



Continuing Legal Education

The Future is Now

By H. Lalla Shishkevish

In 2016, members of the State Bar of Michigan's 21st Century Practice Task Force examined challenges facing the legal profession and made recommendations to address those challenges in a forward-thinking way. Their recommendations for continuing legal education (CLE) call for new tools to allow Michigan lawyers to maintain a competitive edge while serving clients more effectively in the changing and challenging climate of law practice in the twenty-first century.

Traditionally, CLE has been defined as a certain number of hours of attendance at seminars presented by experts—usually in a formal, lecture-based setting—that a lawyer must

satisfy annually. Although this definition is derived from the rules in states with mandatory CLE requirements, it is commonly used even in nonmandatory CLE states such as Michigan. No doubt lawyers have acquired and authorities have imparted important information in such an environment. Yet even after decades of mandatory CLE, there is no empirical evidence that attending or listening to such presentations is an effective way for practitioners to learn. In fact, cognitive scientific research indicates that noninteractive presentations by experts are one of the least effective and efficient ways for adults to learn.

So what can be done to ensure that lawyers have access to the education they need to serve their clients and run successful practices? What should the future of CLE look like? The vision of the State Bar of Michigan is that lawyers require new tools to update their skills, especially when they are “overwhelmed, distracted and impatient”¹ with the demands of work and life. The good news is that current developments in CLE are making that vision a reality.

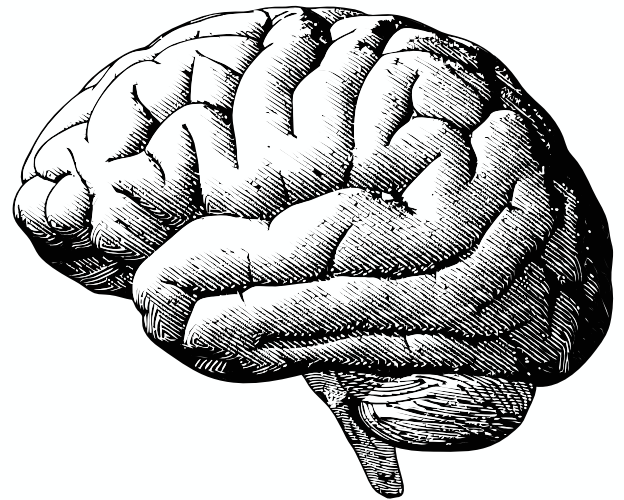
Competency-based CLE prioritizes the practical skills, knowledge, and behaviors that lawyers must have for the effective performance of their responsibilities.² It goes beyond the typical CLE course descriptions like “you will learn all you need about changes in your area of practice.” Competency-based training is developed from a concrete map of the tasks a lawyer must perform in a specific area of practice, such as “recommend the form of entity and tax election” or “advise a guardian on his or her duties.” The American Bar Association as well as many law firms, CLE providers, and corporations have been working to define competencies for use in hiring, training, evaluation, and talent management.

The Institute of Continuing Legal Education (ICLE) and the SBM Business Law Section are currently developing a competency map for transactional business lawyers that can be used in several ways. Lawyers getting started in a business transactions practice can use it to identify the full range of matters they will typically be asked to handle. Experienced lawyers can use it to consider areas for expanding their practice and skills. Law firms often use competency maps to develop in-house training plans. Finally, competency maps are an ideal foundation for assessing training offerings and developing practical, effective, new education for lawyers.

Beyond defining needed competencies, what are the characteristics of effective and efficient CLE? Planning the right activities for your learning objective is critical.³ Effective adult learning requires that learners absorb and understand new information and be able to apply it appropriately.⁴ The best CLE engages the learner. Lawyers should be given an opportunity to use and build on what they already know when acquiring a new skill. Finally, effective CLE should employ relevant stories and examples to teach new skills. When we hear a compelling story, more of our brain is engaged and we understand and remember better.⁵

Adults also learn best when they can choose where, when, and how they learn—what cognitive science describes as “just in time” learning. For lawyers in the twenty-first century, the right time is whenever they are thinking about that new client problem or drafting a new document. So if a lawyer wants to concentrate on a specific issue or skill late in the evening because he or she is a night owl or the kids are asleep, CLE training should be readily accessible at that time.

