

SPECIAL MEETING AGENDA

July 16, 2020
11:00 A.M.

OPEN SESSION - 11:00am – 12:00pm:

- Suggested Amendment Discussion
- 2018-2020 MCLE Reporting Period Extension

DISCUSSION : Suggested Amendment to APR 11 Ethics Requirement
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The MCLE Board will review materials for the suggested amendment discussed at prior Board meetings, and determine timeline and next steps for the suggested amendment.

Possible Discussion Topics:

- Discuss feedback and input received from stakeholders.
 - Based on the initial feedback received from stakeholders should any changes be made to the suggested amendment?
 - Should the language of ‘client advising’ be reconsidered?
- Discuss timeline and potential of expediting suggested amendment proposal. If the suggested amendment time is expedited discuss next steps:
 - Post the suggested amendment for comment.
 - Collect comments via Survey Monkey link.
 - Outreach efforts: who to contact?
 - Update and finalize subcommittee report for public website.
 - Update the number of states that require diversity/elimination of bias.
 - Ask to be added to the Board of Governors agenda for their September meeting.
 - Decide who will present, and what to present?
 - Schedule additional MCLE and/or Subcommittee meetings

Background:

On June 22, 2020, a request for input and feedback regarding the suggested amendment was sent to several Supreme Court-appointed boards, WSBA Committees, minority bar associations, and accredited CLE sponsors. This feedback was to be collected and discussed at the July 16, 2020 MCLE Board Special Meeting.

Enclosed Documents:

- **APR 11 Preliminary Suggested Amendment**
- **Stakeholder Feedback**
- **Stakeholder Contact List**
- **Stakeholder Outreach Letter**
- **Subcommittee Report and Recommendation**
- **Outreach - Context for Revised Suggested Amendment**
- **Possible Timeline for Expedited Suggested Amendment**
- **Draft of Survey Monkey Questions for Collecting Public Comments**

SUGGESTED AMENDMENTS TO APR 11 (Redline)

1 TITLE

2 ADMISSION AND PRACTICE RULES (APR)

3 RULE 11. MANDATORY CONTINUING LEGAL EDUCATION (MCLE)

4 Sections (a) – (b) No Changes.

5 (c) Education Requirements.

6 (1) Minimum Requirement. Each lawyer must complete 45 credits and each LLLT and LPO
7 must complete 30 credits of approved continuing legal education by December 31 of the last year
8 of the reporting period with the following requirements:

- 9 (i) at least 15 credits must be from attending approved courses in the subject of law
10 and legal procedure, as defined in subsection (f)(1); and
11 (ii) at least six credits must be in ethics and professional responsibility, as defined in
12 subsection (f)(2), with at least one credit in equity, inclusion, and the mitigation
13 of both implicit and explicit bias in the legal profession and the practice of law,
14 including client advising.

15 Sections (c)(2) – (e) No Changes.

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

- 17 (1) Law and legal procedure, defined as legal education relating to substantive law,
18 legal procedure, process, research, writing, analysis, or related skills and
19 technology;
20 (2) Ethics and professional responsibility, defined as topics relating to the general
21 subject of professional responsibility and conduct standards for lawyers, LLLTs,
22 LPOs, and judges, including ~~diversity and antibias with respect to the practice of~~
23 ~~law or the legal system,~~ equity, inclusion, and the mitigation of both implicit and
24 explicit bias in the legal profession and the practice of law, including client
25 advising, and the risks to ethical practice associated with diagnosable mental
26 health conditions, addictive behavior, and stress;

SUGGESTED AMENDMENTS TO APR 11 (Redline)

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Sections (f)(3) – (k).

No Changes.

Stakeholder Feedback

Received as of 7/15/2020

Disclaimer: The comments have not been edited in any way, including content, typographical errors, etc., and because the comments were submitted for consideration at a public meeting, we have included the commenters' names and but not their email addresses.

