

RULE 11. MANDATORY CONTINUING LEGAL EDUCATION (MCLE)

(a) Purpose. Mandatory continuing legal education (“MCLE”) is intended to enhance lawyers’ legal services to their clients and protect the public by assisting lawyers in maintaining and developing their competence as defined in RPC 1.1, fitness to practice as defined in APR 22, and character as defined in APR 21. These rules set forth the minimum continuing legal education requirements for lawyers to accomplish this purpose.

(b) Definitions.

- (1) “Activity” means any method by which a lawyer may earn MCLE credits.
- (2) “Association” means the Washington State Bar Association.
- (3) “Attending” means participating in an approved activity or course.
- (4) “Calendar year” means a time period beginning January 1 and ending December 31.
- (5) “Identical activity” means any prior course or other activity that has not undergone any substantial or substantive changes since last offered, provided or undertaken.
- (6) “Lawyer” means an active member of the Association, a judicial member of the Association classified as an administrative law judge, and any other lawyer admitted to the limited practice of law in Washington who is required by the Admission and Practice Rules (APR) to comply with this rule.
- (7) “Reporting period” means a three-year time period as assigned by the Association in which a lawyer must meet the education requirements of this rule.
- (8) “Sponsor” means a provider of continuing legal education activities.

(c) Education Requirements.

- (1) *Minimum Requirement.* Each lawyer must complete 45 credits of approved continuing legal education by December 31 of the last year of the reporting period with the following requirements:
 - (i) at least 15 credits must be from attending approved courses in the subject of law and legal procedure, as defined in section (f)(1); and
 - (ii) at least six credits must be in ethics and professional responsibility, as defined in section (f)(2).
- (2) *Earning Credits.* A lawyer earns one credit for each 60 minutes of attending an approved activity. Credits are rounded to the nearest quarter hour. A lawyer may earn no more than eight credits per calendar day. A lawyer cannot receive credit more than once for an identical activity within the same reporting period.

- (3) *New Lawyers.* Newly admitted lawyers are exempt for the calendar year of admission.
- (4) *Military Personnel.* Military personnel in the United States Armed Forces may be granted an exemption, waiver or modification upon proof of undue hardship, which includes deployment outside the United States. A petition shall be filed in accordance with subsection (i)(5) of these rules.
- (5) *Exemptions.* The following are exempt from the requirements of this rule for the reporting period(s) during which the exemption applies:
 - (i) *Judicial Exemption.* Judicial members of the Association, except for administrative law judges;
 - (ii) *Supreme Court Clerks.* The Washington State Supreme Court clerk and assistant clerk(s) who are prohibited by court rule from practicing law;
 - (iii) *Legislative Exemption.* Members of the Washington State Congressional Delegation or the Washington State Legislature; and
 - (iv) *Gubernatorial Exemption.* The Governor of Washington state.
- (6) *Comity.* The education requirements in Oregon, Idaho and Utah substantially meet Washington's education requirements. These states are designated as comity states. A lawyer may certify compliance with these rules in lieu of meeting the education requirement by paying a comity fee and filing a Comity Certificate of MCLE Compliance from a comity state certifying to the lawyer's subjection to and compliance with that state's MCLE requirements during the lawyer's most recent reporting period.
- (7) *Carryover Credits.* If a member completes more than the required number of credits for any one reporting period, up to 15 of the excess credits, two of which may be ethics and professional responsibility credits, may be carried forward to the next reporting period.

(d) MCLE Board

- (1) *Establishment.* There is hereby established an MCLE Board consisting of seven members, six of whom must be active members of the Bar Association and one who is not a member of the Association. The Supreme Court shall designate one board member to serve as chair of the MCLE Board. The members of the MCLE Board shall be appointed by the Supreme Court. Appointments shall be staggered for a 3-year term. No member may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year.
- (2) *Powers and Duties.*
 - (i) *Rules and Regulations.* The MCLE Board shall review and suggest amendments or make regulations to APR 11 as necessary to fulfill the

purpose of MCLE and for the timely and efficient administration of these rules and for clarification of education requirements, approved activities and approved course subjects. Suggested amendments are subject to review by the Association's Board of Governors and approval by the Supreme Court.

