

FILED

FEB 27 2023

CLERK SUPREME COURT

IN THE SUPREME COURT OF IOWA

IN THE MATTER OF THE)
COMMISSION ON CONTINUING)
LEGAL EDUCATION) **2022 ANNUAL REPORT**
)

The attached annual report of the Commission on Continuing Legal Education is submitted as required by Iowa Court Rule 41.2 for the reporting period January 1, 2022, through December 31, 2022.

Respectfully submitted,

OFFICE OF PROFESSIONAL REGULATION

By: *Nicholas Critelli*
Nicholas (Tré) Critelli, Executive Director
Office of Professional Regulation
Iowa Judicial Branch Building
1111 E. Court Avenue
Des Moines, IA 50319-5003
Telephone: (515) 348-4670
Fax: (515) 348-4698
E-mail: tre.critelli@iowacourts.gov

Commission on Continuing Legal Education

2022 Annual Report

The Commission on Continuing Legal Education (CLE Commission) is authorized and created by the Iowa Supreme Court pursuant to Iowa Court Rules, Chapter 41. The CLE Commission is responsible for the accreditation of courses, programs, and other educational activities to ensure they satisfy the annual educational requirements placed upon Iowa's lawyers. The CLE Commission also proposes recommendations for both substantive and procedural rule changes as necessary to ensure that Iowa's lawyers can fulfill their educational obligations.

CLE Commission Members

The CLE Commission consists of ten Iowa residents who are currently licensed to practice law in the State of Iowa and two resident lay members, all of whom are formally appointed by the Court for up to two 3-year terms. The following people served on the CLE Commission during 2022:

Attorney Members

Heather L. Palmer, Des Moines (Chair)
Henry Hamilton III, West Des Moines
Jayant M. Kamath, Iowa City
Mindi M. Vervaecke, Mason City
Kristymarie Shipley, Cedar Rapids
Paul G. Thelen, Iowa City
Robert R. Rigg, Des Moines
Leah D. Patton, Des Moines
Chaney E. Yeast, Des Moines
Siobhan M. Schneider, West Des Moines
The Honorable Daniel P. Kitchen, Washington
(term ended 6/30/22)
The Honorable Margaret J. Reyes, Council Bluffs
(term ended 6/30/22)
Michael G. Pagel, West Des Moines (term ended
6/30/22)

Lay Members

D. Suzanne Buffalo, Tama
Robert Tyson, Waterloo

CLE Commission Staff

The CLE Commission staff consists of one attorney and one assistant. Director Jessica Taylor serves as the principal executive officer of the Commission. Lisa Correa assists as her program manager.

Commission Duties

As part of its responsibility to oversee the continuing legal education of Iowa's lawyers, the Iowa Supreme Court has created procedures for accrediting educational programs and for the filing of an annual report which certifies the course attendance by the lawyer. The CLE Commission meets twice a year to review the accreditation policies, procedures, and operations of the commission. At these meetings, the CLE Commission also reviews any appeals of accreditation not handled by an accreditation division and considers any proposed rule changes.

Applications for Accreditation

A CLE sponsor that desires accreditation of a program, course, or other legal education activity or an attorney who desires to establish accreditation of a program, course or other legal education activity must apply for accreditation to the Commission in advance of the commencement of the activity or after completion of the activity. Applications for accreditation are handled electronically, utilizing the Supreme Court Commissions application (SCC App) found at www.iacourtcommissions.org.

The accreditation application must state the class dates, subjects offered, total hours of instruction, names and qualifications of speakers, and format of the course (e.g. live

webinar). Corroborating documentation for the submitted information must also be provided. Pursuant to the rules, the Commission must approve or deny such application in writing or by electronic mail with 30 days of receipt of such application. Practically speaking, most submissions are processed within 48 hours of submission.

In calendar year 2022, there were 10,765 courses submitted with a start and end date during 2022.

This compares to 10,585 courses submitted for accreditation during calendar year 2021. While this is well below the submissions of 2020, most of the 2020 accreditations were for courses which



were already accredited for in-person CLE but had to be converted to live webinars due to the pandemic. The number of applications in 2022 were higher than any year other than 2020.

