Before the Nebraska MCLE Commission

In re Appeal of XXXXXXXXXXX	)	Appeal #09-1
	)	
	)	FINDINGS, CONCLUSIONS, AND ORDER

This matter came before the Nebraska MCLE Commission on December 2, 2009, by conference call hearing upon the appeal filed by Appellant seeking reversal of the Director's denial of credit for a program of continuing legal education he attended. Those participating in the conference call hearing included Commission members Stephan, Rembolt, Knoepfler, Collins, Hillman, Dowding, and Schroeder; appellant; and MCLE Commission Director Carole McMahon-Boies.

The Commission reviewed documentary evidence submitted by Appellant, including verification of his attendance at the 25th Annual Basics of Airport Law Workshop and 2009 Legal Update in San Francisco, California, on September 13-15, 2009. Appellant was given an opportunity to address the Commission and respond to questions from Commission members.

The Commission hereby makes the following findings of fact and conclusions of law pursuant to Neb. Ct. R. § 3-402.2(F):

Findings of Fact

1. Appellant attended the 25th Annual Basics of Airport Law Workshop and 2009 Legal Update in San Francisco, California, on September 13-15, 2009. He considered this educational program to be very beneficial to him in a specialized area of his practice. The California MCLE Board has approved this program for 15.0 general CLE credit hours based on attendance at all sessions.

2. On November 3, 2009, pursuant to Neb. Ct. R. § 3-401.8 (D) Appellant submitted an Attorney's Form to Request CLE Credit for Education Obtained seeking credit for this program, accompanied by documentation verifying his attendance, describing the nature of the educational program, and providing biographical information regarding the faculty.

3. On November 10, 2009 the Appellant was notified by the Director of the MCLE Commission that credit could not be awarded for programs attended prior to October 1, 2009, and therefore his request for credit was denied.

4. On November 11, 2009 the Appellant sent a letter to the MCLE Commission containing a request for a waiver of the October 1, 2009 date after which credits could be earned for 2010. This was treated as an appeal from the decision of the Director denying Appellant's request for CLE credit.

5. On November 19, 2009, the Director sent written notice to Appellant that the Commission would conduct a hearing pursuant to Neb. Ct. R. § 3-402.2 on his appeal. The notice included the date, time, and place of the hearing. Appellant received the notice.

Conclusions of Law

1. The appeal was properly filed and a hearing was conducted in compliance Neb. Ct. R. § 3-402.2.

2. Neb. Ct. R. § 3-401.1 establishes the Commission's exclusive authority to grant credit for continuing legal education activities conducted prior to January 1, 2010 and provides as follows: "Attendance at any accredited or approved CLE program, as approved by the Director of Judicial Branch Education (Director) as set forth in these rules, in the three (3) months preceding January 1, 2010, may apply toward CLE requirements for the first reporting period upon application of the attorney and approval of the Director."

3. Neb. Ct. R. §§ 3-401.7(C) and 3-401.8 (D) permit the granting of CLE credit for educational activities and programs not approved in advance, but these rules do not authorize the granting of MCLE credit for attendance at educational programs prior to October 1, 2009.

4. Neb. Ct. R. § 401.13(B) authorizes the MCLE Commission to grant a waiver of minimum education requirements under certain circumstances, but this rule does not authorize the Commission to waive or disregard the three month period specified in Neb. Ct. R. § 3-401.1.

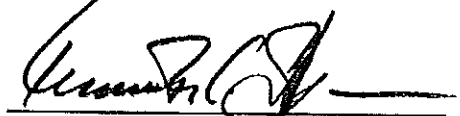
3. The Commission is without authority to deviate from the rules promulgated by the Nebraska Supreme Court regarding the initial date of programs for which credit can be granted for the 2010 mandatory continuing legal education obligation.

ORDER

By a vote of 6-0 (Stephan not voting), the Commission denies the appeal and request for waiver, and affirms the decision of the Director denying Appellant's request for CLE credit for his attendance at the 25th Annual Basics of Airport Law Workshop and 2009 Legal Update in San Francisco, California, on September 13-15, 2009.

Dated: December 4, 2009.

BY THE COMMISSION:



Kenneth C. Stephan, Chair