

# MCLE

## The Joke's On Us

Chiseled into a granite statue at Faber College is the motto “Knowledge Is Good.”<sup>1</sup> At Faber’s John Blutarsky School of Law,<sup>2</sup> a similar statue bears the inscription “Mandatory Continuing Knowledge Is Better.” Perceptive scholars, strolling the campus, observe the companion phrases and smile. Aha! they exclaim. A fallacy!

That’s for sure. Bar leaders in Arizona and elsewhere began with an undisputed fact—that attorneys must constantly increase their knowledge. Then they added a mistaken assumption—that we don’t. From this shaky foundation, they concocted a dysfunctional solution to a non-existent problem, ordering us to “learn” on the state’s official terms and timetable.

Thus we were shackled with the costly and largely useless MCLE program. At a time when the best guarantee of professionalism—swift and fair discipline—went begging, we shelled out millions on this insulting boondoggle. Enough, already. Let’s swallow our pride and admit that MCLE is a bad joke.

### High Hopes. High Cost. Low Results.

MCLE was well-intentioned. I salute the dedicated Bar leaders who gave it a try. We cannot begrudge them a mistake, even this whopper. Who among us, brimming with aspiration, has not bought a pig in a poke? This particular porker, however, is overdue for the chop.

It’s not the “CLE” that offends many of us. It’s the “M.” By dictating our mode of alleged growth, the mandate assumes that we commoners are too cheap, stupid and unprincipled to take responsibility for our own improvement. Well, to stretch the porcine metaphor until it squeals: Hogwash.

Last year, for example, I flew to New York for a two-day program on communications law. I didn’t know whether or not it would earn MCLE credit; I didn’t care. Trip and tuition were expensive; I gladly paid. Using only my tiny brain and shallow professional standards, I concluded that the program would enhance my competence. So I paid the substantial costs, took the time, and reaped the benefits.

But when we are forced to accumulate hours for their own sake, it’s a different story. Look around the room at your next MCLE snoozer. Lawyers are checking their watches, mumbling into cell phones, staring into space, or copping a glance at the registration table to see if the attendance certificates are ready.<sup>3</sup>

Well, say MCLE proponents, the public benefits. Well, say I, *prove it*. We’ve had about eight years of this in Arizona. Some states have endured almost a quarter-century.<sup>4</sup> Where is the evidence—the substantial body of solid, documented proof—that a mandatory scheme of seminar attendance and tape purchases creates better lawyers?

There is virtually none. As one law review contributor recently observed, no empirical data exist to prove that CLE courses improve an attorney’s competence.<sup>5</sup> Indeed, even the District of Columbia task force that unsuccessfully urged adoption of MCLE had to admit that “proof is essentially unobtainable in scientific terms.”<sup>6</sup> No less a legal light than White House counsel and former D.C. Bar President Charles Ruff found the notion of forced CLE neither necessary nor useful.<sup>7</sup>

It’s an expensive fiasco. In 1997 alone, members spent more than \$1.5 million on MCLE.<sup>8</sup> Material from external providers runs the tab higher. Even with the recent dues increases, many of us spend more on MCLE than on dues. In the next decade, we’ll pour \$20 million into this pit. With some 39 states suckered into the charade, the national MCLE establishment could pick attorneys’ pockets—ultimately, clients’ pockets—for a billion dollars.

It’s time to urge the Arizona Supreme Court to put MCLE out of our misery. Let us use our limited resources for essentials, not an unproven nuisance. For example, a fraction of the money blown on MCLE could finance a discipline system second to none. Presto: future funding crises avoided, at *lower* overall cost to members!

### Weakening the Bar

Think about this. Most attorneys’ only contact with the State Bar is in its capacity as dues collector and MCLE enforcer.

Send in your money, swear you endured 15 hours last year, and the Bar cops let you walk. Is that how we want our vital organization viewed by its own members?

Look at what happened in California. When the State Bar there came under political attack, few rank-and-file lawyers rushed to its defense. This was a tragedy, fostered in part by contempt for MCLE. *Read the California Bar Journal* letters column if you doubt me.<sup>10</sup> Faced with a choice of backing their Bar or sitting on their hands, many of our Californians asked, "Why should we prop up a system that extorts our earnings to support a demeaning, unnecessary burden?"

Increasingly, I fear, that's the MCLE image in Arizona, too. At the recently mandated Professionalism Course, many of my fellow prisoners were new admittees. They sat politely as speakers regurgitated law school ethics course highlights and cranked out the current LC (legally correct) platitudes: be civil, love your arbitrator, yada yada yada. When the attorneys fled the building, many grumbled about a pointless morning of rehashing the obvious. Even worse, they *laughed* at the patronizing folly of it.

It would be easy to dismiss their derision as the whining of petulant newbies who just don't understand. Wrong. These are sophisticated folks. They want to serve their clients and their profession capably and honorably. But they have a low tolerance for baloney. They resent having their calendars cluttered with costly, paternalistic make-work.

I'm with them. Knowledge is good, but coerced seat time is wasteful, insulting, and potentially dangerous. It has no place in an association of already conscientious, learned professionals. And that's no joke.

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#### ENDNOTES:

1. NATIONAL LAMPOON'S ANIMAL HOUSE (1978).
2. Not approved by the American Bar Association.
3. None of this should be read as criticism of our CLE staffers, who are unfailingly courteous and superbly efficient. When we get rid of MCLE, we should find a way to keep these excellent folks on board for useful work.
4. Iowa and Minnesota imposed MCLE in 1975.
5. Rocio T. Aliaga, *Framing the Debate on Mandatory Continuing Legal Education (MCLE): The District of Columbia Bar's Consideration of MCLE*, 8 GEO. J. OF LEGAL ETHICS 1145 (1995).
6. EVALUATION AND RECOMMENDATIONS ON MCLE FOR THE DISTRICT OF COLUMBIA BAR, Jan., 1995, quoted in Aliaga, note 5, *supra*.
7. Aliaga, note 5, *supra*, at 1156.
8. *Arizona Attorney*, July, 1998, State Bar Insert at 8.
9. California's Bar has other problems, of course, most notably the perception of many members that its external political activities are inappropriate.
10. Current and back issues of the *California Bar Journal* are searchable at the Web site [www.calbar.org](http://www.calbar.org).