- (ii) Policies. The MCLE Board may adopt policies to provide guidance in the administration of APR 11 and the associated regulations. The MCLE Board will notify the Board of Governors and the Supreme Court of any policies that it adopts. Such policies will become effective 60 days after promulgation by the MCLE Board.
 - (iii) Approve Activities. The MCLE Board shall approve and determine the number of credits earned for all courses and activities satisfying the requirements of these rules. The MCLE Board shall delegate this power to the Association subject to MCLE Board review and approval.
 - (iv) Review. The MCLE Board shall review any determinations or decisions regarding approval of activities made by the Association under these rules that adversely affect any lawyer or sponsor upon request of the lawyer, sponsor or Association. The MCLE Board may take appropriate action consistent with these rules after any such review and shall notify the lawyer or sponsor in writing of the action taken. The MCLE Board's decision shall be final.
 - (v) Fees. The MCLE Board shall determine and adjust fees for the failure to comply with these rules and to defray the reasonably necessary costs of administering these rules. Fees shall be approved by the Association's Board of Governors.
 - (vi) Waive and Modify Compliance. The MCLE Board shall waive or modify a lawyer's compliance with the education or reporting requirements of these rules upon a showing of undue hardship filed in accordance with these rules. The MCLE Board may delegate this power to the Association subject to (1) parameters and standards established by the MCLE Board, and, (2) review by the MCLE Board.
 - (vii) Approve Mentoring Programs. The MCLE Board shall approve mentoring programs that meet requirements and standards established by the MCLE Board for the purposes of awarding MCLE credit under these rules.
 - (viii) Audits for Standards Verification. The MCLE Board may audit approved courses to ensure compliance with the standards set forth in these rules.
- (3) *Expenses and Administration.* Members of the MCLE Board shall not be compensated for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties according to the Association's expense policies. All expenses incurred and fees collected shall be

submitted on a budget approved by the Association's Board of Governors. The Association shall provide administrative support to the MCLE Board.

(e) Approved Activities. A lawyer may earn MCLE credit by attending, teaching, presenting or participating in activities approved by the Association. Only the following types of activities may be approved:

- (1) Attending, teaching, presenting or participating in or at a course, provided that any pre-recorded audio/visual course is less than five years old;
- (2) Preparation time for a teacher, presenter or panelist of an approved activity at the rate of up to five credits per hour of presentation time, provided that the presentation time is at least 30 minutes in duration;
- (3) Attending law school courses with proof of registration or attendance;
- (4) Attending bar review courses for jurisdictions other than Washington with proof of registration or attendance;
- (5) Writing for the purpose of lawyer education, when the writing has been published by a recognized publisher of legal works as a book, law review or scholarly journal article of at least 10 pages, will earn one credit for every 60 minutes devoted to legal research and writing;
- (6) Teaching law school courses, when the instructor is not a full-time law school professor;
- (7) Providing pro bono legal services provided the legal services are rendered through a qualified legal services provider as defined in APR 8(e);
- (8) Participating in a structured mentoring program approved by the MCLE Board provided the mentoring is free to the mentee and the mentor is an active member of the Association in good standing and has been admitted to the practice of law in Washington for at least five years. The MCLE Board shall develop standards for approving mentoring programs; and
- (9) Judging or preparing law school students for law school recognized competitions, mock trials or moot court. The sponsoring law school must comply with all sponsor requirements under this rule.

(f) Approved Course Subjects. Only the following subjects for courses will be approved:

- (1) *Law and legal procedure*, defined as legal education relating to substantive law, legal procedure, process, research, writing, analysis, or related skills and technology;
- (2) *Ethics and professional responsibility*, defined as topics relating to the general subject of professional responsibility and conduct standards for lawyers and judges, including diversity and anti-bias with respect to the practice of law or the

legal system, and the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;

- (3) *Professional development*, defined as subjects that enhance or develop a lawyer's professional skills including effective lawyering, leadership, career development, communication, and presentation skills;
- (4) *Personal development and mental health*, defined as subjects that enhance a lawyer's personal skills, well-being and awareness of mental health issues. This includes, stress management, and courses about, but not treatment for, anxiety, depression, substance abuse, suicide and addictive behaviors;
- (5) *Office management*, defined as subjects that enhance the quality of service to clients and efficiency of operating an office, including case management, time management, business planning, financial management, office technology, practice development and marketing, client relations, employee relations, and responsibilities when opening or closing an office;
- (6) *Improving the legal system*, defined as subjects that educate and inform lawyers about current developments and changes in the practice of law and legal profession in general, including legal education, global perspectives of the law, courts and other dispute resolution systems, regulation of the practice of law, access to justice, and pro bono and low cost service planning; and
- (7) *Nexus subject*, defined as a subject matter that does not deal directly with the practice of law but that is demonstrated by the lawyer or sponsor to be related to a lawyer's professional role as a lawyer.

(g) Applying for Approval of an Activity. In order for an activity to be approved for MCLE credit, the sponsor or lawyer must apply for approval as follows.

