A. **Name of Proponent:**

Mandatory Continuing Legal Education (MCLE) Board

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B. **Spokesperson:**

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C. **Purpose:**

The primary purpose of the suggested amendments is to ensure that licensed legal professionals in Washington State are adequately educated in order to protect the public and improve each licensed legal professional’s ability to render competent and effective legal services to clients.

These suggested amendments will enable licensed legal professionals to better serve their clients by requiring credits in three categories: 1) equity, inclusion and the mitigation of bias, 2) mental health, addiction, and stress, and 3) technology education focusing on digital security. The MCLE Board has identified these categories as so pervasive and necessary to the practice of law, that all lawyers, LLLTs, and LPOs should...
be required to be educated in these areas in order to protect the public and work with clients in an ethical manner. The suggested amendments have been discussed and reviewed at length by the MCLE Board and are designed to enhance the existing ethics requirements of legal practitioners in Washington State.

**Background**

Pursuant to Washington Supreme Court APR 11 (d)(2)(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 … Suggested amendments are subject to review by the Board of Governors and approval by the Supreme Court.” Licensed legal professionals are currently required to earn six ethics credits each reporting period.

At the Washington State Supreme Court MCLE Board meeting on October 5, 2018, the WSBA Diversity Committee presented to the MCLE Board a suggested amendment to APR 11. The initial proposal was developed by the WSBA Diversity Committee and the Washington Women Lawyers with the support of eight minority bar associations: the Asian Bar Association of Washington, the Cardozo Society of Washington State, Filipino Lawyers of Washington, the Pierce County Minority Bar Association, the Loren Miller Bar Association, the Latina/o Bar Association of Washington, the South Asian Bar Association of Washington, and QLaw. The proposal was to require that at least one of the six required ethics credits earned each reporting period be on the topic of “equity, inclusion and the mitigation of bias in the legal profession.”

**MCLE Board Actions**

Following the presentation, the MCLE Board formed a subcommittee to study the proposal and make a recommendation to the MCLE Board. After further research and
discussion, the subcommittee recommended that the MCLE Board suggest an amendment to the ethics requirement under APR 11 requiring one credit in each of the following subjects per reporting period: 1) equity, inclusion and the mitigation of bias, 2) mental health, addiction, and stress, and 3) technology education focusing on digital security. The subcommittee found a compelling need to build upon the original ethics requirement amendment proposal. For more information, see the attached preliminary recommendation and report.

The MCLE Board preliminarily adopted the subcommittee's preliminary recommendation, and sought feedback from both licensed legal professionals and the general public on the suggested amendment. The MCLE Board received 665 written comments, and three in-person comments during a public comment session held at the August 16, 2019, MCLE Board meeting. A majority of the commenters were opposed to the suggested amendment. Although the majority of individual commenters were opposed to the amendment, the 665 comments do not take into account the number of individuals who are represented by associations and groups that support the recommendation. To review the comments, please see the MCLE Board webpage.

The MCLE Board reviewed and considered all written and oral feedback, and held a special meeting on August 28, 2019. After discussing the feedback, the MCLE Board voted to continue to move forward with the suggested amendment by sending it to the Board of Governors for review (5-2 vote). One MCLE Board member noted he would have voted yes on a motion that required the first provision with the 'equity, inclusion, and mitigation of implicit and explicit bias' portion of the proposal without the other two provisions. The majority of the MCLE Board rejected the minority’s suggestion to strongly
recommend the credits in the three areas instead of making them required given many of
the opponents commented they did not feel the need to attend courses in those subject
areas and would not voluntarily attend the classes even if strongly recommended.

**Board of Governors Actions and MCLE Board Response**

On September 27, 2019, MCLE Board member Todd Alberstone presented the
suggested amendment to the WSBA Board of Governors for review. The WSBA Board
of Governors discussed the suggested amendment and passed a motion (7-5 vote)
directing WSBA CLE to offer free CLEs each year on each of the three ethics topics that
are required in the suggested amendment. Additionally, those CLEs will be
recommended for participation by the WSBA, and would count toward mandatory ethics
hours. The Board of Governors clarified that by approving this motion, the Board is not
recommending adoption of the amendments to the rule. It was also clarified that these
CLEs would be offered in-person and on-demand for free, regardless of whether the
suggested amendment is proposed and adopted by the WA Supreme Court.

At the October 4, 2019, MCLE Board meeting, the MCLE Board reviewed and
discussed the WSBA Board of Governors decision to provide training instead of
supporting the suggested amendment. The MCLE Board noted that while several
Governors recognized the importance of each of the three categories, the Governors
decided not to support the suggested amendment. However, the MCLE Board believes
that the suggested amendment is necessary to make progress in improving the legal
services provided to clients, and to acknowledge the increasing shifts in demographics of
the public we serve. Consequently, the MCLE Board decided by motion to suggest the
amendment to the Court (5-0 vote; 1 Board member absent and 1 vacant position).
Suggested Amendment

The MCLE Board subcommittee presents the below discussion in support of the amendment. The role of the MCLE Board is to develop, propose, and support continuing legal education that will not only educate Washington licensed legal professionals on the state of the law on various subjects but also improve inter-cultural communication, improve equitable outcomes, and reduce the risk of potential liability. Further, the MCLE Board has a duty to ensure that Washington licensed legal professionals have the skills and knowledge base to effectively serve their clients, the legal system, and society as a whole. For these reasons, the MCLE Board recommends adopting the entire suggested amendment, despite unpopularity of the proposed requirements in the comments submitted by WSBA members.

Many opponents of the proposal are not in favor of mandatory requirements; however, the practice of law is not a right, but a privilege. It is a natural tendency to choose CLEs that seem directly relevant to one’s practice or that sound interesting. However, a person who lacks understanding of a topic covered by the suggested amendment might be more likely to discount the value of the topic, and therefore not choose to participate in a given CLE. Accordingly, if the three suggested ethics topics are not mandatory, the licensed legal professionals who might benefit most from the training might not receive it.

Furthermore, the suggested requirement to take three of the already required credits in the specified areas is neither burdensome nor onerous. There are many available and accessible CLEs in each of the practice areas covered by the suggested amendment. Only three (3) total credits are being specified over a three-year reporting
period. With the recent commitment by the WSBA Board of Governors, free ethics CLEs will be made accessible both in-person and on-demand in each of the topics required in the suggested amendment. This eliminates any access barriers, as these topics will be provided at no cost. The Board’s proposal would not increase the total number of ethics hours required, nor prevent legal professionals from earning additional ethics credits on other topics, which would also count toward the 45 total required credits.

Throughout the amendment process, the MCLE Board was guided by APR 11, which states that the purpose of MCLE is “to enhance lawyers’, LLLTs’, and LPOs’ legal services to their clients and protect the public by assisting lawyers, LLLTs, and LPOs in maintaining and developing their competence as defined in RPC 1.1 or equivalent rule for LLLTs and LPOs, fitness to practice as defined in APR 20, and character as defined in APR 20.”

**APR 20:**

(c) Good Moral Character.

Good moral character is a record of conduct manifesting the qualities of honesty, fairness, candor trustworthiness, observance of fiduciary responsibilities, adherence to the law, and a respect for the rights of other persons and the judicial process.

(d) Fitness to Practice Law.

Fitness to practice law is a record of conduct that establishes that the applicant meets the essential eligibility requirements for the practice of law.

The following describes each suggested amendment and the amendment’s
purpose and intended effect:

**APR 11(c)(1)(ii)**

APR 11(c)(1)(ii) states “at least six credits must be in ethics and professional responsibility, as defined in subsection (f)(2).” The Board suggests an amendment that adds “with at least one credit from each of subsections (f)(2)(ii), (iii), and (iv).” The amendment would require one credit per reporting period in each of the following subjects: 1) mental health, addiction, and stress, 2) equity, inclusion and the mitigation of bias, and 3) technology education focusing on digital security.

This amendment would simply require that a portion of the required six ethics hours be devoted to the three categories identified in the suggested amendment. The ethics requirements are a required minimum, and any credits earned above the required minimum of six ethics credits and fifteen law and legal credits can be counted towards the overall 45 credit requirement regardless of the credit category.

