

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

BACKGROUND

Forty-five states currently impose mandatory continuing legal education (MCLE) requirements on attorneys. Of these states, forty-one allow legal practitioners to satisfy some or all of these requirements through on-demand online programs. Minnesota is not one of them. Instead, Minnesota is one of only four states whose rules require that an online continuing legal education (CLE) program be listened to as a live webcast in order to receive accreditation.¹ Lawyers in Minnesota, in other words, can receive CLE credit for listening to a particular online program at its scheduled time, but cannot receive credit for the exact same program if they download it and listen to it the next day.

In drawing the distinction between live and on-demand webcasts, Minnesota lags behind the vast majority of states, whose rules have been updated to account for the technological advances of the past decade. Minnesota also requires its attorneys to complete forty-five CLE credits every

¹ See generally *CLE Requirements*, West LegalEdcenter, <http://tinyurl.com/CLEREquirements> (last visited May 31, 2012). See also Exhibit A (a compilation of the MCLE requirement data found at *id.*).

three years, placing it among those states with the heftiest credit requirements as well.²

The Rules of the Minnesota Board of Continuing Legal Education (Board) were not always behind the times. In fact, Minnesota led the original charge in accrediting online CLE. This Court altered the Board's rules in 2000 to allow for accreditation of live webcasts when such a policy was not the norm: as of 2002, two years after the rule change, only twenty states allowed for accreditation of online programs.³ As technology continued to improve to allow not only for improved webcasts but also for improved on-demand options, other states took the lead in updating their rules. By 2006, twenty-four states had accredited live webcasts, and twenty-three of them had accredited on-demand programming.⁴

Nowadays, every state with MCLE requirements accredits live webcasts and nearly all allow accreditation for on-demand programs as well.⁵ Even the American Bar Association offers on-demand CLE.⁶ Minnesota stands among a handful of outliers that don't accredit on-demand CLE.

² *Id.*

³ Harry J. Haynsworth, *Post-Graduate Legal Education in the United States*, 43 S. Tex. L. Rev. 403, 404 (2002).

⁴ Peter Glowacki, *Celebrating Twenty Years of Continuing Legal Education*, 40 Val. U.L. Rev. 543, 551 (2006).

⁵ *See generally CLE Requirements, supra* note 1. *See also* Exhibit A, *supra* note 1.

⁶ *CLE Downloads*, American Bar Association, <http://tinyurl.com/ABA-CLE>

When the Board's rules were changed in 2000 to allow credit for live webcasts,⁷ members of the Board explained that "these changes have served to clarify and adapt the Rules in light of new developments in technology; they do not represent major changes in what is required for attorneys to earn CLE credit."⁸ In other words, according to the Board, the new rules only applied preexisting principles of CLE to new technology. What is of fundamental importance to CLE, in this understanding, is not that a webcast be live, but that it preserves (1) the principle of the Rule 2Q requirement that an attorney be "actively engaged in the subject matter being presented,"⁹ (2) the principle of the Rule 2E requirement that the setting of the presentation of the CLE event is "exclusively devoted to the educational activity being

(last visited June 25, 2012).

⁷ Order Promulgating Rules of the Minnesota Board of Continuing Legal Education, No. C2-84-2163 (Minn. Apr. 17, 2000), at www.mncourts.gov/rules/cle_prom_rules_set.doc. Although paragraph (5) of Rule 5A has since undergone a few slight changes in phrasing and grammar, the 2000 updated version of paragraph (5) is substantively identical to the current version for all of this petition's practical purposes. Rule 5A(5) was updated to its current exact wording by Order Promulgating Amendments to the Rules of the Minnesota State Board of Continuing Legal Education, ADM09-8008 (2010), at <http://tinyurl.com/Rule-5A-5>. This version, being the current one, will be cited throughout, although it is worth noting that the substance of the law has not changed in over a decade.

⁸ David L. White & Margaret Fuller Corneille, *CLE Credit for Teleconference and Webcast Courses*, Bench & Bar of Minnesota (August 2001), at <http://tinyurl.com/White-Fuller> (Exhibit B).

