

From: [Wayne Ellenbogen](#)
To: [CLEguidelines](#)
Subject: Comments on Proposed Continuing Legal Education (CLE) Guidelines
Date: Wednesday, October 14, 2020 10:39:25 AM
Attachments: [image001.png](#)

Re: [Comments on Proposed Continuing Legal Education \(CLE\) Guidelines](#)

Dear Sir:

I have been a registered patent attorney and a member of the Bars of New York and New Jersey since 1998. I have reviewed the Proposed Continuing Legal Education Guidelines set forth in Federal Register, Volume 85, No. 197 (October 9, 2020). As set forth in the Guidelines, it is my understanding that the purpose of the proposed CLE requirement is to achieve higher quality applications, more efficient prosecution, and obtain patent grants that are stronger, more reliable, and more predictable. I submit that requiring patent practitioners to take mandatory CLE courses, even “CLE relevant to their practice before the Office,” will not necessarily achieve this stated objective. The role of maintaining the quality and integrity of issued patents has historically rested, and should remain, solely with the patent examiners. From my over 23 years of practice before the USPTO, I have found that the quality of the issued patents, as well as the efficiency of the prosecution, depends to a large extent on the examiner’s knowledge of the technical area and his/her knowledge of the patent laws and procedures. The skill level of patent practitioners can vary widely, but it is the patent examiner who must ensure that an issued patent meets a certain minimum standard of quality. Furthermore, the patent examiner is in the best position to maintain this standard, through his/her knowledge of the technology relating to the invention and knowledge of the patent rules and laws. Thus, the proposed CLE requirement seems to be a burden-shifting exercise. Perhaps a better and more preferred approach (at least from the standpoint of the patent practitioner) would be to allow patent examiners more time to review patent applications and impose CLE requirements for examiners.

I would agree that CLE may be beneficial for the patent practitioner if the objective is ensure ethical standards in the client representation. According to the Bar of New York, the mandatory CLE program “seeks to enhance the New York Bar's proud tradition of professionalism in serving clients and the public.” However, one might argue that the Office of Enrollment and Discipline (OED) has already been tasked with this oversight role.

As a practicing attorney, I already have an obligation to abide by the ethical rules and cannons imposed by the legal profession. Therefore, if patent *attorneys* would be able to use at least a portion of their already mandated CLE hours (24 hours biennially in NY and NJ) to fully satisfy the USPTO’s CLE requirement, that would be the suggested approach. On the other hand, for patent *agents* who do not have such a requirement, I would certainly agree with implementation of a mandatory CLE requirement in order to maintain their patent registration.

If the objective of the USPTO’s CLE requirement is to maintain the skills of registered patent practitioners, I submit that any active patent *attorney* should, in order to comply with their ethical

obligations to their clients, already have a responsibility to maintain their knowledge of USPTO rules as well as the current state of the law in relevant intellectual property matters. For patent *agents* who do not have such a requirement, it may be beneficial to implement a CLE program that is designed to insure that agents understand the present state of the law as it relates to patent practice. Moreover, for patent practitioners who are not “active” (however “active” is defined), a mandatory CLE requirement can aid in maintaining the skill levels of these inactive practitioners. It is my understanding that of the currently registered patent practitioners (attorneys and agents), only an estimated 70% “actively” practice before the USPTO.

In summary, I submit that registered patent **attorneys** should be distinguished from patent **agents**, since many of the concerns and objectives about maintaining proper skill levels, as well as upholding legal integrity, ethics and professionalism, are already incorporated into the mandatory CLE requirements imposed by most, if not all, state bars. Thank you for your consideration of the above comments.

Sincerely yours,

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