- (1) *Sponsor.* A sponsor must apply for approval of an activity by submitting to the Association an application fee and an application in a form and manner as prescribed by the Association by no later than 15 days prior to the start or availability of the activity.
 - (i) *Late fee.* A late fee will be assessed for failure to apply by the deadline. The Association may waive the late fee for good cause shown.
 - (ii) *Repeating Identical Course.* A sponsor is not required to pay an application fee for offering an identical course if the original course was approved and the identical course is offered less than 12 months after the original course.
 - (iii) *Waiver of Application Fee.* The Association shall waive the application fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.

- (2) *Lawyer.* A lawyer may apply for approval of an activity not already approved or submitted for approval by a sponsor by submitting to the Association an application in a form and manner as prescribed by the Association. No application fee is required.

(h) Standards for Approval. Application of the standards for approval, including determination of approved subject areas and approved activities in subsections (e) and (f) of this rule, shall be liberally construed to serve the purpose of these rules. To be approved for MCLE credit, all courses, and other activities to the extent the criteria apply, must meet all of the following criteria unless waived by the Association for good cause shown:

- (1) A course must have significant intellectual or practical content designed to maintain or improve a lawyer's professional knowledge or skills, competence, character, or fitness;
- (2) Presenters must be qualified by practical or academic experience or expertise in the subjects presented and not disbarred from the practice of law in any jurisdiction;
- (3) Written materials in either electronic or hardcopy format must be distributed to all lawyers before or at the time the course is presented. Written materials must be timely and must cover those matters that one would expect for a professional treatment of the subject. Any marketing materials must be separate from the written subject matter materials;
- (4) The physical setting must be suitable to the course and free from unscheduled interruption;
- (5) A course must be at least 30 minutes in duration;
- (6) A course must be open to audit by the Association or the MCLE Board at no charge except in cases of government-sponsored closed seminars where the reason is approved by the Association;
- (7) Presenters, teachers, panelists, etc. are prohibited from engaging in marketing during the presentation of the course;
- (8) A course must not focus directly on a pending legal case, action or matter currently being handled by the sponsor if the sponsor is a lawyer, private law firm, corporate legal department, legal services provider or government agency; and
- (9) A course cannot have attendance restrictions based on race, color, national origin, marital status, religion, creed, gender, age, disability or sexual orientation.

(i) Lawyer Reporting Requirements.

- (1) *Certify Compliance.* By February 1 of the year following the end of a lawyer's reporting period, a lawyer must certify compliance, including compliance by

comity certification, with the education requirements for that reporting period in a manner prescribed by the Association.

- (2) *Notice.* Not later than July 1 every year, the Association shall notify all lawyers who are in the reporting period ending December 31 of that year, that they are due to certify compliance.
- (3) *Delinquency.* A lawyer who does not certify compliance by the certification deadline or by the deadline set forth in any petition decision granting an extension may be ordered suspended from the practice of law as set forth in APR 17.
- (4) *Lawyer Late Fee.* A lawyer will be assessed a late fee for either (i) or (ii) below but not both.
 - (i) *Education Requirements Late Fee.* A lawyer will be assessed a late fee for failure to meet the minimum education requirements of this rule by December 31. Payment of the late fee is due by February 1, or by the date set forth in any decision or order extending time for compliance, or by the deadline for compliance set forth in an APR 17 pre-suspension notice.
 - (ii) *Certification and Comity Late Fee.* A lawyer will be assessed a late fee for failure to meet the certification requirements or comity requirements by February 1. Payment of the late fee is due by the date set forth in any decision or order extending time for compliance or by the deadline for compliance set forth in an APR 17 pre-suspension notice.
 - (iii) *Failure to Pay Late Fee.* A lawyer who fails to pay the MCLE late fee by the deadline for compliance set forth in an APR 17 pre-suspension notice may be ordered suspended from the practice of law as set forth in APR 17.
- (5) *Petition for Extension, Modification or Waiver.* A lawyer may file with the MCLE Board an undue hardship petition for an extension, waiver and/or modification of the MCLE requirements for that reporting period. In consideration of the petition, the MCLE Board shall consider factors of undue hardship, such as serious illness, extreme financial hardship, disability, or military service, that affect the lawyer's ability to meet the education or reporting requirements. The petition shall be filed at any time in a form and manner as prescribed by the Association but a petition filed later than 30 days after the date of the APR 17 pre-suspension notice will not stay suspension for the reasons in the APR 17 pre-suspension notice.
- (6) *Decision on Petition.* The MCLE Board shall as soon as reasonably practical notify the lawyer of the decision on a petition. A lawyer may request review of the decision by filing, within 10 days of notice of the decision, a request for a hearing before the MCLE Board.
- (7) *Hearing on Petition.* Upon the timely filing of a request for hearing, the MCLE Board shall hold a hearing upon the petition.