⁹ Minn. Bd. of Continuing Legal Educ., Rules of the Minnesota State Board of Continuing Legal Education, R. 2(Q) (2010), at <http://www.mbcle.state.mn.us/MBCLE/pages/rules.asp>.

presented,”¹⁰ and (3) the underlying principle of both rules—that “the attorney must be focused solely upon the learning activity.”¹¹

Petitioners believe these principles can be served just as well by on-demand CLE options as by live options. For the reasons presented below, it is now time for this Court to amend the Board’s rules to recognize the numerous benefits of on-demand CLE.¹²

REQUEST

Petitioners respectfully request this Court modify Rule 5A of the Rules for the Minnesota Board of Continuing Legal Education (Board)¹³ (set forth in its current form in Exhibit C) by adopting the changes proposed in a redline version of Rule 5A in Exhibit D. As the 2000 rule change did, this change would serve, in the words of the Board, “to clarify and adapt the Rules in light of new developments in technology” and would “not represent major changes in what is required for attorneys to earn CLE credit.”¹⁴

¹⁰ *Id.*, R. 2(E).

¹¹ White & Corneille, *supra* note 8.

¹² This Court has shown similar flexibility in amending rules regulating CLE. In 2003, it allowed for unlimited credit for courses in professional development, and in 2008, for credit for pro bono service. Order Promulgating Amendments to the Rules of the Minnesota State Board of Continuing Legal Education, No. C2-84-2163 (Minn. Dec. 10, 2003), at <http://tinyurl.com/C2-84-2163> and Order Promulgating Amendments to the Rules of the Minnesota State Board of Continuing Legal Education, No. C2-84-2163 (Minn. Jan. 31, 2008), at <http://tinyurl.com/01-31-2008>.

¹³ Minn. Bd. of Continuing Legal Educ., *supra* note 9, R. 5(A).

¹⁴ White & Corneille, *supra* note 8.

ARGUMENT

Petitioners present two arguments. First, Petitioners argue that the vastly expanded library of course options that accredited on-demand CLE brings with it allows more convenient and more relevant CLE choices for attorneys as well as greater educational and economic value for the CLE program as a whole. Secondly, Petitioners argue that, although there may have been reason in 2000 to believe that principles of educational value such as those embodied in the Board Rules could be honored only by live CLE programs, improvements in technology have made on-demand CLE, including podcasts, substantially identical to live webcasts in terms of adherence to standards of educational value.

I. ON-DEMAND CLE OFFERS OPTIONS THAT ARE MORE NUMEROUS, CONVENIENT, RELEVANT, AND VALUABLE THAN THOSE OFFERED BY LIVE WEBCASTS.

A. On-demand CLE allows for more expansive course offerings than live webcasts are capable of producing alone.

A defining difference between live and on-demand webcasts is that live webcasts expire after only one webcast whereas on-demand webcasts can be accessed multiple times for months or even years. It follows from this that at any given point in time there are more on-demand options than live ones even if the same number of each type of program was created. Furthermore, at any given time, the vast majority of Minnesota-accredited course offerings

are inaccessible, their live webcasts scheduled months in the future, whereas on-demand courses are all available at any time.

To see these effects in action, compare the online courses accredited in Minnesota with those accredited in Colorado. Colorado's population¹⁵ and its number of lawyers¹⁶ are roughly the same as Minnesota's, and Colorado's and Minnesota's requirements both average fifteen hours of CLE per year.¹⁷ Significantly, however, Colorado allows all of these credits to be earned through on-demand CLE, including podcasts. If one examines the available offerings of popular CLE provider West LegalEdcenter on a single, given date (for example, on June 11, 2012), courses accredited in Colorado (which include both live and on-demand webcasts) total 6,046, whereas Minnesota-accredited courses (which are exclusively live webcasts) scheduled for that day total a mere six.¹⁸ Attorneys in Colorado have access, on any given day, to more than one thousand times the accredited online CLE options available to attorneys in Minnesota.

¹⁵ U.S. Census Bureau, Population Estimates, at <http://tinyurl.com/Col-census>

¹⁶ U.S. Bureau of Labor Statistics, Occupational Employment and Wages, May 2011. See details imbedded in map at <http://tinyurl.com/lawyers-census>.

