

CLE Attendance: A Big Deal ... or Not?*

by Mark Bassingthwaight, mbass@alpsnet.com

I would like to describe a disciplinary matter that was resolved a few years back in another jurisdiction, because the issue addressed remains a risk management concern.

The trouble began when Attorney A submitted a continuing legal education compliance report in December claiming credit for two programs that were scheduled for the following January. The CLE commission asked for and received a resubmitted report, as credit could not be granted for future programs. The resubmitted report listed the same two January programs due to the time that had elapsed.

Later, a random report verification review revealed that Attorney A had failed to register at one of the January seminars. He stated that he had paid and registered but arrived shortly after the program had ended because he mistakenly believed that the program was an all-day event instead of two hours and because he drove to the wrong location. It was his belief that the late arrival would not nullify the hours. Once again, the commission asked for a new report. This time Attorney A dropped the disputed January seminar and substituted a different seminar. All of the reports were notarized.

In response to disciplinary charges that were filed, Attorney A admitted misconduct as to his CLE requirements but argued that, since no clients were harmed, the behavior did not constitute attorney misconduct. He also argued that he reasonably believed that making the effort to attend a seminar entitled him to receive credit for the program since "it is common practice for attorneys to receive full CLE credit for seminars when they leave early."

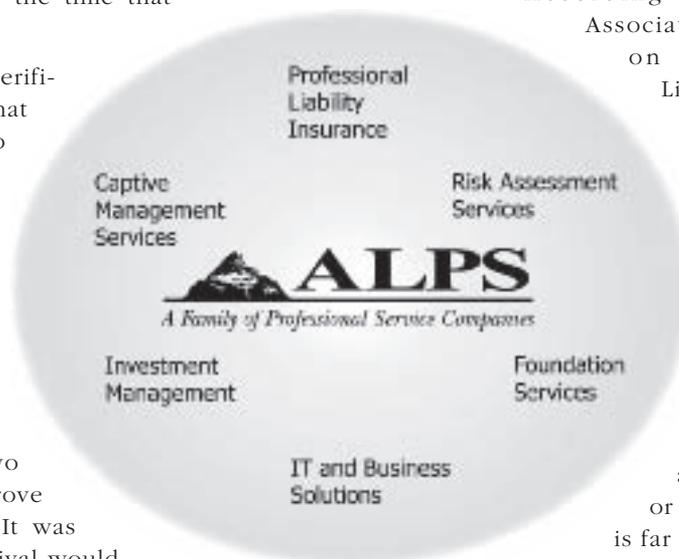
In the end, the attorney was found to have violated rules that prohibit an attorney from knowingly making

a false statement of material fact to a tribunal and from engaging in conduct involving dishonesty. The court suspended him from practice for ninety days after finding that his false statements on the notarized report constituted perjury. The court also noted that eventual compliance with the requirements did not constitute mitigation because compliance is a requirement. The court further noted that an attorney who is practicing law while not in compliance with the CLE requirement is engaging in the unauthorized practice of law.

According to the American Bar Association's Standing Committee on Lawyers' Professional Liability, 56 percent of malpractice claims are a result of a substantive error, such as failure to know or properly apply the law and failure to know or ascertain a deadline. Risk management tips that address substantive law are rare, because these issues are not as easily addressed as administrative or client relations matters. It is far easier to focus on returning client phone calls in a more timely

fashion or incorporating an improved calendaring program into the practice then trying to determine an attorney's level of competency. No one would ever have a risk manager visit if the visit process included an attempt to determine a basic level of attorney competency. In spite of this, one tip that we do share that helps address the prevention of substantive errors is to take full advantage of CLE programs in your practice area.

I think that we would all agree that the attorney's actions were wrong. Yet his statement that it is common practice for attorneys to leave early and report being there for the full time struck a nerve. Over the years, I have witnessed a great deal of late arrivals and early departures at CLE events. I have watched attorneys arrive on time, sign in, pick up the



THE ALPS CONNECTION

materials and promptly exit, only to return for the last part of the program in order to pick up a certificate of attendance. In addition, how many of us have witnessed attorneys sleeping, reading a paper or even working on a client matter during a presentation? Although I cannot speak from firsthand knowledge, having never reviewed CLE reports for accuracy, I suspect that Attorney A's perspective has some basis in reality. I become even more concerned as we incorporate video programs, online seminars and teleconferences into the mix. It is so easy to start the clock ticking and let the opportunity to learn pass us by.

Substantive mistakes are a significant malpractice problem and CLE programs offer an opportunity to

help each of us decrease the risk of a claim by keeping us current, informed and connected. I encourage each of you to choose wisely when selecting a CLE program and focus on quality and subject matter when making the decision. Then go participate and take advantage of the educational opportunity. Further, attending a program two weeks before the CLE deadline on a subject that is completely irrelevant to your practice truly is a waste of time and money. Plan ahead. Finally, when completing the affidavit of compliance remember this case. It serves as a reminder that the CLE process is not something to be taken lightly. Attorney A got caught; how many others don't? In the end, we all pay for it.

ALPS is the endorsed legal malpractice insurance carrier of the Virginia State Bar.