



MCLE TASK FORCE

MINUTES

November 15, 2013

The meeting of the Washington State Mandatory Continuing Legal Education (MCLE) Task Force was called to order by Acting Chair Jean McElroy at 1:05 p.m. on Friday, November 15, 2013, at the WSBA Conference Center in Seattle, Washington. Task Force members in attendance were:

- Eron M. Berg
- Michelle González
- Elizabeth A. Hanley
- Robin Lynn Haynes (BOG liaison)
- Terri W. Malolepsy
- Mary R. Mann
- Allen T. Miller
- Gregory S. Morrison
- Aaron S. Okrent
- Michele G. Radosevich
- Geoffrey G. Revelle
- Todd S. Richardson
- Sharon A. Sakamoto
- John C. Shaffer Jr.
- Linda J. Strout
- Thomas A. Waite
- Colleen Yamaguchi

Absent were Chair Stanley Bastian and members John P. Fairgrieve and Liza E. Burke.

Liaisons, staff, and guests attending were:

Jean McElroy	WSBA Liaison General Counsel/Chief Regulatory Counsel
Robert Henry	Associate Regulatory Services Director
Kathleen Todd	WSBA Liaison / MCLE Manager
Adriana Castano-Agudelo	MCLE Analyst
Sandy Hayes	WSBA Lawyer, Guest

DISCUSSION OF TASK FORCE BUSINESS

Welcome and Introductions

Members introduced themselves to the Task Force members who were not in attendance at the first meeting on October 11, 2013.

Approval of the Minutes

The minutes of the October 11, 2013, MCLE Task Force meeting were approved by motion.

Meeting Goal

The goal of this meeting was to establish the vision of how the work of the MCLE Task Force would proceed. This goal grew out of a quote by Yogi Berra offered by Paula Littlewood in the conclusion of her presentation to the Task Force in October. "If you don't know where you are going, you might wind up someplace else."

To establish the vision, the Task Force spent the meeting working on three questions individually and in small groups. For each question, the small groups reported their ideas to the full Task Force. The minutes below reflect these group reports.

QUESTION #1: What is the purpose of MCLE?

- To ensure that WSBA lawyers maintain competency in the practice of law
- To maintain the community's confidence in lawyers
- To ensure the safety of vulnerable clients
- To keep current with technology
- To facilitate adapting to change
- To learn
 - New areas of the law
 - Updates to the law
- To engage in
 - Experiential learning
 - Mentoring
 - Pro bono work
- To be exposed to
 - A diversity of viewpoints regarding ways to practice law (e.g. applying rules of discovery) and also to standardize the most effective modalities
 - New conflict resolution ideas
- To increase skills and develop new modalities for delivering legal services to clients

- To improve professionalism
- To provide relevant education to lawyers who are Active and not practicing law, but needing to keep up their skills
- To dialogue and exchange ideas about issues important to society
- To provide an opportunity for both small and large firm attorneys to meet with their peers outside of the office and to learn from them
- To allow attorneys to forge their own paths
- To maintain self-governance

QUESTION #2: Should MCLE be required? Why or why not?

The majority of the members of each small group determined that MCLE should be required but it should look different from how it looks today. Reasons given to keep it mandatory are listed below.

- To hold the public trust
- To be able to continue self-regulation
- To make education egalitarian
- To help increase the professionalism and ethical decision-making of the profession
- To help lawyers stay accountable for maintaining and improving competency to practice law since it is too easy for clients to take up all a lawyer's time
- To help lawyers
 - Learn the substantive content, legal skills, and interpersonal skills, and other skills necessary for moving into each stage of their careers
 - Improve their law office management skills
 - Manage stress
- To increase awareness about alcoholism, drug abuse, mental illness, etc. for self and for recognizing it in peers
- To promote pro bono work

Some Task Force members raised concerns about having MCLE be required, which are listed below.

