

Pandemic Rule for On-Demand CLE Credits Expires Jan. 31, 2023

At the start of the pandemic, the Wisconsin Supreme Court issued a temporary rule that allowed attorneys to obtain almost all continuing legal education credits on demand (accessible anytime). That rule expires at the end of January.

“Active” lawyers admitted to practice law in Wisconsin must obtain at least 30 continuing legal education (CLE) credits every two years. Three of those credits must be in the area of ethics and professional responsibility (EPR). If you were admitted to practice law in an even-numbered year, CLE reporting deadlines are fast approaching.

The reporting period for lawyers corresponds with the year of admission to practice law in Wisconsin. If you were admitted in an even-numbered year, you will be required to obtain CLE credits for the 2021-22 reporting period on or before Jan. 31, 2023.

The two-year reporting period technically ends on the last day of the year, but rules grant an additional month to obtain and report CLE activity for the reporting period.

That is, to avoid a late filing fee and other penalties, 2021-22 courses must be completed on or before Jan. 31, 2023, and CLE reports must be submitted electronically to the Wisconsin Board of Bar Examiners (BBE) on or before Feb. 1, 2023.

Note that the 30-credit requirement applies to “Active” status members. “Senior Active” members – those age 75 and older who are still practicing law – are only required to obtain 15 credits, three of which must be EPR credits. (“Emeritus Active Legacy” members do not have CLE reporting requirements.)

On-Demand CLE Order Expiring

Before the pandemic, lawyers could earn a maximum of 15 CLE credits for each two-year reporting period

through a “repeated on-demand program,” which is an approved “on-line program delivered over the internet.”

Lawyers can watch on-demand programs anytime from office or home (or another location). In March 2020, at the start of the pandemic, the Wisconsin Supreme Court issued a temporary order that allowed attorneys to obtain up to 30 credits on demand (increased from 15 credits).

The temporary order did not apply to EPR credits – attorneys still needed to obtain at least three EPR credits through “live” programming, that is by attending in person or through live webcasts or live telephone seminars. “Live” programs allow presenters to answer questions and interact with those who are attending the programs.

As the pandemic continued, the court extended the on-demand temporary order through 2022. However,

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Earn Continuing Legal Education Credits

Looking for a State Bar of Wisconsin CLE program?

Go to the State Bar Marketplace at <https://marketplace.wisbar.org/> to find seminars, webcasts, and on-demand programs.

Want to earn CLE credit by writing for the State Bar of Wisconsin?

PINNACLE Books: Contact Carol Chapman at cchapman@wisbar.org or (608) 250-6113.

Wisconsin Lawyer: Contact Karlé Lester at klester@wisbar.org (preferred) or (608) 250-6127.

InsideTrack: Contact Joe Forward at jforward@wisbar.org or (608) 250-6161. **WL**

the court recently denied a request to extend the order through 2023.

Moving forward, only 15 CLE credits may be earned on demand in every two-year reporting period, reverting to the pre-pandemic rule.

For instance, those whose reporting periods will end on Dec. 31, 2023 (attorneys admitted to practice in an odd-numbered year) will be capped at 15 on-demand credits.

However, the court's order¹ specifies that lawyers whose CLE reporting period ends on Dec. 31, 2023, and who have logged more than 15 on-demand credit-hours, may use the excess on-demand credit-hours to satisfy the Dec. 31, 2023, reporting obligation.

Moving forward, after the current reporting period, "no more than 15 credits may be claimed for repeated on-demand programs during a lawyer's CLE reporting period."

Thus, if your CLE reporting period ends at the end of 2023 and you obtain excess on-demand CLE *on or before Jan. 31, 2023*, those excess on-demand credits can be applied for the current reporting period (ending Dec. 31, 2023), except for EPR credits.