The Board notes that each of the proposed categories – implicit/explicit bias, technology, and mental health – are core areas in which modern licensed legal professionals must be fluent in order to provide legal services and representation. Furthermore, the bar has an important role to play in addressing systemic inequities in our society and the mental health crisis in our profession, as well as the changing opportunities and responsibilities created by developments in technology.

**APR 11(f)(2)(i)**

The Board’s suggested amendment to APR 11(f)(2)(i) strikes a phrase “including diversity and anti-bias with respect to the practice of law or the legal system, and;” this phrase would be moved to and reworded in APR 11(f)(2)(iii) under the suggested
amendments.

**APR 11(f)(2)(ii)**

The Board’s suggested amendment to APR 11(f)(2)(ii) strikes the words “diagnosable” and “conditions” as qualifiers to credits earned in the category of mental health. The Washington Attorneys With Disabilities Association provided feedback that the current language may stigmatize those with mental health illnesses, and discourage licensed professionals from seeking treatment due to fear of being diagnosed with a condition.

The rate of mental health and addiction issues in the legal profession is both widely recognized and notoriously high, and the profession as a whole has been slow to counteract these issues. The American Bar Association has addressed this in their model rule, which recommends that all lawyers be required to take one credit of programming every three years that focuses on the prevention, detection, and/or treatment of mental health disorders and/or substance use disorders.

Training can provide a helpful avenue to raise awareness of these obstacles. Training can also provide helpful reminders and instruction on how to access resources that are available to assist licensed legal professionals struggling with these issues.

Data shows that one in five people live with a mental health condition, many of which are unknown until activated by a life event (such as intersection with the legal system). Due to the lack of training and awareness around many mental health conditions, legal professionals are often unprepared to address and serve an individual who may need assistance or other forms of mental health first aid. Asking licensed legal professionals—who often encounter people with mental health conditions—to take training
on this topic is a more than reasonable request to help protect both the public and the legal profession.

**APR 11(f)(2)(iii)**

The suggested amendment in this section replaces the phrase currently in section APR 11(f)(2)(i) with the phrase “equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, including client advising.” This wording replaces the wording “diversity” with “equity, inclusion, and mitigation of implicit and explicit bias” at the suggestion of the Washington Attorneys with Disabilities Association. The suggestion was supported by the Korean American Bar Association and the South Asian Bar Association of Washington. Similarly, the Middle Eastern Legal Association of Washington and the Loren Miller Bar Association advised changing the language to incorporate “unconscious bias”. The MCLE Board believes the intent of that language is captured by adding “implicit” and “explicit” to the proposed amendment.

Objective data demonstrates that the population of Washington State is rapidly becoming more racially diverse. Increasing the cultural competencies of our legal professionals will equip each of its members to better serve the public today.

Given the diversity of our community, it is important to understand the different lived experiences of others. Certain assumptions, attitudes, words, phrases and behaviors can harm others, negatively impact their mental and social well-being, and deny them their due economic wellness. Words can be confusing and change interactions if misused; they can also help persuade a judge or jury, sway negotiations, and determine how we meet our clients’ needs. An individual’s tone of voice, and non-verbal cues also impact how we interact with others. By understanding and identifying
biases and interrupting their adverse impacts on others, the Washington licensed legal professionals can better understand their clients’ needs and other points of view. It is a business imperative to understand bias. Being aware of our own bias and being sensitive to different perspectives can establish communication bridges. Through this communication, an attorney can become a credible source, build client relationships, and gain others’ trust or convince another to see the other side of an argument.

No one is without some sort of bias. Recognizing our own biases, whether they be positive or negative, implicit or explicit, is a continual process. Opponents’ claims that such courses would shame or target a particular group are erroneous. The equity requirement is not about shaming a particular group; any attempts to shame are counterproductive and a detour from achieving equitable outcomes. It is about understanding how one’s bias can have adverse impact on the equitable practice of law.

Additionally, knowing that a significant segment of our colleagues and clients face unfair treatment in the legal community, including by legal professionals, requires purposeful action. Both racial discrimination and gender bias remain prevalent issues in the legal community. According to the National Association for Law Placement’s 2018 Diversity Report, women make up nearly 42% of the profession, but only about 23% are represented at the level of partner. A similar disparity is evident with racial minorities, which comprise nearly 17% of the profession, but only 9% are represented at partner level. Mandatory training in this area is both proper and necessary.

The original report and recommendation of the WSBA Diversity Committee and Washington Women Lawyers (with the support of multiple minority bar associations) demonstrates the need for education within the profession across all categories of
Washington licensed legal professionals (private practitioners, government lawyers, professors and instructors, judges, regulators, in house counsel, LLTs, LPOs etc.), to raise the awareness and sensitivity of Washington lawyers to diversity issues, and particularly with respect to equity, inclusion, and both implicit and explicit biases. Our role as licensed legal professionals should be to work to eliminate our own biases, and to have a positive effect on both the profession and Washington generally. Intuitively, this is an idea whose time has more than come.

Promoting equity and inclusion drives better business outcomes. Having individuals that think differently, by virtue of their distinct backgrounds and experiences, encourages creative thinking and innovation. This is particularly important amongst decision-makers. Conversely, failing to include diverse perspectives can result in a failure to take useful risks and ultimately lead to stagnation. The business sector as a whole has recognized this reality, with many major employers in this state and elsewhere investing in diversity even when not required by law. The legal profession needs to catch up in this regard.

Addressing issues of equity and inclusion is not political move, but a practical one. It is an undeniable fact that certain communities – such as people of color, those with disabilities, and those with non-majority religions, to name just a few – do not have and have not had the same opportunities as others who have not been marginalized.

Members of the MCLE Board talked to citizens of Washington State, who are not licensed to practice law, about this proposal. Board members heard consistently that this proposal is necessary to ensure appropriate treatment and consideration of the various
issues and concerns the general public faces, no matter who is in office, or running local, state, and national government.

Promoting equity and inclusion is appropriate for the Bar, and is covered under GR 12.1 (j), which cites “diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system” as a regulatory objective. It is therefore both appropriate and beneficial for the Washington Supreme Court to mandate training to help licensed legal professionals gain awareness and understanding of these issues. While it is true that training does not guarantee equitable and inclusive outcomes, training does result in an increased understanding of various topics, especially in a legal context where rules and regulations change constantly. For example, discussion around visible and invisible disabilities allows us, as legal professionals, to better identify legal concerns facing these communities. If we fail to take action while the rest of society engages in this conversation, we risk providing inadequate counsel to our clients as well as the community at large. Given our position in society as rule makers and legal deciders, we cannot afford to sit back and react only when a lawsuit or other grievance takes place.

**APR 11(f)(2)(iv)**

The suggested amendment includes the addition of section APR 11(f)(2)(iv), which requires that all licensed legal professionals complete one credit each reporting period in “the use of technology in the practice of law as it pertains to a lawyer’s, LLLT’s, or LPO’s professional responsibility, including how to maintain the security of electronic or digital property, communications, data, and information.”

RPC 1.2 provides in relevant part, “To maintain the requisite knowledge and skill,
a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. Attention should be paid to the benefits and risks associated with relevant technology.”

The rise of technology in the practice of law creates several risks and raises several ethical questions. The following are only some examples of technology scenarios that lead to ethical issues and concerns. CLEs on these topics give the membership guidance that could prevent negative outcomes for both legal professional and client.

Law firms are increasingly using Artificial Intelligence such as “chatbots” to deliver legal services and communicate with clients about their legal needs. The use of artificial intelligence raises ethical questions for licensed legal professionals. For example, do legal professionals have an ethical duty to train and supervise bots? (See e.g., RPC 5.1 or 5.3) Can a legal professional or law firm be disciplined for the conduct of a bot? Bots have access to a person’s personally identifiable information and other sensitive financial and medical data. Thus, are law firms in the US that service international corporate clients subject to the requirements of the General Data Protection Regulation enacted in the European Union?

Technological advances provide legal professionals with new ways to contact prospective clients. For example, when text messages are being used by some businesses to advertise services ethical questions are raised. For example, if RPC 7.3 prohibits lawyers from directly soliciting prospective clients using real-time electronic contact, do text messages constitute real-time electronic contact? Must texts follow Rule
7.2, which requires any communications to include the name and office address of at least one lawyer or law firm responsibility for its content?

