

**PROPOSED AMENDMENTS TO
APPENDIX APR 11**

**APPENDIX APR 11. REGULATIONS OF THE WASHINGTON STATE BOARD OF
MANDATORY CONTINUING LEGAL EDUCATION**

REGULATION 101. DEFINITIONS

(a) "Accredited activity" means any method by which a lawyer may earn MCLE credits, ~~and includes courses, self study, teaching, pro bono legal services, law school competitions, nexus, and writing and editing,~~ as described in these regulations.

(b) "Accredited sponsor" means an organization that meets the requirements of Regulation 105 for accreditation of its ~~entire~~ legal education courses program subject to review by the MCLE Board.

(c) "APR 11" means Admission to Practice Rule 11, including subsequent amendments.

(d) "Attending" means:

(1) Presenting for or participating in a panel or being present in an audience as an attendee, either in person or through an electronic medium, at an accredited live continuing legal education course at the time the course is actually being presented; or

(2) Taking a self-study course that has been ~~Engaging in self study using pre-recorded audiovisual or audio-only courses that have been~~ accredited by the MCLE Board.

(e) "Chairperson" means the chairperson of the MCLE Board, except where otherwise indicated.

(f) "Course" means an organized program of learning designed to maintain or improve the professional competency of lawyers. ~~dealing with matter directly relating to the practice of law or legal ethics, including anti-bias and diversity training, and substance abuse prevention training.~~

(g) "Ethics" – An ethics activity is a clearly defined course or program session devoted to ethics with a specific start and end time. "Ethics" credits may be earned for:

(1) The analysis, interpretation, or application of

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1 (A) The Rules of Professional Conduct;

2 (B) The Rules for the Enforcement of Lawyer Conduct;

3 (C) The Code of Judicial Conduct;

4 (D) Judicial decisions relating to the rules referred to in subsections A-C above;

5 (E) Ethics opinions published by courts or bar associations relating to the rules referred to in
6 sections A-C above;

7 (F) Other professional codes of conduct, statutes, and court rules specifically for lawyers
8 representing clients and the public interest but excluding government- or office-mandated
9 ethics, anti-harassment, or anti-discrimination programs applicable to both lawyer and non-
10 lawyer employees;

11 (2) A course or program session on professionalism as it pertains to compliance with the Rules
12 of Professional Conduct and other rules, regulations, and codes that define the ethical behavior
13 or requirements expected of lawyers. Such a course should be designed to enhance the
14 development and performance of lawyers in conduct that is consistent with the tenets of the
15 profession as demonstrated in the lawyer's civility, honesty, integrity, character, fairness,
16 competence, ethical conduct, public service, and respect for the rule of law, the courts, other
17 lawyers, witnesses, and unrepresented parties; and

18 (3) A course or program session related to cultural competency and elimination of bias with
19 respect to the practice of law. This may include courses or sessions on identifying and
20 eliminating from the legal profession and from the practice of law biases against persons
21 because of race, gender, economic status, marital status, creed, color, religion, national origin,
22 disability, age, or sexual orientation. ~~includes discussion, analysis, interpretation, or application~~
23 ~~of the Rules of Professional Conduct, Rules for Enforcement of Lawyer Conduct, Code of~~
24 ~~Judicial Conduct, judicial decisions interpreting these rules, and ethics opinions published by~~
25 ~~bar associations relating to these rules. It also includes the general subject of professional~~
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1 ~~conduct standards for lawyers representing clients and the public interest. Ethics credits may~~
2 ~~also be awarded for accreditable activities in the areas of diversity and anti-bias with respect to~~
3 ~~the practice of law, or the risks to ethical practice associated with diagnosable conditions of~~
4 ~~stress, anxiety, depression, and addictive behavior.~~

5 **(h)** "Executive Secretary" means the executive secretary of the MCLE Board.

6 **(i)** "Form 1" means the CLE course accreditation application form.

7 **(j)** "Governmental agency" means federal, state, local, and military Agencies and organizations,
8 and organizations primarily funded by one or more of the preceding, but excludes colleges,
9 universities, law schools, ~~and~~ graduate schools, public law libraries, and state bar associations.

10 **(k)** "Groups 1, 2, and 3" means three groups of lawyers for purposes of the reporting periods to
11 which they are assigned: Group 1 consists of lawyers admitted through 1975 and in 1991, 1994,
12 1997, 2000, 2003, 2006, 2009, 2012, etc.; Group 2 consists of lawyers admitted 1976 through
13 1983, and in 1992, 1995, 1998, 2001, 2004, 2007, 2010, 2013, etc.; and Group 3 consists of
14 lawyers admitted 1984 through 1990 and in 1993, 1996, 1999, 2002, 2005, 2008, 2011, 2014,
15 etc. New admittees shall be assigned to these Groups in the same manner upon admission.

16 **(l)** "Legal education" means activities that meet the requirements of these regulations and that
17 maintain or enhance the competence of lawyers with respect to the practice of law.

18 **(m)** "MCLE Board" means the Washington State Board of Mandatory Continuing Legal
19 Education.

20 **(n)** "Participating" means ~~taking part~~ providing substantive instructional content in an
21 accredited continuing legal education course as a ~~contributing~~ member of a panel. Presentation
22 time for a lawyer participating in a panel is based on the total time of the panel presentations
23 and discussion by the lawyer's panel.

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1 (o) "Preparation time" or "Prep time" means the time a presenter or panelist spends researching
2 and writing substantive legal presentation and course materials. It is counted as self-study
3 credit.

4 ~~(p)(e)~~ "Qualified legal services provider" means a Washington State not-for-profit legal
5 services organization whose primary purpose is to provide legal services to low income clients,
6 as defined in APR 8(e)(2). The WSBA maintains a list of the qualifying organizations.

7 ~~(p)~~ "Quorum of the MCLE Board" means ~~four or more members of the Board~~

8 (q) "Session" within a course means a period of instruction with a specific start time and end
9 time on the course agenda.

10 (r) "Sponsor" means an individual or an organization that provides continuing legal education
11 programs. All sponsors that have not been approved under Regulation 105 are "non-accredited"
12 sponsors.

13 ~~(s)(e)~~ "Teaching" means presenting the delivery of a prepared talk, lecture or address at an
14 accredited continuing legal education course.