Standards for Accreditation

A CLE activity qualifies for accreditation if the CLE Commission determines that the activity complies with all of the following:

- a. It constitutes an organized program of learning (including a workshop or symposium) that contributes directly to the professional competency of an attorney;
- b. It pertains to common legal subjects or other subject matters that integrally relate to the practice of law;
- c. It is conducted by attorneys or individuals who have a special education, training, and experience by reason of which the attorneys or individuals should be considered experts concerning the subject matter of the program, and the activity preferably is accompanied by a paper, manual, or written outline that substantively pertains to the subject matter of the program; and

- d. It is presented in the form of moderated programming, or in the form of unmoderated programming approved by the commission according to its guidelines.

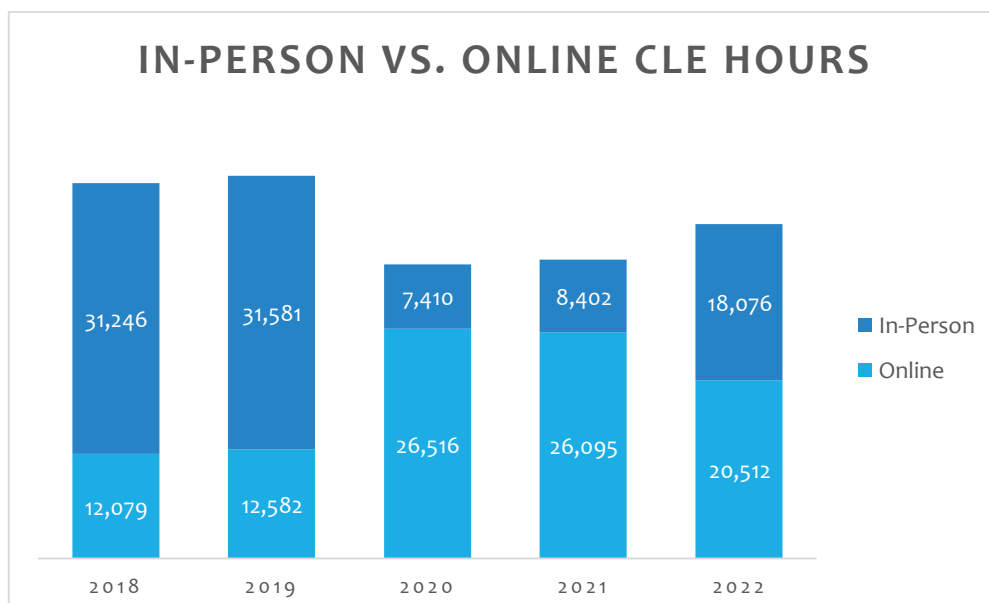
Although the Commission considers all applications for accreditation on an individual basis, certain general policies regarding accreditation have been developed by the Commission. The current accreditation policies of the Commission are set out as Attachment A to this report.

When accreditation of a particular event appears unlikely based on Commission policies, the director issues an informal denial of credit, explains the basis for the denial, and advises the applicant of the procedure for appeal. If the applicant desires consideration by an accreditation division of the Commission, the issue of accreditation is referred to one of two accreditation divisions for review.

Accreditation matters not resolved by an accreditation division are reviewed and considered by the entire Commission at a regular commission meeting. In recent years, appeals have been relatively infrequent, such that most appeals have been considered and resolved by the entire Commission, sitting as an accreditation division at semiannual meetings. In 2022, the initial review of applications for accreditation resulted in denial of credit for only 12 applications. One of these denials were appealed to the Commission pursuant to Rule 42.10, and the decision to deny the accreditation request was upheld.

Accreditation Processing

The pandemic continued to have an impact on CLE accreditations and filings in calendar year 2022. Overall there was an increase in the total number of CLE hours offered to Iowa lawyers for the 2022 calendar year as compared to 2021, but 2022 is still below the number of hours offered during the 2018-19 calendar years.



