

2009 Lawyer Feedback on CLE

Illinois Supreme Court Commission on Professionalism

Survey: Lawyer Feedback on CLE

In December 2009, the Illinois Supreme Court Commission on Professionalism conducted a web-based survey of the legal community. The purpose of the survey was to gather feedback from lawyers about their participation in professional responsibility CLE courses and activities and to garner ideas for strengthening professional responsibility education for Illinois lawyers.

The Legal Community Survey explored the following topic areas:

1. Organizations selected to provide continuing legal education;
2. Areas of content included in professional responsibility courses and activities;
3. Teaching methods used in professional responsibility courses;
4. Extent to which professional responsibility requirements were fulfilled via distance learning and the methods of distance learning most utilized;
5. Utilization of non-traditional professional responsibility credit;
6. Lawyers' perceptions regarding increased knowledge from CLE participation;
7. Lawyers' perceptions regarding their application of learning into their practice of law;
8. Lawyers' perceptions regarding CLE influence on job performance;
9. Ideas for improving continuing legal education and other feedback and comments.

Methodology & Response

The Illinois Attorney Registration and Disciplinary Commission (ARDC) provided the email addresses of attorneys from its 2009 master roll. In December 2009, the Commission sent the link to the online survey and an invitation for participation to 43,200 lawyers via email. A total of 3,327 lawyers completed the online survey.

Summary of Findings

1. Organizations Attorneys Selected for CLE

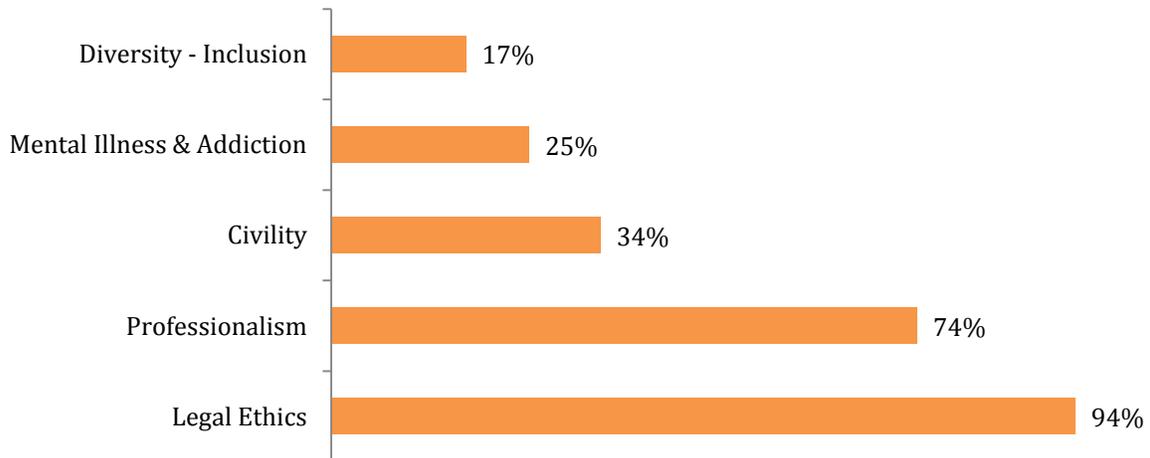
Lawyers were asked to identify the organizations that provided the courses or activities that they attended to fulfill the professional responsibility requirement. Providers of professional responsibility CLE most often identified were Bar Associations (55%) and CLE Organizations (50%). The chart below ranks the organizational groups by the rate of attorney selection.

Bar Association	55%
CLE Nonprofit or Profit Organization	50%
Law Firm	23%
Legal Professional Association (not Bar)	22%
Corporation/Business Industry & Corporate In House Counsel	16%
Government Entity	14%
Business/Trade Association	11%
University (including Law School)	11%
Supreme Court Board/Commission/Program	9%
Legal Aid or Advocacy Organization	6%
Court - Federal/Appellate/Circuit	4%