15 **REGULATION 102. STANDARDS FOR APPROVAL AND ACCREDITATION**

16 To be approved for credit, all courses must meet all of the following criteria, except where
17 otherwise stated.

18 **(a)** A course must have significant intellectual or practical content designed to maintain or
19 improve the attendee's professional knowledge, competence, and skills as a lawyer. relating to
20 the practice of law, or legal ethics. In determining whether courses have such content, the
21 following factors should be considered:

22 **(1)** The topic, depth, and skill level of the material, which must be of a caliber suitable for law
23 school graduates and practicing lawyers;

24 **(2)** The presenters, who must be qualified by level of practical or academic experience or
25 expertise to present the subject of the presenters or faculty;

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1 (3) The intended audience, which should be primarily lawyers but may include others besides
2 lawyers;

3 (4) The written materials, which must be of high quality, current, in a hardcopy or electronic
4 format, and distributed to all attendees at or before the course is presented. A brief outline
5 without citations or explanatory notations is not sufficient. In some unusual cases, written
6 materials may not be necessary, but ~~that is the~~ this requires a written explanation in order to be
7 considered for an exception and not the rule; and,

8 (5) The physical setting, which must be suitable to the educational activity, ~~and~~ free from
9 unscheduled interruption, and conducive to learning; and,

10 (6) The course length, which must be of sufficient duration to provide an effective and
11 meaningful educational experience. Live courses must be at least 30 minutes to be considered
12 for accreditation.

13 (b) Any written, electronic, or presentation materials must be available for submission and
14 review upon request by the MCLE Board.

15 (1) ~~However, in~~ In the case of government-sponsored, ~~closed~~ sponsored closed seminars,
16 where materials are subject by law to confidentiality rules or regulations, those portions of the
17 materials subject to confidentiality may be redacted from the overall submission, provided that a
18 list of the redacted materials, a general summary of the redacted materials, and the basis for
19 confidentiality, is supplied.

20 (2) CLE course materials must be retained by the sponsor – in electronic or hardcopy format –
21 for four years from the date of the course.

22 (c) The course must be open to audit by the MCLE Board or its designees at no charge.
23 ~~However, this~~ This requirement may be waived in cases of government-sponsored, closed
24 seminars if the reason stated on the Form 1, as required by Regulation 104(a)(3)(C), is approved
25 by the MCLE Board.

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1 (d) The sponsor must keep accurate attendance records and retain them for six years. The
2 sponsor must provide copies to the MCLE Board upon request. In addition, the sponsor must
3 report attendance ~~within 30 days of the end~~ not later than 30 days after the conclusion of the
4 program as required by APR 11.6(a)(1).

5 (e) The attendees must be provided with a paper or electronic ~~critique form or evaluation form~~
6 ~~sheet~~ to complete. The completed forms, or a compilation of all numerical ratings and
7 comments, must be retained by the sponsor for two years and copies must be provided to the
8 MCLE Board upon request.

9 (f) There must be no marketing of any law firm or any company that provides goods or services
10 to lawyers or law firms during the presentation of the program in the room where the program is
11 being held.

12 (g) Aside from indicating that an activity has been accredited for the number and type of credits
13 approved by the MCLE Board, people and organizations must not state or imply that the WSBA
14 or the MCLE Board approves or endorses any person, law firm, or company providing goods or
15 services to lawyers or law firms.

16 (h) A course must not focus directly on a pending case, action or matter currently being handled
17 by the sponsor if the sponsor is a private law firm, corporate legal department, or a government
18 agency.

19 (i) If the course is sponsored by a private law firm, no client, former client, or prospective client
20 of the private law firm may directly or indirectly pay for or underwrite the course, in whole or
21 in part.

22 **REGULATION 103. EARNING AND CALCULATING CREDITS**

23 WSBA MCLE staff, the Executive Secretary, or the MCLE Board will apply APR 11 and these
24 regulations to determine approval or denial of accreditation, and to determine the number of
25 credits a lawyer can earn for each activity.

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1 **(a) Accreditable activities.** A lawyer may earn continuing legal education credit by attending,
2 teaching, or participating in accredited continuing legal education activities, subject to all
3 restrictions, limitations, and conditions set forth in APR 11 and these regulations.

4 **(1)** A lawyer may earn credits through an accreditable activity even if neither the lawyer nor
5 the activity is in Washington State (see Regulation 103(g)(e)(1), 103(n)(k), and 107(e)); ~~and~~

6 **(2)** To be accreditable, an activity must have no attendance restrictions based on race, color,
7 national origin, marital status, religion, creed, gender, age, disability, or sexual orientation, ~~or~~
8 ~~marital status~~.

9 **(3)** A lawyer may earn teaching and preparation credits through teaching a pre-admission
10 course required by APR 5(b) ~~and APR 18(e)(1)(i)~~.

11 **(b) Live credits.** A lawyer may earn “live credits” by attending in person or via an electronic
12 medium, or teaching or participating in an accredited course at the time the course is actually
13 being presented.

14 **(1)** Teleconferences, videoconferences, and webcasts are considered “live” if there are
15 presenters or expert moderators available to all course attendees at the time the course is
16 actually being presented and all attendees can hear or see other attendees’ questions and the
17 resultant responses at the time they occur ~~happen~~.

18 **(2)** Presentations ~~Viewings~~ of pre-recorded programs ~~courses~~, ~~presented~~ by one or more expert
19 moderators, qualified and available present on site at the time of the program airing ~~viewing~~ to
20 answer questions and expand on topics, may also be considered “live”.

21 **(3)** A program that qualifies under (2) may be considered live if broadcast and the remote
22 attendee can pose a question to the on-site moderator and can hear other attendees’ questions
23 and the resultant responses at the time they occur.

24 ~~(3) Writing credits, as defined in Regulation 103(j), are considered to be live credits.~~

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1 **(c) Credit for attending accredited courses.** A lawyer may earn one credit for each 60
2 minutes spent attending actual instruction at an accredited course.

3 (1) Credits are rounded to the nearest quarter hour.

4 (2) Course credit is granted on the basis of one credit hour for each 60 minutes actually spent
5 in attendance at a course, exclusive of introductory and closing remarks, keynote/inspirational
6 speeches that do not meet the requirements of Regulation 102(a), meals, breaks, presentations
7 during meal times unless designated on the agenda for a distinct period during the meal when
8 there will be no distractions from meal service, or other non-CLE creditable activities.

9 (3) A lawyer must attend at least 30 minutes of an accredited course to earn any credit for the
10 course.

