

## Before the Nebraska MCLE Commission

In re Appeal of XXXXXX,	)	Appeal #10-4
	)	
(XXXXXXXXXX, Appellant)	)	FINDINGS, CONCLUSIONS,
	)	AND ORDER

This matter came before the Nebraska MCLE Commission on November 2, 2010, by conference call review hearing upon the appeal filed by Appellant seeking reversal of the Director's denial of credit for teaching 3 separate programs of continuing legal education. Those participating in the conference call review hearing were Commission members Stephan, Rembolt, Hillman, Dowding, and Knoepfler, Appellant and MCLE Commission Director Carole McMahan-Boies. Commissioners Schroeder and Collins did not participate. Stephan and McMahan-Boies participated in the review hearing from Justice Stephan's office. The appellant had no objection to proceeding without a verbatim record of the proceeding.

The Commission reviewed documentary evidence regarding Appellant's request for teaching credit for the following:

1. Trial Lawyers College Graduate Seminar II, "Trial Skills" taught August 24-29, 2009
2. Trial Lawyers College Regional Seminar "Direct Examination" taught February 25-29, 2010
3. Trial Lawyers College Staff Training "Cross-examination" taught May 16-20, 2010

The Commission also reviewed an affidavit and supporting documents submitted by Appellant.

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. On March 1, 2010 Appellant submitted two requests for teaching credit, one for a course she taught at the Trial Lawyers College in August 2009 and one for a course she taught at the Trial Lawyers College in February 2010. On May 30, 2010 she submitted a request for teaching credit for the course she taught at the Trial Lawyers College in May, 2010. All of the requests were submitted using the proper procedures for submitting teaching credits as established by the MCLE commission. None of the courses Appellant taught had been submitted for approval through the system the MCLE Commission has established for seeking course approval.

2. The Director reviewed the requests for teaching credit and notified Appellant by e-mail on October 4, 2010 that the courses had not been submitted for approval by the sponsor and were therefore only eligible for participation credit. Appellant was told that she could use the online system to seek participation credit for the programs, however the teaching credit applications were denied.

3. On October 5, 2010 Ms. Appellant sent a request for an appeal of the Director's decision before the MCLE commission.

4. Appellant was sent a notice by certified mail on October 12, 2010 scheduling a telephonic hearing on November 2, 2010. The notice was received by Appellant and included the materials that the commission members have before it for this appeal.

### **Conclusions of Law**

1. The appeal was properly filed and a review hearing was conducted in compliance with Neb. Ct. R. § 3-402.2.
2. The session, Trial Lawyers College Graduate Seminar II, "Trial Skills" taught August 24-29, 2009 cannot be granted credit under the rules of the MCLE Commission; MCLE credits could be earned under the terms of Neb. Ct. R. § 3-401.1 beginning October 1, 2009, the request predated the date upon which credits could begin to be earned.
3. The two additional sessions Appellant taught at the Trial Lawyers College were taught in 2010, and neither was submitted for approval either by an attorney attendee or the sponsor. In order to be eligible for the grant of teaching credit, a course must be approved by the MCLE commission upon the submission of the sponsor. In order to be eligible for participation credit, a course must be submitted for approval to the commission through the online system either by the sponsor or by an attorney attendee.

### **ORDER**

By a vote of 4-0 (Stephan not voting), the Commission denies the appeal with respect to the session: Trial Lawyers College Graduate Seminar II, "Trial Skills" taught August 24-29, 2009. By a vote of 4-0 (Stephan not voting), the Commission denies the appeal without prejudice with respect to the remaining 2 courses. In the event the Trial Lawyers College submits the courses for approval in 2010, Appellant may pursue both teaching and participation credit for the courses. In the event Appellant submits the courses for approval in 2010, she may seek participation credit. In either case she may further appeal the determination of the Director with respect to any decision made regarding approval of credit for the programs.

Dated: November 12, 2010.

**BY THE COMMISSION:**

Kenneth C. Stephan, Chair