Example 1: Jane Doe was admitted to practice law in 2019. Her two-year CLE reporting period ends Dec. 31, 2023. On or before Jan. 31, 2023, Jane earns 25 on-demand credits. Because Jane obtained the on-demand credits on or before Jan. 31, 2023 (when the temporary order expires), she can use all 25 on-demand credits toward the 30-credit CLE requirement when she reports her CLE credits for 2022-23.

Example 2: Jane Doe was admitted to practice law in 2019. Her two-year CLE reporting period ends Dec. 31, 2023. On or before Jan. 31, 2023, Jane earns 10 on-demand credits. After Jan. 31, 2023 (when the court's order expires), Jane will only be able to obtain an additional five credits on demand because the 15-credits cap for on-demand programs will apply.

Obtaining and Reporting CLE Credit

Lawyers may engage in a combination of different "activities" to satisfy the CLE requirements. In other words, coursework is not the only means of earning the required 30 credits. Lawyers can also earn credits through writing, speaking, teaching, or doing pro bono work.

Approved Coursework

Lawyers could, if they wish, earn all 30 credits through approved coursework. The BBE approves CLE programs that meet certain criteria, explained in SCR 30.07.

CLE providers, such as State Bar of Wisconsin PINNACLE®, typically submit programs or sessions for BBE approval in advance of the program or session. Thus, lawyers will know how many CLE or EPR credits are available for each program or session.

The BBE maintains a database of courses that it has approved for CLE credit. Lawyers who attended an out-of-state program that was not already submitted for approval to the BBE can submit for approval in Wisconsin using CLE Form 2.²

However, there is some risk in taking out-of-state courses because different

states have CLE reporting types, course-length requirements, and even content requirements for obtaining approval for CLE credits that differ from Wisconsin requirements, notes Christopher Shattuck, the State Bar's Law Practice Assistance Manager (Practice 411™).

"Mistakenly relying on out-of-state programs that have not been approved for CLE credit by the BBE may result in lawyers failing to meet CLE requirements in situations when out-of-state programs are relied on and submitted at the end of the CLE reporting deadline, but do not receive appropriate CLE approval, especially in the area of EPR credits," Shattuck said.

CLE Credits for Lawyer Awareness and Understanding (LAU) and Law Practice Management (LPM)

Under supreme court rules, lawyers have the option to earn a maximum of six credits on subjects "designed to enhance a lawyer's awareness and understanding [LAU] of substance abuse/dependence disorders, mental illness, stress management, and work/life balance relating to the practice of law."³

Lawyers may obtain another six credits "on the subject of law practice management [LPM], which may include topics such as client communications, trust accounting, record keeping, applications of technology, and other subjects essential to the practice of law. Courses or portions of courses dealing primarily with profit enhancement or marketing of services will be denied credit."⁴

PINNACLE program materials indicate whether the BBE has approved or is expected to approve a session for LAU or LPM credit, as opposed to CLE or EPR credit. Just remember that the six-credit maximums apply to the LAU and LPM categories.

Currently, there is a pending petition that would allow attorneys to earn CLE credit for programing related to diversity, equity, inclusion, and access (DEIA). State Bar President Margaret Hickey

discusses the petition in her column elsewhere in this issue.

Approved Teaching or Presenting

Lawyers can also obtain CLE credits for teaching or presenting. Presenting an approved CLE program or session, such as a PINNACLE program, counts toward the 30-credit requirement.⁵

Presenting for a judicial education activity or teaching a course at an ABA-approved law school also counts. Lawyers can earn two hours for each hour of presentation of an approved CLE or judicial education activity and one hour for each hour of presentation at a law school. There is no maximum on the number of teaching or presenting credits lawyers can obtain.

Approved Legal Writing

Writing is another option to earn CLE credit. The BBE “may approve published legal writings for use toward the CLE requirement under rules it may adopt.”⁶ Lawyers can obtain up to 15 credits for approved legal writing.

