

# PUBLIC SUBMISSION

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Proposed Continuing Legal Education Guideline

**Comment On:** PTO-P-2020-0042-0001  
Proposed Continuing Legal Education Guidelines

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## Submitter Information

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## General Comment

The CLE requirement is burdensome and is highly unlikely to achieve the purported goals. Attorneys and Agents are best suited to determine what ongoing education is most relevant to their work. A few hours watching lectures each year will not make anyone a better writer and will not turn bad attorneys into good attorneys. Good attorneys already keep up with legal developments that are relevant to their work, and admonishing them to spend time tracking it will not improve anything. The problem has not been properly characterized, and the proposed solution would not fix it.

The USPTO biennial submission cycles are unlikely to coincide with existing state bar CLE reporting cycles. My state has a three year cycle, so patent attorneys in my state have the option to save up and attend a large IP-focused multi-day educational conference every few years and, thereby, meet state requirements with education in advanced topics without frequent expense. If attorneys had to track CLEs on multiple rotations they might not be able to afford the in-depth, but expensive, out-of-town conferences, because reporting cycles might be out of sync and those multi-day seminars can cost hundreds or thousands of dollars for registration, not including travel costs. The Office may attempt to ameliorate this by offering free or low-cost CLEs, but that inferior solution discounts the attorney time cost of having to spend this CLE time in an area that may have little practical value for that practitioner, and make them less able to justify the expense of attending the in-depth seminars. Thus, such an inferior solution could undermine the ongoing engagement with education it purports to encourage.

The proposed subject requirement adds a substantial additional tracking burden. Other than things like ethics, state bars don't ask for separate tracking by subject matter. Many attorneys keep track of their CLEs by checking their state CLE transcript which may show a topic, date, and whether a particular item qualifies as ethics. To also track PTO-eligible CLEs, a whole new tracking system would need to be implemented, in parallel to the state CLE tracking, this duplication would be confusing and require substantial resources (time, money, new software, staff training, etc.).

Regarding Other Activities That May Qualify for USPTO Credit, the Patent Pro Bono Program should not be considered a substitute for CLEs and should not be permitted to replace any CLE time. I participated in a Patent Pro Bono program for a few years and found the experience useless and disappointing. The clients had nothing invested in their own ideas and so were wasteful of attorney time. Pro Bono clients viewed a patent as more like a lottery ticket than as a part of a business plan. I withdrew from the

program after too many non-novel ideas for dog waste contraptions and ideas for better ways to grow marijuana. The Patent Pro Bono Program does nothing to teach or to make a patent practitioner better at their job and it should not qualify for CLE credit.

Regarding Form of Recognition for Practitioners, this will likely amount to public shaming and will mean that CLE reporting will not actually be voluntary. It is a backdoor way to making it a mandatory requirement, because attorneys will need to avoid malpractice accusations for failing to maintain a standard of care in relation to other practitioners.

The proposed change of 37 CFR 11.11(a) would modify rule 11.11(a) contact information which, at present, merely requires a registered practitioner to keep their contact information up to date with the Patent Office and to respond if contacted. The current rule requires no record-keeping by the practitioner, and perhaps, at most, an hour of time every few years as a practitioner moves or changes jobs, so about 15 minutes per year. The proposed rule would impose a time burden that is at least twenty times greater. It would also likely entail additional time for tracking courses, time for submitting information, time for confirming the records were updated, cost for software to track the CLEs, as well as the expense of paying for additional CLE courses.

For at least the aforementioned reasons, the proposed rule change should not be implemented.

[Commenting on Proposed CLE Requirements - Agency/Docket Number: PTO-P-2020-0042]