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FAST FACTS

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it whenever they choose. Our busy lives demand short, focused segments; short segments also align better with how our brains absorb and retain information.⁶ On-demand videos and online research were the first steps toward providing this type of flexible learning. Corporations, larger law firms, and some CLE providers have begun shifting to concise, modular online training with short segments that focus on a single topic or learning objective. Many are repurposing existing traditional online CLE courses into a series of short, professionally narrated and visually enhanced mini lessons.

Certified public accountants have led the way by setting standards for accreditation of “nano learning,” defined as 10-minute tutorials on a given subject delivered via electronic media without interaction with a real-time instructor.⁷ These tutorials must focus on a discrete, measurable learning objective and include a qualified assessment; learners must earn a 100 percent score to pass. Mandatory CLE states have not yet accepted a nano learning credit option for lawyers. Because Michigan does not have mandatory CLE requirements, CLE providers are free to develop shorter, focused training

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programs. For example, ICLE's on-demand seminars typically consist of several 10–12 minute segments.

Interactive online training is the most exciting development in CLE. In contrast to traditional, passive online courses, it is designed to let lawyers learn by practice, engage their existing expertise, set their own pace, and study at the time and location of their choosing. This type of training begins with a short demonstration, example, or case file that introduces a new skill or concept. Realistic and complex scenarios ensure the material is relevant and engaging. Carefully designed activities ensure the immediate application of the new skill or concept. The activities also serve as a tool for self-assessment, allowing learners to evaluate their mastery of the skill. ICLE is currently designing interactive online education for deposition skills.

In California, interactive online training has been developed to help lawyers prepare for the state's specialty certification tests. Although there currently are no specialty certification requirements in Michigan, interactive education for an entire practice specialty can provide an excellent training opportunity for lawyers who wish to develop or improve their skills. This may be especially important for lawyers without partners or mentors to guide them—a more common occurrence in twenty-first-century practice.

One such specialty practice area is elder law, for which ICLE is developing an extensive interactive online training program. When completed, the training will consist of seven modules on topics ranging from assessing a client's capacity to the labyrinthine world of government benefits. Lawyers will be able to choose the order in which they tackle the modules and can take as much (or as little) time on each within an

overall two-year limit for earning a certificate of completion. The lessons in each module feature complex, professionally acted scenarios and demonstrations. Some include document drafting exercises. Others feature branching exercises in which different answers lead to different outcomes. Every lesson provides guided learning activities for self-assessment with a chance to compare one's responses to those of an expert in the field. This gives lawyers an opportunity to test their skills in a safe environment before facing these issues on behalf of a client.

Lawyers need new tools for their continued educational growth, skill development, and successful practice management. The future of effective CLE depends on online interactive education based on the secure foundation of competency mapping. CLE providers have the opportunity to use the science of engaged learning to give lawyers the ability to acquire and apply new skills and access training when their customers need it most. The future of CLE is happening. ■



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ENDNOTES

1. Tauber & Jonson, *Meet the Modern Learner* (Infographic) (November 26, 2014) <<http://2syt8l41fuvr2dqan6123ah0.wpengine.netdna-cdn.com/wp-content/uploads/2015/10/unnamed.png>>. All websites cited in this article were accessed April 29, 2017.
2. See, e.g., Wagner, *Defining Key Competencies for Business Lawyers*, 72 *Bus Lawyer* 103 (Winter 2016/2017).
3. Stolovitch & Keeps, *Telling Ain't Training* (Alexandria: ASTD Press, 2d ed, 2011), pp 80–84.
4. Dirksen, *Design for How People Learn* (Berkeley: New Riders, 2011).
5. *Id.* at 112–113; Leo Widrich, Buffer Social blog, *The Science of Storytelling: What Listening to a Story Does to Our Brains* <<https://blog.bufferapp.com/science-of-storytelling-why-telling-a-story-is-the-most-powerful-way-to-activate-our-brains>> (posted November 29, 2012).
6. Steve Gluckman, Talent Think Tank blog, *The "Modern" Lawyer Learner—Overwhelmed, Distracted & Impatient* <<http://www.talentthinktank.com/modern-lawyer-learner/>> (posted March 9, 2015); Dirksen, *Design for How People Learn* (Berkeley: New Riders, 2012), pp 133–135.
7. NASBA National Registry of CPE Sponsors, *Nano Learning* <<https://www.nasbaregistry.org/preparing-to-apply/nano-learning>>.