

CLE? Who, me? **The Daily Record, April 9, 2004**

By Alisa Bralove, *Daily Record Legal Affairs Writer*

Nearly 10 years ago, the Maryland State Bar Association put a proposal for mandatory continuing legal education before the Standing Committee on Rules of Practice and Procedure.

It's still there.

While everyone from physical therapists to accountants to certified interior designers is required to complete some sort of continuing legal education in Maryland, the state is one of only 10 nationwide that lets its attorneys close their books for good after law school.

"What's most frustrating to me is that there is no profession that has a greater annual change in what goes on than in the legal profession," says Steven VanGrack, a Rockville attorney and president of the Maryland Institute for the Continuing Professional Education of Lawyers.

And while MICPEL, formed by the MSBA and the state's two laws schools in 1975 to offer voluntary CLE courses, arguably could benefit from mandatory continuing legal education, VanGrack is not alone in his views.

"It is a black mark against the Maryland legal community that we tell the public that we do not need this," said Judge John F. Fader II, who retired from the Baltimore County Circuit Court. "It's not like riding a bicycle. You need to keep up with it."

In his 26 years on the bench, 21 of those on circuit court, Fader said he found more than a few lawyers who would benefit from mandatory continuing legal education.

"When judges come to court... I think that most of them are much more disappointed in the quality of the lawyering than they suspected they were going to be," Fader said. "Close to 50 percent of the lawyers who appear before me [in civil non-domestic cases] should have more experience and done more work than they did."

Fader's comments echo what "almost every other judge with whom I've spoken has said," VanGrack said. "The disparity is great. Sometimes they see brilliance, and sometimes they see anything but brilliance. There are a lot of judges that are reluctant to say that publicly."

U.S. District Judge Roger W. Titus, who served on the Rules Committee from 1989 until taking a seat on the federal bench last year, would advocate a mechanism to allow judges to refer lawyers to a course if they showed signs of needing it. However, Titus is strongly against mandating continuing legal education.

"I don't believe that it seriously furthers the purposes of those who advocate for it," he said. "It seems to be a wonderful thing for private CLE providers but for the most part, those that go to these mandatory courses are looking for the best local."

That's just one of the concerns raised over mandatory CLE, or MCLE.

"In some respects, part of the argument against MICPEL is that when it's mandated it turns into a commodity that is not always quality," said Brent Burry, MICPEL's executive director.

Chief Judge Joseph F. Murphy Jr. of the Court of Special Appeals, who chairs the Riles Committee, puts it this way: "In some where they have CLE, at least the impression is some of the continuing legal education programs are cocktail parties at which somebody speaks for five minutes on some issue and now everyone has their continuing legal education requirement satisfied."

It is up to individual states to decide what courses can be taken for credit, and how much credit, said Mark Rackley, CEO of CLE International. The Denver-based company has offered continuing legal education courses in the United States and Canada since 1983.

This summer, in addition to more nuts-and-bolts classes, CLE International's offerings include a seminar on fiction writing for lawyers. It counts for up to eight CLE credits in Florida and West Virginia. North Carolina lawyers can earn six credits, California lawyers can earn three, and Texas lawyers can earn two credits. The course costs \$795.

But will a course like that really make a better lawyer?

"I will admit that not all of it is CLE," said Rackey, but "there is a section or topic that Michael Levin goes through when he does his program with us that he talks about copyrights and contracts."

Administrative details like quality control helps kill the MSBA's 1995 proposal to the Rules committee, Murphy said.

"There's so much energy expended in trying to figure out what the minimum amount should be and what really qualifies. All of these are administrative issues but they pile up. At a certain point you put enough feathers together and you have a ton of feathers," Murphy said.

Setting priorities

Making continuing legal education a requirement also would be harder on solo practitioners and small firms that don't have the time or money it takes to meet the requirements, Murphy added.

That's a legitimate concern, said Dean Gilbert A. Holmes of the University of Baltimore School of Law – but it is not sufficient.

"It's just a question of where people put their priorities. If you consider staying abreast of the area you practice in a priority, then you plan for the expense just like you plan for other priorities in your life," said Holmes, who is also a member of the American Bar Association's Standing Committee on Continuing Legal Education.

Coming from New York, Holmes was “was shocked and amazed that there’s not a CLE requirement” in Maryland.

“I think that having CLE requirement says something very important about how we view our profession. A lot of other states have recognized that and we have a CLE requirement.”

Maryland can learn from experiences of those states, Holmes said.

“These are concerns that I think other areas have already addressed. If we really have legitimate concerns about them, we can look to other jurisdictions and see how they address them,” he said. “of the 40 or 41 states [with continuing legal education requirements] there’s got to be some model that can address whatever concerns exist in the state of Maryland.”

In states like Connecticut and New Jersey, for instance, experienced lawyers don’t have to worry about a CLE requirement unless they want to advertise themselves as certified in certain practice areas.

New Jersey established its Board of Attorney Certification in 1980, and allows lawyers to become certified in civil trial law, criminal trial law, matrimonial law and workers’ compensation law, as long as they fulfill the CLE requirement.