In client communications, the use of text messages raises concerns about whether and how confidentiality can be maintained in these communications and what steps a legal professional should take to ensure client information is protected. ABA Opinion 477 includes a warning for communicating or advertising by text: “... electronic communication through certain mobile applications or on message boards or via unsecured networks may lack the basic expectation of privacy afforded to email communications.” Therefore, legal professionals must, on a case-by-case basis, constantly analyze how they communicate electronically about client matters, applying the Comment [18] factors to determine what effort is reasonable.”

Texting raises several concerns. For example, if a legal professional uses texting to communicate with clients generally, is the legal professional aware that others may have access to the client’s mobile device? Also, text message exchanges are not separately recorded by the cellular provider indefinitely for future reference. Therefore, do legal professionals need to transfer and backup text messages from their mobile phones to their computers?

Furthermore, security breaches are so prevalent, that the question today is not if, but when. The New York Ethic Opinion 1019 warned lawyers in May 2014: “Cyber-security issues have continued to be a major concern for lawyers, as cyber-criminals have begun to target lawyers to access client information, including trade secrets, business plans and personal data. Lawyers can no longer assume that their document systems are of no interest to cyber-crooks.”
On October 17, 2018, ABA Formal Opinion 483, “Lawyers’ Obligations After an Electronic Data Breach or Cyberattack,” warned, “Data breaches and cyber threats involving or targeting lawyers and law firms are a major professional responsibility and liability threat facing the legal profession. As custodians of highly sensitive information, law firms are inviting targets for hackers. In one highly publicized incident, hackers infiltrated the computer networks at some of the country’s most well-known law firms, likely looking for confidential information to exploit through insider trading schemes.”

Twenty-two percent (or one in five) of law firms experienced a cyber-attack or data breach in 2017, up fourteen percent from the previous year. Is our membership aware of the phishing campaigns that hackers use to gain access? Phishing scams specifically targeting lawyers have become frequent enough that the State Bar of Texas maintains an updated list, on their blog, notifying attorneys of recent scams.

The consequences of data breaches are significant. Forty-one percent of respondents to the ABA’s 2018 Legal Technology Survey who experienced a data breach reported downtime or other loss of billable hours. Twenty-nine percent reported their firm did not have security policies and seven percent admitted they did not know whether or not their firm had any policies. Only thirty-five percent had an incident response plan for a data breach. Most importantly, do firms have an ethical duty to notify their clients of a breach? If so, there is a current significant ethical issue not being addressed by WSBA members given the ABA’s 2018 Legal Technology Survey that found only eleven percent of law firms who had a security breach notified their clients of the data breach.

Conclusion

Washington has an opportunity to take the lead by adopting a requirement that
training in all three categories become mandatory. Multiple states require at least one of each of these three categories, with several states requiring two of the three. To recognize the importance of these categories of continuing education and to require them is to identify Washington as a leader in its approach to MCLE (as well as avoid a later amendment to add any categories left out at this time). Also, in light of the systems costs involved to add an ethical requirement to enable online tracking in the compliance database, it would be more cost effective to make the necessary changes at once rather than add requirements over the coming years. The time is ripe to adopt all three requirements.

The MCLE Board recommends that these suggested amendments become effective on September 1, 2021, and that the first group of licensed legal professionals who will be required to report the three ethics credits on these new subjects be those who are in the 2022-2024 MCLE reporting period. This will allow time for WSBA staff to develop tracking mechanisms in the MCLE database and to notify both licensed legal professionals and CLE sponsors of the new requirements. In addition, an effective date of September prior to the start of the 2022-2024 reporting period allows the Bar’s MCLE staff to accredit courses taking place in 2022 according to the new requirements.

D. **Hearing:** Because of the outreach conducted and input previously received by the MCLE Board, a hearing is not requested.

E. **Expedited Consideration:** Expedited consideration is not requested.

F. **Supporting Material:** In addition to the submission of the suggested amendments to APR 11, attached is the MCLE Board Report and Preliminary Proposal for the suggested APR 11 Amendment.

WSBA Board of Governors Meeting on September 2019. Video of Review and Comments Re Mandatory Continuing Legal Education (MCLE Board) Suggested Amendment to APR 11 Ethics Requirement: [http://link.videoplatform.limelight.com/media/?channelListId=34d9718a114a453fa4067f9dad13df94&width=960&height=360&playerForm=WidescreenTabbedPlayer](http://link.videoplatform.limelight.com/media/?channelListId=34d9718a114a453fa4067f9dad13df94&width=960&height=360&playerForm=WidescreenTabbedPlayer)

ABA Model Rule: [https://www.americanbar.org/content/dam/aba/directories/policy/2017_hod_midyear_106.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/2017_hod_midyear_106.pdf)


ABA Formal Opinion 477: [https://www.americanbar.org/content/dam/aba/administrative/law_national_security/ABA%20Formal%20Opinion%20477.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/law_national_security/ABA%20Formal%20Opinion%20477.authcheckdam.pdf)

ABA Formal Opinion 483: [https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_op_483.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_op_483.pdf)


TITLE
ADMISSION AND PRACTICE RULES (APR)
RULE 11. MANDATORY CONTINUING LEGAL EDUCATION (MCLE)
Sections (a) – (b)
No Changes.
(c) Education Requirements.
(1) Minimum Requirement. Each lawyer must complete 45 credits and each LLLT and LPO
must complete 30 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), with at least one credit from each of subsections (f)(2)(ii), (iii), and
(iv).
Sections (c)(2) – (e)
No Changes.
(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:
(i) the general subject of professional responsibility and conduct standards for
lawyers, LLLTs, LPOs, and judges, including diversity and anti-bias with
respect to the practice of law or the legal system, and;
(ii) the risks to ethical practice associated with diagnosable mental health
conditions, addictive behavior, and stress;
SUGGESTED AMENDMENTS TO APR 11 (Redline)

(iii) equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, including client advising; and

(iv) the use of technology in the practice of law as it pertains to a lawyer’s, LLLT’s, or LPO’s professional responsibility, including how to maintain the security of electronic or digital property, communications, data, and information.

Sections (f)(3) – (k)

No Changes.
SUGGESTED AMENDMENTS TO APR 11 (Clean)

TITLE

ADMISSION AND PRACTICE RULES (APR)

RULE 11. MANDATORY CONTINUING LEGAL EDUCATION (MCLE)

Sections (a) – (b)

No Changes.

(c) Education Requirements.

(1) Minimum Requirement. Each lawyer must complete 45 credits and each LLLT and LPO must complete 30 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), with at least one credit from each of subsections (f)(2)(ii), (iii), and (iv).

Sections (c)(2) – (e)

No Changes.

(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:

   (i) the general subject of professional responsibility and conduct standards for lawyers, LLLTs, LPOs, and judges;

   (ii) the risks to ethical practice associated with mental health, addictive behavior, and stress;
(iii) equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, including client advising; and

(iv) the use of technology in the practice of law as it pertains to a lawyer’s, LLLT’s, or LPO’s professional responsibility, including how to maintain the security of electronic or digital property, communications, data, and information.

Sections (f)(3) – (k)

No Changes.
REPORT AND PRELIMINARY RECOMMENDATION OF THE WASHINGTON SUPREME COURT
MANDATORY CONTINUING LEGAL EDUCATION BOARD RE: PROPOSED AMENDMENT TO APR 11

Background

At the Washington State Supreme Court Mandatory Continuing Legal Education Board (MCLE) meeting on October 5, 2018, the WSBA Diversity Committee presented to the MCLE Board a proposed amendment to Rule 11 of the Washington Supreme Court’s Admission and Practice Rules (APR 11). The proposal was drafted by the WSBA Diversity Committee and the Washington Women Lawyers with the support of eight minority bar associations: the Asian Bar Association of Washington, Cardozo Society of Washington State, Filipino Lawyers of Washington, Pierce County Minority Bar Association, Loren Miller Bar Association, Latina/o Bar Association of Washington, South Asian Bar Association of Washington, and QLaw. Their proposal was to require that at least one of the six ethics credits licensed legal professionals are required to earn each reporting period be on the topic of “equity, inclusion and the mitigation of bias in the legal profession”. Following the presentation, the MCLE Board formed a subcommittee to study the proposal and make a recommendation to the MCLE Board.