2. Content Areas of Professional Responsibility CLE

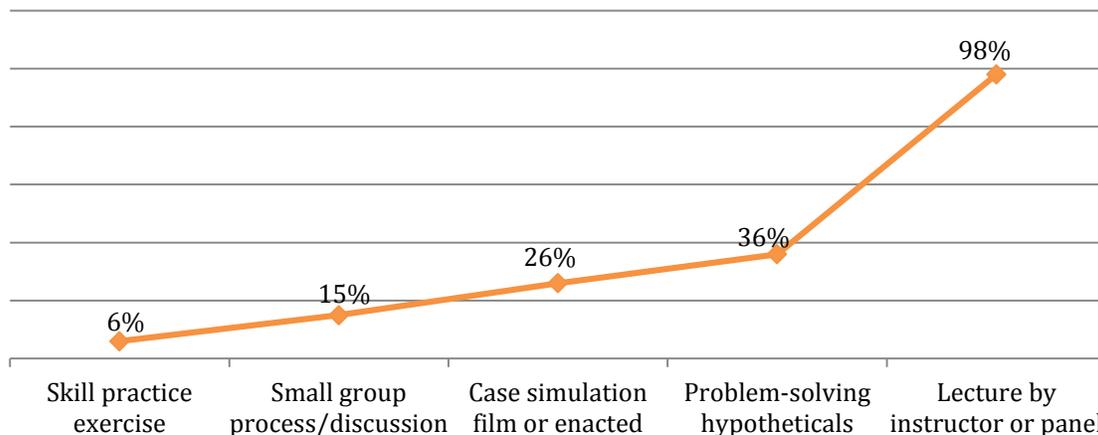
Rule 795(a) requires that the professional responsibility course or activity have significant intellectual, educational, or practical content with a primary objective to increase participant’s competence as an attorney and requires that the course or activity relate primarily to the practice of law. The scope of what may be considered professional responsibility CLE is broad, defined by Supreme Court Rule 794(d) as the areas of “professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics.” There can be significant overlap between these areas and often the professional responsibility CLE course will entail more than one area.

Attorneys were asked to identify the content areas contained in their professional responsibility courses. Most lawyers (94%) indicated that their professional responsibility coursework included legal ethics. Almost two-thirds of the lawyers indicated their professional responsibility course encompassed professionalism. The chart below illustrates the distribution of professional responsibility course content by percentage of lawyer responses.



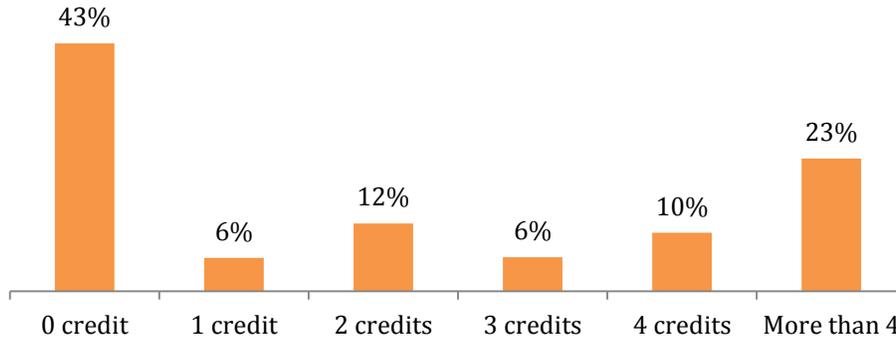
3. Teaching Methods for Professional Responsibility CLE

Lawyers were asked to indicate the teaching methods utilized in their professional responsibility course(s). Nearly all (98%) of the lawyers indicated lecture as the most common teaching method used in their professional responsibility courses. Over one-third of the lawyers’ learning experiences included hypotheticals. The chart below indicates the frequency of the identified methods.

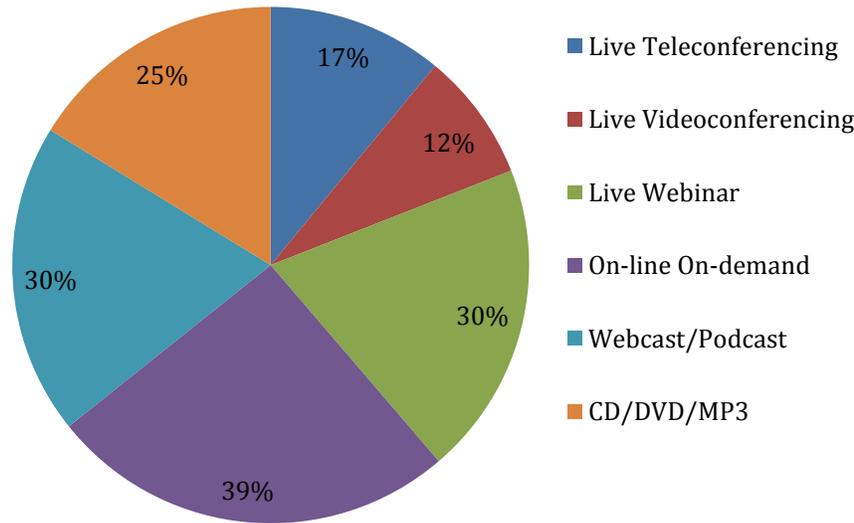


4. Professional Responsibility via Distance Learning

Distance learning is the delivery of continuing legal education to participants not physically in the room with the faculty. It provides access to learning when the faculty and the learners are separated by time or distance, or both. The survey results show that more than half of respondents acquired at least some of their professional responsibility credits from distance learning.