Comment #1: Alan Tindell (Member of Character and Fitness Board)

I would object to requiring an legal education credit that is specifically focused on any particular topic within the overarching topic of "ethics".

Comment #2: Laura Spradley (Member of Board of Bar Examiners)

Adelaine,

I heartily endorse the proposed amendment, provided that the required ethics credit is offered as a free CLE, which you propose.

Comment #3: Nicholas Larson (Member of Public Service Committee)

Adelaine,

Thank you for the email. We will review this at our next committee meeting and get back to you.

Comment #4: Nestor Gorfinkel (Member of Limited Practice Board)

Can you kindly explain what would the curriculum entail for "equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, including client advising"? Could the one credit be best served by a general topic called "Professionalism in the Industry" which would entail the pursuit and practice of the highest ideals and tenets of the profession, which is more than compliance with the minimal standards of professional conduct, but include a commitment to civility and respect to all persons. Thank you for the opportunity to provide input.

Comment #5: Jonathan Ko (Member of WAWDA)

Hi Adelaine,

Thank you for your email. Our board looked over the amendment and we are in support of it. There was not much comment – some of the Board were in support of the changes last year. We appreciate that you reached out to us.

Hope you're doing well and staying healthy.

Comment #6: Joshua Treybig (Member of QLaw)

Hi Adelaine,

My only thought would be perhaps a brief mention that given the current unrest and conversation about racism in the country calls us to focus on the equity and inclusion requirement, of the three originally proposed, as the most important for our profession to address. QLaw would certainly be in support of this amendment. It is a very small ask given the importance many corporations and local governments have placed on similar efforts toward addressing race equity. Please let me know anything else you need from me.

Take care!

Comment #7: Omar Nur (Member of MELAW)

Hello Ms. Shay,

Thank you for reaching out about this amendment to the MCLE requirements. Although I have not circled back with the rest of the board (yet), in the past we have supported this amendment and we continue to do so. Would you like an actual statement from melaw or is our endorsement of the changes enough?

Comment #8: Dalynne Singleton (Member of Disciplinary Board)

I have reviewed what you have presented and have just one change or suggested revision I would deem necessary.

- Reference to “client advising” is unclear to me and I am not sure of the significance of this wording. I would consider an alternate term or a definition of what this is referring to in the changes.
- Client advising may mean something to me and another to other legal professional. We are “counselors” by profession. We give legal advice to clients. This seemed to be an addition or after thought.
- Are we trying to promote better inter-cultural communication? Say that.

Comment #9: Doug Walsh (Member of Practice of Law Board)

Adelaine:

Thank you for your response. POLB hopes to meet before 7/15 and provide timely feedback.

Comment #10: Gregory Morrison (Member of 2014 MCLE Task Force)

Adelaine,

I think the proposed amendment is necessary, appropriate, well composed and, therefore, should be adopted.

Comment #11: Beth Bersson (Sponsor Representative for Lawline)

Hi Adelaine,

I hope all is well!

I wanted to submit my feedback on the proposed rule change, which will add an equity, inclusion, and mitigation of bias requirement. We at Lawline think it is a wonderful idea for Washington to start requiring this specialty credit!

Many CLE states are moving towards requiring attorneys to complete courses on this important topic. Just this July, Vermont became the eighth state to implement a Diversity & Inclusion CLE requirement. By requiring attorneys to study this area on a continuous basis, Washington will ensure that attorneys are turning their attention to, and finding ways to combat, some pervasive problems within the legal industry and beyond.

Lawline already offers many courses in this area for other states. If it is helpful, I would be happy to provide you or anyone at the WA MCLE Board with access to some sample courses. Some comments we have received from our current Diversity & Inclusion and Elimination of Bias courses:

- “Amazing. We ended up with my family gathered around my iPad, listening and pausing to discuss points she made. Excellent. A fabulous presentation on a complex topic.”
- “I really enjoyed this program. It was eye opening to some of my own biases.”
- “Good discussion with honest admission that we all have biases to overcome and that the process is ongoing at all times.”
- “Very well done. Raised important and interesting dynamics of all our biases and how to deal with them.”

