

MEETING AGENDA

January 8, 2020
10:00 A.M.

OPEN SESSION - 10:00am-11:00 am:

10:00 – Review of Minutes

10:05 – Discussion: Supreme Court/BOG Workgroup

10:15 – Discussion: MCLE Updates

10:30 – MCLE Board Recruitment

10:45 – Course Audits

CLOSED SESSION – 11:00am -12:00pm:

- Petitions, Appeals and Staff Liaison Decisions
- End of Meeting

Minutes
October 2, 2020

The meeting of the Mandatory Continuing Legal Education Board was called to order by Board Chair Ayanna Colman at 10:02 AM on Friday, October 2, 2020. This meeting was held via videoconference. Board members in attendance were:

Ayanna Colman, Chair
Todd Alberstone, Vice Chair
Asia Wright
Chris Bueter
Merri Hartse
Melissa Skelton
Robert Malae

Liaisons and Staff in attendance were:

Adelaine Shay	MCLE Manager/MCLE Board Staff Liaison
Robert Henry	Associate Director, Regulatory Services Department
Gabriel Moore	MCLE Analyst
Michael Tonkin	MCLE Analyst

Review of Minutes for August 7 and September 22, 2020

The MCLE Board reviewed the minutes from their August 7, 2020 meeting, as well as their September 22, 2020 special meeting. The Board approved all minutes without change.

Board Orientation

MCLE Staff Liaison Adelaine Shay gave an update on MCLE Board orientation materials, and discussed potential online diversity training offered by the WSBA Equity and Justice team. MCLE Board requested to wait until online training is finalized before deciding on Board member attendance timeline.

Suggested Amendment to APR 11

The MCLE Board reviewed the GR-9 coversheet and suggested amendment in order to send all documents to Washington Supreme Court for consideration. MCLE Board directed MCLE staff to add a definitions section to the GR-9 coversheet, and approved all documents for submission pending this update.

Discussion: MCLE Updates

At the August 7, 2020 MCLE Board meeting, the MCLE Board directed MCLE staff to explore CLE application trends. MCLE Analyst Gabriel Moore presented application statistics and figures covering both WSBA member and CLE sponsor submissions over the past three years. The yearly comparison demonstrated a slight decrease in sponsor submissions, and an increase in WSBA member submissions. The MCLE Board also heard from the MCLE Staff Liaison regarding ongoing work with WSBA IT for a new MCLE online system, and heard an update regarding carryover credit procedures.

Issue Summary: Sponsor Fees during COVID-19

MCLE staff provided an overview of sponsor application fee procedures in the midst of the COVID-19 pandemic - including charging separate application fees for formerly in-person seminars that are divided into unique webcast offerings/separate applications. The MCLE Board agreed with the current fee assessment procedures, and requested that MCLE staff watch for any unique application issues that may require an additional assessment.

Discussion: Mitigation of Bias in MCLE Petitions

The MCLE Board discussed ways to mitigate potential bias with regards to review of MCLE petitions of undue hardship. MCLE Board recommended that certain information be redacted from petitions, including bar numbers, names, and emails. MCLE Board expressed concern for redacting other member-submitted information, and suggested that other supplemental information voluntarily provided should remain. MCLE Staff Liaison informed the Board that an external equity expert will be evaluating WSBA procedures in the coming months.

MCLE Hardship Petitions

The MCLE Board reviewed and decided by motion on two hardship petitions. No listing of these motions is included in order to protect member confidentiality.

Adjournment

There being no further business at hand, the Board meeting was adjourned at 12:06 PM. The next regularly scheduled Board meeting will be held at 10:00 AM on Friday, January 8, 2021.

Respectfully submitted,



Adelaine Shay
MCLE Board Staff Liaison

<p>DISCUSSION:</p> <p>BOG/Supreme Court Workgroup</p>

The MCLE Board will discuss a letter from WSBA President Kyle Sciuchetti, regarding the formation of a WSBA task force.

Background:

On December 1, 2020, MLCE Board Chair Ayanna Colman received an emailed letter from WSBA President Kyle Sciuchetti. The letter explained that the WSBA Board of Governors is in the process of establishing a task force to discuss collaboration, improve communication, and to bring clarity by defining relationships between WSBA entities (Washington Supreme Court-appointed Boards and the WSBA). President Sciuchetti requested that the MCLE Board nominate a representative to serve on this task force.

It is anticipated the work group will have an initial meeting in January, and would involve 3-4 meetings that are approximately 2 hours in duration. However, the time commitment is subject to change depending on the needs of the work group.

Note: The letter indicates a 12/31/2020 deadline to submit representative information; however, MCLE Staff Liaison Adelaine Shay requested an extension until after the next regularly-scheduled MCLE Board Meeting (January 8, 2021) to submit this information.