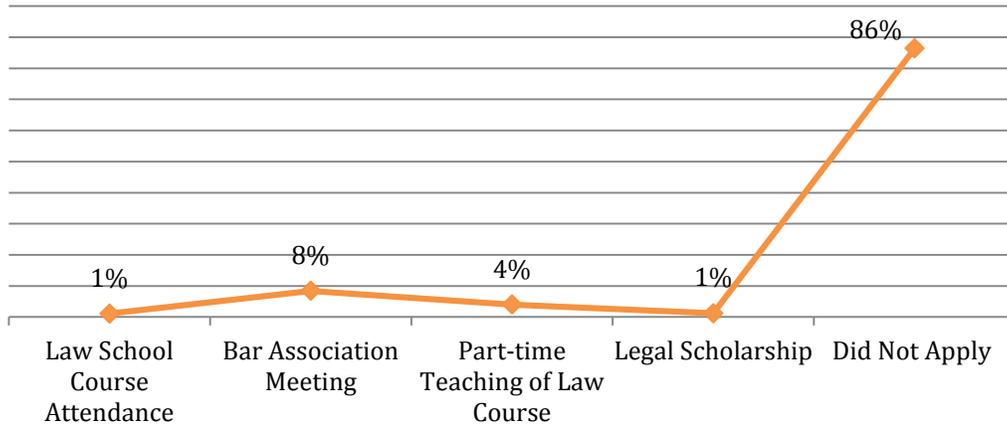
The lawyers also revealed that there many ways in which they engaged in learning from a distance. (Percentages exceed 100% because some providers use multiple delivery methods.)



5. Non-traditional CLE Credit

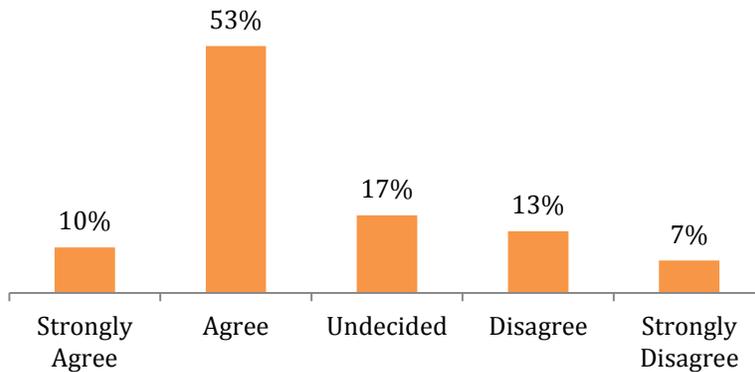
Lawyers were asked if they received credit for non-traditional professional responsibility courses or activities, defined under Rule 795(d) as: law school course attendance, bar association meetings, part-time teaching of law course, or legal scholarship. Very few lawyers stated they had applied for non-traditional CLE credit. Bar Association meetings were the most utilized non-traditional credit option. In reviewing the 72 comments for this question, many lawyers were not aware of this option. Others chose not to apply because of the added MCLE fee to report the course or activity.

Non-traditional CLE Participation



6. CLE Results—Knowledge or Capability

Lawyers were asked if their participation in a professional responsibility course resulted in increased knowledge or capability. 63% of the lawyers thought that their knowledge or capacity increased as a result of participating in a professional responsibility CLE course. Of these attorneys who strongly agreed or agreed their professional responsibility course increased their knowledge or capability, 100% indicated problem-solving hypotheticals as a teaching method used in their professional responsibility courses.