¹⁷ See generally *CLE Requirements*, *supra* note 1. See also Exhibit A, *supra* note 1.

¹⁸ See generally *Online Continuing Legal Education*, West LegalEdcenter, <http://westlegaledcenter.com/home/homepage.jsf> (last visited June 8, 2012).

B. More expansive offerings of accredited courses increase convenience to attorneys.

The greater number of available on-demand courses carries many benefits for attorneys. The most obvious of these benefits is that on-demand courses allow lawyers to participate in CLE at their convenience.

1. Busy attorneys benefit from more convenient CLE.

Busy lawyers need to schedule CLE around their business rather than their business around CLE. They often cannot afford to sacrifice time working with their clients or preparing for their cases to take CLE courses. During any given free hour in an attorney's day, it is fairly likely that no live webcast is being presented, while thousands upon thousands of on-demand options would be available to meet Minnesota lawyers' requirements at any hour of any day if such courses could gain accreditation. Even when a live webcast is offered at a time available to a particular lawyer, such as over the lunch hour, it would be far more convenient for the lawyer to have the option of taking the course at another time—at home or on the morning bus ride, for instance—if it works better for his or her schedule.

2. Out-state and out-of-state attorneys benefit from access to more convenient CLE.

The additional educational value accompanying on-demand options is especially important for the many Minnesota attorneys operating outside of the Twin Cities. As Peter Glowacki, former Director of the American Bar

Association Center for CLE, points out, online CLE may be the only option for lawyers attempting to meet requirements in rural or remote locations without easy access to live conferences. The enormous expansion of relevant CLE options that would accompany accreditation of on-demand CLE would equalize opportunities for such lawyers, placing them on a more even playing field with their metropolitan counterparts.¹⁹

On-demand CLE is even more valuable to Minnesota-licensed attorneys working outside of the state or country. Consider the case of an attorney on active military duty. Such an attorney could very likely be stationed overseas, in a dramatically different time zone, for an entire compliance period, with limited bandwidth and limited access to civilian Internet connection. In such an environment, the chance to take a live webcast course in the midst of military operations is slim to none, while downloading an on-demand course for later use is far more feasible. Paragraph (11) of Rule 5A of the Board Rules seems to acknowledge the difficulty out-of-state lawyers face in finding live credits for the Minnesota-specific “elimination of bias” requirement, allowing such lawyers to get two elimination of bias credits by taking courses with no live component whatsoever.²⁰ But attorneys on active military duty have the same difficulty accessing *any* live courses—and if on-demand

¹⁹ Glowacki, *supra* note 4, at 550.

²⁰ Minn. Bd. of Continuing Legal Educ., *supra* note 9, R. 5(A).

options are sufficient, as Rule 5A(11) suggests, for elimination of bias, there is no reason they should not be sufficient for all credits. While Rule 9F allows lawyers “called to active duty military service” to request an extension on the compliance period from the Board²¹, it would be more convenient for all parties involved to allow lawyers serving active duty to complete on-demand CLE courses as the opportunity arises. The ability to extend the compliance period fails to address the problems faced by those who serve in the military.

C. More expansive course offerings increase the relevance of CLE.

Another benefit of on-demand CLE’s expansion of options over exclusively live CLE is the increased relevance of CLE to each particular attorney. When as few as six accredited CLE options might be available on any given day, the odds that any of them deal even tangentially with a given lawyer’s area of specialty are remote. Indeed, West LegalEdcenter, which often begins advertising Minnesota-accredited live webcasts more than six months in advance of their scheduled date, currently displays no offerings scheduled at any time in the foreseeable future in many of the legal categories it allows users to search by, including such large and prominent practice areas as asset forfeiture and juvenile law, to name only two.²² For Minnesota lawyers in these fields and a host of others, online CLE credit

²¹ *Id.*, R. 9(F).

²² *See generally Online Continuing Legal Education*, *supra* note 18.

relevant to their actual practice is often unobtainable. In Colorado, to use the same examples, on-demand and podcast options total three in the area of asset forfeiture and eleven in juvenile law.²³ Furthermore, because the Colorado courses are on-demand, they are available to attorneys immediately. Expansive on-demand libraries guarantee relevant courses for attorneys practicing in all specialties within the legal profession.