This is a critically important topic area for everyone to be focusing on, but it's particularly important for attorneys. We believe that adding this to the CLE requirements will help drive change within the legal industry and elevate the profession as a whole.

Thank you in advance, and I look forward to seeing this change roll out in the future!

Comment #12: Emily Sheldrick (Member of Client Protection Board)

I am very much in support of the suggested amendment to APR 11. I would be in favor of the Client Protection Board issuing a joint statement supporting the proposed amendment.

Comment #13: Gloria Ochoa-Bruck (Member of Client Protection Board)

I second Emily and would also be in favor of the Client Protection Board issuing a joint statement supporting the proposed amendment.

Initial Stakeholder List for Suggested Amendment Support/Feedback:

INITIAL STAKEHOLDERS
Access to Justice Board (ATJ)
Asian Bar Association of Washington
Board of Bar Examiners
Cardozo Society of Washington State
Character and Fitness Board
Client Protection Board
Commission on Judicial Conduct
Committee on Professional Ethics
Continuing Legal Education Committee
Court Rules & Procedures Committee
Disciplinary Board
Filipino Lawyers of Washington
Korean American Bar Association
Latina/Latino Bar Association of Washington
Law Clerk Board
Limited Practice Board
LLLT Board
Loren Miller Bar Association
MCLE TASK FORCE
Middle Eastern Legal Association of Washington

Northwest Indian Bar Association
Northwest Justice Project
Pierce County Minority Bar Association
Practice of Law Board
Pro Bono and Public Service Committee
QLAW
Slavic Bar Association of Washington
South Asian Bar Association of Washington
Vietnamese American Bar Association of Washington
Washington Attorneys with Disabilities Association
Washington State Veterans Bar Association
Washington Women Lawyers
WSBA Accredited Sponsors
WSBA Diversity Committee

Dear [leaders in the legal community],

I am reaching out to you because the MCLE Board is considering making a new recommendation for an amendment to Admission and Practice Rule (APR) 11, regarding the ethics requirement. As you may be aware, the MCLE Board previously sent a suggested amendment of the ethics requirement to the Washington Supreme Court in 2019, which was rejected. Now, the MCLE Board is interested in recommending a related but much narrower amendment to the rule, to focus on equity, inclusion, and mitigation of bias. The MCLE Board is hopeful that if it can develop broader support and endorsements from community partners, the WSBA Board of Governors and the Court may look more favorably on such an amendment.

The MCLE Board is considering suggesting an amendment to APR 11 that would require each licensed legal professional to complete at least one (1) ethics credit in the topic of equity, inclusion and the mitigation of bias per each three year MCLE reporting period. The suggested amendment being considered by the MCLE Board 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. Please see the attached draft recommendation and report on the suggested amendment for more detailed information.

The MCLE Board would appreciate support from you — those who represent diverse stakeholder groups, work with Court-created boards, have expertise in legal ethics and providing CLE courses, and/or have knowledge of past MCLE processes—before soliciting comments from the WSBA membership at large. In addition, if you have input about the draft suggested amendment proposal, the MCLE Board would appreciate the opportunity to receive and consider your input before proceeding further in this process.

If possible, the MCLE Board would like to receive a statement of support from [insert entity name here]. The MCLE Board hopes to garner overall support for recommending the suggested amendment, in order to help the Board determine whether to move forward and conduct outreach to the entire WSBA membership later this year. Thank you for your consideration.

Please let me know if you would like a member of MCLE Board to present this request and answer any questions at one of your future meetings. You may send any feedback or statements of support to MCLE Board staff liaison at AdelaineS@wsba.org.