There were 117 comments to this question. The responses varied widely:

“I almost always gain something new that I can put to use in my practice.” and

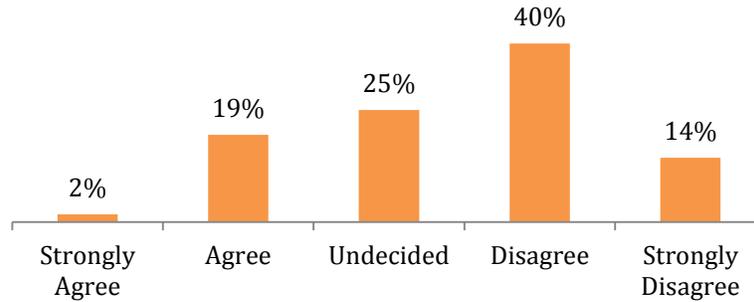
“The ethics/professional responsibility session that was part of the professional association course I took was very interesting and enlightening.”

“It was a waste of time...nothing related to my area of litigation.”

“Courses were all entry level courses.”

7. CLE Results—Application of Learning

Lawyers were asked if their participation in a professional responsibility course contributed to changes in their professional behavior. Only 21% of the lawyers responding to this survey thought they would make changes as a result of a professional responsibility course and 54% did not think their participation in a course would result in behavior change or application of learning.



There were 156 comments to this question. There was a range of comments, both positive and negative:

“Mere mention of these topics in the education tends to improve the conduct of lawyers, in my view.”

“Good professional responsibility CLE teaches you where pitfalls are so that you avoid such conduct, rather than have to change habits already made. However, I would have to say that I have readily made adjustments to practices based on things I learned in CLE.”

“Made me more confident in identifying valid claims presented by potential clients.”

“Changed my engagement letter to cover web communication and security.”

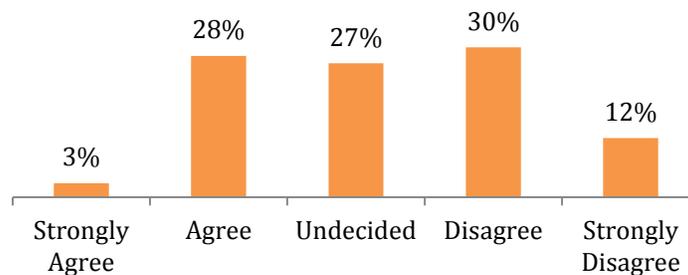
“Courses were good reminders but did not change my efforts/behavior.”

“I am very ethical and have been throughout my career. My behavior does not need to change.”

“The courses on professionalism that I took were not applicable to the ethical dilemmas I face.”

8. CLE Results—Improvement in Effectiveness

Lawyers were asked if their participation in a professional responsibility course contributed to improvements in their job performance. 31% of the lawyers responding to this question thought a professional responsibility CLE course contributed to their effectiveness on the job. 27% were undecided, and 42% did not think a course contributed to their job performance.



There were 99 comments to this question. The diverse feedback included:

"The courses resulted in no change and in fact the time spent away to take the courses adversely affected my job performance."

"I am familiar with continuing education for other professionals as well as for lawyers. My opinion is that most continuing education courses are taken just to meet requirements."

"Dealing with clients: getting fee agreements ironed out."

"If you count job performance as rated by my superiors, increase in ethical awareness decreased their happiness. If you look at it from a client perspective, it may have improved my job performance."

"Improved to the extent that the office is in compliance with new developments."

"Increased and underscored awareness of good policy and practice which ultimately influences my effectiveness in law practice."

9. Ideas for Improving CLE and Other Feedback

Lawyers were asked to share suggestions for improving continuing legal education as well as for other remarks and ideas. 837 lawyers (25% of survey participants) submitted ideas and commentary. These submissions were analyzed and categorized by topic. The prevailing topics included:

- a. Increase and improve distance learning options.
- b. Cost of CLE (money and time) is too high for over one-third of the lawyers responding to this question.
- c. Lawyers want quality CLE and have ideas for improving teaching methods and content.
- d. Lawyers want relevant professional responsibility options, courses that address issues of the legal profession, and courses specific to their experience level and area of practice.
- e. Recruit quality teachers of CLE and publicize how to get credit for courses and for teaching.
- f. Lawyers want judges to be part of the solution.
- g. Majority of lawyers appreciated aspects of CLE requirements.
- h. There is uncertainty about the efficacy of CLE making a difference in professionalism.
- i. Change the CLE rules.
- j. Address the issues of out-of -state jurisdictions and practice in multiple states.

These topics are listed below with examples of quotes from the attorneys. Keep in mind this feedback addresses ideas relevant to both the IL MCLE Board and the Commission.