11 **(4)** A lawyer may earn no more than eight credits per calendar day spent attending courses.

12 **(5)** A lawyer may earn credit only once as an attendee at ~~for attending~~ the same approved
13 course, whether attended live or through other media.

14 **(d) Credit for development courses.** A lawyer may earn a maximum of six “development
15 course” credits per reporting period, which include courses in practice development,
16 professional resilience development, post-retirement pro bono service planning, communication
17 skill development, CLE presentation skills development, and other courses pertaining to the
18 enhancement of a lawyer’s professional and personal skills and well-being. Development
19 courses do not include individual or group therapy or coaching sessions.

20 **(e) Credit for leadership courses.** A lawyer may earn a maximum of six “leadership course”
21 credits per reporting period in courses designed to develop leadership skills and enhance the
22 leadership performance of lawyers.

23 **(f)(d) Credit for teaching or participating in accredited courses.** A lawyer may earn credit
24 by teaching or participating in an accredited continuing legal education course. ~~Additionally, a~~
25 ~~lawyer who is teaching or participating in an accredited course may earn one credit for each 60~~
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~~minutes actually spent by the lawyer preparing for the presentation of the course, up to a maximum of 10 credits per course. A lawyer may earn credit only once for teaching or participating in the same accredited course, regardless of the number of times the course is presented.~~

(1) Presentation time-

(A) A lawyer may earn one credit for each 60 minutes of presentation or participation time. Presentation and participation times are reported as “attendance” time.

(B) A lawyer may earn credit only once for teaching or participating in the same accredited course – or presenting the same material – regardless of the number of times the course or material is presented unless six or more months have elapsed since the course or material was previously presented for which the lawyer earned presentation or participation time plus preparation time credit, the topic is related to a substantive area of law rather than developing skills, and the lawyer spent additional time researching and updating the written materials.

(2) Preparation time- A lawyer must present, or participate in a panel, for at least 30 consecutive minutes in order to earn preparation time. Up to five preparation credits may be earned for each 30 minutes of presenting or participating, up to a maximum of 10 preparation credits per course. Preparation time is counted as self-study credit. No preparation time credit is given for the planning and organizational activities related to putting on a course.

~~**(i) EXAMPLE:** Lawyer X gives a one hour presentation and attends the other five hours at a six credit hour course presented in three cities, and attends the rest of the course on each of those days. If Lawyer X spent 10 hours preparing for the presentation, Lawyer X may earn a total of 16 credits.~~

~~**(ii) EXAMPLE:** Lawyer X gives a two hour presentation and attends the other four hours at a six credit hour course presented in three cities, and attends the rest of the course on each of~~

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1 those days. If Lawyer X spent 15 hours preparing for the presentation, Lawyer X may earn a
2 total of 16 credits.

3 **(g)(e) Credit for attending or teaching law school courses.**

4 **(1) Attending.** A lawyer may earn one credit for each 60 minutes of instructed class time the
5 lawyer attends in law school courses at the J.D. or advanced education level. The course may
6 be taken within or outside the United States, and the lawyer is not required to take or be
7 successful on any examination given in connection with the course in order to earn CLE credits
8 for attending the course. To earn credit, the lawyer must:

9 **(A) Submit verification of attendance, which may be a transcript from the law school**
10 **registrar or arranging for the instructor to submit written attendance verification to the MCLE**
11 **Board.** ~~Arrange for the instructor or law school registrar to verify the lawyer's actual~~
12 ~~attendance at the various sessions of the course and to report such attendance to the MCLE~~
13 ~~Board; and~~

14 **(B) Report any sessions taken via recorded media as self-study credits and report in-person**
15 **attendance at the time the course is given as live credit; and**

16 **(C)(B) Comply with the applicable regulations of the law school or university involved.**

17 **(2) Teaching.** Full time teachers and lawyers whose primary employment is teaching law
18 school courses may not earn credit for teaching or preparation of law school courses, but a
19 lawyer who is acting as a part-time accredited law school adjunct professor or lecturer may earn
20 credit one time only for ~~in connection with that lawyer's first presentation of a specific law~~
21 ~~school course, as follows:~~

22 **(A) Presentation time-** one credit for each 60 minutes of presentation time ~~for that lawyer's~~
23 ~~first presentation of a specific law school course,~~ up to a maximum 15 credits for actual
24 presentation time; and

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1 **(B) Preparation time-** one credit for each 60 minutes the lawyer spends preparing for each
2 60 minutes of presentation time, up to a maximum of 10 credits of actual preparation time for
3 each 60 minutes of presentation time. Preparation time is counted as self-study credit.

4 ~~(h)(f)~~ **Credit for pro bono legal services:** A lawyer may earn 25.5 six pro bono credits during
5 a reporting period annually , of which three credits are pro bono training and 22.5 credits are pro
6 bono service. if:

7 ~~(1) The lawyer receives at least two hours of education in a given calendar year, The pro bono~~
8 training must be provided under the auspices of a qualified legal services provider, (as defined
9 in Regulation 101(p)) and approved for pro-bono CLE credit by the MCLE Board. It can be
10 taken as live or self-study credits, which may consist of: A lawyer may also earn pro bono
11 training credit by:

12 ~~(A) Presenting or participating in a course approved for pro-bono training CLE credit by the~~
13 MCLE Board, provided that the requirements of Regulation 103(f) are met; or

14 ~~(B) Serving as a mentor to other lawyer(s) who have completed pro bono training during their~~
15 current reporting periods and are providing pro bono legal advice, representation, or assistance
16 to low- income client(s) through a qualified legal services provider.

17 ~~(2) The training must be completed by December 31 of the last year of the reporting period for~~
18 which pro bono service credits are being claimed in order to be able to earn the pro bono service
19 credits.

20 ~~(A) Not less than two hours of training in MCLE Board-approved live presentation(s); or~~

21 ~~(B) Not less than two hours individually viewing or listening to pre-recorded training courses~~
22 approved by the MCLE Board; or

23 ~~(C) Not less than two hours of any combination of the foregoing training; or~~

24 ~~(D) Not less than two hours serving as a mentor to a participating lawyer who has completed~~
25 the foregoing training; and

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1 **(4)** Pro bono service credit shall be considered self-study and may be earned for the following:

2 ~~(2) The lawyer completes not less than four hours of pro bono work in that same calendar year,~~

3 ~~by:~~

4 **(A)** Providing legal advice, representation, or other legal assistance to low-income client(s)
5 through a qualified legal services provider; or

6 **(B)** Serving as a mentor to other ~~participating~~ lawyer(s) who have completed pro bono
7 training during their current reporting periods and are providing pro bono legal advice,
8 representation, or assistance to low-income client(s) through a qualified legal services provider.

