed by CLE staff attorneys with input from the CLE Committee after determining the hot topics of the day (recent examples include Same Sex Marriage and Power of Attorney)."

Programs co-sponsored with the CLE Department provide a platform for Sections to highlight their expertise in their particular areas of practice. CLE programs are marketed to section members and non-members with the intent of providing a quality educational experience while reinforcing the benefits of Association and Section membership and attracting new members. The CLE Department's Senior Staff is experienced in working with Sections to choose the appropriate format for programs and market the programs to ensure maximum attendance and visibility.

GUIDELINE #3. ANY OTHER CLE PROGRAMMING PROPOSED BY SECTIONS, COMMITTEES AND SUBCOMMITTEES SHOULD BE SUBMITTED TO THE HEAD OF THE DEPARTMENT OF SECTION SERVICES AND THE DIRECTOR OF THE CLE DEPARTMENT FOR CONSIDERATION USING THE ATTACHED PROGRAM QUESTIONNAIRE. [Attachment A]

This management Guideline and the more specific "Parts" set forth below are intended to provide flexibility in Section CLE programming, to harmonize coordination among different groups within the Association, to insure compliance with applicable New York State CLE Board rules and regulations, to allow review of proposed co-sponsors, to provide an opportunity for the CLE Department to share its expertise and knowledge with Section/Committee leaders who want to conduct additional CLE programming, to develop an avenue for the Association Sections and Committees to generate additional funds and to improve overall coordination and communication among Association groups and local bar associations.

Part A. Sections, Committees, and Subcommittees may seek clearance for additional, stand-alone CLE programs which provide a minimum of two CLE credits.

This limitation comes from joint discussions of the Section Services Department, the CLE Department, and Meetings Department. Their conclusion is that programs providing less than 2 CLE credit hours do not justify the commitment of resources necessary to develop, produce, provide quality control, and accreditation. In addition, the large number of committees and subcommittees within all Association Sections and Committees could conceivably overwhelm the Association's staff without this limitation. As noted above, the Association's Sections currently have 467 active Committees.

Part B. Sections, Committees, and Subcommittees should obtain clearance for a stand-alone CLE program at least three months before the proposed program date.

From experience, the Association's CLE Department has determined that it takes approximately 3 months after a CLE program concept is selected to prepare, market and provide quality control for a particular CLE program.

Part C. Sections, Committees and Subcommittees should not seek clearance to schedule additional CLE programs during the November 1 through January 31, time period.

During this time period, the Association's staff is heavily engaged in facilitating the Annual Meeting in New York City, which involves many CLE programs and other events. Section/Committee/Subcommittee members who propose separate CLE programs to be held during the November 1 to January 31 time period should be encouraged by Association and Section leadership to consolidate these separate CLE programs into the Annual Meeting schedule.

In general, the CLE Department uses half-year calendars to market and monitor the Association's CLE programs and to avoid calendar conflicts with competing programs and events, including some local bar association programs. The deadline for entry of a program in the Association's "spring" CLE calendar is October 31 of the prior year; the deadline for entry in the "fall" CLE calendar is the preceding June 15.

Part D. Sections, Committees, and Subcommittees should not seek clearance to schedule separate CLE programs within 30 days before, or 30 days after, Full Day or Multi Day Section Meetings.

These meetings may be scheduled during the spring, summer or fall. As a general guideline, Section CLE and Section subcommittee CLE programs should not be scheduled 30 days prior to or after a Section full or multi-day meeting so as not to compete with the Section's most significant annual programming events. Subcommittees wishing to present CLE programs within the 30 days prior to or after a Section multi-day meeting should be encouraged to add their programs to the Section meeting.

Part E. The maximum number of additional, stand alone, CLE Section/Committee/Subcommittee CLE programs which the Department of Section Services staff can handle is 3 programs per month per Section Liaison.

In addition to the above and the regular business meetings of the Sections, each Section Liaison could handle a maximum of 3 CLE programs per month sponsored by the Section, Committee, and Subcommittees. The result, spread across the five Liaisons and twenty-five Sections, is a maximum of 15 Section Subcommittee CLE programs per month. This parameter takes into consideration the full-range of CLE programming requirements including the review, production and distribution of CLE program materials, and the processing of CLE certificates. The Department of Section Services will work with Section Chairs, Section Committee and Subcommittee Chairs, and the Section, Committee, and Subcommittee CLE programming Chairs, to arrive at an equitable distribution of subcommittee CLE programs within the time frames not excluded above. Requests for one of the three monthly Section, Committee, and Subcommittee CLE program slots per Liaison should be made at least three months ahead of

time to assure efficient planning and maximization of the program benefits to the Sections.

Part F. In Considering Additional CLE Programs, Sections, Committees and Subcommittees Should Consider Programs which Offer a Probability of Generating Net Revenue

As noted above, the operations of the Association's CLE Department have averaged approximately \$1,050,000.00 in annual net revenue over the past 4 years. This is a significant revenue stream in supporting the Association's overhead, which benefits all Association activities, including the Sections.