The total number of hours of in-person events more than doubled in 2022 as compared to 2021. In 2021, in-person CLE hours were 24% percent of the total amount of CLE hours. In 2022, in-person CLE hours were 47% of the total hours offered. Historically, Iowa's lawyers have had just over 31,000 hours of in-person accredited CLE hours that they could attend. In 2021 they had just over 8,400 hours, which increased to over 18,000 hours in 2022. While it is anticipated that the number of hours of in-person CLE will

continue to increase as seminars and conventions start to be held again, it is unlikely that in-person CLE numbers will return to pre-pandemic levels.

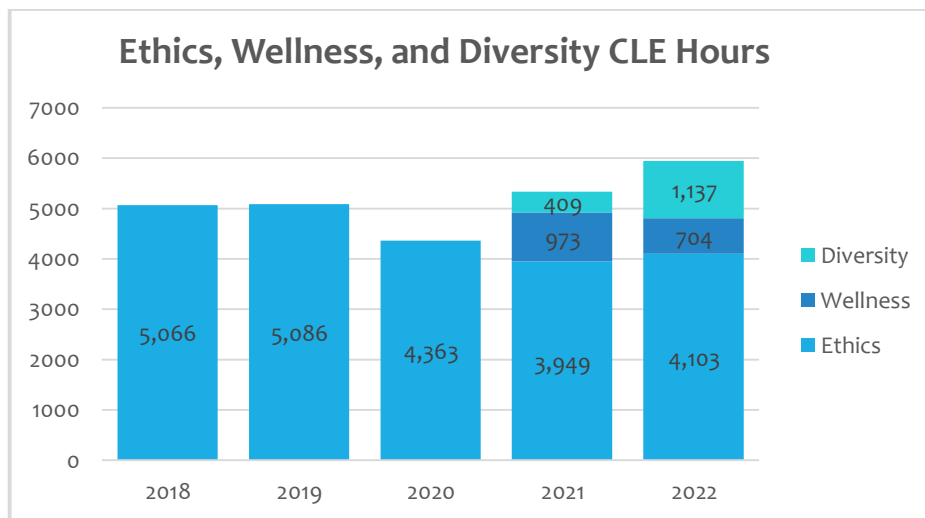
Many of the in-person CLE events converted to “virtual” in some manner, be it a webinar, telephone, or on-demand format. In 2020 and 2021, the amount of virtual CLE more than doubled over 2019. In 2022, the virtual trend slowed a bit, as there were just over 20,000 accredited hours of CLE which could be attended virtually by Iowa’s lawyers, compared to around 26,000 in both 2020 and 2021. It is anticipated that CLE sponsors and Iowa lawyers will continue to utilize virtual CLE offerings because they are (a) more economical to put on and attend, (b) allow greater time flexibility for the lawyer attending, and (c) allow anyone to attend.

New Wellness & Diversity CLE requirements

Prior to 2021, Iowa lawyers were required to attend three (3) hours of ethics CLE every two years. At that time, legal ethics consisted of courses on traditional professional ethics (e.g. disciplinary rules), courses dealing with attorney wellness, and courses dealing with diversity in the legal profession. There was no requirement that an Iowa lawyer attend any courses in one subcategory or another, so long as they obtained their three (3) ethics credits.

Starting in 2021, the ethics requirement changed. Now all Iowa lawyers must attend the following each calendar year: 1 hour of “traditional” legal ethics, and a 1-hour course dealing with either attorney wellness OR diversity/inclusion in the legal profession. In short, the subcategories have themselves become requirements.

In 2022 there was a slight decrease in Wellness CLE offerings and a large increase in Diversity/Inclusion CLE offerings. Collectively there were almost 6,000 hours of accredited CLE in the combined categories—which is almost 1,000 additional hours than was offered before 2021 (the first year of the delineation into separate categories).



Annual Filings

The annual report due March 10, 2022, was filed by 9,594 attorneys, each of whom paid the administrative fee of \$20.00. This was 45 more attorneys than filed a CLE report in 2021. The decrease in attorneys filing CLE reports in 2018 was due to the high number of attorneys who took inactive status the year before.