9 ~~(i)(g)~~ **Credit for law school competitions.** A lawyer may earn one general self-study—~~not~~
10 ~~ethics~~— credit for each 60 minutes spent judging or preparing law school students for law
11 competitions, mock trials, or moot court arguments at an ~~ABA~~ accredited law school. Up to a
12 maximum of six self-study credits per reporting period may be earned provided the following
13 conditions are met:

14 **(1)** Prior to the event, the sponsor provides the lawyer “judge” training in the feedback process
15 to be used by the “judge” to give performance feedback to each student during the event. Such
16 training, live or pre-recorded, ~~must incorporate~~ meet the requirements of Regulation 102(a),
17 ~~and it can be conveyed by live or video-taped training, a written outline of points to be covered~~
18 ~~by the “judge”, or other acceptable method.~~

19 **(2)** The lawyer “judge” provides specific performance feedback to each student participant
20 during the event.

21 **(3)** The sponsor

22 **(A)** Issues ~~issues~~ appropriate certification documenting the name of the lawyer, the activity
23 name, date, and location, and the number of CLE credits earned, and

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1 (B) Reports attendance at the training and competition to the WSBA within 30 days of the
2 end date of the competition according to the special “moot court” procedures for reporting such
3 events.

4 (4) The lawyer shall ~~does~~ not earn credits for preparation time or for grading written briefs or
5 other written papers in connection with this type of activity.

6 ~~(j)(h)~~ **Credit for self-study pre-recorded programs.** A lawyer may earn credit for self-study
7 by completing MCLE Board-approved pre-recorded audiovisual or audio-only courses, under
8 the following conditions:

9 **(1) Requirements for lawyers.**

10 (A) For each all completed pre-recorded self-study course courses, the lawyer must add the
11 approved course to the lawyer’s online MCLE roster or report the following on a Form 1 for
12 each activity:

13 (i) The sponsor and title of the course;

14 (ii) The course agenda;

15 ~~(iii)(ii)~~ (iii) The original date the activity was recorded;

16 ~~(iv)(iii)~~ (iv) The dates ~~date~~ the lawyer started and completed the course; ~~and~~

17 ~~(v)(iv)~~ (v) The total running time of the course in hours and minutes ~~number of credits for~~
18 ~~which the course was approved;~~ and

19 (vi) The number of credits earned.

20 (B) The lawyer must declare on the reporting period CLE Certification form that the lawyer
21 did not knowingly violate any copyright laws in earning the credits.

22 **(2) Requirements for sponsors ~~regarding accreditation of self-study courses.~~** For each all
23 pre-recorded course courses approved for credit by the MCLE Board:

24 (A) The sponsor must affix on the outside of the recording or provide in the online course
25 description for online programs:

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1 (i) The name of the sponsor;

2 (ii) The name of the course;

3 (iii) The date originally recorded;

4 (iv) The total running time in hours and minutes; ~~and~~

5 (v) The number of Washington credits for which it has been approved; ~~and~~

6 (vi) The Washington Activity ID number.

7 (B) The complete course agenda and written materials distributed at the live course must also
8 be distributed with the pre-recorded course. If the course was not recorded from a live
9 presentation, a detailed course agenda and written materials that meet the requirements for live
10 courses must be included with the pre-recorded course.

11 ~~(C)(B)~~ Sponsors are not required to submit a copy of the pre-recorded self-study course with
12 the Form 1, but must provide copies or allow online access to the MCLE Board on request.

13 ~~(D)(C)~~ If a live course was approved by the MCLE Board; ~~the recorded version of that~~
14 ~~course is automatically approved if the sponsor creates a “duplicate” Form 1 at the MCLE~~
15 ~~website or submits a paper Form 1 for the recorded version of the course.~~

16 (i) Form 1s for the recorded version shall be submitted after the recorded program has been
17 produced and the actual running time known (to be used for the course accreditation
18 determination); and

19 (ii) The recorded version of that course is automatically approved if the sponsor creates a
20 “duplicate” online Form 1 at the MCLE website or submits a paper Form 1 for the recorded
21 version of the course.

22 ~~(D) Written materials distributed at the live course must also be distributed with the pre-~~
23 ~~recorded course.~~

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1 (E) The accreditation of the pre-recorded course expires five years after the date the course
2 was originally recorded, ~~except those determined by the MCLE Board to be purely skills~~
3 ~~training courses.~~

4 **(k) Credit for alternative format self-study courses.** Credit for alternative format electronic
5 self-study courses will be considered by the MCLE Board and granted only on a case-by-case
6 basis. All requests must be submitted in writing to the MCLE Board for consideration with
7 complete documentation of course requirements, sponsor information, sponsor documentation
8 of average time for course completion, and written course materials. Text-only and traditional
9 read-and-self-test presentations are not accreditable.

10 **(l)(+) Credit for nexus courses.** A lawyer may earn credits for ~~actually~~ attending, teaching, or
11 participating at a course that does not qualify for approval under these regulations and does not
12 directly deal with the practice of law but that is substantially related to the lawyer's area of
13 practice. To earn such credits, the lawyer must demonstrate that the topic, depth, and skill level
14 will improve the lawyer's competence to practice law. Lawyers petitioning to return to Active
15 status may not use nexus credits to meet MCLE requirements.

16 **(m)(+) Credit for writing and editing activities.** Credit for writing or editing activities is
17 granted ~~sparingly, and~~ only on a case by case basis. A lawyer may earn one self-study ~~five~~
18 credit for every 60 minutes spent in writing and editing activities, up to a maximum of 10 self-
19 study ~~five~~ credits per writing activity, under the following conditions:

20 (1) The writing or editing in question meets the standards of these regulations;

21 (2) The writing has been ~~is~~ published for the education of the Bar by a recognized publisher of
22 legal works; ~~and~~

23 **(3) The writing was submitted for publication in a WSBA Deskbook and certified as ready for**
24 **publication by the Associate Director of Publications and Professional Development of the**
25 **Bar's continuing legal education department, which will satisfy requirement (2) above.**

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1 ~~(4)(3)~~ The writing or editing is not performed for or on behalf of a client or prospective client,
2 for marketing purposes, or in the course of the regular practice of law.