Discussion:

Who will the MCLE Board nominate to serve as the task force representative?

Enclosed Documents

- Letter from WSBA President Kyle Sciuchetti dated 12/01/2020.

WASHINGTON STATE BAR ASSOCIATION

Board of Governors

Kyle D. Sciuchetti, President

December 1, 2020

Ayanna Colman

MCLE Board Chair

ayannaeagan@gmail.com

Dear Ayanna:

Thank you for your service as the Chair of the MCLE Board, one of the six Supreme Court Boards that WSBA is charged with administering pursuant to General Rule 12.3. Each of these entities serves a critical role in helping to fulfill the Supreme Court's charge and WSBA's mission to serve the public. Over the years the relationship between WSBA and these entities has been largely collaborative and fruitful, but there has also been some tension, which I believe can be avoided and addressed through greater communication and clarity in defining these relationships.

To that end, the Board of Governors has approved the charter for a task force to begin a collaborative discussion with the Washington Supreme Court regarding the administration of these entities, some of the conflicts that have resulted and how we might improve communications and relationships. I am writing to invite you to designate a member of the MCLE Board to serve on the task force. I will be scheduling the first meeting of the task force in January and would be grateful if you could notify me of your appointment by December 31, 2020.

I hope to make this a collaborative process that allows the MCLE Board and WSBA to better deliver on their missions. Please feel free to contact me or Executive Director Terra Nevitt, terran@wsba.org if you have any questions. I look forward to working with you.

Sincerely,



Kyle D. Sciuchetti
President, Washington State Bar Association

Cc: Russell Knight, Board of Governors Liaison
Sunitha Anjilvel, Board of Governors Liaison
Adelaine Shay, WSBA Staff Liaison

DISCUSSION: MCLE Updates

The MCLE Staff Liaison will discuss current general updates with MCLE, including: the status of the suggested amendment to APR 11; MCLE budget; current application fee waiver process; new MCLE system delay; and new MCLE staff.

Discussion Topics:

- **Suggested Amendment to APR 11**

The MCLE Board reviewed the GR-9 coversheet and finalized the suggested amendment at the October 2, 2020 MCLE Board meeting. On October 15, 2020, on behalf of the MCLE Board, MCLE staff sent the suggested amendment and all supporting documents to the Washington Supreme Court. MCLE Board liaison recently contacted the Supreme Court staff, and asked for an update on where the suggested amendment is in the process.

- **MCLE Budget**

MCLE Staff Liaison will provide an overview of the MCLE budget for the new fiscal year (FY21).

- **CLE Application Fee Waiver Process**

Due to a prolonged MCLE system outage (the MCLE site was down for several weeks for external users), MCLE staff are waiving application and attendance late fees as appropriate, and when requested by CLE sponsors subject to the below site outage timeline guidance:

- Staff to waive activity application late fees for any activity that took place after 11/25/2020
- Staff to waive attendance late fee for any activity that took place after 10/12/2020

The MCLE site went down on November 12th and became available to external users on December 10th.

- **MCLE System Update**

MCLE staff continues to work with WSBA IT on a new central MCLE database. Due to unexpected IT projects within the organization, the project has been temporarily delayed as IT staff prioritize more pressing system work.

- **New MCLE Staff**

In December 2020, MCLE began interviewing candidates for an open MCLE Analyst I position, with the expected candidate start date of mid-January, 2021.