The subcommittee provided a report and recommendation at the January 2019 MCLE Board meeting. Based on the factors and information discussed below, the subcommittee recommended that the MCLE Board propose an amendment that included not only a required credit for equity, inclusion, and anti-bias but also one credit for mental health and addiction, and technology education focusing on digital security for a total of three of the six required credits. The MCLE Board approved the recommendation by the subcommittee and sought feedback about the proposed amendment from key stakeholders including board and committee members in the Bar, minority bar associations, providers of CLE seminars, and former members of the MCLE Task Force. After considering the feedback, the subcommittee proposed revised amendments at the May 2019 meeting of the MCLE Board. The MCLE Board adopted the revised preliminary recommendation as set forth below, and is now seeking feedback on this proposal.

Preliminary Recommendation

The following preliminary recommendation would amend the ethics requirement under Admission and Practice Rule (APR) 11 to require one credit in each of the following subjects: 1) inclusion and anti-bias, 2) mental health, addiction, and stress, 3) technology education focusing on digital security, per reporting period. The MCLE Board recommends the following amendments to APR 11:

APR 11(c)(1)(ii)

(ii) at least six credits must be in ethics and professional responsibility, as defined in subsection (f)(2), with at least one credit from each of subsections (f)(2)(ii), (iii), and (iv).
(2) Ethics and professional responsibility, defined as topics relating to:

(i) the general subject of professional responsibility and conduct standards for lawyers, LLLTs, LPOs, and judges, including diversity and anti-bias with respect to the practice of law or the legal system, and;

(ii) the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;

(iii) equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, including client advising; and

(iv) the use of technology in the practice of law as it pertains to a lawyer, LLLT, or LPO’s professional responsibility, including how to maintain the security of electronic or digital property, communications, data, and information.

If the amendment is adopted by the Washington State Supreme Court, the MCLE Board would recommend a target implementation date of January 1, 2021.

Basis for Recommendation

Upon review of the materials and consideration of available information, it became apparent to the MCLE Board that national trends are moving toward increased requirements in education in the topics of diversity, inclusion and anti-bias, mental health and addiction, and technology education focusing on digital security. A few of the largest states have already implemented one or more of these requirements, including California, Illinois, New York and Florida. The MCLE Board believes these three areas are among the most important issues facing not only the legal profession but also the general population in the United States today.

The MCLE Board believes that, in addition to the initially recommended topic of equity, inclusion, and anti-bias in the legal profession, the topics of mental health and technology are very likely to come under consideration at some time in the near future. The MCLE Board believes that it makes sense to implement these new requirements contemporaneously rather than piecemeal. In addition, the rulemaking process can take a considerable amount of time. Implementing them now is more efficient and prevents unnecessary delay in the future.

The MCLE Board notes that this recommendation does not include a recommendation to increase the total number of ethics credits required for each reporting period. Instead, it requires that three of the ethics credits be in the identified topics. The MCLE Board also notes that two of these topics are already included as eligible for credit in the current ethics category, but they are not specifically required.
Factors & Information
In determining this preliminary recommendation, the MCLE Board considered the following factors and information:

- **Need for Equity, Inclusion and Mitigation of Bias in the Legal Profession**
  
The MCLE Board reviewed the information and materials provided by the WSBA Diversity Committee that discussed the need for mandatory diversity and mitigation of bias training for all licensed legal professionals. The MCLE Board believes that education in this area is of paramount importance, would benefit all licensed legal professionals whether they are currently engaged in the active practice of law or not, and would serve the purpose of APR 11 of assisting legal professionals’ competence, fitness to practice, and character.

- **ABA Model Rule for Minimum Continuing Legal Education (2017)**
  
The ABA recently amended its Model Rule for MCLE. Section 3(A) of the ABA Model Rule recommends that jurisdictions require one credit per year in the area of ethics and professionalism (which would be three credits for a three-year reporting period as in Washington). In addition, it recommends one credit every three years in the specific areas of mental health and substance abuse disorders, and one credit every three years in diversity and inclusion. That is a total of five required credits in a three year period. Washington already requires six credits in ethics and professional responsibility, one more than the total recommended by the ABA.

- **Trends in United States Jurisdictions**
  
  A review of the MCLE requirement in other U.S. jurisdictions found that four states have adopted a diversity requirement. In addition, five states have adopted a mental health or substance abuse requirement, and, two states have adopted a technology education requirement. Given the recommendation by the ABA and the trend so far in the United States, the MCLE Board decided to recommend the adoption of mental health/substance abuse as a requirement, not just as a permitted ethics topic, in Washington as well. The MCLE Board notes that it appears states are starting to include requirements for continuing education in technology. However, instead of a general technology requirement, the MCLE Board believes a technology requirement should focus on digital security and the protection of confidential information, which relates to ethical requirements of competency.

- **Intent of APR 11**
  
  Another factor considered by the MCLE Board was the intent of APR 11. When APR 11 was rewritten by the MCLE Task Force in 2014, the MCLE Task Force issued a report that recognized that not all active members are practicing law and stressed the importance of the relevance of the education to the individual. In its July 2014 report, the task force wrote:
One of the fundamental premises on which the task force bases its recommendations is that Washington lawyers are not only engaged in the traditional lawyer-client representation, but that there is an increasing amount of lawyers in Washington whose career options or employment are in a myriad of different legal and nonlegal professions. ...

The task force’s proposed new rules recognize, in its requirements, that a lawyer who is not practicing law in the traditional sense is still licensed to practice while an active member of the Bar. The task force’s recommendations, therefore, attempt to strike a balance between the needs of protecting the public and the needs of all lawyers who may or may not be practicing law but could do so at any moment in any given situation.

The report’s conclusion included:

The recommendations also address specific current and future needs of WSBA members wanting healthier practices and recognition that the practice of law – and use of a lawyer’s skills – is much wider than in the past. In addition, the recommendations are based on solid pedagogical grounding – that mandatory legal education is only effective if it addresses a lawyer’s true needs and is relevant to the lawyer. The public is also best protected and served when members take courses that address true need.

• **Resources and Time Needed to Implement**

The MCLE Board considered the input from WSBA staff about resources needed to implement an amendment of this type. WSBA staff reported that it would be impractical to implement the rule prior to January 1, 2021. In addition, due to the current technological structure of the MCLE online system, it would be difficult, if not impossible, to incorporate a change to the credit structure into the current system. It would also result in delays to other technology projects underway at the WSBA. The WSBA is currently planning and working on a revision to the MCLE system in order to improve the general functioning of the system and to incorporate LLLTs and LPOs; therefore, it would be easier to include a change to the credit structure into those plans at this time, rather than later. Although implementation would be approximately nineteen months out, that is only a few months longer than a normal rule-making schedule. Suggested rules generally go to the Washington Supreme Court in October, and if adopted, are effective the following September. Because the MCLE requirements are based on three calendar-year reporting periods, it would be logical for any new requirement adopted by the Supreme Court to start on a January 1 so that all members will have, at a minimum, one year to meet any new requirement.

**Changes to the Proposed Amendment Based on Initial Stakeholder Feedback**
The MCLE Board reviewed initial feedback provided by key stakeholders including minority bars, former MCLE Task Force members, and CLE Sponsors. The MCLE Board adopted suggestions from the Washington Attorneys with Disabilities Association (WADA). WADA suggested removing “diagnosed” and “conditions” from APR 11(f)(2)(ii) in an effort to reduce stigmatization that may deter lawyers from seeking treatment and support. The MCLE Board also adopted WADA’s suggestion of adding “implicit and explicit” before bias in APR 11 (f)(2)(iii). WADA’s suggestions were supported by the Korean American Bar Association and the South Asian Bar Association of Washington.

Similarly, the Middle Eastern Legal Association of Washington and the Loren Miller Bar Association advised changing the language to incorporate “unconscious bias”. The MCLE Board believes the intent of that language is captured by adding “implicit” and “explicit” to the proposed amendment. The MCLE Board added language to clarify that technology and security credits must also pertain to a lawyer, LLLT, or LPO’s professional responsibility to qualify for ethics credit.