3 ~~(n)(4)~~ **Credit for courses for lawyers in foreign countries and/or remote locations in the**
4 **United States.**

5 (1) A lawyer may earn credit for programs outside the United States, including courses
6 concerning laws of jurisdictions outside the United States, if those courses are approved for
7 credit by the MCLE Board.

8 (2) A lawyer residing in a foreign country where standard live CLE courses are unavailable
9 may earn credit for courses that do not fully meet the standards of these regulations and which
10 would not be approved if offered within the United States. In determining whether to grant
11 credit for such courses, the MCLE Board shall consider, among other things, the availability of
12 standard live CLE courses in the area involved or via the internet and the good faith attempts of
13 the lawyer to comply with the requirements of APR 11 and these regulations.

14 (3) With approval from the MCLE Board, a lawyer in a foreign country with no reasonable
15 opportunities for attendance at standard live CLE programs in-person or via the internet may
16 earn a maximum of 45 credits per reporting period through approved self-study courses ~~or by~~
17 ~~attending informal CLE programs developed and presented by lawyers in the foreign~~
18 ~~jurisdiction.~~

19 (4) With approval from the MCLE Board, a lawyer in a location within the United States that
20 is very remote and removed from reasonable opportunities for attendance at live CLE programs
21 or from internet access to live courses may earn a maximum of 45 credits per reporting period
22 through approved self-study courses. Such approval will be granted only on a case by case
23 basis sparingly.

24 ~~(o)(4)~~ **Other Examples of activities that may qualify for credit.** The following types of
25 activities may be approved for credit, subject to the other provisions of these regulations:
26

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1 ~~(1) Courses about running a law office—in particular, docket control,~~
2 ~~malpractice avoidance, education on substance abuse by lawyers and other legal~~
3 ~~professionals, time management, increasing office efficiency, business planning, office financial~~
4 ~~management, billing and collections procedures, office technology, and customer service, as~~
5 ~~each relates to the practice of law.~~

6 **(1) Courses on communication skill development** to improve a lawyer’s skills for
7 communicating with clients or other legal professionals, or to improve the lawyer-client
8 relationship.

9 **(2) Courses on substance abuse by lawyers** and other legal professionals may be granted
10 credit, including how to recognize substance abuse in law offices and in law practice
11 interactions. The program must be designed specifically for lawyers. (See “Credit for
12 development courses” Regulation 103(d) for accreditation of courses on dealing with personal
13 substance abuse.)

14 **(3) Law office management courses** designed for lawyers that deal with means and methods
15 to enhance the quality and efficiency of a lawyer’s service to clients.

16 **(A) Accreditable topics include docket control, time management, increasing office**
17 efficiency, business planning, office financial management, trust accounting procedures, billing
18 and collections procedures, office technology, law office closing, legal obligations to clients
19 upon termination of practice, and customer service as each relates to the practice of law.

20 **(B) Credit also may be granted for courses designed to teach lawyers how to improve market**
21 share, attract clients, or increase profits if the program focuses on topic areas that include the
22 ethics of marketing, case law updates, conflicts of interest, or conflicts of law. (See Regulation
23 103(d) “Credit for development courses” for accreditation of courses dealing with practice
24 development programs related to improving market share, attracting clients, and increasing
25 profits that do not focus on ethics, case law updates, or conflicts.)

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1 ~~(2) Courses designed to improve a lawyer's skills for communicating with clients or to improve~~
2 ~~the lawyer-client relationship.~~

3 ~~(4)(3) **Electronic research courses** on how to conduct electronic legal research that are not~~
4 ~~intended to advertise, market, or sell particular electronic research products.~~

5 ~~(5)(4) **Alternative** Alternate **dispute resolution** courses.~~

6 ~~(6) **Parliamentary procedure courses** that pertain to understanding and using parliamentary~~
7 ~~procedures.~~

8 ~~(7)(5) **Bar review courses** A lawyer's attendance at Bar review/refresher courses for~~
9 ~~jurisdictions other than Washington, on the basis of one credit for each live classroom hour of~~
10 ~~actual instruction or pre-recorded audio/videotaped hour of substantive legal instruction.~~

11 ~~(8)(6) **Legal product courses** Courses sponsored by or involving participation by a company~~
12 ~~that provides services or products to the legal community, but only if the written material does~~
13 ~~not include prepared promotional literature, and:~~

14 ~~(A) There is no marketing of that company during the program and no intention to advertise,~~
15 ~~market, or sell particular legal products; or~~

16 ~~(B) There is equal treatment in any discussion and written materials of alternate vendors of~~
17 ~~the particular product or service.~~

18 ~~(p)(m) **Examples of Aactivities that do not qualify for credit.** Examples include the~~
19 ~~following: The following types of activities will not be approved for credit:~~

20 ~~(1) Teaching a legal subject to non-lawyers in an activity or a course or session of a course that~~
21 ~~would not be approved for credit if taught to lawyers.~~

22 ~~(2) Programs primarily designed to teach lawyers how to improve market share, attract clients~~
23 ~~or increase profits unless the program primarily focuses on topic areas that include, but are not~~
24 ~~limited to, marketing ethics, case law updates, conflicts of interest, or conflicts of law.~~

25 ~~(2)(3) Programs primarily designed to be a sales vehicle for a service or product.~~

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1 ~~(3)~~(4) Writing for or on behalf of a client, or for the regular practice of law.

2 ~~(4)~~(5) Meritorious legal work, such as pro bono work, except as provided in Reg. 103(h)(f).

3 ~~(5)~~(6) Bar review/refresher courses offered in preparation for the Washington State Bar
4 examination.

5 ~~(6)~~(7) Jury duty.

6 ~~(8) Programs primarily designed to enhance a person's ability to present or prepare a~~
7 ~~continuing education program.~~

8 ~~(7)~~(9) Private law firm, corporate legal department, or government agency sponsored courses
9 that are focused directly on a pending case, action or matter being handled by the private law
10 firm, corporate legal department or government agency sponsor.

11 **REGULATION 104. APPLYING FOR ACCREDITATION OF AN ACTIVITY**

12 Subject to the requirements and restrictions of APR 11 and these regulations, ~~sponsoring~~
13 ~~organizations~~ non-accredited sponsors (as defined in Regulation 101(r)) or individual lawyers
14 may apply for accreditation of an activity. The MCLE Board, with the approval of the WSBA
15 Board of Governors, may adopt and assess a fee on sponsoring organizations or individuals for
16 the purpose of defraying the costs of processing applications for accreditation of courses or
17 activities.