D. More relevant course offerings increase the educational value of the CLE program as a whole.

If attorneys have access to accredited CLE options with greater relevance to their own practices, the CLE program as a whole will be better equipped to deliver a meaningful learning experience to legal practitioners. That CLE in Minnesota currently falls short of its educational potential can be seen clearly in how it is advertised by Minnesota CLE, a major provider of live conference, video replay, and live webcast CLE courses. In light of the June 30 end-of-compliance period, for example, Minnesota CLE presented lawyers with its “June Webcast Extravaganza,” a collection of thirty-five webcasts that Minnesota CLE suggests be purchased all together as a substantially reduced-cost bundle to net a lawyer 45.5 credits (just over the

²³ *Id.*

three-year requirement of forty-five credits).²⁴ The fact that Minnesota CLE markets to lawyers who have yet to earn a single credit one month before the end of a three-year compliance period suggests many lawyers regard CLE as a mere burden rather than as a resource for updated legal information or a genuine provider of beneficial education.²⁵ By contrast, on-demand options would allow attorneys to earn credit for courses that truly interest them and inform their particular practices, increasing the educational value of CLE.

E. On-demand CLE increases the economic value of the CLE program as a whole.

Because there is such a low marginal cost to the production of on-demand CLE—all of the expense is in the production of the original live webcast—individual on-demand courses can be sold at lower prices than their live counterparts, for which the entire expense must be recouped in a single session. According to low-cost-CLE provider Richard Clem, while the going rate for podcast courses is about \$10 per credit hour, the going rate for live courses is often around \$50-60 per credit hour. Even Clem’s low-cost business

²⁴ Exhibit E. A similar advertisement that includes Minnesota CLE’s “May Webcast Extravaganza” is available at *Seminar Detail*, Minnesota CLE, <http://tinyurl.com/Minn-CLE> (last visited June 12, 2012).

²⁵ The same can be seen in the large attendance at Kinney & Lange’s annual intellectual property CLE (Kinney & Lange, *Seminar Offerings*, <http://www.kinney.com/seminars/index.html> (last visited June 25, 2012)), attended by some lawyers who do not specialize in intellectual property due to its proximity to the end of the compliance period and its being free of charge. Telephone Interview with Richard Clem, Richard Clem Continuing Legal Education (June 25, 2012).

model must charge around \$25 per credit hour for his live telephone conference call programs in Minnesota due to the increased expenses associated with them. In states such as California, where all CLE credits can be earned through on-demand courses, it is possible, according to Clem, for lawyers to earn all or most of their credits for free without difficulty,²⁶ through such services as 4 Free CLE.²⁷

The many lawyers who subscribe to an online CLE provider's entire catalog for a single fixed rate also stand to benefit economically from the accreditation of on-demand CLE. Such subscriptions often already include the provider's on-demand options,²⁸ such that Minnesota lawyers with subscription services currently pay for access to thousands of courses that they cannot take for credit. Allowing for accreditation of on-demand CLE would allow these attorneys to benefit fully from the services that they already pay for.

²⁶ Telephone Interview with Richard Clem, *supra* note 25.

²⁷ 4 Free CLE, <http://www.4freecle.blogspot.com> (last visited June 25, 2012).

²⁸ *See, e.g., Learn about subscriptions (solo small info)*, West LegalEdcenter, <http://tinyurl.com/CLE-subs> (last visited June 29, 2012) (documenting that West LegalEdcenter's subscriptions are a national product—they contain all courses regardless of state of accreditation—giving lawyers in Minnesota who buy the subscription access to the entire library of on-demand courses despite their lack of accreditation in Minnesota).

II. THERE IS NO LONGER ANY SIGNIFICANT DIFFERENCE IN EDUCATIONAL STANDARDS BETWEEN LIVE AND ON-DEMAND WEBCASTS.

A. Continuing education requirements for other professions recognize on-demand courses.

To oppose accrediting on-demand CLE is to say that the professional standards good enough for Minnesota's law enforcement are not good enough for the state's lawyers. The Rules of the Board of Peace Officer Standards and Training (POST) allows for on-demand continuing education courses,²⁹ and services such as Police Accredited TRaining OnLine (PATROL) provide Minnesota police officers with online training courses that are available for credit on-demand for months at a time.³⁰

Minnesota medical professionals also frequently use on-demand programs for the fulfillment of continuing education requirements. The Board of Medical Practice allows doctors to earn continuing medical education (CME) credits through any course sponsored by an organization accredited by the Accreditation Council for Continuing Medical Education (ACCME)³¹, and ACCME accredits on-demand "enduring materials" such as videos or

²⁹ See Minn. R. 6700.0900 (2011).