Sincerely,

MCLE Board



To: MCLE Board
From: MCLE Board's Rules Subcommittee
Date: June 16, 2020
RE: REPORT AND RECOMMENDATION OF THE MCLE BOARD'S RULES SUBCOMMITTEE

Rules Subcommittee

The Rules Subcommittee ("Subcommittee") of the MCLE Board consists of three members from the MCLE Board: Robert Malae, Christopher Bueter, and Todd Alberstone.

Suggested Amendment

The MCLE Board Rules Subcommittee recommends an amendment to Admission and Practice Rule (APR) 11 that would require each licensed legal professional to complete at least one (1) credit hour of equity, inclusion and the mitigation of bias as Continuing Legal Education per each three year MCLE reporting period. The Subcommittee'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.

The Subcommittee is recommending the following suggested amendment to APR 11:

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 credit in equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, including client advising.

APR 11(f)(2) Ethics and professional responsibility, defined as topics relating to 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,~~ equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, including client advising, and the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;

Background

At the MCLE Board's meeting of October 5, 2018, the WSBA Diversity Committee and the Washington Women's Lawyers 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 developed by a collaboration between Washington Women Lawyers and the WSBA Diversity Committee; and was endorsed by the Asian Bar Association, the Cardozo Society of Washington State, the Filipino Lawyers of Washington, the Pierce County Minority Bar Association, Loren Miller Bar Association, Latina/o Bar Association of Washington, the South Asian Bar Association of Washington, and QLAW (the LGBT Bar Association of



Washington). The proposal would have required that at least one of the six required ethics credits 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. 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 one credit technology education focusing on digital security for a total of three of the six required credits.

The MCLE Board presented the above-suggested amendments to the Washington State Bar Association's Board of Governors on September 27, 2019, who voted against the amendments. The governors directed that in lieu of the MCLE proposal, WSBA will offer three free one-hour CLEs each year, one on each of the three topics. At the October 4, 2019 MCLE Board meeting, the MCLE Board moved to send the suggested APR 11 amendment to the Washington Supreme Court. On December 4, 2019, the Washington State Supreme Court rejected the proposed amendments without comment.

This year the MCLE Board Rules Subcommittee plans to suggest a single, narrower amendment of the APR 11 ethics requirement to the Washington State Supreme Court – focusing on an equity, inclusion and mitigation of bias requirement. The Subcommittee is hopeful that with broader support and endorsements from community partners that the WSBA Board of Governors and the Court may become more amenable to adopt this important suggested amendment.

Factors & Information

Need for Equity, Inclusion and Mitigation of Bias in the Legal Profession

Licensed legal professionals in the state of Washington are required to continue their legal education throughout their careers in order to remain eligible to practice law¹. As created and appointed by the Washington Supreme Court, and administered by the WSBA, the Mandatory Continuing Legal Education (MCLE) Board plays a critical regulatory role in determining compliance with the minimum education requirements, as set out in Admission and Practice Rule (APR) 11. Part of this role is to develop, propose, and support continuing legal education that will not only educate Washington licensed legal professionals on the state of the law in 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.

¹ In the state of Washington, individual members of the WSBA as legal professionals serve the public as a privilege, not a right. As members of the legal community, legal practitioners know that they are an integral part of the wider community and serve at the discretion of the Washington State Supreme Court.



This suggested amendment will better equip legal professionals with tools of cultural competency and understanding in working with the diverse public we serve. When legal professionals cannot recognize and identify implicit bias, they cannot work individually and collectively to disrupt the inequitable and unconscionable influence of bias on clients and the general public.

Aligns with WSBA Diversity Plan

Since its adoption seven years ago, the WSBA's Diversity Plan continues to make progress on some levels, but WSBA can do better by ensuring members are educated and able to contribute to equity, inclusion, and to mitigate bias. This amendment will help its members better understand the lived experiences of individuals and entire communities who are currently both underrepresented and underserved by the legal community. As part of organizational self-reflection and to better align with our values and our guiding principles of equity and inclusion, the MCLE Board suggests the above amendment.