Certificates of Exemption and Relinquishment

268 attorneys went on exempt (inactive) status in 2022¹ and were granted certificates of exemption from filing a CLE report. This was just 16 more than in 2021, where 252 attorneys went exempt. This number is expected to gradually increase as Iowa's attorneys reach retirement age.

Late Filing Penalties



Attorneys who fail to file their annual report or pay any required annual fee by March 10 of each year are assessed a late filing penalty. The late filing penalty starts at \$100 on March 11th of each year, then increases by \$50.00 each succeeding month the report is late until a maximum penalty of \$250 is reached. On average, there are

typically 200-300 attorneys that fail to file their CLE reports in a timely manner.

In 2022, there were 370 attorneys who incurred late CLE fees of \$100-\$250. This compares to 325 attorneys in 2021. Attorneys are not required to pay any late fees if they have (a) timely requested a CLE extension, and (b) file their CLE report within the extension period.

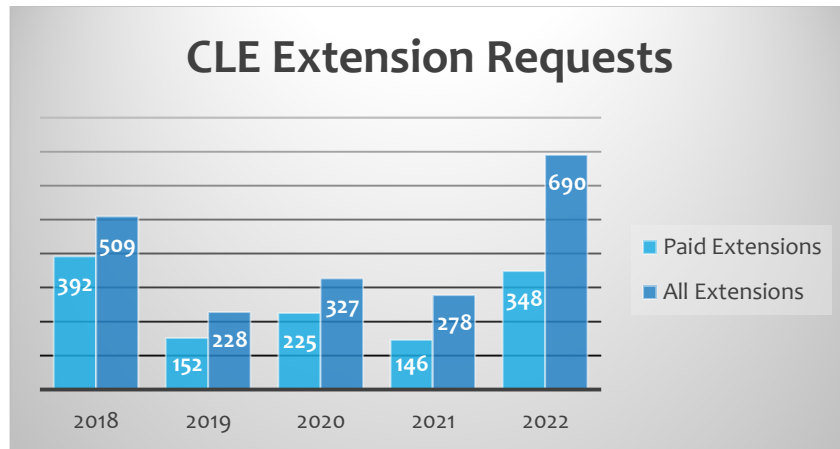
¹ The CLE Commission operates on three calendar systems. The calendar year and fiscal years are self-explanatory. The filing season calendar runs from December 15th through December 14th. It is during this time period that attorneys make changes to their status as they file their annual reports. In past reports we did not have the capability to make a filing season calendar data pull, which we now do. Accordingly the data for prior years has been revised to the new standard and so may differ from previous years' reports.

The total amount paid by attorneys in late CLE filing penalties for 2022 was \$60,500. This compares to \$54,125 paid in late filing penalties in 2021. The lower amount of late fees paid in 2020 was impacted by the Court putting a ceiling of \$100 on all CLE late fees. This removed the normal \$50 late fees increases and accounts for the decreased fees being paid.



CLE Extensions

Attorneys who were unable to complete their CLE requirements during the calendar year are required to file an extension in order to put CLE attended in the subsequent year on their CLE report. As mentioned earlier, as long as the attorney files their CLE report within the extension period, they do not have to pay any late fees. Iowa Court Rule 42.5 requires that a \$100 fee be assessed on all waiver or extension of time applications received after January 15th of the year following the year in which the alleged hardship occurred. The \$100 extension fee has resulted in more attorneys requesting CLE extensions before January 15th, which was the intended result. In 2022 there were 690 extension requests, with 348 of them made after January 15th. This is significantly higher than in previous years. The reason for this is likely because it was the first reporting year with the new ethics, diversity, and wellness requirements.



Suspensions

Lastly, during 2022, 17 attorneys were suspended by the Court for failure to comply with Iowa Court Rule 41.4 (Annual Report and Fee). This compares to 32 attorneys suspended in 2021.