Request for Comment from Members

The MCLE Board would like to hear from all WSBA members about the proposed amendment to APR 11. Please provide your feedback by emailing the MCLE manager, Adelaine Shay at adelaines@wsba.org by August 8th, or by attending the MCLE Board meeting on Aug. 16, 2019 comments will be heard from 10:05 AM to 10:25AM at WSBA, 1325 Fourth Ave, Suite 600, Seattle, WA.

Proposed Schedule

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>June – July 2019</td>
<td>Member Comment</td>
<td>Share Report with members for comment</td>
</tr>
<tr>
<td>Aug 16, 2019</td>
<td>MCLE Board Meeting</td>
<td>Revise if needed after member comments</td>
</tr>
<tr>
<td>September 26 2019</td>
<td>BOG Meeting</td>
<td>Share with BOG for FYI</td>
</tr>
<tr>
<td>October 2019</td>
<td>MCLE Board</td>
<td>Revise if needed if any feedback from BOG</td>
</tr>
<tr>
<td>Oct 15, 2019</td>
<td>Deadline</td>
<td>Send recommendation to Court; request effective date Jan 1, 2021</td>
</tr>
</tbody>
</table>

Attachments

1. Proposal from WSBA Diversity Committee
2. Additional Statistical Support for MCLE Requirement on Equity, Inclusion and Mitigation of Bias
3. ABA Model Rule for Minimum Continuing Legal Education (2017)
4. MCLE Requirements in United States Jurisdictions
5. MCLE Task Force Report, July 2014
Proposal from WSBA Diversity Committee and Washington Women Lawyers
MCLE Committee:

We are pleased to submit the attached amendment proposal to your committee. Other state bar associations have adopted rules that require each bar member to earn a CLE credit based on Equity, Inclusion and the Mitigation of Bias principles. The ABA supports the concept as well. Washington Women Lawyers brought the idea to the WSBA Diversity Committee where the idea was enthusiastically supported. We urge the committee to consider adopting such a requirement for WSBA members. We have consulted several of the Washington Minority Bar Associations. In addition to Washington Women Lawyers, we have met with the Asian Bar Association, the Cardozo Society of Washington State, the Filipino Lawyers of Washington, and the Pierce County Minority Bar Association who have endorsed the proposed rule amendment. We anticipate receiving support from other MBA’s as well.

Both myself and Karrin Klotz, on behalf of the Washington Women Lawyers, look forward to discussing the proposal with you at your meeting on October 5, 2018. I am hopeful that there will be a call-in number as I will be attending the Tacoma—Pierce County Bar Association Convention in Bellingham on the 5th. Karrin will attend in person.

In the meantime, if you have any questions, please feel free to contact one of us.

Thank you for your consideration.

Laura Wulf
WSBA Diversity Committee Member
1. Proposed New CLE Requirement:

That Washington requires each member of the WSBA to take one stand-alone hour of approved continuing legal education activity every three years in an area called Equity, Inclusion and the Mitigation of Bias in the legal profession, and the practice of law, including client advising. Qualifying CLEs would include courses and activities regarding implicit and explicit bias, equal access to justice, serving a diverse population, equity and inclusion initiatives in the legal profession and society, and raising awareness and sensitivity to myriad differences when interacting with members of the public, judges, jurors, litigants, attorneys, court personnel, other employees, executives, and customers.

The mitigation of bias aspect shall be designed to help legal professionals identify and mitigate implicit and explicit bias in the practice of law against persons based on, for example: race, gender, economic status, creed, color, religion, national origin, disability, political ideology, breastfeeding in a public place, military or veteran status, age, sexual orientation, sex, gender identity, ancestry, parental status, marital status, ethnicity, and use of a service animal. The protected categories include those under federal, state and Seattle laws, which employers must follow depending on number of employees or whether they are engaging in business activities that otherwise create a jurisdictional nexus to employee-protection laws.

APR 11(c)(1)(ii) requires six credits in "ethics and professional responsibility," as defined in APR 11(f)(2). Currently, programs related to “diversity or antibias with respect to the practice of law or the legal system” can be applied toward the six-credit minimum at each member’s option. Our proposal would revise APR 11(c)(1)(ii) to stipulate that at least one of the six ethics and professional responsibility credits focus on equity, inclusion, and the mitigation of bias.

One option for building such a requirement into the existing framework is highlighted below:

APR 11(c)(1)(ii): at least six credits must be in ethics and professional responsibility, as defined in subsection (f)(2), with at least one of the six credits from subsection (f)(2)(ii).

APR 11(f)(2): Ethics and professional responsibility, defined as topics relating to (i) the general subject of professional responsibility and conduct standards for lawyers, LLLTs, LPOs and judges, including the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress or (ii) equity, inclusion and the mitigation of bias in the legal profession and the practice of law, including client advising.

2. Justification for New CLE Requirement:

Diversification of gender, race, age and abilities in positions of power continues to be an unresolved issue. For example, women or minorities represented 66% of Washington’s population in a recent study but just 44% of its state judges.1 In private practice, women and minorities represent 59% of junior associates nationwide but just 24% of equity partners.2 Meanwhile, bias continues to affect the legal profession and the practice of law, which is one reason Washington changed General Rule 37 earlier this year to help combat implicit bias in jury

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2 Marc Brodherson et al., Women in Law Firms 3 (McKinsey & Company 2017).
selection and the U.S. District Court for the Western District of Washington asks all jurors to watch a video on unconscious bias. While explicit bias may be rare in our profession, “we all live our lives with stereotypes that are ingrained and often unconscious, implicit biases that endure despite our best efforts to eliminate them.”

We can help by ensuring legal professionals have practical tools and tips for recognizing and mitigating explicit and implicit bias against underrepresented populations in the legal profession and in the practice of law, including in court and when counseling clients who face these issues in their own entities. Qualifying CLEs could also help us work toward a more diverse and self-aware profession by focusing on best practices for increasing inclusion and mitigating bias, such as policies and procedures that recognize and address the needs of specific underrepresented populations, impact litigation, and other methods for increasing diversity.

This MCLE requirement will help legal practitioners recognize and mitigate their own bias and biases within the profession to better serve the public. This is a topic that is crucial to maintaining public confidence in the legal profession and the rule of law, and to promoting the fair administration of justice.

We propose, as the ABA Model Rule for Minimum Continuing Legal Education does, that inclusion or bias mitigation training should be a stand-alone requirement to ensure that all lawyers receive minimal training in this area. Mandatory training is especially important here, due to the insidious nature of bias, which is “activated involuntarily and without an individual’s awareness or intentional control.” A lawyer who is not aware of his or her biases may not opt in to specialty training. However, bias affects even the best of us and mandatory training would help mitigate its effects on our profession through education and awareness.

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6 The Kirwan Institute for the Study of Race and Ethnicity at The Ohio State University, Understanding Implicit Bias, http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/ (last visited September 2018).
Additional Statistical Support for MCLE Requirement on Equity, Inclusion and Mitigation of Bias
I contacted Retired Justice Faith Ireland about the issue of support for our proposal for a required MCLE on "Equity, Inclusion & Mitigation of Bias" and she sent me the below link for your follow-up purposes:

http://projectimplicit.org/demopapers.html
ABA Model Rule for Minimum Continuing Legal Education (2017)