³⁰ See *Frequently Asked Questions*, PATROL, <http://tinyurl.com/Patrol-FAQ> (last visited June 27, 2012).

³¹ Minn. R. 5605.0300 (2011).

recordings of previous live webcasts.³² The Board of Dentistry also allows for the use of on-demand programs for professional development credits,³³ and dentists can get credit from taking webcast courses recorded years ago, such as the Clinical Grand Rounds webcasts offered by the University of Minnesota School of Dentistry.³⁴

If on-demand programs meet the educational standards to which Minnesota holds police officers, surgeons, and dentists, it is difficult to conceive of them falling short of the educational standards to which the state holds attorneys. Furthermore, petitioners' requested rule change does not include any change to the fundamental test of CLE quality: the requirement that the content of each course be approved by the Board.

B. Due to advances in network technology, there is no difference between environments in which live webcast can be accessed and environments in which on-demand webcasts can be accessed.

In 2000, restricting online CLE to live webcasts may have initially ensured a particular classroom setting—a desktop computer in an office with an internet connection—but in 2012, it is possible to listen to a live webcast in nearly any environment. Almost every coffee shop and restaurant now provides its customers with free Wi-Fi access, and most cellular networks are

³² See *Enduring Materials: Definition and Requirements*, ACCME, <http://tinyurl.com/ACCME-1> (last visited June 27, 2012).

³³ See Minn. R. 3100.5100 (2011).

³⁴ See *Continuing Dental Education*, University of Minnesota, <http://tinyurl.com/Dental-CE> (last visited June 27, 2012).

now powerful enough that a lawyer could participate in a live webcast on a smartphone anywhere—even in the absence of a Wi-Fi connection. In this day and age, lawyers can listen to a live webcast in a car, train, or airplane as easily as in a traditional office setting. In this respect, on-demand webcasts or podcasts are truly no different from their live counterparts.

C. On-demand CLE programs can provide participants the same benefits as live programs.

Online communication and file-sharing now allow on-demand CLE to provide the benefits of question-and-answer and discussion in a classroom setting. Petitioners' proposed amendment includes requiring access to the presenter or moderator by voicemail, email, or online discussion forum.

As early as 2006, Peter Glowacki, then Director of the American Bar Association Center for CLE, proposed several options for designing on-demand CLE to imitate live question-and-answer.³⁵ Among them, Glowacki suggested questions could be recorded on a telephone system and answers recorded and sent back via a dropbox-type file-sharing system—a sort of online voicemail. Another perhaps simpler solution would be to simply allow CLE participants to email the instructor questions for the duration of time that the program stays on-demand. The instructor could then send an email response to just the participant asking the question or to a list of previous

³⁵ Glowacki, *supra* note 4, at 548.

participants who have indicated that they wish to have access to subsequent discussion of the topic, contributing to the classroom-like experience.

According to Clem, who has used email as a means of answering questions for participants in his Wisconsin podcast courses, this method is a perfectly capable recreation of live question-and-answer. In general, Clem has found that podcasts provide an educational experience equal to that of live programs, and that participants in his podcast courses are fully engaged in the learning process.³⁶

The benefits of a traditional classroom experience can also be gained by adding, as West LegalEdcenter does to its podcast application, an online discussion forum, where participants can discuss the course material with one another. According to West Professional Development, the intention behind this function is to ensure that podcast CLE “recreat[es] an already existing experience”³⁷ of live and webcast CLE. An instructor or moderator could also have access to and participate in such a forum, which would allow the forum to function as a vehicle for question-and-answer.

On-demand programs can also keep track of program participants.

Online CLE providers, such as West LegalEdcenter, advertise their

³⁶ Telephone Interview with Richard Clem, *supra* note 25.