- a. Increase and improve distance learning options:

"The use of technology for distance and virtual learning makes it easier to complete the course and are a great option which save time and travel. I would like to see more opportunities in this area. Also, I would like to see more options for low cost or free distance learning opportunities in the future."

"I am not resident in IL, so on line classes is the only practical approach for me. The price of these classes is much higher than for CA MCLE of the same kind and quality. Unfortunately, there is not much approval of nearly identical programming between states. The CA Bar does offer a wide catalog of low

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cost on-line on demand classes. It would be great if IL's various organizations would look at providing something similar to reduce CLE costs to the legal community as well as providing greater access to CLE. Lower costs and greater access will enhance compliance."

b. The cost of CLE (money and time) is an issue for over one-third of the lawyers responding to this question:

"CLE is typically VERY expensive. For new attorneys and those of us who have just opened a law office as a solo practitioner, it is financially burdensome."

"Also, every lawyer I know (especially lower paid government or legal aid attorneys) are appalled at the MCLE fees charged just to have non-traditional CLE counted. These fees are totally unnecessary, especially in light of the ever-increasing ARDC dues."

"With the economy in a slump and continuing education a requirement, it would be nice to see more free CLE courses. Sometimes you want to take a course but its cost is prohibitive."

c. Lawyers want quality CLE and have ideas for improving teaching methods and content:

"Professional responsibility instruction for CLE most often is elementary. I'd prefer to see instruction with more advanced problems, especially problem-solving hypotheticals, based on the model rules. Civility content needs more than a mandate presented; it needs some content about how to diffuse tense situations and stories about better legal outcomes due to respect shown in a negotiation."

"Better quality seminars with emphasis on civility among attorneys."

"Have more courses that actually present as well as analyze various portions of the professional responsibility code itself. Few practicing professionals have the time to be thoroughly familiar with aspects of the code, despite it being formulated in such a way that it behaves not only as a guide but one with a wealth of material cases to support and enhance it."

d. Lawyers want relevant professional responsibility options, including courses that address challenges to professionalism in the legal profession, and courses specific to their experience level and area of practice. In regard to professionalism challenges:

"More on diversity/inclusion. African-Americans and other minority group and their issues to reach the bench or be included in Bar Associations ... I strongly think that more sensitivity training should be part of our training or disparity will continue."

"Courses with examples of typical ethical issues faced in practice and how to recognize them are the best form of professional responsibility education."

On the availability of courses relevant to a specific experience level:

"Need more advanced education than what is currently offered"

"Require courses to advertise the level of experience the course aims for, i.e. junior associate, or 5-10 years, or 3-5 trials, so experienced lawyers don't attend courses that are too basic, lack innovation and insight, etc. "

"Professionalism courses should not be handled like a freshman 101 course. 95% of the people taking it are already involved in the legal profession and have experienced situations where professionalism became an issue. Role playing and model situations should be better emphasized rather than a lecture format."

On the availability of courses relevant to specific areas of practice:

"I have a 'niche' field of practice and hard to find relevant courses"

"It would be helpful for those of us who are GC's of corporations to have access to more such sessions on Board of Directors issues and on the issue of who the in-house corporate lawyer represents -- i.e., the company and not the individuals' interests."

"I would like to see more offerings that focus on professional responsibility in appellate practice."

"Either have a separate course to deal with the unique problems of criminal defense lawyers or find a speaker who has some awareness of the unique questions that arise in our practice."

"More attention needs to be given to in-house professional responsibility (including ethics in a non-public company setting) and professionalism among transactional lawyers. Also, more guidance, examples regarding steps lawyers must take if clients engage in questionable behaviors."

e. Recruit quality teachers of CLE and publicize how to get credit for courses and for teaching:

"Members of the bar should be encouraged to participate in teaching because they can give up-to-date examples of the importance of professional responsibility in the day to day practice of law."

"The Illinois Bar Association should partner with for profit companies to provide CLE that are responsive to particular needs. There should be a program for civil defense attorneys with less than 10 years of practice and more than 10 years of practice and programs broken down by core practice areas such as insurance defense, corporate law, real estate, criminal defense, and divorce law. The Bar should identify leaders in these areas of practice to identify most common ethical issues for presentations by a For Profit organization."

f. Lawyers want judges to be part of the solution:

"The way to increase professionalism is to have judges that expect it, and who begin sanctioning lawyers for filing frivolous pleadings, who expect them to conduct themselves professionally, and who lead by example."

"Get serious about enforcing penalties for lack of professional behavior. Lawyers lack professional behavior. Judges lack professional behavior. Judges lack the fortitude to enforce standards."