Please view the model rule on the ABA webpage:
https://www.americanbar.org/content/dam/aba/directories/policy/2017_hod_midyear_106.pdf
MCLE Requirements in United States Jurisdictions
<table>
<thead>
<tr>
<th>STATE</th>
<th>REQ TOTALS*</th>
<th>REQ CATEGORIES</th>
<th>NOTES</th>
<th>GOVERNING RULE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>12 T/yr</td>
<td>Of these, 1 E/professional</td>
<td>No mention of diversity/anti-bias</td>
<td>AL State Bar Rules for MCLE</td>
</tr>
<tr>
<td>Alaska</td>
<td>3 E/yr, and 9 T/yr voluntary CLE</td>
<td>3 E/yr</td>
<td>No mention of diversity/anti-bias</td>
<td>Rule 65</td>
</tr>
<tr>
<td>Arizona</td>
<td>15 T/yr</td>
<td>Of these, 3 credits of prof. resp.</td>
<td>No mention of diversity/anti-bias</td>
<td>Rule 45</td>
</tr>
<tr>
<td>Arkansas</td>
<td>12 T/yr</td>
<td>Of these, 1 in ethics (which may include professionalism)</td>
<td>No mention of diversity/anti-bias</td>
<td>AR MCLE Rule 3</td>
</tr>
<tr>
<td>California</td>
<td>25 T/3 yrs</td>
<td>Of these, 4 E plus 1 Substance Abuse/Mental Illness, plus 1 Elim. of Bias in legal prof. (originally effective 2008, in 2014 elim of bias definition broadened to include not just w/n practice of law)</td>
<td>1 ELIM OF BIAS REQUIRED (separate from 4 E required)</td>
<td>Rule 2.5</td>
</tr>
<tr>
<td>Colorado</td>
<td>45 T/3 yrs</td>
<td>Of these, 7 E</td>
<td>Topics on diversity included but not required</td>
<td>Rule 250</td>
</tr>
<tr>
<td>Connecticut</td>
<td>12 T/yr</td>
<td>Of these, 2 E/prof. resp.</td>
<td>No mention of diversity/anti-bias</td>
<td>Practice Book §2-27A</td>
</tr>
<tr>
<td>Delaware</td>
<td>24 T/2 yrs</td>
<td>Of these, 4 E</td>
<td>No mention of diversity/anti-bias</td>
<td>DE Rules for CLE</td>
</tr>
<tr>
<td>Florida</td>
<td>33 T/3 yrs</td>
<td>Of these, 5 E plus 3 technology programs</td>
<td>Topics on bias elimination included but not required</td>
<td>Rule 6-10.3</td>
</tr>
<tr>
<td>Georgia</td>
<td>12 T/yr</td>
<td>Of these, 1 E, 1 professionalism, (&amp; 3 trial hrs for trial attys only)</td>
<td>Diversity included in professionalism definition but not required</td>
<td>GA State Bar Rule 8-104</td>
</tr>
<tr>
<td>Hawaii</td>
<td>3 T/yr &amp; 1 E/3 yrs</td>
<td>Separate requirement -1 E/prof. resp. every 3 yrs</td>
<td>Topics on bias awareness/prevention included but not required</td>
<td>RSCH Rule 22</td>
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<tr>
<td>Idaho</td>
<td>30 T/3 yrs</td>
<td>Of these, 3 E/prof. resp.</td>
<td>No mention of diversity/anti-bias</td>
<td>IBCR 402</td>
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<tr>
<td>Illinois</td>
<td>30 T/2 yrs</td>
<td>Of these, 6 PMCLE (Prof. Resp. MCLE) incl. at least 1 diversity/inclusion AND 1 Mental health/sub. Abuse (effective 2019 - D&amp;I req.)</td>
<td>1 DIVERSITY/INCLUSION REQUIRED (as part of 6 T E required)</td>
<td>IL Supreme Court Rule 790-798</td>
</tr>
<tr>
<td>Indiana</td>
<td>36 T/3 yrs (6T/yr)</td>
<td>Of 36 T, 3 E/prof. resp.</td>
<td>No mention of diversity/anti-bias</td>
<td>Admission &amp; Discipline Rule 29</td>
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<tr>
<td>Iowa</td>
<td>15 T/yr &amp; 3 E/2 yrs</td>
<td>3 E/2 yrs</td>
<td>Topics on diversity included but not required</td>
<td>Commission on CLE Ch. 41, 42</td>
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<tr>
<td>Kansas</td>
<td>12 T/yr</td>
<td>Of these, 2 E/prof.</td>
<td>No mention of diversity/anti-bias</td>
<td>Rule 802, 803</td>
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<td>Kentucky</td>
<td>12 T/yr</td>
<td>Of these, 2 E</td>
<td>No mention of diversity/anti-bias</td>
<td>KT SCR 3.6</td>
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<tr>
<td>Louisiana</td>
<td>12.5 T/yr</td>
<td>Of these, 1 E AND 1 Professionalism</td>
<td>No mention of diversity/anti-bias</td>
<td>LA SCR for CLE Part H</td>
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<td>Maine</td>
<td>11 T/yr</td>
<td>Of these, 1 professionalism</td>
<td>Topics on diversity included but not required</td>
<td>ME Bar Rule 5</td>
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<tr>
<td>State</td>
<td>Hours</td>
<td>Requirement Details</td>
<td>Additional Notes</td>
<td></td>
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<tr>
<td>---------------</td>
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<tr>
<td>Maryland</td>
<td>none</td>
<td>New admittees only – day long Practicing with Professionalism course</td>
<td>Practicing with Professionalism keynote topic - Elim of bias</td>
<td>SJC Rule 3:16</td>
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<tr>
<td>Michigan</td>
<td>none</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Minnesota</td>
<td>45 T/3 yrs</td>
<td>Of these, 3 E/prof. resp. plus 2 Elim. of Bias (effective 2016)</td>
<td>2 ELIM OF BIAS REQUIRED</td>
<td>MN Rules of the Board of CLE</td>
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<tr>
<td>Mississippi</td>
<td>12 T/yr</td>
<td>Of these, 1 E/prof. resp.</td>
<td>No mention of diversity/anti-bias</td>
<td>MS Rules &amp; Regs for MCLE</td>
</tr>
<tr>
<td>Missouri</td>
<td>15 T/yr</td>
<td>Of these, 2 professionalism</td>
<td>No mention of diversity/anti-bias</td>
<td>Rule 15</td>
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<tr>
<td>Montana</td>
<td>15 T/yr</td>
<td>Of these, 2 E</td>
<td>No mention of diversity/anti-bias</td>
<td>MT Rules for CLE</td>
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<tr>
<td>Nebraska</td>
<td>10 T/yr</td>
<td>Of these, 2 prof. resp. (ethics)</td>
<td>Topics on diversity included but not required</td>
<td>NE SCR Ch 3 Art 4</td>
</tr>
<tr>
<td>Nevada</td>
<td>13 T/yr</td>
<td>Of these, 2 E, plus 1 substance abuse</td>
<td>No mention of diversity/anti-bias</td>
<td>NV SCR 210-215</td>
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<tr>
<td>New Hampshire</td>
<td>12 T/yr</td>
<td>Of these, 2 E/professionalism</td>
<td>No mention of diversity/anti-bias</td>
<td>NH SCR 53</td>
</tr>
<tr>
<td>New Jersey</td>
<td>24 T/2 yrs</td>
<td>Of these, 4 E/professionalism</td>
<td>No mention of diversity/anti-bias</td>
<td>NJ CR 1:42</td>
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<tr>
<td>New Mexico</td>
<td>12 T/yr</td>
<td>Of these, 2 E/professionalism</td>
<td>No mention of diversity/anti-bias</td>
<td>NM SCR 18-101 thru 303</td>
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<tr>
<td>New York*</td>
<td>24 T/2 yrs</td>
<td>Of these, 4 E/professionalism, plus 1 diversity &amp; inclusion/elim. of bias (effective 2018)</td>
<td>1 DIVERSITY &amp; INCLUSION/ ELIM. OF BIAS REQUIRED</td>
<td>NYCRR 1500</td>
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<tr>
<td>North Carolina</td>
<td>12 T/yr</td>
<td>Of these, 2 E/professionalism, plus 1 technology training (effective 2019), AND 1 mental health/sub abuse every 3 yrs</td>
<td>Topics on diversity included but not required</td>
<td>27 NCAC 1D, Sections .1500 and .1600.</td>
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<tr>
<td>North Dakota</td>
<td>45 T/3 yrs</td>
<td>Of these, 3 E</td>
<td>No mention of diversity/anti-bias</td>
<td>State Bar Assn of SD CLE Policies</td>
</tr>
<tr>
<td>Ohio</td>
<td>24 T/2 yrs</td>
<td>Of these, 2.5 E/professionalism, mental health, sub. Abuse, Access to Justice, Diversity</td>
<td>Topics on diversity included but not required</td>
<td>SCR for The Gvt of the Bar of OH Rule X</td>
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<td>Oklahoma</td>
<td>12 T/yr</td>
<td>Of these, 1 E</td>
<td>No mention of diversity/anti-bias</td>
<td>MCLE rules for the SC of OK</td>
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<tr>
<td>Oregon*</td>
<td>45 T/3 yrs</td>
<td>Of these, 5 E, plus 1 Elder Abuse Reporting, and every alternate RP- Of total, 3 Access to Justice; AND starting 2019, Of 45 T, 1 Mental Health/Sub. Abuse</td>
<td>No mention of diversity/anti-bias</td>
<td>OSB MCLE Rules &amp; Regs</td>
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<td>Pennsylvania</td>
<td>12 T/yr</td>
<td>Of these, 1 E/professionalism/sub. abuse</td>
<td>No mention of diversity/anti-bias</td>
<td>PACLE Rules &amp; Regs</td>
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<tr>
<td>Rhode Island</td>
<td>10 T/yr</td>
<td>Of these, 2 E/professionalism</td>
<td>Topics on diversity included but not required</td>
<td>RI Judiciary Art. IV Rule 3</td>
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<td>South Carolina</td>
<td>14 T/yr</td>
<td>Of these, 2 E/professionalism</td>
<td>No mention of diversity/anti-bias</td>
<td>SC Commission Regulations for MCLE</td>
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<td>State</td>
<td>Requirement</td>
<td>Credit Details</td>
<td>Diversity/Anti-Bias</td>
<td>Rule or Rule(s)</td>
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<tr>
<td>South Dakota</td>
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<td>none</td>
<td>No mention of diversity/anti-bias</td>
<td>TN SCR 21</td>
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<td>Tennessee</td>
<td>15 T/yr</td>
<td>Of these, 3 E/prof. resp.</td>
<td>No mention of diversity/anti-bias</td>
<td>TX St. Bar MCLE rule Article XII</td>
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<tr>
<td>Utah</td>
<td>24 T/2 yrs</td>
<td>Of these, 3 E/prof. resp. (1 of 3 must be professionalism/civility)</td>
<td>No mention of diversity/anti-bias</td>
<td>UT SCR of Prof. Practice Ch 14 Art 4</td>
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<td>Vermont</td>
<td>20 T/2 yrs</td>
<td>Of these, 2 E</td>
<td>No mention of diversity/anti-bias</td>
<td>VT SCR Rules for MCLE</td>
</tr>
<tr>
<td>Virginia</td>
<td>12 T/yr</td>
<td>Of these, 2 E/professionalism</td>
<td>No mention of diversity/anti-bias</td>
<td>VA SCR MCLE regs</td>
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<tr>
<td>Washington</td>
<td>45 T/3 yrs</td>
<td>Of these, 6 E</td>
<td>Topics on diversity included but not required</td>
<td>WA SC APR 11</td>
</tr>
<tr>
<td>West Virginia</td>
<td>24 T/2 yrs</td>
<td>Of these, 3 E</td>
<td>Topics on elim of bias included but not required</td>
<td>MCLE WV Rules</td>
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<tr>
<td>Wisconsin</td>
<td>30 T/2 yrs</td>
<td>Of these, 3 E/prof. resp.</td>
<td>No mention of diversity/anti-bias</td>
<td>WI SCR 31</td>
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<tr>
<td>Wyoming</td>
<td>15 T/yr</td>
<td>Of these, 2 E</td>
<td>Topics on diversity included but not required</td>
<td>Rules of WY St. Board or CLE</td>
</tr>
</tbody>
</table>