³⁷ Gina Roers & Kevin McCormack, *Mobile CLE – Lessons From the Development Trenches*, West LegalEdcenter, 2 (October 2010), <http://tinyurl.com/c39wme5> (follow “Mobile CLE—Lessons From the Development Trenches” hyperlink) (Exhibit F).

willingness to adapt their programs to the demands of different state regulations,³⁸ and the requirement of paragraph (7) of Rule 5A that a list must be kept of program participants³⁹ is as easily accomplished with on-demand CLE options as with live ones. In the same way that a provider is able to keep track of who orders and completes a live webcast, a provider can track who downloads and completes an on-demand webcast or podcast program for verification purposes.

D. Podcast programs allow access to the same visual materials available through video webcast courses.

When an on-demand program is presented through a smartphone application, that course is often referred to as a podcast. Podcasts are capable of providing access to course materials—such as slideshows or written handouts—in the same way live webcasts provide them: through downloadable files. West LegalEdcenter, for example, includes access to downloadable course materials right next to access to its online discussion forum in its podcast application,⁴⁰ producing the same effect already found in many live webcasts.

³⁸ See *id.*

³⁹ Minn. Bd. of Continuing Legal Educ., *supra* note 9, R. 5(A).

⁴⁰ See Lee Ann Enquist, *Lawyers Enjoy New Level of Productivity With iPhone Technology*, West LegalEdcenter, 2, <http://tinyurl.com/3x6ppcb> (follow “Lawyers Enjoy New Level of Productivity With iPhone Technology” hyperlink) (last visited June 25, 2012) (Exhibit G).

PETITIONERS

The five petitioners are attorneys licensed in Minnesota. Each has a unique practice and experience, and each has his or her own particular reasons to support the accreditation of on-demand CLE.

Kent Laugen is a solo practitioner in Red Wing who has been licensed to practice in Minnesota since 1988. As he believes is the case with many of his out-state counterparts, he earns all his CLE credits through online courses. The hassle of attending live events—most often held in the Twin Cities area—is more than he cares to deal with: fuel costs, downtown parking, and travel time all make online CLE a much more appealing option for attorneys living out-state, especially considering the current economic conditions in out-state areas. The market conditions of the last few years have hit Red Wing especially hard, and, according to Laugen, out-state lawyers are still struggling. The lower costs of on-demand CLE would make meeting the state's requirement less onerous for out-state lawyers. Laugen also finds that he learns more from the webcasts he accesses through West LegalEdcenter than he ever did at conferences; he finds he is able to pay much better attention and has access to a wider course selection. Live webcasts are far from perfect, however. In addition to being hard to schedule, Laugen says that the live requirement unnecessarily limits the available online options that are so critical to the continuing legal education of out-

state attorneys. Laugen finds that he is unable to earn credit for many courses that would be truly valuable for his practice only because he is not available at the scheduled time. In this way, he believes the live requirement sells the educational potential of CLE short.

Nicole Concordia is a solo estate planning attorney and a mother, who works from her home office in Minnetonka. In 2010, she opened Concordia Law Group, PLLC, while expecting the birth of her first child, so she could craft her own flexible work schedule while being the primary caretaker of her daughter. Estate planning was the perfect fit for Concordia: as much of the practice is transactional in nature, she can do it whenever the opportunity arises—during her child’s nap time, in the evenings, or on weekends. Live CLE presents a challenge for Concordia, since she cannot often predict when her daughter will need her attention. The ability to hit the pause button on a podcast, attend to her baby, and later return to the lecture, would present an invaluable opportunity to integrate CLE into her busy schedule. Many parents face the same dilemma as Nicole. In this day and age when flexible schedules, flexible office locations and other accommodations are being made to reduce the burden of being an engaged parent and having a career, on-demand CLE is a logical step in helping Minnesota lawyers have both.