- (i) The MCLE Board shall give the lawyer at least 10 days written notice of the time and place of the hearing.
 - (ii) Testimony taken at the hearing shall be under oath and recorded.
 - (iii) The MCLE Board shall issue written findings of fact and an order consistent with these rules as it deems appropriate. The MCLE Board shall provide the lawyer with a copy of the findings and order.
 - (iv) The MCLE Board's order is final unless within 10 days from the date thereof the lawyer files a written notice of appeal with the Supreme Court and serves a copy on the Association. The lawyer shall pay to the Clerk of the Supreme Court any required filing fees.
- (8) *Review by the Supreme Court.* Within 15 days of filing a notice with the Supreme Court for review of the MCLE Board's findings and order, after such a non-compliance petition hearing, the lawyer shall cause the record or a narrative report in compliance with RAP 9.3 to be transcribed and filed with the Bar Association.
- (i) The MCLE Board chairperson shall certify that any such record or narrative report of proceedings contains a fair and accurate report of the occurrences in and evidence introduced in the cause.
 - (ii) The MCLE Board shall prepare a transcript of all orders, findings, and other documents pertinent to the proceeding before the MCLE Board, which must be certified by the MCLE Board chairperson.
 - (iii) The MCLE Board shall then file promptly with the Clerk of the Supreme Court the record or narrative report of proceedings and the transcripts pertinent to the proceedings before the MCLE Board.
 - (iv) The matter shall be considered by the Supreme Court pursuant to procedures established by order of the Court.
 - (v) The times set forth in this rule for filing notices of appeal are jurisdictional. The Supreme Court, as to appeals pending before it, may, for good cause shown (1) extend the time for the filing or certification of said record or narrative report of proceedings and transcripts; or (2) dismiss the appeal for failure to prosecute the same diligently.
- (9) *Compliance Audits.* The Association may audit an individual lawyer's compliance certification to substantiate participation in the activities listed in the certification. The Association may request records from a lawyer or sponsor for the purpose of conducting the audit and the lawyer must comply with all such requests. Where facts exist that indicate a lawyer may not have participated in the activities certified to, the lawyer may be referred to the Association's Office of Disciplinary Counsel and/or credit for the activities may be rescinded.

(j) Sponsor Duties. All sponsors must comply with the following duties unless waived by the Association for good cause shown:

- (1) The sponsor must not advertise course credit until the course is approved by the Association but may advertise that the course credits are pending approval by the Association after an application has been submitted. The sponsor shall communicate to the lawyer the number of credits and denominate whether the credits are “law and legal procedure” as defined under section (f)(1), “ethics and professional responsibility” as defined under section (f)(2), or “other,” meaning any of the other subjects identified in sections (f)(3)-(7).
- (2) The sponsor must provide each participant with an evaluation form to complete. The forms or the information from the forms must be retained for two years and provided to the Association upon request.
- (3) The sponsor must submit an attendance report in a form and manner as prescribed by the Association and pay the required reporting fee no later than 30 days after the conclusion of the course. A late fee will be assessed for failure to report attendance by the deadline.
 - (i) *Waiver of Reporting Fee.* The Association shall waive the reporting fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.
- (4) The sponsor must retain course materials for four years from the date of the course. Upon request of the Association, a sponsor must submit for review any written, electronic or presentation materials including copies of audio/visual courses.
- (5) The sponsor must keep accurate attendance records and retain them for six years. The sponsor must provide copies to the Association upon request.
- (6) The sponsor shall not state or imply that the Association or the MCLE Board approves or endorses any person, law firm or company providing goods or services to lawyers or law firms.
- (7) *Accredited Sponsors.* The Association may approve and accredit sponsoring organizations as “accredited sponsors” subject to procedures and fees established by the Association. Accredited sponsors have the same duties as sponsors but have the additional responsibility of approving their own courses and determining appropriate MCLE credit in accordance with this rule. Accredited sponsors pay an annual flat fee for all course applications submitted in lieu of an application fee for each individual course.

(k) Confidentiality. Unless expressly authorized by the Supreme Court or by the lawyer, all files and records relating to a lawyer’s individual MCLE requirements are confidential and shall be privileged against disclosure except as necessary to conduct an investigation, hearing, and appeal or review pursuant to these rules. This provision does not apply to

the Association except that such records shall not be disclosed to Association staff responsible for creating or marketing CLE products.