



MCLE TASK FORCE

MINUTES

December 13, 2013

The meeting of the Washington State Mandatory Continuing Legal Education (MCLE) Task Force was called to order by Chair Stanley Bastian at 11:00 a.m. on Friday, December 13, 2013, at the WSBA Conference Center in Seattle, Washington. Task Force members in attendance were:

- Stanley Bastian, Chair
- Eron M. Berg
- Liza E. Burke
- Judge Marybeth Dingley (via teleconference)
- Michelle González
- Elizabeth A. Hanley
- 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.
- Thomas A. Waite
- Colleen Yamaguchi

Absent were members John P. Fairgrieve and Linda J. Strout and BOG Liaison Robin Lynn Haynes.

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

Approval of the Minutes

The minutes of the November 15, 2013, MCLE Task Force meeting were approved by motion.

Meeting Goal

The goal of this meeting was to continue the process of developing the vision for the work of the MCLE Task Force -- to more clearly define the objectives.

“If you don’t know where you are going, you might wind up someplace else ...” Yogi Berra – last slide of Paula Littlewood’s presentation to the MCLE Task Force on October 11, 2013

The Chair proposed that the Task Force come to a consensus on 3-5 answers to each question below. (Each question was discussed in small groups at the November 15, 2013, meeting). The objective is to have the consensus answers drive the Task Force work in reviewing the rules and regulations.

1. What is the purpose of MCLE?
2. Should MCLE be required? Why or why not?
3. What should MCLE look like in the 21st century?

Discussion

Task Force members brought up the following issues as key points to consider prior to making a consensus determination on the three questions in the proposed meeting goal. They also concluded that data needed to be gathered so that consensus decisions – as well as the final Task Force recommendations to the Court – were based on facts.

- In the recent WSBA member survey, the annual license fees and MCLE were the issues of greatest concern to the membership.
- The challenge for the Task Force is to look five to 10 years ahead to
 - Determine the changes that will be coming,
 - Clearly define the competencies lawyers will need for these changes, and
 - Specify the revisions to the MCLE rules and regulations that must be made for directing lawyers to achieve these competencies.
- The specific values, issues, and problems that the Task Force needs to consider as the MCLE rules and regulations are reviewed include the following:
 - The legal profession needs to maintain the trust of the public.

- * Maintaining trust goes beyond protecting the public. In a survey of lawyers and clients, what lawyers perceived that clients wanted was number nine on the clients' list. Clients want good service, e.g. an effective relationship, competent communication, etc.
 - * Protecting the public and developing lawyers are the same journey.
 - * There needs to be a balance in what the public needs lawyers to be with what lawyers need in order to do the job they are called to do. Development for the sake of members and development for the sake of the public are equally important. It is about having clients satisfied, not to avoid the risk of malpractice.
 - * The WSBA membership needs information about how lawyers may be failing the public.
- o The continuing legal education required for lawyers should promote maintaining the constitutional role of lawyers and the system of justice.
 - o The self-governance of the legal profession needs to be preserved.
 - o Competent lawyers will make a personal effort to continue their education without the requirement to comply. For the WSBA membership to advance, however, the Task Force needs to develop objectives.
 - o Members are motivated by compliance as long as the education is useful.
 - o Mandatory continuing legal education rests on the assumption that taking CLE courses improves competency. Is this the best way to improve competency? Would just relying on discipline and the RPCs take care of any incompetence?
 - o The medical profession's continuing education compliance rules should be considered as a model for Washington's MCLE compliance. Doctors can take non-accredited courses, if they contribute to their professional growth, for a portion of the credits due.
 - o Compliance does not necessarily result in competency. MCLE gives the face to the WSBA of promoting competency without necessarily achieving it; it seems to be a public relations process.
 - o Dentists must demonstrate competence by taking a medical exam every 10 years.
 - o CLE courses are too expensive.
 - * Due to economic realities, members sometimes need to choose between taking courses that further professional development and courses needed to satisfy the MCLE compliance requirements. Professional development and MCLE compliance need to be aligned.
 - * Some of the main feedback from lawyers during the May 28, 2013, live web "chat" with Paula Littlewood and Michele Radosevich was regarding the high cost of CLE courses.