Enclosed Documents

- **MCLE Budget FY2021**

Washington State Bar Association

Statement of Activities

For the Period from September 1, 2020 to September 30, 2020

100% OF YEAR COMPLETE

	FISCAL 2020 REFORECAST	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
MANDATORY CONTINUING LEGAL EDUCATION					
REVENUE:					
ACCREDITED PROGRAM FEES	516,700.00	42,200.00	512,900.00	3,800.00	99.26%
FORM 1 LATE FEES	170,000.00	18,150.00	222,800.00	(52,800.00)	131.06%
MEMBER LATE FEES	191,000.00	2,100.00	189,450.00	1,550.00	99.19%
ANNUAL ACCREDITED SPONSOR FEES	41,750.00	-	41,750.00	-	100.00%
ATTENDANCE LATE FEES	90,000.00	8,500.00	97,900.00	(7,900.00)	108.78%
COMITY CERTIFICATES	29,000.00	225.00	29,850.18	(850.18)	102.93%
TOTAL REVENUE:	1,038,450.00	71,175.00	1,094,650.18	(56,200.18)	105.41%
DIRECT EXPENSES:					
DEPRECIATION	250,000.00	20,868.00	250,392.00	(392.00)	100.16%
STAFF MEMBERSHIP DUES	500.00	-	500.00	-	100.00%
ONLINE LEGAL RESEARCH	1,837.50	297.94	1,489.70	347.80	81.07%
LAW LIBRARY	279.00	10.48	94.32	184.68	33.81%
MCLE BOARD	2,500.00	1.11	1,091.46	1,408.54	43.66%
STAFF TRAVEL/PARKING	50.00	-	9.26	40.74	18.52%
TOTAL DIRECT EXPENSES:	255,166.50	21,177.53	253,576.74	1,589.76	99.38%
INDIRECT EXPENSES:					
SALARY EXPENSE (4.65 FTE)	509,354.00	25,643.81	427,997.02	81,356.98	84.03%
BENEFITS EXPENSE	139,871.00	8,501.75	109,367.03	30,503.97	78.19%
OTHER INDIRECT EXPENSE	127,828.00	12,215.48	132,992.98	(5,164.98)	104.04%
TOTAL INDIRECT EXPENSES:	777,053.00	46,361.04	670,357.03	106,695.97	86.27%
TOTAL ALL EXPENSES:	1,032,219.50	67,538.57	923,933.77	108,285.73	89.51%
NET INCOME (LOSS):	6,230.50	3,636.43	170,716.41		

Washington State Bar Association

Statement of Activities

For the Period from October 1, 2020 to October 31, 2020

8.33% OF YEAR COMPLETE

	FISCAL 2021 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET
MANDATORY CONTINUING LEGAL EDUCATION					
REVENUE:					
ACCREDITED PROGRAM FEES	480,000	53,600	53,600	426,400	11.17%
FORM 1 LATE FEES	150,000	24,700	24,700	125,300	16.47%
MEMBER LATE FEES	2,700	150	150	2,550	5.56%
ANNUAL ACCREDITED SPONSOR FEES	42,250	-	-	42,250	0.00%
ATTENDANCE LATE FEES	80,000	7,150	7,150	72,850	8.94%
COMITY CERTIFICATES	13,000	400	400	12,600	3.08%
TOTAL REVENUE:	767,950	86,000	86,000	681,950	11.20%
DIRECT EXPENSES:					
DEPRECIATION	143,045	20,865	20,865	122,180	14.59%
STAFF MEMBERSHIP DUES	500	-	-	500	0.00%
ONLINE LEGAL RESEARCH	1,672	-	-	1,672	0.00%
LAW LIBRARY	150	10	10	140	6.97%
MCLE BOARD	2,600	-	-	2,600	0.00%
STAFF TRAVEL/PARKING	50	-	-	50	0.00%
TOTAL DIRECT EXPENSES:	148,018	20,875	20,875	127,142	14.10%
INDIRECT EXPENSES:					
SALARY EXPENSE (3.80 FTE)	266,722	19,451	19,451	247,271	7.29%
BENEFITS EXPENSE	94,034	7,055	7,055	86,979	7.50%
OTHER INDIRECT EXPENSE	113,066	10,648	10,648	102,418	9.42%
TOTAL INDIRECT EXPENSES:	473,822	37,154	37,154	436,668	7.84%
TOTAL ALL EXPENSES:	621,840	58,029	58,029	563,811	9.33%
NET INCOME (LOSS):	146,110	27,971	27,971		

FYI - Recruiting MCLE Board Members

The application process for the 2021-2022 MCLE Board year will open on or around March 15, 2021. Nominations for open positions on each standing committee and board are made by a nomination team comprising the staff liaison, BOG liaison, and chair. Supreme Court boards may also share redacted applications with and solicit feedback from their board members. MCLE Board members may serve two consecutive terms.

For the 2021-2022 MCLE Board year, two MCLE Board member's terms will expire in September of 2021. One MCLE Board member will have finished their first term and will therefore be eligible to reapply to the MCLE Board for a second. The other MCLE Board member will have completed their second term, and their position will need to be filled.

Application Timeline – WSBA members: *Note: the below are proposed dates and a subject to change*

- Application available to members on myWSBA: March 15 (est.)
- Applications close: April 16
- Staff Liaison recommendations due in myWSBA: May 14
- Duplicate nominations resolved; slates finalized: May 21-28
- Slates sent to BOG and published on WSBA website: May 28 (at earliest)
- BOG Nominations Committee makes appointments/Supreme Court nominations: June 15
- Appointments confirmed; Supreme Court nomination letters sent: June 22

Public Description:

Legal professionals in the state of Washington must continue their legal education throughout their careers in order to remain eligible to practice law. The MCLE Board plays a critical role in defining and determining compliance with the minimum education requirements under APR 11. The Board meets five times a year to consider MCLE policy issues and makes determinations on petitions, appeals, and special requests submitted by licensed legal professionals and CLE sponsors. This includes reviewing requests for waiver and extension of time to meet the minimum education requirements, and holding hearings on denied requests. Board members also audit CLE courses throughout the year to ensure CLE providers are complying with APR 11. In addition to attending what are usually half-day meetings, members should expect to spend several hours reviewing materials prior to the meetings. Individuals with diverse backgrounds, teaching experience, and technology skills are encouraged to apply. Appointment is for a three-year term; two consecutive terms may be served.