Access to Free CLEs in the required topics

The WSBA Board of Governors made a commitment, at their September 2019 Board meeting, to provide free ethics CLEs to be made accessible both in-person and on-demand each year in these three topics: equity, inclusion, and the mitigation of both implicit and explicit bias; mental health and addiction; and the use of technology as it pertains to professional responsibility including how to maintain security. This eliminates any access barriers, as the suggested amendment topic will be provided at no cost.

Contributes to Better Business Outcomes

Promoting equity and inclusion drives better business outcomes. Innovation and creative thinking are enhanced by recognizing and considering the diverse experiences and backgrounds of others. This is particularly important amongst decision-makers. Conversely, failing to include diverse perspectives can result in a failure to take useful action despite some acceptable 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 a political move, but a practical one.

Other Jurisdictions

A review of the MCLE requirement in other U.S. jurisdictions found that five states have adopted a diversity requirement, with California as the first state to do so in 2008. In 2014, California amended their requirement to include elimination of bias outside of the legal profession. Following this, Minnesota adopted a diversity and anti-bias requirement in 2016, New York in 2018, and both Illinois and Missouri most recently implementing the requirement in 2019.

ABA Model Rule for Minimum Continuing Legal Education (2017)



The ABA recently amended its Model Rule for MCLE in 2017. 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 in Washington). In addition, the ABA Model Rule recommends one credit every three years specifically in the area of diversity and inclusion. Washington already requires six credits in ethics and professional responsibility, one more than the total recommended by the ABA, and allows for topics covering diversity and inclusion to meet the ethics requirement; however, Washington does not *require* that any of the six credits be in the area of diversity and inclusion. All six ethics credits may currently be completed without instruction in the area of diversity, inclusion, and the mitigation of bias.

Attachments

1. WSBA Diversity and Inclusion Plan (2013)
2. Additional Statistical Support for MCLE Requirement on Equity, Inclusion and Mitigation of Bias
3. ABA Model Rule for Minimum Continuing Legal Education (2017)



Q. Why did the MCLE Board decide to narrow the scope of the proposed amendments to the APR 11, from three substantive areas (as previously proposed in 2019) to only one?

A. The MCLE Board decided to focus on the original, more narrow propose amendment to require one (1) ethics credit in the topic of equity, inclusion and anti-bias in hopes of making the proposed change more amenable for broader support of stakeholders, including the WSBA Board of Governors, and perhaps have success for adoption by the Washington Supreme Court.

Q. Why did the MCLE Board decide to also omit the proposed draft language to strike the qualifiers “diagnosable” and “condition” from the mental health and addiction definitions, as recommended [strongly supported?] by mental health stakeholders because of concerns about stigma associated with mental illness disease?

A. The MCLE Board decided to focus efforts on only one (1) substantive provision in the APR 11, rather than three (3) separate substantive changes, which also included the proposed changes to strike the qualifiers “diagnosable” and “condition” from the mental health and addiction definitions. This approach seeks to garner broader support for the proposed amendment from diverse stakeholders, including the full support of and endorsement by the Board of Governors.

Note: This does not preclude future proposals to change this language as to striking “diagnosable” and “conditions” or any other proposed amendments to the continuing education requirements. (See also related response above for added context.)

Suggested Amendment Possible Timeline

June 15	Send email to stakeholders	Ask for feedback by July 15 th
July 9, 2020	Meeting with Supreme Court	
July 16	MCLE Special Meeting	Discuss any changes to the suggested amendment based on stakeholder feedback, and discuss whether to expedite suggested amendment.
Timeline if MCLE Board decides to expedite suggested amendment:		
July 20 th		Open Comment Period
July & August		Gather Support of Stakeholders for BOG Meeting
August 7 th	Regularly schedule MCLE Board meeting	Discuss comments received to date, and begin materials to the BOG.
August 22 nd		Close Comment Period & Finalize BOG materials
Week of August 22 nd (TBD)	Tentative Subcommittee meeting	Subcommittee meeting only if substantial change in comments that were presented at earlier August meeting.
Sept 2 nd	BOG materials due	
Sept 17-18	BOG Meeting	Ask BOG for Support
Week of Sept 22 nd (TBD)	Special MCLE Meeting	Discuss feedback from BOG and decide whether to move forward with suggested amendment
October 2020	Deadline	Send Recommendation to Court