18 **(a) Application by a non-accredited sponsor.**

19 **(1) Submitting Form 1.** A ~~sponsoring organization~~ non-accredited sponsor shall may apply
20 for accreditation of a continuing legal education course or activity by submitting a completed
21 Form 1, including a complete course agenda, to the WSBA MCLE staff, together with payment
22 of the required fee, if any.

23 **(A) The agenda must include:**

24 **(i) The start and end times (for live programs) or elapsed time (for pre-recorded programs)**
25 **of each session or topic covered for programs over 90 minutes;**

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1 (ii) The objective of each session and description of the main topic(s) covered; and

2 (iii) The start and end time of an ethics session, if an ethics session is being applied for, and
3 an explanation of how the session satisfies the requirements of Regulation 101(g).

4 (B) The Form 1 must include the name of the qualified legal services provider under whose
5 auspices the course is being given if the sponsor is not a qualified legal services provider as
6 defined in Regulation 101(p) and the course is being submitted to qualify for “pro bono
7 training”.

8 **(2) Private law firm and corporate legal department sponsors.** Private law firms and
9 corporate legal departments must:

10 **(A)** Register as the sponsor of a course if they either present the course or contract with an
11 outside CLE provider to present the course.

12 **(B)** Submit the completed Form 1s and applicable Form 1 fee by no later than 14 days before
13 the first presentation day of the activity. Failure to submit the Form 1 and applicable Form 1
14 fee at least 14 days in advance of the activity may result in imposition of a late fee and/or denial
15 of accreditation for the activity.

16 **(3) Government sponsors.** Government sponsors must:

17 **(A)** Register as the sponsor of a course if they either present the course or contract with an
18 outside CLE provider to present the course;

19 **(B)** Submit completed Form 1s and applicable Form 1 fee by no later than 14 days before the
20 first presentation day of the activity. Failure to submit the Form 1 and applicable Form 1 fee at
21 least 14 days in advance of an activity may result in imposition of a late fee and/or denial of the
22 accreditation of the activity; and

23 **(C)** If a closed course cannot be audited by the MCLE Board or its designees due to
24 confidentiality rules or regulations, ~~this~~ the legal basis for disallowing an MCLE Board audit,
25 including citation to the appropriate legal authority, must be stated on the Form 1.

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1 **(4) Accreditation of same course.** A sponsor may apply, with no additional Form 1 charge,
2 for accreditation of a course that is the same as an accredited course presented by that sponsor
3 within 12 months from the original date of accreditation, by creating a duplicate Form 1 on the
4 MCLE website or submitting a paper Form 1 for each subsequent presentation. Such duplicate
5 or paper Form 1s must be submitted by no later than one day before the subsequent
6 presentation of the previously approved activity. The paper Form 1 must clearly state
7 “duplicate,” and reference the Activity ID number of the original activity approved.

8 **(5) Accreditation statement in promotional materials brochures.** If a course has been
9 approved and accredited, the sponsor sponsoring organization may announce in the promotional
10 materials informational brochures and/or registration materials: "This course has been approved
11 for _____ hours of Washington MCLE credit, including _____ hours of ethics credit."

12 **(6) Reporting attendance.** ~~After the conclusion of the presentation of a course, the~~ The
13 sponsor must submit an attendance report showing the actual attendance time of each lawyer
14 and pay any associated fee(s), either through the MCLE website or by submitting it to the
15 Executive Secretary, within 30 days after the conclusion of the program.

16 **(b) Application by an individual lawyer.**

17 **(1) Submitting Form 1.** If a sponsor does not submit a Form 1 and attendance report for a
18 continuing legal education course, as required by these rules and regulations, ~~A~~ a lawyer may
19 apply to receive credit for that ~~a continuing legal education~~ course — or other CLE activity — by
20 submitting a ~~completed~~ Form 1 with a complete agenda to the WSBA MCLE staff ~~for that~~
21 ~~activity,~~ along with any other materials or information required by these regulations or
22 requested by the WSBA MCLE staff, the Executive Secretary, or the MCLE Board.

23 **(A) The agenda must include:**

24 **(i) The start and end times (for live programs) or elapsed time (for pre- recorded programs)**
25 **of each session or topic covered for programs over 90 minutes; and**

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1 (ii) The start and end time of an ethics session, if an ethics session is being applied for, and
2 an explanation of how the session satisfies the requirements of Regulation 101(g).

3 (B) The Form 1 must include the name of the qualified legal services provider under whose
4 auspices the course is being given if the sponsor is not a qualified legal services provider as
5 defined in Regulation 101(p) and the course is being submitted to qualify for “pro bono
6 training”.

7 (C) A lawyer must ensure that all courses taken and activities completed for reporting period
8 compliance have been accredited by the MCLE Board prior to certifying compliance.

9 **(2) No individual application for private law firm or corporate legal department**
10 **sponsored course.** A lawyer who is associated with or employed by a private law firm or
11 corporate legal department ~~that maintains~~ maintaining an office within Washington State that
12 employs lawyer staff may not apply to receive credit for a continuing legal education course
13 sponsored by that private law firm or corporate legal department for which the sponsor did not
14 submit a completed Form 1.

15 **(3) Individual lawyer as sponsor.** A lawyer who is the sponsor of a CLE program must
16 submit a Form 1 as a sponsor, not as an individual lawyer, and follow all rules and regulations
17 applicable to non-accredited sponsors.

18 **REGULATION 105. ACCREDITED SPONSORS**

19 **(a) General provisions.** The Executive Secretary may approve sponsoring organizations as
20 “accredited sponsors”. The following apply to all accredited sponsors:

21 **(1)** Accredited sponsors are not required to seek approval for individual courses that they
22 sponsor.

23 **(2)** All courses sponsored by an accredited sponsor and in compliance with APR 11 and these
24 regulations are considered approved by the MCLE Board, subject to review by the MCLE
25 Board.

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1 **(3)** For any course it is sponsoring, an accredited sponsor may state the following (or
2 something substantially similar) in the promotional or registration materials: This activity has
3 been approved for Washington State MCLE credit in the amount of ____ hours (of which ____
4 hours will apply to ethics credit requirements).