NOTE – WASHINGTON, DC HAS NO MCLE REQUIREMENT (not listed, as it is not a state, but it is a jurisdiction)

*New admittees may have additional requirements, but if there are any additional requirements concerning any different credit categories they will be listed here:

- **NY** new admittees must also complete 32T within the first two years of the date of admission, of which 16 T must be 3 E/professionalism; 6 must be skills; and 7 must be law practice management and areas of professional practice.
- **OR** new admittees must (NOT also, but only) complete in their first RP 15 T, including 2 E, and 10 practical skills. One of the E must be devoted to Oregon ethics and professionalism and four of the ten credits in practical skills must be devoted to Oregon practice and procedure. New admittees must also complete a three credit hour introductory course in access to justice.

**DIVERSITY/INCLUSION/ANTI-BIAS** – 4 (CA, IL, MN, NY)

**MENTAL HEALTH/SUBSTANCE ABUSE** – 5 (CA, IL, NV, NC, OR)

**OTHER SPECIFIED CREDIT CATEGORY** – 3 (FL, NC, OR)
MCLE Task Force Report

July 2014
REPORT AND RECOMMENDATIONS OF THE MCLE TASK FORCE

Background
The current MCLE rules and regulations have been amended several times over the years resulting in a long, complicated set of rules and regulations. In 2013, the MCLE Board, after receiving significant input from various sources and stakeholders, submitted a new set of suggested amendments to the Court. The suggested amendments in 2013 proposed new subject areas, credit caps on certain subjects and activities, and recommended requirements to be met to earn credits in some of the approved subjects and activities. The Court recognized the frequent amendments and difficulty in understanding the rules by all stakeholders and, therefore, tabled consideration of the suggested amendments and stated that they would wait for the Task Force’s comprehensive review of the MCLE rules.

The Process
The MCLE Task Force was charged with suggesting amendments to the MCLE rules in light of the changes in the areas of education and training, the rapidly changing legal services marketplace, and the widely varied needs of Washington lawyers and their clients in the 21st century. In order to accomplish their charge, the task force of about 20 members of the Bar Association met once a month for the last nine months. In between meetings, task force members studied MCLE related articles, information relating to best learning practices and reviewed evolving drafts of proposed APR 11 revisions. During the course of its work, the task force also heard from several different stakeholders and experts in related fields:

- Paula Littlewood, WSBA Executive Director, who discussed the future of the legal profession and the changes taking place in the 21st century.
- Mark Johnson, malpractice lawyer with Johnson Flora PLLC and past president of the BOG, who discussed malpractice claims and the fact that somewhat less than half of the claims result from substantive law knowledge errors and a significant number of claims result from administrative errors and client relations issues;
- Doug Ende, Chief Disciplinary Counsel, who discussed the underlying reasons for grievances and pointed out that violations of the RPC generally do not arise from a lack of understanding the RPCs. Rather, the data suggests that courses on improving the lawyer-client relationship would likely decrease the number of grievances;
• Peg Giffels, WSBA Education Programs Manager, who discussed key factors for learning, primarily that the subject matter be relevant and include practical application as opposed to a pure lecture format;

• Michal Badger, WSBA LAP Manager, who discussed the important correlation between a lawyer’s mental and emotional health and a lawyer’s career satisfaction;

• Mary Wells, WSBA LOMAP Advisor, who discussed the importance of technology related skills, employee relations skills, and practice management skills; and

• Supreme Court Justices Charles Johnson and Sheryl Gordon McCloud, who provided some insight into the matters important to the Court such as making sure the rules are relevant to the lawyers of today’s world and meet the original purpose of MCLE—keeping lawyers competent to practice law.

Finally, the task force sought and considered comments and feedback from the WSBA membership and CLE providers.

**Key Premises**

**Easy to Understand and Administer**

The task force recommends a complete rewrite of APR 11. The rules recommended by the task force are clear, concise and easy to understand. The comprehensive review of all of the current rules and regulations led the task force to conclude that the substance and purpose of MCLE, now and going forward, is better served by these new rules. The task force believes that these new rules will greatly increase the lawyer's understanding of how to earn MCLE credit, assist efficient administration of the MCLE program, and provide each lawyer expanded opportunities to grow in the profession.

**Expanding and Diverse Bar**

One of the fundamental premises on which the task force bases its recommendations is that Washington lawyers are not only engaged in the traditional lawyer-client representation, but that there is an increasing amount of lawyers in Washington whose career options or employment are in a myriad of different legal and nonlegal professions. In addition, the Bar is rapidly expanding with a large number of newer lawyers entering the profession while older lawyers are starting to retire. These newer lawyers are more diverse and more technologically savvy than previous generations of lawyers.

The task force's proposed new rules recognize, in its requirements, that a lawyer who is not practicing law in the traditional sense is still licensed to practice while an active member of the Bar. The task force’s recommendations, therefore, attempt to strike a balance between the needs of protecting the public and the needs of all lawyers who may or may not be practicing law but could do so at any moment in any given situation.