Survey Monkey Questions

Background Information:

The MCLE Board is soliciting feedback on a suggested amendment to Admission and Practice Rule (APR) 11 that would require each licensed legal professional to complete at least one (1) credit hour of equity, inclusion and the mitigation of bias training as Continuing Legal Education per each three year MCLE reporting period. The Subcommittee'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.

The Subcommittee is recommending the following suggested amendment to APR 11:

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 credit in equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, including client advising.

APR 11(f)(2) Ethics and professional responsibility, defined as topics relating to the general subject of professional responsibility and conduct standards for lawyers, LLLTs, LPOs, and judges, including ~~diversity and antibias with respect to the practice of law or the legal system,~~ equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law, including client advising, and the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;

Please see MCLE Board's Recommendation and Report [[link to report](#)] detailing the suggested amendment.

Please provide any feedback or comments by completing the form below. Any information submitted below, including your name, will be provided to the MCLE Board, posted on the WSBA website, and submitted for consideration at a public meeting.

Name:

- Blank Field

Relationship to the WSBA:

- Member of the Public
- Licensed Legal Professional (Lawyer, LLLT, LPO)
- Law Student
- MCLE Sponsor
- Committee, Board, or Association

- Other – please specify

Position on the MCLE Board’s Suggested Amendment to APR 11 ethics requirements:

- In favor of the Suggested Amendment
- Partially in favor of the suggested amendment with some changes
- Against the suggested amendment

Please provide any feedback or comments you have on the suggested amendment below:

- Comment Box

DISCUSSION : 2018-2020 Reporting Period Extension
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The MCLE Staff Liaison will provide an overview of the Court-ordered extension of the deadline for those due to report in the 2018-2020 reporting period, and will discuss subsequent administrative changes.

Overview of Order:

- Licensed legal professionals in the extended 2018-2021 reporting period must complete earning their credits by **December 31, 2021**, and must complete the certification of their credits by **February 1, 2022**.
- This extension order encompasses all licensed legal professionals: lawyers, LLLTs and LPOs. Despite narrower prefatory language in the order, the operative provision includes all who share the reporting requirement under APR 11, as to both earning credits and carrying over credits.
- The next reporting period will be a shortened two year reporting period: 2022-2023. As a result, the order allows for the additional 15 carryover credits (30 total carryover credits, up to 4 of which may be ethics) to be earned in the extended 2018-2021 reporting period. The increased credit carryover limit applies *only* for the 2018-2021 reporting period.

Discussion:

- Certification deadline changes, staff time, and IT/Database updates.
- Impact of the extension on the MCLE Budget
- Comity (UT, ID, OR).

Background:

On June 5th, the Washington Supreme Court ordered an extension of one year for the due date for this reporting group to report MCLE credits. This order includes an increased credit carryover limit, with licensed legal professionals able to carryover an additional 15 credits (for a total of 30 carryover credits) towards their next reporting period.

WSBA MCLE Staff Liaison reached out for clarification with regards to the language and scope of the order, and Chief Justice Debra Stephens responded on June 23, 2020 with clarification.