5 **(4)** Approval of a course and/or the award of credits made by an accredited sponsor may be
6 reviewed at any time, and accepted or rejected by the MCLE Board, Executive Secretary, and/or
7 WSBA MCLE staff, based on the course's conformance to ~~Regulation~~ Regulations 101, 102,
8 and 103.

9 **(5)** The MCLE Board may set and assess fees and fines, or revoke an organization's accredited
10 sponsor status, for repeated failure to correctly award credit for courses, failure to pay the
11 annual accredited sponsor fee, or for failure to comply with accredited sponsor reporting or
12 other requirements.

13 **(6)** Except as specified in this regulation, an accredited sponsor shall continue to be subject to
14 and governed by all provisions of APR 11 and these regulations.

15 **(b) Duties of accredited sponsors.** Any organization that is approved as an accredited sponsor
16 must:

17 **(1)** Accurately calculate the number of credits to be awarded for each course, by applying the
18 provisions of Regulations 101, 102, and 103.

19 **(2)** Submit an accurately completed electronic Form 1 for a course at least one day prior to
20 presentation of the live course or one day prior to making a pre-recorded course available to
21 lawyers. Form 1s for the pre-recorded version shall be submitted after the actual run time of the
22 program has been determined.

23 **(3)** Keep accurate attendance records for each live course and retain them for six years. An
24 attendance report showing the actual attendance of each lawyer must be submitted through the
25 MCLE website within 30 days of completion of the course.
26

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1 ~~(4)~~ Provide a paper or electronic critique form or evaluation form sheet to all live course
2 attendees. The accredited sponsor must retain the completed forms, or a compilation of all
3 numerical ratings and comments, for two years and provide copies to the MCLE Board upon
4 request.

5 (5) Retain CLE course materials – in electronic or hardcopy format – for four years from the
6 date of the course and submit to the MCLE Board upon request. In the case of government-
7 sponsored closed courses, where materials are subject by law to confidentiality rules or
8 regulations, those portions of the materials subject to confidentiality may be redacted from the
9 overall submission, provided that a list of the redacted materials, a general summary of the
10 redacted materials, and the basis for confidentiality, is supplied.

11 ~~(6)(5)~~ Demonstrate a continuing ability to provide high-quality continuing legal education
12 activities and to correctly determine credit awards for those activities.

13 ~~(6)~~ ~~At least annually, provide to the MCLE Board a list of all its course offerings, identifying~~
14 ~~the number of lawyers and non-lawyers attending each program, and providing any additional~~
15 ~~information required by the CLE Board.~~

16 (7) By February 1 each year submit a report regarding the accredited programs offered to
17 Washington lawyers in the previous calendar year. The content of what is to be reported will be
18 determined by the MCLE Board and sent to accredited sponsors no later than January 1 each
19 year.

20 ~~(8)(7)~~ Pay any required annual accredited sponsor fee.

21 (9)(8) Permit course audits by the MCLE Board or its designees at no charge. For government
22 accredited sponsors, if a closed course cannot be audited by the MCLE Board or its designees
23 due to confidentiality rules or regulations, the legal basis for disallowing an MCLE Board audit,
24 including citation to the appropriate legal authority, must be stated on the Form 1.

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1 ~~(10)~~(9) For any pre-recorded programs not originally offered as a live program by the sponsor,
2 the sponsor must:

3 (A) Review the content and materials of each such course; and

4 (B) Ensure that the course, including the written materials, is in compliance with all
5 provisions of APR 11 and these regulations.

6 **(c) Applying to become an accredited sponsor.**

7 (1) To apply to become an accredited sponsor, an organization must:

8 ~~(A)~~(C) Prior to application, submit a minimum of 20 courses for at least one year to
9 demonstrate that the organization can correctly apply APR 11 and these regulations to
10 determine and award credit for such courses activities as well as comply with all sponsor
11 process requirements;

12 ~~(B)~~(A) Submit a completed application form and all required documentation, in the required
13 format, to the Executive Secretary, along with payment of any required fee; ~~and~~

14 ~~(C)~~(B) Provide proof to the Executive Secretary that the sponsoring organization has at least
15 three years of previous experience in sponsoring and presenting at least 30 unique continuing
16 legal education activities a year; and

17 ~~(D)~~(C) Provide on request information about 10 courses from the previous three years,
18 selected by the Executive Secretary, for evaluation of course content and attendee evaluations.

19 (2) No private law firm or corporate legal department may be an accredited sponsor.

20 (3) A request for accredited sponsor status shall be granted or denied by the Executive
21 Secretary after consideration of the application and other materials submitted.

22 (4) An adverse determination by the Executive Secretary regarding an application for
23 accredited sponsor status may be appealed to the MCLE Board for a final review and decision
24 on the application in a manner consistent with the provisions of Regulation 106-(c).

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**REGULATION 106. DELEGATION BY MCLE BOARD AND EXECUTIVE
SECRETARY**

(a) To committees: The MCLE Board may delegate tasks and duties to committees for the purpose of administering and enforcing APR 11 and these regulations.

(b) To Executive Secretary.

(1) Subject to review by the MCLE Board, the Executive Secretary is authorized to act on behalf of the MCLE Board, in reviewing, granting or denying applications for accreditation of continuing legal education activities or applications for accredited ~~legal~~ sponsor status, ensuring compliance with reporting and other requirements and regulations, granting or denying lawyer petitions for waivers or for extension of time deadlines, and in providing interpretations of APR 11 and these regulations. The Executive Secretary may delegate to WSBA MCLE staff such of these duties and responsibilities as may be appropriate for timely and orderly administration of the Board's work, subject to review by the Executive Secretary and MCLE Board.

(2) Pursuant to guidelines established by the MCLE Board, the Executive Secretary shall provide a written description of any action taken in response to written requests for approval of courses or accreditation of sponsors, awarding of credit for attending, teaching or participating in approved courses, writing and editing, waivers, extensions of time deadlines and interpretations of APR 11 and these regulations. The Executive Secretary may seek a determination of the Board before making such response.

(3) Upon request by the MCLE Board, the Executive Secretary shall report on determinations made since the last meeting of the MCLE Board.

(c) Review of Executive Secretary's actions.

(1) Any person or organization affected by any adverse determination or any question of interpretation of these regulations or APR 11 by the Executive Secretary may seek MCLE Board review by filing a written petition.