Audit and Budget

The independent audit report of the Commission’s fiscal operations as prepared by Brooks Lodden, P.C., covering the fiscal year ending June 30, 2022, was submitted to the Court separately. The audit report includes a section entitled *Management Discussion & Analysis*, prepared by Commission staff. Examination of the *Management Discussion & Analysis* statement is recommended in lieu of any separate analysis the Commission might provide regarding financial operations of the Commission.

The Commission submitted and the Court originally approved an operating budget for the year July 1, 2022, through June 30, 2023. See Attachment B. Based on funds on hand and anticipated costs of administration during the 2022–2023 and 2023–2024 fiscal

years, as well as the anticipated expenses that were to be incurred in updating the CLE reporting software application and attendant hardware, the administrative assessment to be paid to the Commission during the 2022 CLE report filing season by each active attorney eligible to practice in this state remained at \$20.00. The fee also remained at \$20.00 for the 2023 CLE report filing season.

Dated this 21st day of February, 2023.



By

Heather L. Palmer, Chairperson

Attachment A: Accreditation Policies

Attachment B: OPR Budgets for FY2022-23

Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies*

- (1) Credit is not allowed for committee work or portions of meetings devoted to administrative matters relating to the organizations sponsoring an activity, such as the business sessions of such organizations.
- (2) Credit is not allowed for sessions that involve a combined meal and presentation, e.g., lunch periods with speakers. The standard is that instruction must be a separate and distinct portion of the program, presented in an educational environment. Credit will be allowed if the sponsor splits the time into separate meal and instruction periods, demonstrates that the meal will not intrude on the presentation time, and otherwise shows the existence of an appropriate educational environment.
- (3) Credit is allowed both to presenters and those in attendance at continuing legal education activities. Presenters at an accredited continuing legal education activity are permitted credit for any actual time required to make the presentation, including panel discussions, question-and-answer periods and similar activities. Presenters may claim up to one hour of preparation credit for each hour of CLE for which they prepare written materials and present, up to maximum of (3) hours per year.
 - (a) Preparation credit counts against the regular attendance requirement of fifteen hours per calendar year, but not against the attendance requirement for legal ethics.
 - (b) Hours of preparation credit in excess of three (3) do not carry over to a subsequent year.
 - (c) Preparation credit may not be claimed if an attorney:
 - a. prepares written materials but does not make the presentation or serve on a panel of speakers;
 - b. makes a presentation or serves on a panel of speakers but does not prepare written materials;
 - c. prepares a course directed primarily to persons preparing for admission to practice law; or
 - d. receives compensation, other than reasonable expenses, for preparing or presenting the continuing legal education.
- (4) The granting of credit to instructors or attending lawyers for instruction presented to non-lawyer or predominantly non-lawyer audiences depends on a variety of factors, including but not limited to the subject matter of the course, qualifications of the instructors, depth of the presentation, and the level of attorney participation. Although attendance at these courses may be justified as beneficial and possibly relating to an attorney's practice or a particular pending case, the burden is on the applicant to demonstrate that the course integrally relates to the practice of law and was of sufficient quality and rigor to meet other established standards for accreditation. Therefore, no credit is ordinarily allowed to instructors at educational activities aimed

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Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies*

directly or primarily at individuals who have not yet been admitted to the Bar.