Enclosed Documents:

- **Court Order Extending Deadline**
- **Email from Chief Justice Stephens clarifying Order**

THE SUPREME COURT OF WASHINGTON

IN THE MATTER OF STATEWIDE RESPONSE)	ORDER EXTENDING DATE
BY WASHINGTON STATE COURTS TO THE)	FOR REPORTING 2018-2020
COVID-19 PUBLIC HEALTH EMERGENCY)	MCLE CREDITS
)	
)	No. 25700-B-628
)	

WHEREAS, pursuant to Admission and Practice Rule (APR) 11, Washington lawyers are required to report their compliance with mandatory continuing legal education (MCLE) requirements every three years, on a rotating schedule.

WHEREAS, the COVID-19 pandemic has resulted in many continuing legal education (CLE) courses being cancelled and fewer opportunities for lawyers to earn their required CLE credits. As a result, lawyers required to report MCLE for the 2018-2020 period may have difficulty obtaining the required number of credits.

WHEREAS, at the June 4, 2020, En Banc Conference, the Court considered a request that the 2018-20 reporting period be extended an extra year and that members of the bar reporting in this cycle be allowed to carry over an extra 15 credits, and found this would be an appropriate accommodation in light of the impact of the pandemic.

The Court hereby enters the following order regarding reporting of 2018-2020 MCLE credits:

- 1) The due date for reporting MCLE credits earned in 2018-2020 is hereby extended by one year.

- 2) As part of this extension, lawyers are authorized to carry over an additional 15 credits towards the next reporting period.

DATED at Olympia, Washington this 5th day of June, 2020.

For the Court


CHIEF JUSTICE

Michael Tonkin

From: Adelaine Shay
Sent: Thursday, July 2, 2020 1:52 PM
To: [REDACTED]

Subject: Supreme Court MCLE Order Clarification

Dear MCLE Board,

We received clarification from the Court on their order extending the deadline for those due to report in the 2018-2020 reporting period. We are working on messaging to send to all licensed legal professionals in the 2018-2020 reporting period, and working through how our process and online database may need to change to accommodate this order. You can see the email message from Justice Debra Stephens clarifying the order below.

Key takeaways from the clarification are:

- This order applies to all license types.
- Those in the 2018-2020 reporting period must complete earning their credits by December 31, 2021, and certification of credits for the extended 2018-2021 reporting period will be due Feb 1, 2022.
- The next reporting period will be a shortened two year reporting period: 2022-2023. As a result, the order allows for the additional 15 carryover credits (30 total carryover credits, up to 4 of which may be ethics) to be earned in the extended 2018-2021 reporting period.

Sincerely,
Adelaine



Adelaine Shay | Mandatory Continuing Legal Education Manager

Washington State Bar Association | 206.7278249 | adelaines@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact katherines@wsba.org.



*Most WSBA employees are working remotely.
Thank you for your patience and understanding.*

From: Stephens, Justice Debra L. [REDACTED]
Sent: Tuesday, June 23, 2020 3:56 PM
To: Adelaine Shay <Adelaines@wsba.org>
Cc: Carlson, Susan [REDACTED]
Subject: RE: Supreme Court MCLE reporting order questions

Good afternoon Adelaine,

I met with the justices today to confirm answers to your questions below. Thank you for your patience. I can clarify that the order:

- (1) Authorizes an additional year for earning and reporting MCLE credits for an additional year, anticipating that means licensed legal professionals have until 12/31/21 to earn credits and an appropriate time *after that* to report for the cycle. It leaves to WSBA the administrative details, but reading the rule it seems 2/1/22 would be the logical reporting deadline.
- (2) Encompasses all licensed legal professionals: attorneys, LLLTs and LPOs. Despite narrower prefatory language in the order, the operative provision includes all who share the reporting requirement under APR 11, as to both earning and carrying over credits.
- (3) As to carry over credits, your understanding is correct: up to 30 carryover hours are authorized from the extended (now 2018-21) reporting period.

Please let me know if you have any further questions or need additional guidance.