Peter Swanson has been licensed in Minnesota since 1994. During that time, he has spent seven years in active military service. He served as a

judge advocate in the Army from 1995-2000. First deployed to the Balkans in May 1998, his first CLE reporting year, Swanson recalls spending the last night before he left for pre-deployment processing finalizing a CLE affidavit. As a reservist, he was mobilized to active duty and deployed in July 2007, also a reporting year. He experienced difficulty trying to take live courses in an overseas military environment. Largely as a result of the mobilization process, Swanson completed only six hours of CLE between July 2006 and September 2008. Working around military operations in a different time zone, he was rarely in a position to take live courses. He would have greatly benefited from the convenience of on-demand CLE. Currently, Swanson is a Master of Science in Teaching candidate at the College of Saint Scholastica. His program utilizes traditional classes, as well as on-demand coursework and discussion forums like those advocated in this petition. On-demand CLE would allow Swanson to balance his CLE education with his reserve, career and education obligations.

Kristian Dahl is a partner with the law firm of McGuire Woods LLP in Richmond, Virginia. His practice focuses on energy regulatory issues at the state and federal levels. He has been a member of the Minnesota Bar since 1996 and has met his MCLE requirements as an out-of-state attorney since 1997. Meeting these requirements often includes preparing and filing for approvals for individual CLE courses at his own time and expense, or

traveling to Washington, D.C., Chicago and elsewhere—at considerable costs of time and money that could be avoided with accredited on-demand CLE. Moreover, Dahl would benefit from a greater variety of course options because his practice is specialized. Dahl counsels clients on a range of energy issues before the Federal Energy Regulatory Commission (FERC) and state commissions on issues such as utility rates, natural gas pipelines and distribution and energy regulatory aspects of transactions for the financing, development, acquisition and disposition of energy assets—a comparatively specialized practice area for which more expansive CLE offerings would aid in terms of relevance. Dahl’s firm also mandates his participation in the Practising Law Institute’s (PLI) “Privileged Member” programs,⁴¹ for which he is assessed several hundred dollars annually. PLI’s programs include both live and web-based CLE seminars, and through its “CLE Now” on-demand CLE courses, PLI offers on-demand CLE programs often more specific and helpful to the individual needs of his practice and clients than what is offered live or locally in Virginia. PLI even offers elimination-of-bias CLE programs on-demand, for which suitable courses are particularly difficult for out-of-state attorneys licensed in Minnesota, such as Dahl, to find. However, because Dahl can only fulfill his Minnesota CLE requirements through live

⁴¹ See *Continuing Legal Education Seminars, Treatises, and Webcasts*, Practising Law Institute, <http://www.pli.edu> (last visited July 2, 2012).

course work, the PLI membership, with its expansive on-demand CLE offerings, is of little practical use for meeting the Minnesota MCLE requirements. Dahl's practice, and thus his clients, would benefit from access to more convenient, relevant courses through accredited on-demand CLE.

Seth Leventhal is a litigator in Minneapolis whose business depends on his hard-working nature, extensive knowledge, and price-competitiveness. Formerly a partner at Dorsey & Whitney, he opened his solo practice, Leventhal, PLLC, in 2010. He takes pride in being the only attorney to work on his clients' cases, but the busy schedule of a solo practitioner leaves Leventhal little spare time during the business day. Without other attorneys in his office, his clients have no one to turn to when he must take time out of his work day for live CLE. If he could receive credit for on-demand CLE, he could devote his entire work day to his busy practice and get his credits in the evenings at home. As a solo litigator, Leventhal's knowledge of the law must be extensive enough for his whole practice, and with on-demand access to thousands of accredited course options, he would gain knowledge most relevant to his cases. Moreover, Leventhal not only strives to offer his clients the same quality litigation experience as larger firms, but offers it at less than half the hourly rate that larger firms expect. Leventhal, and, ultimately, his clients would benefit from lower CLE costs if less-expensive on-demand options were accredited.

CONCLUSION

The time has come for Minnesota's rules to recognize the wisdom that forty-one of this country's forty-five states with MCLE have: accredited on-demand CLE would benefit lawyers by making CLE offerings more expansive, convenient, relevant, and, therefore, more valuable. Furthermore, these benefits can be reaped without loss of educational rigor, as there is no significant difference between the inherent educational values of live webcasts and that of their on-demand counterparts. As has been recognized in many other professions, any relevant technological difference that may have ever existed between the two no longer exists, with modern technologies and designs allowing on-demand courses and podcasts to perform every important educational function of live webcasts.