- (5) A person admitted to practice may obtain credit for taking or auditing a law school course whether at a graduate or regular law school level. A copy of the law school transcript is required when a lawyer requests credit for courses completed incident to a graduate program in law (e.g., L.L.M.) Contact hours are computed based on individual session duration and number of class sessions during the semester. Generally, the number of computed hours will be sufficient to satisfy the general CLE requirement for the year the courses are taken, and provide a 30 hour carry forward, which is the maximum. Ethics requirements still must be separately satisfied.
- (6) Whether or not a continuing legal education activity is sponsored by a non-profit or profit-making organization is considered by the Commission to be irrelevant to accreditation; however, the Commission looks very carefully at courses given by sponsors who appear to be motivated in giving such courses by a desire to assemble a group of attorneys in order to expose the attorneys to the services (other than CLE activities) the sponsor may be able to provide such attorneys or their clients.
- (7) Courses directed primarily at increasing the profits of the practice of law are deemed by the Commission not to meet the standards of Rule 42.3(1)(a) of the Commission's regulations, which requires that the educational activity "contribute directly to the professional competency of an attorney". However, continuing legal education activities dealing with law office management which are directed primarily at improving the quality of or delivery of legal services are deemed by the Commission to be creditable.
- (8) Except in situations in which permission is specifically granted on applications based on hardship or extenuating circumstances, no credit is allowed for self-study of any kind whether or not aided by video or audio recordings, per Iowa Court Rule 42.3(2). In general, any pre-recorded content, including television viewing, video or sound recorded programs, or correspondence work, that does not meet the verification, interaction, and content requirements set forth in this policy, will be considered self-study and ineligible for accreditation.
- (9) "In-house" activities, that is programs or instruction given by a company or firm for its own employees are considered on a case-by-case basis.
- (10) Video tapes or remote television presentations are generally accredited only if there is a speaker or instructor present at the time and place of showing to answer questions and discuss the presentation with participants in the activity.

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Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies*

- (11) Programs involving non-legal subject matter or courses covering both non-legal subject matter and related common legal subjects designed for attorneys or both attorneys and other disciplines are not ordinarily given prior CLE accreditation. Lawyers may apply for post accreditation after attending such courses. The granting of credit for courses containing non-legal subject matter which are indicated as being integrally related to the practice of law will depend upon a variety of factors including but not limited to the subject matter of the course, qualifications of the instructors, depth of the presentation and attorneys participation. While attendance at these courses may be justified as being beneficial and possibly relating to an attorney's practice or a particular pending case, the burden is on the applicant to demonstrate that the course does integrally relate to the practice of law and was of sufficient quality and content to meet other established standards for accreditation.
- (12) Programs consisting primarily of instruction on the operation or benefits of a particular proprietary software program are not eligible for credit, because they do not include sufficient substantive legal content. Programs that combine instruction on the operation and benefits of a particular program with substantive legal content will be considered on a case-by-case basis, with the burden on the applicant to demonstrate that the primary content pertains to common legal subjects or other subject matters integrally related to the practice of law.
- (13) Ethics, Attorney Wellness, and Diversity/Inclusion must be separate, designated sessions. Credit for these requirements is not approved for a part of a class or session (so-called "imbedded material"), unless the sponsor designates a specific time period for the claimed portion of the class or session.
 - (a) The area of legal ethics includes instruction intended for and directed to attorneys or judges and covering topics related to or specifically discussed in the IOWA RULES OF PROFESSIONAL CONDUCT, the IOWA CODE OF JUDICIAL CONDUCT, provisions of the MODEL RULES OF PROFESSIONAL CONDUCT, or provisions of any comparable ethics or professional responsibility code in the jurisdiction where the instruction is presented. The content description or handout materials must specifically refer to and be based on the disciplinary rules or judicial canons, or must bear a direct relationship to the Rules of Professional Conduct or the Code of Judicial Conduct. The commission does not issue ethics credit for instruction on ethics requirements for government employees generally, such as Iowa Code chapter 68B (Conflicts of Interest of Public Officers and Employees) or its federal statutory or agency counterparts.

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Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies*

- (b) The area of attorney wellness includes instruction designed to help attorneys detect, prevent, or respond to substance-related disorders or mental illness that impairs professional competence. The instruction must focus on issues in the legal profession and in the practice of law, and not issues of substance-related disorders or mental health in general.
 - (c) The area of diversity/inclusion includes courses directly related to the practice of law that are designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law biases against persons because of race, sex, gender, gender identification, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status or political affiliation, shall be accredited as legal ethics.
- (14) Rule 42.3(1)(d) provides specific authority for accreditation of computer based transmission events, provided they are interactive. The definition of what qualifies as interactive was left to the Commission to develop as policy, so that the interpretation can mature as technology matures and Commission experience dictates. Current policy is as follows:
- (a) For *moderated activities*, the interactive requirement will be met if there is a method for the viewers to send their questions in to the presenters or a live moderator and hear the answers to (or discussions of) those questions live during the presentation. Computer-based transmission presented live must consist of at least a live streaming audio component like that used for live telephone CLE events. Most events in this category also incorporate a video component, in either a streaming video format or a moving slide presentation keyed to the audio transmission.
 - (b) For *unmoderated activities*, in addition to the other applicable guidelines set forth in these accreditation policies and in Rule 42.3(1), all unmoderated activities must contain the following:
 - i. The date that the most recent substantive revision of the activity content was made and the duration of the program;
 - ii. High-quality written instructional materials, which must be available to be downloaded or otherwise furnished so that the attendee will have the ability to refer to such materials during and after the seminar;
 - iii. An interactive component, which either allows the attendee to