Thank you,

Chief Justice Debra L. Stephens
Washington State Supreme Court
PO Box 40929
Olympia, WA 98504

From: Adelaine Shay [<mailto:Adelaines@wsba.org>]
Sent: Friday, June 19, 2020 12:11 PM
To: Stephens, Justice Debra L. [REDACTED]
Cc: Carlson, Susan [REDACTED]
Subject: RE: Supreme Court MCLE reporting order questions

Good Afternoon,

Thank you for your response, and for keeping me updated.

Sincerely,

Adelaine



Adelaine Shay | Mandatory Continuing Legal Education Manager

Washington State Bar Association | 206.7278249 | adelaines@wsba.org

1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | www.wsba.org

The WSBA is committed to full access and participation by persons with disabilities. If you have questions about accessibility or require accommodation please contact katherines@wsba.org.



*Most WSBA employees are working remotely.
Thank you for your patience and understanding.*

From: Stephens, Justice Debra L. [REDACTED]
Sent: Thursday, June 18, 2020 4:44 PM
To: Adelaine Shay <Adelaines@wsba.org>
Cc: Carlson, Susan [REDACTED]
Subject: Supreme Court MCLE reporting order questions

Good afternoon, Adelaine,

I apologize for the delay in getting back to you on your questions below, and I'm afraid I don't have a firm answer to all of them. The court is meeting next Tuesday, and I will confirm the intended scope of the order, and whether an amended order is necessary. I need clarification on whether LLLTs and LPOs are intended to be included, and on the carry-over credit allowance. I've attached the original attorney request that ultimately led to this order, by way of background.

See highlights below for what I can confirm today. I'll follow up next week.
Please let me know if you have any questions.

CJ Debra Stephens

Good Afternoon,

I am writing to request clarification from the Court regarding Order No. 25700-B-628 extending the date for reporting 2018-2020 MCLE credits. APR 11(i)(2) requires the Bar, by July 1, to notify all lawyers, LLLTs, and LPOs who are in the reporting period ending December 31 of that year that they are due to certify compliance. As such, it would be helpful to receive clarification on the questions below as soon as possible (before the end of June), to assist with crafting the required notice.

1. Lawyers, LPOs and LLLTs are required to complete their credit requirements by December 31 of the last year of the reporting period [APR 11(c)(1)], and are required to complete the certification of their credits by February 1 of the year following the reporting period. The order extends the reporting deadline by a year. Does that mean that both the MCLE deadline to earn credits **and** report credits for the 2018-2020 reporting period are extended?
 - a. Meaning that licensed legal professionals in the extended 2018-2020 reporting period must complete earning their credits by **December 31, 2021 [APR 11 (c) (1)]**, and must complete the certification of their credits by **February 1, 2022 [APR 11(i)(1)]**. **The intent was to allow an extra year to earn the credits (until 12/31/21), and we leave it to WSBA to administer the timing for reporting.**
2. APR 11 applies to Lawyers, LLLTs, and LPOs. The Court order states "The due date for reporting MCLE credits earned in 2018-2020 is hereby extended by one year." Does the order apply to all licensed legal professionals due to report in the 2018-2020 reporting period including LLLTs and LPOs?
 - a. The second line of the order states "lawyers are authorized to carry over an additional 15 credits towards the next reporting period". If the order applies to all license types including LPOs and LLLTs, should "lawyers" be revised to say "lawyers and other licensed legal professionals"? **I will confirm and get back to you.**
3. Lawyers, LLLTs, and LPOs may earn up to 15 carryover credits, 2 of which may be ethics and professional responsibility credits [APR 11(c)(7)]. Should this order be interpreted as doubling of the currently permitted carryover credits?

- a. Meaning up to 30 carryover credits, 4 of which may be ethics and professional responsibility credits, may be earned for those in the extended 2018-2020 reporting period. Based on Mr. Quigley's letter request, I believe the intent was to allow carry over credits into the current cycle (not going forward), but the wording of the order is unclear. I will confirm and get back to you.

Sincerely,

Adelaine

Chief Justice Debra L. Stephens
Washington State Supreme Court