- The WSBA should play a more active role in providing free CLEs that address lawyer development needs.
 - * The Legal Lunchbox series of courses is a new WSBA service for lawyers to earn 1.50 free CLE credits per course, each addressing a topic where education is needed. All credits needed for compliance can be taken over the three year reporting period via these monthly courses.
 - * Put on two required courses each year that all WSBA active members take – one put on by the WSBA and one put on by the Bench. The annual courses will be on the biggest problem that the WSBA and the bench are each seeing and the goal is to push the WSBA members to improve in these areas. These courses would address actual competency needs. Perhaps offer these at no cost and cover the expense by part of the license fees.
 - * The suggestion of the two annual courses above is reactive to what has been happening. CLE also needs to be pro-active by, e.g. improving communication skills, black letter law knowledge, etc.
- The new MCLE requirements need to address the evolving demographic trend.
 - * Current high school students are graduating at earlier ages and are generally less competent.
 - * Law school programs are starting to be reduced from three years to two years, which means that very young people are becoming lawyers.
 - * Consider making the credit requirement higher for younger lawyers than for older and/or more experienced lawyers.
- Older lawyers should be allowed credit for mentoring younger lawyers.
- The Active WSBA member population for whom the MCLE rules and regulations are being written needs to be more clearly defined.
 - * Currently the rules and regulations are directed to practicing lawyers. However, many Active members are not practicing law.
 - * Should the MCLE rules and regulations be broadened to allow compliance by taking professional development courses that are relevant to the career in which a member is engaged?
 - * Alternatively, should there be a separate set of requirements for non-practicing Active members? Or should Active non-practicing lawyers have a different type of license so that the MCLE requirements can be directed at practicing lawyers?
- The process for determining whether a course is credit-worthy needs to be reconsidered. Currently the MCLE rules and regulations determine if a course is credit-worthy.
 - * Are there courses that contribute to a lawyer's competence to practice law that currently are not credit-worthy?

- * What percentage of the MCLE requirements should be devoted to black letter law courses?
- Failure to comply with MCLE requirements is one of the first ways that the WSBA gets information about lawyers that are potentially experiencing trouble.
- The Task Force must represent the WSBA membership in the MCLE rule and regulation change recommendations sent to the Court.
- Task Force members asked Judge Marybeth Dingledy to consider the scenario: if she could impose CLE courses on lawyers to address developmental needs that she is seeing, what would they be? General topics that she recommended were
 - Being able to tell time; [Motions are too long. Lawyers need to learn how to supplement rather than rehash.]
 - Rules of evidence – require annual refreshers;
 - Effective jury presentation;
 - How to effectively work with clients --- treat them well (and be less focused on the result); and
 - Demeanor in dealing with opposing counsel and judges.
- To determine the Task Force consensus answers to the three questions -- stated as the goal of this meeting -- focus groups should be convened.
 - Focus groups should consist of different constituencies, including lawyers from different types of practices, non-practicing Active lawyers, clients, public citizens, CLE instructors, and judges (including Washington Supreme Court Justices).
 - Get information that includes feedback on the ways that Washington lawyers are failing. Is it lack of information about black letter law, including recent law changes? Is it professionalism? Communication skills?
 - Consider taking half an hour of a CLE – where there is a captive audience – to conduct a focus group.
 - Consider doing a noon hour live webcast town hall for WSBA lawyers using the facilities at 1501 4th Avenue. Task Force representatives could make a short presentation then ask for feedback from WSBA lawyers.

Survey and Focus Group Question Suggestions

- What competencies do you need for your practice? (A suggestion was offered to ask this question first.)
 - Where do you go to develop them – or how do you go about developing and strengthening them?
 - To what extent do CLE courses contribute to developing your competency?

