

DILEMMA:

CLE Shenanigans May Be Dishonest Conduct

What are the consequences when lawyers sign attendance sheets at continuing legal education programs but leave before the program ends? State Bar ethics counsel Tim Pierce discusses why it is important to keep up with your CLE requirements.

Question

I've been going to continuing legal education (CLE) seminars for a long time and always, whether the seminar is good or bad, attend the entire seminar and report my attendance to the Board of Bar Examiners. But sometimes I see lawyers sign the attendance sheet and leave immediately. I recently heard that another lawyer had his office staff sign in under his credentials to a remote webinar because he had a scheduling conflict.

This seems like dishonest conduct to me. Do lawyers ever get in trouble for this sort of thing?

Discussion and Answer

This issue gained some attention from a recent case in Maine. On Sept. 7, 2023, the Maine Supreme Court suspended Attorney Jason R. Buckley for one year for dishonest conduct in connection with reporting CLE attendance as well as other misconduct. Buckley had been administratively suspended for some time, and in an attempt to obtain the necessary CLE credits to lift the suspension, he submitted an attendance form to get credit for two live webcasts that occurred simultaneously.

When this was discovered by the Board of Overseers in reviewing the form, Buckley asserted that he used a computer and an iPad to watch the two programs at the same time and was unaware the conduct was improper. It was later discovered that Buckley had also attended a live CLE webcast while simultaneously

viewing an on-demand CLE.

The Maine Supreme Court found that this was a violation of Maine's version of SCR 20:8.4(c), which states that it is misconduct for an attorney to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The Buckley case relied in part on a prior Maine case, *Board of Overseers v. Brown*, BAR 22-02 (Oct. 4, 2022). In that case, Brown had discovered that he did not have any CLE credits for the previous year and purchased an all-access pass with a private CLE provider to try to quickly obtain the necessary credits. After signing up for several courses, Brown realized he had scheduling conflicts. He then instructed a staff person to sign on to some of the online courses

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While it is rare, lawyers do get disciplined for dishonest conduct in connection with CLE reporting. The takeaway: don't procrastinate getting your required CLE credits.



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with his credentials, which “allowed” the private provider to report that Brown had attended the seminars.

After the staff person reported Brown to the disciplinary agency, Brown argued that he misunderstood the reporting rules and that he had instructed the staff person to download the seminars so that he could view them later. The court found, however, that text messages made clear that Brown intended the staff person to attend under Brown’s identity and found violations of Maine’s versions of SCR 20:8.4(c) and SCR 20:8.4(a), which prohibits violating the rules through the acts of another. The court imposed a stayed suspension with several conditions.

CLE Misconduct in Wisconsin

Wisconsin has its own CLE-related misconduct cases. In *Disciplinary Proceedings Against Hammis*, 2011 WI 3, 331 Wis. 2d 19, 793 N.W. 2d 884, Hammis was administratively suspended and needed to obtain CLE credits to lift the suspension.

The opinion states what happened when the respondent attempted to obtain those credits:

“Later that same day, Attorney Hammis registered and signed in for a 3 1/2 hour CLE class titled, ‘Agricultural and Business,’ at the Wisconsin State Bar Center. This class was scheduled to begin one hour from the time Attorney Hammis arrived at the center. Attorney Hammis then left the State Bar Center and drove to the BBE office to file his petition for reinstatement. The petition for reinstatement stated that Attorney Hammis had completed the ‘Agricultural and Business’ class when, in fact, the course had not begun at the time Attorney Hammis filed his petition with the BBE. Attorney Hammis then traveled to a meeting in Portage, Wisconsin, and did not return to the CLE course until after 2:15 p.m. The BBE denied Attorney Hammis’ petition for

reinstatement because it ascertained he had filed his petition prior to completion of the necessary CLE course.” *Id.* ¶ 12.

The court found that the respondent’s conduct violated SCR 20:8.4(c). For that, and several other rule violations in different matters, the court imposed a four-month suspension.

In *Reinstatement of Eisenberg*, 175 Wis. 2d 648, 498 N.W.2d 840 (1993), the supreme court denied reinstatement to a lawyer who had been under a disciplinary suspension. The Board of Attorneys Professional Responsibility (predecessor to the Office of Lawyer Regulation) opposed Eisenberg’s reinstatement based upon the investigating district committee’s findings:

“The district committee was informed by the State Bar’s continuing legal education seminar coordinator in March, 1992, that Mr. Eisenberg had arrived one hour late for a seminar and one-half hour later retrieved his coat, returned to the meeting room and shortly thereafter ‘sort of snuck out’ through a door designated for the exclusive use of the facility’s employees. When this information was brought to his attention at the public hearing before the district committee in August, 1992, Mr. Eisenberg stated that he did not recall the incident and could not imagine any attorney doing such a thing.”

At a continuation of the reinstatement hearing, the district committee found that Eisenberg gave contradictory testimony and had falsely claimed on his submission to the Board of Bar Examiners (BBE) that he had attended the entire seminar. Based upon this, the court concluded that Eisenberg lacked the fitness to be readmitted to the practice of law.

Conclusion: Keep Up with Your CLE Requirements

The common denominator in all these cases is that the lawyer failed to keep up with credits during the reporting period and then cut corners to try to quickly obtain the necessary credits.

Upcoming Ethics Webcasts from State Bar of Wisconsin PINNACLE®

Attorneys admitted to practice law in an odd-numbered year must obtain their 30 CLE credits for the 2022-23 reporting period by Jan. 31, 2024, and report them to the Board of Bar Examiners by Feb. 1, 2024.

At least three (3) of the 30 credits must be on Ethics and Professional Responsibility (EPR). Here are a few upcoming ethics programs from PINNACLE running in December 2023 and January 2024.

- *Responding to Negative Criticism on Social Media 2023* (1.5 CLE, 1.5 EPR)
- *Civility and Lawyer Conduct when Dealing with Others 2023* (1.5 CLE, 1.5 EPR)
- *Witnesses: Ethical Issues in Testimony 2023* (1.5 CLE, 1.5 EPR)
- *Legal Ethics 2023: New Opinions, New Rules, and New Issues* (4 CLE, 4 EPR)

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This also sometimes results in lawyers being disciplined for engaging in the unauthorized practice of law while suspended and failing to notify clients and courts of the CLE suspension as required by SCR 22.26, as occurred in *Hammis*.

While these types of cases are rare, lawyers do get disciplined for dishonest conduct in connection with CLE reporting. **WL**