That is, a lawyer may claim up to 15 hours of credit for approved legal writing that was published during the reporting period. But BBE rules limit the types of legal writing that will be approved. The legal writing must satisfy the following criteria:

- 1) The writing must be published, in print or electronically, in the form of an article, chapter, book, or significant revision.
- 2) The writing must be written in whole or in substantial part by the lawyer submitting the request for approval.
- 3) The writing must satisfy the criteria set forth in SCR 31.07(2)(a) and (b) in that its objective is to increase the reader’s professional competence as a lawyer, and in that its content must deal primarily with matters related to the practice of law, professional responsibility, or ethical obligations of lawyers.⁷

Thus, lawyers could apply for CLE credit for legal writings published in State Bar of Wisconsin PINNACLE

books. These rules also allow lawyers to apply for CLE credit for published articles in State Bar print and electronic publications such as *Wisconsin Lawyer*[™] and *InsideTrack*[™] so long as the above criteria are satisfied.

To obtain credit, lawyers must submit CLE Form 4⁸ (Request for Approval of CLE Credit for Published Legal Writing) to the BBE and attach a copy of the published work.

Certain types of published material are specifically excluded.⁹ These include contributions to blogs, material produced on behalf of a client, and material appearing in media controlled by the lawyer or the lawyer’s firm, such as a law firm website.

Articles appearing in a publication for general circulation or directed to nonlawyer audiences are also excluded, as are materials developed for CLE presentations.

Tracking CLE Credits

As you can see, there are numerous avenues to obtain 30 CLE credits in every two-year reporting period. So how do you keep track of it all?

Good news. The State Bar of Wisconsin has a tool that will help you. It’s called *myCLETracker*. To use it, log in to WisBar.org and go to *myStateBar* at the top of the page, then click on *myCLETracker*.

As the name implies, *myCLETracker* helps you track CLE credits throughout a reporting period, but CLE credits must be reported to the BBE.

This is an important point because attorneys sometimes incorrectly believe that *myCLETracker* is a CLE reporting tool. But *myCLETracker* is not a mechanism for reporting CLE; rather, it serves as a reference guide when you do report to the BBE.

Exemptions to Attendance or Reporting Requirements

Are you a new lawyer? Attorneys are exempt from the CLE attendance and reporting requirements in the year

of their admission to practice law in Wisconsin.¹⁰ For the current period, that would include 2022 admissions.

Did you attend a CLE program or session this year anyway? New lawyers who do earn CLE credits in the year of admission can carry forward up to 15 credits into the next reporting period.¹¹

Attorneys who do not engage in the practice of law during the applicable reporting period are exempt from the CLE attendance requirement for that reporting period.¹² However, attorneys will not receive any carryover credits if they do elect this exemption, and nonpracticing attorneys must still report the designation to the BBE.

Attorneys who principally practice law in other jurisdictions with mandatory CLE requirements are exempt from Wisconsin’s CLE attendance requirement but must still report the out-of-state CLE to maintain active standing in Wisconsin.¹³ **WL**

ENDNOTES

¹In the Matter of the Temporary Amendment of SCR 31.02 and 31.05 Relating to the Continuing Legal Education Requirements: On-Demand CLE Programming in Response to COVID-19 (Dec. 1, 2022), www.wicourts.gov/supreme/docs/120122order.pdf.

²CLE Form 2, www.wicourts.gov/services/attorney/docs/cle2.pdf.

³SCR 31.02(3).

⁴SCR 31.02(4).

⁵SCR 31.05(3).

⁶SCR 31.07(3); CLE 7.06-7.10. (CLE rules appear in the appendix to SCR ch. 31.)

⁷CLE 7.06(1).

⁸CLE Form 4, www.wicourts.gov/form-display/BE-404.pdf?formNumber=BE-404&formType=Form&formatId=2&language=en.

⁹CLE 7.06(2).

¹⁰SCR 31.04.

¹¹SCR 31.05(2)(a).

¹²SCR 31.04(2).

¹³SCR 31.04(3). **WL**