- What is the best source for continuing your professional development? Is it to take CLE courses or is it engaging in some other type of activity?
- What informs your decision to take a particular CLE? Is it the money, geography, interest, compliance requirements, or something else?
- What is the purpose of CLE?
- What do you like about taking CLE courses?
- What three things are important to you in a CLE course?
- What is the best CLE you have attended? What is it about the course that made it the best?
- What three things do you dislike about CLE courses?
- Would you be willing to have a dues increase in order to get free CLE courses from the WSBA?
- Gather member information:
 - How old are you?
 - Are you an Active WSBA member?
 - Are you practicing law?
 - What is your practice area?
 - (If not practicing) Do you intend to practice in the next 3 years?
 - Do you carry malpractice insurance?
- What do you perceive your client demographics to be? (Each client type may require different skills.)
- What trainings have you attended for which you think you should have gotten credit? Why?
- Should mentoring others get CLE credit? Why or why not?
- Does it help for continuing legal education to be mandatory in order for you to develop the competencies you need to be effective in your practice?
- Should continuing legal education be mandatory? (A suggestion was offered to ask this question last.)

Other Data Gathering

- For the CLE focus groups, in addition to the questions suggested above, ask
 - What do you like about CLE?
 - What is important to you?
- For a representative from Discipline, ask what the discipline issues are. Also get a copy of the most recent Office of Disciplinary Counsel's annual report

- For a representative from the malpractice insurance business, ask for statistics about the types of claims filed.
- What listservs are lawyers a part of that have an educational purpose?

Requests from the Task Force

Send Task Force members the following:

- List of potential questions to ask in the focus groups that were developed in today's meeting;
- Reports from the two member surveys previously done by the MCLE Board;
- A copy of the Saintcalle case Washington Supreme Court case (referred to in the Task Force discussion of the CLE that looked at the case of two prosecutors who overly questioned two African-American jurors);
- Member feedback about MCLE from the WSBA Executive Director and BOG President's trip around the state;
- Information about the Escalating Cost of Civil Litigation Task Force chaired by Russ Aoki as a potential template for this task force;
- Malpractice claims statistics (for real-world information about the harm that lawyers are causing to the public);
- A breakdown of the types of WSBA member practices and ages; and
- A copy of the pro bono survey that was sent to the Court when the APR 11 and Appendix APR 11 amendments were sent in January 2013.

Task Assignments

- Draft an electronic survey for the Task Force to review at the next meeting on January 17, 2014. Survey drafting subcommittee members are Mary Ruth Mann, Eron Berg, Terri Malolepsy, and Stan Bastian. A key consideration in creating and publicizing this survey is how to attract younger members to complete it. The majority of the responders to the second survey done by the MCLE Board in 2009 were over 60. Michelle Gonzales will ask the Young Lawyer Committee to help push out the survey. One idea is to advertise a happy hour and administer the survey there.
- Create plans for convening focus groups. Mary Ruth Mann, Elizabeth Hanley, and Todd Richardson will work on this and present at the next Task Force meeting.
- Create a plan for holding focus groups during CLE courses. Aaron Okrent will lead this task. Tom Waite and Eron Berg will assist (with Eron focusing on eastern Washington CLE courses).

- Invite a speaker from Discipline to speak at the next meeting. Stan Bastian volunteered to do this.
- Invite a speaker from the malpractice insurance business to speak at the next meeting.
 - Michelle Gonzales volunteered to contact Mark Johnson (former WSBA president, a litigator, and a CLE presenter on the law of lawyering) to see if he would be willing to come give a presentation to the Task Force about malpractice claims – a presentation that he recently gave at the University of Washington.
 - Geoff Revelle offered to get malpractice statistics from ALAS if Mark Johnson could not make a presentation.

Schedule of Future Task Force Meetings

The next meeting will be January 17, 2014, at 12:00-4:00 p.m. The schedule of future meetings is on the [WSBA web site MCLE Task Force page](#).

Adjournment

The meeting was adjourned at 2:00 p.m.