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Iowa Supreme Court's Continuing Legal Education Commission's CLE Accreditation Policies*

submit questions electronically or in writing and receive an answer back from the course faculty or other qualified commentator within a reasonable period of time, or requires the attendee to take a mid-presentation quiz, end-of-presentation test or respond to a periodic prompt that branches the instruction based upon the user's demonstrated level of comprehension. Activities presented by CD or DVD might include a testing component, or a self-paced format that periodically prompts the user for input and branches the instruction based on the user's demonstrated level of comprehension.

- iv. A verification procedure, which independently verifies a lawyer's completion of the activity. Verification procedures for a course in recorded video format for individual viewing may consist of a lawyer reporting a course code to the provider after viewing the video, and attesting to completion of the activity in an affidavit. A lawyer affidavit attesting to the completion of an activity is not by itself sufficient. The CLE sponsor would then verify the accuracy of the code before issuing a certificate of attendance. Activities presented in segments should have a separate and distinct code for each segment, and spaces on the verification form to report all codes. Other acceptable verification procedures include pop-up boxes and time tracking by an online sponsor to independently verify that an attorney has completed an entire activity or the use of examination results in self-paced instruction. Certifications of attendance may be issued to the lawyer only after the sponsor has established that the lawyer completed the activity in its entirety; and
- v. An attendance documentation procedure whereby the CLE sponsor retains verification and attendance information for at least two years after the lawyer's completion of the activity and is able to provide that verification and attendance information to the Commission upon request.

(15) Method of Submission of Accreditation Requests: Requests need not be submitted with an original signature. Requests submitted by facsimile transmission are acceptable, however online submission of accreditation requests at <https://www.iacourtcommissions.org> is highly recommended.

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COMMISSION ON CONTINUING LEGAL EDUCATION

FISCAL YEAR 2022-2023 BUDGET

OPERATING EXPENSES

Salary & Employee Expense	
Director Salary	\$28,964.25
Assistant Director Salary	\$45,541.69
Clerical Salary	\$42,522.20
Vacation/Sick Leave Payout	\$0.00
Part-Time Call Center Support	\$0.00
Part-Time Accreditation Support	\$0.00
FICA	\$8,952.65
IPERS	\$11,047.46
Employee Insurance	\$30,043.50
Deferred Compensation	\$1,170.00
Travel Expense - Commissioners	\$2,500.00
Travel Expense - Employees	\$4,000.00
Rent	\$13,500.00
Auditing	\$5,175.00
Telephone	\$160.00
Copier Lease	\$500.00
Office Supplies	\$800.00
Printing	\$900.00
Postage	\$3,000.00
Repairs & Maintenance	\$250.00
Employer Insurance	\$1,200.00
Unemployment Insurance	\$220.00
Miscellaneous, Including Moving	\$1,400.00
Banking Fees	\$900.00
Automation Support	\$600.00
Internet App. Maint. & Development	\$25,000.00
Web Site Hosting Expense	\$25,000.00
Internet Payment Charges	\$15,000.00
Payroll Processing	\$250.00
TOTAL OPERATING EXPENSES	<u>\$268,596.75</u>
CAPITAL EXPENDITURES	\$3,000.00
TOTAL PROJECTED EXPENDITURES	<u>\$271,596.75</u>