"This profession needs more than lip-service as some attorneys and judges are just disrespectful."

g. The majority of lawyers responding appreciated aspects of CLE requirements:

"When the mandatory CLE rules were announced, I thought that they were just one more burdensome requirement for already-too-busy practitioners. After more than 3 years' experience with CLE, I now believe the rules are a valuable prod."

"I am delighted by this requirement, caused me to learn new material not related to my practice, exposed me to good teaching."

h. There is uncertainty about the efficacy of CLE making a difference in professionalism:

"The profession has been largely delinquent in maintaining any discernable standards of professionalism for decades, and it appears that it is only now becoming interested in band-aid solutions. Professionalism does not and never will come from a class, and any attempts to instill professionalism through CLE requirements are ill-conceived. Real solutions require a global rethinking of legal education and licensing standards."

"Frankly speaking, these CLE requirements don't contribute much of anything to the profession. I find 99% of the attorney's I deal with on an ongoing basis were ethical, very competent, and professional prior to CLE requirements going into effect."

"You don't change the character of a lawyer by requiring him to take professional responsibility courses. The only possible positive is to provide hard information relating to ethical responsibilities that otherwise may not be readily known or understood by the practicing bar. It's a bit insulting to be teaching "ethics" or "civility" to adult professionals."

i. Change the CLE rules:

"Allow attorneys to carry more hours (including professional responsibility) into next reporting period."

"Scrap the system with possible exception of ethics. But any ethics training should be mandatory. Initial hours were fine and needed. Latest requirements too severe. Subject to abuse. You need to look at how many hours filled in last 60 days on computer or otherwise. Great for the companies selling services."

"The ARDC or the Supreme Court Board should adjust the number of hours down and/or increase the types of sessions offered. I don't think the current system does anything except provide a revenue stream to private CLE businesses for the same course over and over."

"I think that reading materials in addition to course work should qualify for CLE credit."

"I would suggest that we consider offering Illinois lawyers opportunity to mentor AND learn for CLE credit. This "Legal Internship CLE" program would allow veteran lawyers (those with ten-plus years of experience) to mentor younger lawyers and allow younger lawyers (with less than ten years experience) to obtain credit for learning legal skills in an organized manner supervised by your committee. This "Law Internship CLE Credit" would be limited to ten hours per year and would be based upon completing a project of at least ten (10) hours duration under the supervision of an approved mentor attorney. .."

"Supreme Court Committees such as IPI should receive MCLE credit. I prepare more and learn more about cutting edge law serving on the IPI Civil Committee than in any traditional MCLE program."

j. Address the issues of out-of -state jurisdictions and practice in multiple states:

"Fix the overly restrictive rule relating to credit for courses offered in other jurisdictions."

"In addition, more courses should be made available for government attorneys, especially those working internationally and in development."

"Illinois is very difficult, as a member of the Bar of another State, I have found the other State much more likely to accept non-traditional courses for CLE credit...after 43 years of practice, not many of the courses offered are meaningful, either the subject matter is not of interest or of such a general level that it is not meaningful."

"As an admittee in several states, IL is one of the harder states to get approval for out of state courses or bar conference MCLE credits. I hope the process can be streamlined in the future."

Conclusions

The survey results show that, in general, skepticism about the ability of professional responsibility CLE to make a difference remains. Attorneys expressed a desire that the high cost of professional responsibility CLE, in terms of money and time expended, be balanced by benefits that make a difference in the quality of their professional interactions. The general tenor of the comments is that this balance has not yet been achieved. Lawyers are not going to value CLE until the quality of CLE improves. When CLE courses consistently produce learning and results that strengthen the attorneys' practices and effectiveness, attorneys will perceive CLE to be worthwhile.

A very positive finding with respect to the Commission's work is the one-to-one correlation between those who found a CLE course benefitted their practice and those who took CLE courses delivered via interactive consideration of hypotheticals as opposed to the more static delivery method of lecture. These findings validate the Commission's on-going work with providers and presenters to equip them to deliver professional responsibility courses in an interactive format.

Quality professional responsibility CLE engages lawyers' wisdom, judgment, experience, and learning to prepare lawyers for new professional and ethical challenges. Teachers who encourage introspection and facilitate dialogue in professional responsibility courses realize a higher synthesis and application of learning. Even though research into adult learning has proven that the lecture method of delivery yields a retention rate of less than 15%, it continues to be the most frequent method of instruction utilized in continuing legal education.