- What is the evidence that MCLE is effective? What is an effective way to measure this?
- The Task Force needs to define
 - What a well-rounded attorney would look like in order to guide what MCLE should look like; and
 - What is at the core of what it means for an attorney to practice law given how the profession is changing.

- It is important to allow a broad scope of topics for MCLE credit. A lawyer can comply with the current MCLE regulations and learn nothing. Lawyers need topics relevant to their practice accredited in order to stay more engaged. Medical continuing education allows credits for non-accredited courses that are of benefit to the medical professional.
- Input from the public, the courts, from other attorneys, from clients, and other stakeholders is needed regarding what the requirements of MCLE should be.
- If MCLE is required, should the requirements for non-practicing Active attorneys be different from those for practicing attorneys?
- Subjects that are mandated should be made available across the state in a way that is equitable.
- If you are going to require MCLE, make it mean something.

QUESTION #3: What should MCLE look like in the 21st century?

Task Force members were asked to consider the following in their discussions of this question:

- Issues presented by Paula Littlewood at the October 11, 2013, MCLE Task Force meeting (which are in the articles posted on the WSBA MCLE Task Force web site)
- Portability of MCLE for lawyers with licenses in multiple states
 - Twenty percent of the WSBA lawyers are out-of-state. Some of these can meet Washington requirements through comity. For many of these lawyers, their reporting periods in other states do not match their Washington reporting period.
- Ease of MCLE administration – for regulators and for lawyers
- Reporting period length –
 - For lawyers (who have at least one compliant reporting period in Washington) – pros and cons of, for example, of one year vs. three year reporting periods
 - For new admittees
 - In most states the new admittee reporting period is one to two years if the regular reporting period for lawyers (as defined above) is longer.

Responses from the small groups are below.

- Require some subject matter for all attorneys – to be determined by the bench and bar together
- Require the following subjects:
 - Ethics (require online testing of competence)
 - Cultural competency (require online testing of competence)
 - Elimination of bias
 - Pro bono

- Technology
- Implement a sliding scale of requirements depending on where the lawyer is in his/her career and the nature of the career. These requirements should be in the following:
 - Leadership
 - Pro bono (as live credits)
 - Mentoring
 - Black letter law (offered for free or very cheaply and also readily available)
 - Employment law (for all aspects of legally running a law office)
- Administer required courses through the WSBA and offer these courses around the state.
- Include in the annual license fees payment for some CLE courses for which no additional fee would be charged.
- Allow credit for:
 - A broader range of topics
 - Courses for lawyers who don't practice but use their legal skills in other areas, e.g. public policy development and administration.
 - Tiered courses designed to help lawyers move into new areas of law practice.
 - Credits for non-accredited courses (like the medical field allows)
 - Coaching in professional development
 - Five hours of pro bono service
- Make out of state credits 100% transferrable.
- Make MCLE requirements flexible enough to be relevant to each Active attorney's career.
- Test attorneys who specialize in a particular type of law.
- Deliver live courses primarily by computer – a smaller proportion of offerings should be in-person courses
- Implement testing at the end of live computer courses:
 - If a course is taken by webcast, then the attorney must record a code and send it to the sponsor in order to be able to earn credit.
 - There should be two multiple-choice questions per credit hour.
- Make the reporting requirements simpler.
- Make the reporting period one year so that lawyers to keep up their education on a regular basis.
- Assume that attorneys tell the truth in reporting credits when reporting MCLE.
- New admittees should

- Start the CLE requirement right away upon admission – there should be no waiting period before the reporting period starts
 - The goal of the WSBA is to increase diversity. Getting new lawyers into live courses sooner would allow more established lawyers to benefit from the ideas of these newer lawyers. It would also get new lawyers more connected to established lawyers.
- Have a CLE requirement but not have to pay for it for the first two years

Schedule of Future Task Force Meetings

The next meeting will be December 13 at 11:00-3:00. The schedule of future meetings will be decided at the December meeting. Dividing into subcommittees will also be discussed. The Task Force will meet less often once subcommittees are formed.

Adjournment

The meeting was adjourned at 3:35 p.m.