Through mid-March 2012, the pilot program involving resale of 2 selected, 2011 Section/Committee CLE programs has only yielded total net revenue of \$3795.00. Additional 2012 Section/Committee CLE programs have been added to this pilot program with increased marketing efforts.

GUIDELINE #4. SECTION, COMMITTEE, AND SUBCOMMITTEE LEADERS ARE ENCOURAGED TO APPOINT A MEMBER TO SERVE AS CLE CHAIR WHO SHALL BE RESPONSIBLE FOR ORGANIZING AND IMPLEMENTING SECTION CLE PROGRAMS AND TO BECOME FAMILIAR WITH THE ASSOCIATION'S PERSONNEL AND POLICIES INVOLVED WITH CLE ACTIVITIES OVER A MULTI-YEAR PERIOD.

A number of Sections have created a CLE Chair position, perhaps to be assisted by members of a CLE subcommittee, to coordinate the Section's CLE programming.

As noted in the Association's Strategic Plan, the Association's "CLE Committee has committed to meeting with the Section chairs to work more closely in determining topics." In this regard, the CLE Committee Chair invited Section leaders interested in CLE programming to discuss issues of common interest at the end of its January 2012 meeting. Several Section leaders attended, and some reported that they learned a lot about how the CLE Department works on CLE programming from this meeting. This type of acquired/working knowledge can easily be lost with periodic turnover of Section/Committee leadership. Thus, this Guideline encourages Section/Committee leaders to identify, promote and select volunteer attorneys to work on Section/Committee CLE programming, who are able and willing to make a multi-year commitment. In this regard, it is noteworthy that Section leadership models vary from section to section. Some Section Chairs are directly involved in CLE programming; others rely on a designated CLE chair, co-chairs or committee; other Sections have CLE programming responsibilities placed with section leaders coming up through the ranks before becoming Section Chair; other Sections might turn to past Section Chairs for CLE program leadership.

GUIDELINE #5. THE ASSOCIATION SHOULD PROVIDE INCREASED RECOGNITION, GUIDANCE AND TRAINING FOR SECTION, COMMITTEE, AND SUBCOMMITTEE LEADERS INVOLVED IN CLE PROGRAMMING.

The Association should provide increased recognition to Sections and Section leaders, who make extraordinary contributions to the Association's CLE programming. An example might be a program chair or speaker from a Section who organizes and/or presents a program of extraordinary quality and value. Another example might be a Section CLE Chair who has organized valuable, quality CLE programs for his or her Section's meetings over a period of time. Recognition could be in the form of a contribution to the Bar Foundation for a Section's scholarship fund, an appropriate memento to an individual involved, announcement of the recognition in the Bar Journal and the State Bar News, at a House of Delegates meeting, or at the Section Delegates Caucus, etc.

The Association should provide Section, Committee, and Subcommittee CLE Chairs and members with appropriate guidance and training in regard to producing CLE programs. This should include explaining the CLE regulatory requirements and how they are applied, as well as ways to choose program speakers and course materials.

The CLE Department has written "how to" guides for statewide program chairs, local program chairs, regional speakers, local speakers, etc. which cover many "nuts and bolts" topics involved in producing a quality CLE program. The CLE Department is encouraged to draft a comparable document on how to be a "Section CLE Chair." In addition to these "guidance" documents, Section and Committee leaders involved with CLE programming are encouraged to provide "on the job training" for future Section leaders involved with CLE programming by use of CLE co-chairs, vice-chairs or similar techniques for passing on acquired knowledge and relationships with Association staff.



New York State Bar Association

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ATTACHMENT A

CLE Department and Department of Section Services

CLE Program Questionnaire

We are pleased that you are interested in presenting a Continuing Legal Education Program. In order to evaluate your program, please complete this questionnaire and submit it with all supporting materials via email to H. Douglas Guevara, CLE Senior Director, at dguevara@nysba.org, and Richard Martin, Assistant Executive Director, at rmartin@nysba.org.

1. **Name of Sponsoring Section/Committee/Organization and Contact Information for Program Chair or Co-Chairs:** _____

2. **Proposed Program Title:** _____

3. **Requested Month and Location(s) for Proposed Program:** _____

4. **Program Outline/Agenda and Summary:** Please attach to this sheet the following materials: (1) a brief summary, in narrative form, describing the content of the proposed program indicating why it is important that attorneys in this particular practice area should attend. Include in your summary five key benefits or skills that attendees will gain from attending your program. (e.g. How to draft a Will; How to cross-examine a hostile witness, How proposed legislation will impact his/her practice, etc.) and (2) A timed program agenda indicating the amount of time to be allocated for each program segment/panel.

5. **Amount and Allocation of Instruction Hours** (See attached copy of MCLE Regulations and Guidelines). How many hours of instruction do you estimate for this program? _____

Please indicate the number of minutes that will be spent in the following areas of professional competency (exclusive of breaks, introductions, etc). See attached MCLE Regulation §1500.2 for category definitions.