**Prevention**

Task force members understand that prevention of problems through education can have a positive impact on the practice of law. Several speakers and related materials addressed
the importance of creating and maintaining good lawyer-client relationships and office practices. The task force recognizes the importance of work-life balance and the fact that a happy, healthy lawyer makes a competent lawyer. Allowing lawyers to use MCLE to address lawyer-client, stress management, or office management issues will more likely increase overall client satisfaction and assist in preventing the types of issues that lead to lawyer discipline cases and malpractice claims.

**Self Regulation**
The task force also recognizes the fact that the profession is self-regulating. The task force has a great deal of trust and respect for the membership and strongly believes that lawyers, in terms of both a profession and as individuals, are perfectly capable, and should be able, to choose the education that best suits their needs for their particular situation. Learning something relevant to one’s situation is one of the key factors for successful learning. The recommendations are designed to address the needs of all lawyers by trusting each lawyer to decide what he or she most needs to remain competent and fit to practice law.

**The Future**
Finally, the task force recognizes that these recommendations are cutting edge and forward thinking. Yes, they are ahead of other states’ MCLE rules. But then so were the current rules when they were adopted. There is significant literature (including a recent ABA Committee analysis) to the effect that MCLE as currently structured is not effective in protecting the public or making better lawyers. The task force intentionally drafted rules for the future. It will be 2016 at the earliest before the new rules take effect. The task force is of the opinion that it is important to look ahead and plan for the changes in the legal landscape. These rules do that by foreseeing the needs of the whole membership, not just litigators or general practitioners, but all lawyers. By taking action now to address the educational and training needs of the membership as we see it, the lawyers of Washington will be better equipped to maintain their competence and professionalism which in turn serves to better protect the public in the long run.

**Recommendations**

**Purpose (Proposed APR 11(a))**
Based on those key premises, the task force recommends expanding and clearly defining the purpose of MCLE to include competence, character, and fitness. Those are the three fundamental requirements for admission to the practice of law that, therefore, should be maintained by any lawyer wishing to continue in the practice of law. The purpose also clearly states that public protection is an important purpose for MCLE.

**Education Requirements (Proposed APR 11(c))**
The task force recommends that lawyers be required to complete a minimum of 15 credits in “law and legal procedure” courses and a minimum of six “ethics and professional responsibility” credits. After having met these minimum requirements, lawyers may choose to earn the remaining 24 credits in any of the approved subject areas or approved activities that qualify for MCLE credit. This is a simplified structure without credit caps.
and numerous conditions for other approved activities and subject areas as found in the current rules.

“Law and Legal Procedure” Subject Area (Proposed APR 11(c)(1)(i) and (f)(1))
The "law and legal procedure" subject area continues the recognition of the importance of keeping current on the law. The task force recommends that a minimum of 15 credits be earned from “law and legal procedure” courses. This subject area represents the traditional, substantive, black letter law courses, including updates and developments in all areas of law and legal procedure. Any course related to substantive “law” or “legal procedure” falls into this subject area. This subject area was created to enable the new simplified structure to work properly. More importantly, requiring courses in this subject area eliminates the possibility, as it exists now, that any one lawyer could obtain all their credits through other approved activities without attending or completing a single traditional CLE course.

Approved Course Subjects (Proposed APR 11(f))
The task force recommends more diversity in the approved course subjects. As discussed above, after a lawyer meets the minimum 15 “law and legal procedure” course credits and the six “ethics” credits, the remaining credits may be earned in a number of other approved subject areas. All of the proposed course subjects relate directly to the practice of law and the legal profession. In fact, most of them are already approved for CLE credit under the existing rules or were included in the 2013 suggested amendments. These subject areas incorporate the needs of all lawyers as identified by the expert reports to the task force.

This structure allows lawyers who are engaged in the practice of law to choose to continue to supplement their knowledge of the law by attending additional “law” courses. On the other hand, lawyers may choose courses or activities that enhance their knowledge and skills relevant to their situation or the legal profession while at the same time maintaining minimum competence to practice law.

No “Live” Credit Requirement
The task force recommends the elimination of the “live” credit requirement. Currently, the rules require lawyers to earn at least half of their credits by attending courses that occur in real time—this includes live webcasts.

There are several factors that convinced the task force to eliminate the “live” credit requirement. Members often express concern about the cost of CLE courses—and not only the course tuition or registration fees. For many members, the cost of attending CLE courses in person includes travel expenses and time away from the home and office. A majority of newer lawyers, post-recession, may not be able to quickly find employment. In addition, those new lawyers finding employment typically start out in small law firms (two-to-ten lawyer size firms) rather than joining large law firms as has been the case historically. These lawyers do not have the same resources and ability to take time away from the office as lawyers in larger law firms. In addition, the Bar
Association now has over 30,000 active lawyers living and working around the world so access and expense is a real issue.

Among other factors are the rapid advances in technology that now bring pedagogically sophisticated CLE courses into lawyers’ offices and homes, and, the reality that most live seminars are simply lectures with a brief question and answer period at the end. Research shows that these lecture programs are a less effective learning method compared to actual “doing” (trial advocacy programs, handling a pro bono case, for example). There are very few courses that provide significant time for participation or application of the new knowledge or skills. Given this reality, the task force sees little benefit in travelling to or viewing a live lecture when the same experience can be replicated at your home or office at a time that is convenient for you.

The task force understands that in a proper learning environment the best learning can happen when people are able to participate and interact with the educators and other attendees. Likewise, the task force understands the need for some lawyers to use CLE courses and seminars as a way to network and connect with other lawyers in their areas of practice. These are all good reasons for sponsors to continue to offer these live courses.

The task force is of the opinion that those lawyers who need or want a “live” or participatory experience will continue to seek out such courses. It may even turn out that CLE providers will improve their “live” offerings to capture lawyers who are looking for courses that are more than a lecture. However, “live” should not be a requirement especially when such a requirement does not necessarily provide a better learning experience and can also be a barrier for those with limited means or limited geographic opportunities to attend “live” courses.

Approved Activities (Proposed APR 11(e))
The task force recommends simplifying requirements for earning credits for approved activities. The primary recommendations for approved activities involve removing credit caps and most of the requirements to be able to earn credits for the activities. This, again, simplifies and works with the new recommended structure for earning credits after the minimum requirements are met. One significant change is the recommendation that CLE speakers or presenters earn a maximum of five credits of preparation time per hour of presentation time. This is a change from the current ten credits per course.

The task force also recommends adding mentoring for MCLE credit. This is the most significant recommendation in this section. The task force believes mentoring is important for the profession and that both the mentor and mentee should earn MCLE credit in this experiential learning environment. The task force recommends that credit be awarded for structured mentoring programs that are approved by the MCLE Board. The MCLE Board would be tasked with establishing standards for approving mentoring programs.
Sponsor Deadline for Application for Approval of Courses (Proposed APR 11(g))
Finally, the task force recommends requiring all sponsors to apply for credit at least 15 days prior to the date of the course. This is likely the most significant recommendation affecting sponsors of CLE courses. Currently, only private law firms, corporate legal departments and government sponsors need to apply in advance of the first presentation of the course. The purpose is to encourage sponsors to apply for credit in advance so that lawyers know in advance what course are available and how much MCLE credit they are going to earn from attending a course. Sponsors who fail to meet the deadline may still submit an application for approval subject to a late fee.

Conclusion
In conclusion, the recommendations of the task force for updating APR 11 are much broader, deeper, and clearer than previous amendments. The recommendations arise out of the context of today’s 21st century Washington state lawyer who is now practicing in a global economy with rapidly changing technologies which are in turn radically changing the practice of law. The recommendations also address specific current and future needs of WSBA members wanting healthier practices and recognition that the practice of law – and use of a lawyer’s skills – is much wider than in the past. In addition, the recommendations are based on solid pedagogical grounding – that mandatory legal education is only effective if it addresses a lawyer’s true needs and is relevant to the lawyer. The public is also best protected and served when members take courses that address true need.

The lawyers on the MCLE Task Force were specially chosen to represent a broad cross-section of the WSBA membership. As such, over the past nine months there were many opposing views on specific issues. The task force members held true to the overarching purpose of MCLE and – with each issue – were able to find the balance point that all could agree on. The task force’s recommendations are the result of this collaborative, deliberative and reflective process.