

## Mandating CLE for Maryland Attorneys

By Steven VanGrack

In April 2004, during my two-year term as President of MICPEL, Maryland's *Daily Record* published a series of articles examining continuing legal education (CLE) in Maryland and around the country. The series concluded by posing the following question to readers: "Maryland lawyers have absolutely no obligation to participate in continuing legal education (CLE) to maintain their licenses to practice law. It is a fair question to ask, "Why not?"

Today, almost three years later, the answer to the question "why not?" remains elusive. This article seeks to present some important factors to be considered by everyone in Maryland's legal community as we form a response to the recurring query of whether we should be required to participate in CLE.

No profession or occupation has a greater annual increase of new information than the legal profession. As lawyers, we are responsible for knowing rapidly changing and expanding laws on the local, state and federal levels. We must keep up with intermediate and final appellate decisions of both state and federal courts. As New York Court of Appeals Chief Judge Judith S. Kaye noted, "The eternal truth is that law is a profession that by its nature demands constant study to maintain even the barest of competence."

The issues on which we lawyers are asked to provide guidance are often critical to the life, freedom, health, civil rights, home and family of our clients. Attorneys are frequently entrusted with the life savings and investments of our clients. We become the guardians of the mentally deficient and the potential saviors of the accused. We are fiduciaries, confidants, advisors and advocates. As the Court of Appeals of Maryland has pointed out, the profession of law "has been infused with and, in a sense, been a trustee for, the public interest."

With so much new information to be absorbed and such awesome responsibilities to be borne on behalf of our clients, doesn't it make sense to require us, as lawyers, to meet an annual minimum requirement to stay abreast of new developments in our field?

One factor in considering whether lawyers should have mandatory continuing legal education (MCLE) is a look at the continuing educational requirements for other licensed professions and occupations in Maryland. What do all of the following have in common?

*Accountants, acupuncturists, architects, audiologists, bail bondsmen, certified interior designers, chiropractors, dental hygienists, dentists, dietician-nutritionists, educators, electrologists, foresters, HVAC inspectors, insurance producers, managers of health care facilities, mine foremen, mortgage originators, morticians, nuclear medicine technologists, nurses, nursing home administrators, occupational therapists, optometrists, pharmacists, physical therapists, physicians, physician assistants, podiatrists, plumbing inspectors, police officers, professional counselors & therapists, professional land surveyors, psychologists, real estate agents, real estate appraisers, real estate brokers, social workers, stationary engineers, veterinarians and well-drillers.*

All of the above are subject to a continuing professional education requirement. This broad, yet incomplete, list evidences that in Maryland almost every other profession, and many skilled occupations, believe that service to the public requires practitioners to keep up with the latest developments to help themselves maintain minimum standards of competency. In this light, it seems appropriate to quote U.S. Supreme Court Chief Justice Warren Burger, who commented that we lawyers are "more casual about qualifying the people we allow to act as advocates in the courtroom than we are about licensing electricians."

Another factor to consider is how other jurisdictions around the country have addressed the issue of MCLE. Forty-three of the 50 states require lawyers to fulfill an MCLE requirement in order to practice law within that

particular jurisdiction, according to the American Bar Association Center for Continuing Legal Education. The vast majority of lawyers in this country must comply with MCLE. Most actively practicing lawyers have been required to do so since the late 1970s or 1980s. Notable recent additions to the list of MCLE states include California and Pennsylvania (1992), New York (1998) and Illinois (2006). The shrinking list of MCLE holdouts now includes only Connecticut, Maryland, Massachusetts, Michigan, Nebraska, New Jersey (which, while it has no regular MCLE requirement, does mandate a three-year, 46-hour skills & methods course for new admittees) and South Dakota.

Finally, it is instructive to consider the position taken by Maryland's Judicial Department with respect to continuing education of judges. In 1981, the Court of Appeals of Maryland created the Judicial Institute of Maryland to provide training for judges. Chief Judge Robert M. Bell issued an administrative order in December 2000 requiring all appellate, circuit and district court judges to participate in 12 hours of judicial education each year, through the Judicial Institute. On September 18, 2006, Chief Judge Bell issued a new administrative order bringing judges of the Orphans' Courts under the annual JCLE requirement and specifically directing that administrative judges in each circuit and district shall allow judges to be absent from court for up to two days to attend or teach a program of the Judicial Institute.

Chief Judge Bell has repeatedly stressed the importance of building public trust and confidence in Maryland's judicial system. His administrative order of September 2006 states that the Maryland Judiciary "recognizes the value of judicial education as a most effective means of enhancing the equitable and efficient administration of justice." Can we not make the analogy that the public's trust and confidence in the legal profession will increase when Maryland lawyers, like Maryland judges, embrace an annual continuing legal education requirement?

Perhaps the best response to the question raised in the first paragraph of this article is to ask those who oppose MCLE: "Why?"

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