- i. Ethics and Professionalism: _____
ii. Skills: _____
iii. Practice Management and/or Areas of Professional Practice: _____

6. **Please Indicate the Level of Experience of your Target Audience and their Areas of Practice:**

☐ Newly Admitted (0-1 year) ☐ Intermediate (1-5 years) ☐ Advanced (5 + years)

Areas of Practice:

7. **Speakers:** On a separate sheet, please list the names of proposed speakers, including their professional affiliations. It is the policy of NYSBA to ensure that program faculty for all programs are diverse. Please keep this in mind as you select your faculty.

8. **A Note on Program Materials**

In order to be eligible for NYS MCLE credit, your program must include written course materials for distribution to attendees. You should refer to Section 8 (A)(4)(e) of the attached MCLE Regulations and Guidelines to ensure that your course materials meet CLE Board standards. A complete set of written course materials are required to be submitted in MS Word; Word Perfect or Saved to PDF electronic formats and are due no later than 60 days prior to the scheduled program date. Course materials submitted by speakers must be directly related to their presentation. Speakers will be asked to sign a release form granting NYSBA copyright to the materials prepared specifically for the program. **It is the responsibility of each speaker to obtain reprint approval for any third-party copyrighted materials submitted.**

**Rules: Part 1500. Mandatory Continuing Legal Education Program For Attorneys
In The State Of New York**

§1500.2 Definitions

- c. **Ethics and Professionalism** may include, among other things, the following: the norms relating to lawyers' professional obligations to clients (including the obligation to provide legal assistance to those in need, confidentiality, competence, conflicts of interest, the allocation of decision making, and zealous advocacy and its limits); the norms relating to lawyers' professional relations with prospective clients, courts and other legal institutions, and third parties (including the lawyers' fiduciary, accounting and record-keeping obligations when entrusted with law client and escrow monies, as well as the norms relating to civility); the sources of lawyers' professional obligations (including disciplinary rules, judicial decisions, and relevant constitutional and statutory provisions); recognition and resolution of ethical dilemmas; the mechanisms for enforcing professional norms; substance abuse control; and professional values (including professional development, improving the profession, and the promotion of fairness, justice and morality).
- d. **Skills** must relate to the practice of law and may include, among other things, problem solving, legal analysis and reasoning, legal research and writing, drafting documents, factual investigation (as taught in courses on areas of professional practice), communication, counseling, negotiation, mediation, arbitration, organization and trial advocacy.
- e. **Law Practice Management** must relate to the practice of law and may encompass, among other things, office management, applications of technology, state and federal court procedures, stress management, management of legal work and avoiding malpractice and litigation.
- f. **Areas of Professional Practice** may include, among other things, corporations, wills/trusts, elder law, estate planning/administration, real estate, commercial law, civil litigation, criminal litigation, family law, labor and employment law, administrative law, securities, tort/insurance practice, bankruptcy, taxation, compensation, intellectual property, municipal law, landlord/tenant, environmental law, entertainment law, international law, social security and other government benefits, and alternative dispute resolution procedures.

**NEW YORK STATE CLE BOARD
REGULATIONS AND GUIDELINES FOR THE MANDATORY CONTINUING
LEGAL EDUCATION PROGRAM FOR ATTORNEYS IN THE STATE OF NEW
YORK [Excerpts]**

SECTION 8. THE ACCREDITATION PROCESS

A. Individual Courses or Programs

[4.] Standards for Accreditation—Accredited continuing legal education courses or programs shall comply with the following guidelines:

a. One (1) hour of continuing legal education credit shall consist of at least 50 minutes of instruction or other accredited activity, exclusive of introductory remarks, meals, breaks or other noneducational activities. Credit hours shall be calculated in no less than 25-minute (.5-hour) increments.

i. Each 0-24 minute session of instruction or other accredited activity shall equal zero (0) CLE credit hours.

ii. Each 25–49 minute session of instruction or other accredited activity shall equal one-half (.5) credit hour.

iii. Each 50–74 minute session of instruction or other accredited activity shall equal one (1) credit hour.

iv. Each 75-99 minute session of instruction or other accredited activity shall equal one and one-half (1.5) credit hours.

b. The program shall have significant intellectual or practical content and its primary objective shall be to increase the professional legal competency of attorneys in ethics and professionalism, skills, law practice management and/or areas of professional practice.

[c] Omitted

d. The continuing legal education course or program shall be taught by instructors with expertise in the subject matter being taught and shall be specifically tailored to a legal audience.

i. The faculty of the course or program shall include at least one attorney in good standing, who shall actively participate in the course or program.

ii. The faculty of the course or program shall not include any disbarred attorney.

e. Thorough, high quality, readable and carefully prewritten materials shall be made available to all participants at or before the time the course or program is presented[.]

f. Written materials for approved courses and programs shall satisfy the following additional criteria:

- i. Materials shall be prepared or compiled specifically for the accredited course or program, and shall specifically address each topic presented in the course or program;
- ii. Materials shall be prepared or adopted and approved by the speaker and shall be distributed to the attendees at or before the time the course or program is to be held[;]
- iii. Materials shall reflect that they are timely or that they have been updated with specific reference to the course or program;
- iv. Materials shall cover those matters that one would expect for a comprehensive and professional treatment of the subject matter of the course or program; and
- v. Brief outlines without citations or explanatory notations shall not constitute compliance with Program accreditation criteria.