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1 (2) The petitioning person or organization may present information to the MCLE Board in
2 writing or in person or both.

3 (3) The MCLE Board shall review petitions for ~~review of~~ adverse determinations made by the
4 Executive Secretary.

5 (4) The MCLE Board may take appropriate action after review of a petition and any other
6 relevant information presented to it, and the Board shall advise the affected person or
7 sponsoring organization in writing of its findings and any action taken.

8 **REGULATION 107. EXEMPTIONS, WAIVERS, MODIFICATIONS**

9 **(a) Undue hardship, ~~age, or disability~~.** All active members of the WSBA, and other lawyers
10 as established from time to time by the APRs or these regulations, are required to comply with
11 the provisions of APR 11 and these regulations. The MCLE Board may grant extensions,
12 waivers or modifications of the time deadlines or education requirements ~~because upon a~~
13 petitioner's showing of undue hardship, ~~age, or disability~~ of a lawyer. ~~Exemptions, waivers, or~~
14 ~~modifications based upon undue hardship, age or disability should be granted only sparingly.~~
15 All applications for exemptions, waivers and modifications shall be retained by the MCLE
16 Board.

17 (1) Applications for extensions, waivers or modifications must be made in writing and
18 supported by a sworn statement ~~in the form of an affidavit or declaration~~ under penalty of
19 perjury.

20 (2) The applicant must establish to the satisfaction of the MCLE Board that such condition of
21 undue hardship, ~~age, or disability~~ warrants granting an exemption, waiver, or modification.

22 (3) An application for exemption, waiver, or modification, including the sworn statement in
23 support thereof, must be filed for each reporting period for which the exemption, waiver or
24 modification is sought.

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1 (4) Neither a lawyer's status with the WSBA, nor the lawyer's other duties and obligations as
2 established by the WSBA bylaws or by court rules and regulations, are affected by the granting
3 of an exemption, waiver, or modification of the continuing legal education requirements under
4 this regulation.

5 (5) The MCLE Board may revoke an exemption, waiver, or modification if there is a change in
6 the facts or circumstances upon which such exemption, waiver, or modification was granted.

7 **(b) Judicial exemption.**

8 (1) Qualified WSBA Judicial members, except for administrative law judges, are exempt from
9 the continuing legal education requirement established by APR 11.

10 (2) The Washington State Supreme Court clerk and assistant clerk, who are prohibited by
11 Court rule from practicing law, are exempt from the requirements of APR 11 while serving in
12 these positions if the member is on Active status with the WSBA.

13 ~~(1) Full time. Full time judges, magistrates, court commissioners, administrative law judges,~~
14 ~~and the Washington State Supreme Court clerk or assistant clerk, who are prohibited by statute,~~
15 ~~code, regulation, or court rule from practicing law, are exempt from the continuing legal~~
16 ~~education requirement established by APR 11. The exemption ends when the full-time judicial~~
17 ~~position ends, if the member is on active status with the WSBA.~~

18 ~~(2) Part time. Part time or pro tem judges, magistrates, court commissioners, administrative~~
19 ~~law judges, and court clerks who are active members of the WSBA, are fully subject to the~~
20 ~~requirements of APR 11.~~

21 **(c) Legislative and gubernatorial exemption.**

22 (1) Active WSBA members otherwise subject to the continuing legal education requirements
23 of APR 11, who are also members of the Washington State Congressional Delegation or
24 members of the Washington State Legislature, or who are currently serving as the Governor of
25
26

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1 Washington State, are exempted from the requirements of APR 11 for the reporting period(s)
2 during which they are in office.

3 **(2)** This exemption does not apply to active lawyers serving on the staff of any member of the
4 Washington State Congressional Delegation, the Washington State Legislature, or the
5 Washington State Governor. who are:

6 ~~(A) Serving in the legislature of any other state;~~

7 ~~(B) Serving in the administrative branch of any state government; or~~

8 ~~(C) Serving on the staff of any member of the Washington State Congressional Delegation,~~
9 ~~the Washington State Legislature, or the Washington State Governor.~~

10 **(d) Active military duty.** Active lawyers who are employed in the armed forces of the United
11 States may be granted an exemption, waiver, or modification of the continuing legal education
12 requirement established by APR 11, upon proof of undue hardship.

13 **(e) No exemption for active lawyers living outside the United States.** Active lawyers who
14 live or are employed outside the United States are required to comply with the continuing legal
15 education requirements of APR 11, unless they otherwise qualify under these regulations for an
16 exemption for a different reason.

17 **REGULATION 108. REINSTATEMENT OF CONTINUING EDUCATION**
18 **REQUIREMENTS**

19 [no change]

20 **REGULATION 109. REINSTATEMENT OF LAWYERS SUSPENDED FROM**
21 **PRACTICE FOR FAILURE TO COMPLY WITH APR 11**

22 [no change]

23 **REGULATION 110. RULEMAKING AUTHORITY**

24 [no change]

25 **REGULATION 111. CONFIDENTIALITY**

**PROPOSED AMENDMENTS TO
APPENDIX APR 11**

1 [no change]

2 **REGULATION 112. OUT-OF-STATE COMPLIANCE**

3 (a) The MCLE Board has determined that the Mandatory Continuing Legal Education
4 requirements in Oregon, Idaho, and Utah substantially meet Washington's continuing legal
5 education requirements. These states are designated as comity states.

6 (b) A lawyer whose principal place of business is not in Washington may comply with these
7 rules and regulations by ~~filing~~ submitting a Comity Certificate of MCLE Compliance ~~certificate~~
8 ~~of compliance~~ from a comity state MCLE office and the comity certificate processing fee. The
9 comity certificate shall certify that certifies that the lawyer is subject to the MCLE requirements
10 of that other jurisdiction and that the lawyer has complied with that other jurisdiction's MCLE
11 requirements during the lawyer's Washington reporting period for which compliance is due.

12 (1) The Comity Certificate of MCLE Compliance and comity processing fee must be filed by
13 February 1 following the end of the lawyer's three-year reporting period.

14 (2) The comity certificate shall be dated no earlier than October 1 of the last year of the
15 lawyer's Washington reporting period.

16 (3) A late fee will be assessed if the comity certificate or comity certificate processing fee is
17 not postmarked or delivered by February 1 following the end of the lawyer's three-year
18 reporting period. Payment of the late fee is due upon assessment or by the date set in an MCLE
19 Board agreement or order extending the time for compliance.