MEMORANDUM

TO: MCLE Board

FROM: Merri Hartse, MCLE Board Member

RE: Course Audit

COURSE SPONSOR: Lorman Business Center

COURSE TITLE: Obligations and Ethical Considerations for Attorneys Serving on Nonprofit Boards

COURSE DATE(S): Audio Webinar/Previously Recorded (8/27/20)

ACTIVITY ID#: 1148397

ACCREDITATION: Ethics: 1.5 credits

DATE OF REPORT: December 15, 2020

SUMMARY

Nature of the Program: This previously recorded webinar, offered by Lorman, is accessible any time after registration and fee payment. The intent is to help attorney board members of nonprofit corporations understand their role, including balancing fiduciary obligations as board members and as professional board members if representing the organization.

Faculty: Brett R. Harris

Location/Time: OnDemand Course, last revised August 27, 2020, 89 minutes

Facilities: Streaming audio from vendor's website

List of Presenters and Their Qualifications:

Brett R. Harris is a business, nonprofit, and technology attorney, located in Woodbridge, New Jersey. Her practice focuses on counseling nonprofit organizations on their exempt status, governance, and compliance. She is a member of the Legal Working Group for the Center for Nonprofits, an umbrella organization for New Jersey 501(c)(3)s providing advocacy, resources, training, and information to nonprofits.

Written Materials: Detailed PowerPoint slides

Attendance: Unknown - previously recorded event.

DISCUSSION

Lorman is a WSBA accredited sponsors, offering CLE training on hundreds of topics. The CLE was easy to access at the provider's website. Tabbed categories provided easy navigation to materials. Both the posted agenda and PowerPoint slides made it easy to follow along as Ms. Harris presented. Ms. Harris opened by saying the presentation focused on federal law, and referred participants to their state and local laws. She endorsed the IRS website, mentioning it was particularly resource rich and current.

Before diving in Ms. Harris detailed the classifications used for nonprofit entities, and explained that rules may differ depending on the classification. More details on this topic came later in the presentation. She explained that members of Board of Directors or Board of Trustees act as fiduciaries, and that ex-officio positions are fiduciary.

The first section covered fiduciary obligations of all board members. Detailed explanations for duty of care, duty of obedience, duty of loyalty, and the corporate opportunity doctrine (duty of disclosure). The IRS recommends that entities enact a conflict of interest policy, and in order to receive federal funding a policy must be in place. Ms. Harris emphasized that awareness and education about mission is critical for board members to exercise their fiduciary obligations. Mission creep is a common issue for many nonprofits.

The next section addressed ethical obligations particular to attorneys serving on boards. Pay attention to the ABA Model Rules of Professional Conduct, the ethics rules of your own jurisdiction as well as the jurisdiction where the entity is registered. Topics covered in this section included the attorney-client relationship, representing an entity while serving on a board, and board procedures for retention and determining compensation (strongly encouraged voluntary pro bono service for nonprofits addressing needs of persons in poverty).

The speaker went into more detail explaining that due to classification distinctions not all nonprofit corporations are necessarily tax exempt. Ms. Harris detailed the distinctions of 501(d) religious organizations and 501(c)(3) public charities vs private organizations. Regardless of classification, all nonprofits are required to apply to the IRS. A new and evolving classification is low-profit, limited liability corporations (e.g., Kind Bars) which embrace the philosophy of social entrepreneurship.

The section on How to Be an Educated Board Member covered understanding the key/governing documents such as bylaws or constitution, board policies, Roberts Rules of Order (if used), and agreements with national organizations if subordinate. Ms. Harris recommended due diligence compliance checks as a best practice, ensuring the organization is properly

registered. She suggested using the tax-exempt organization search tool at the IRS website to check filings, and obtain copies of letter. She provided guidelines for spotting issues that most often pop up. For example, running an operation test to ensure no lobbying or electioneering is occurring, and looking at the excess benefit rules.

The Protections Against Liability section, which was to cover statutory immunities, indemnification rights, and D&O insurance, was rushed through due to the speaker's pacing. The slides, fortunately, filled in details. Ms. Harris touched upon the Federal Volunteer Protection Acts.

A certificate of successful completion was available to download at the end of the session.

CONCLUSION

The presenter was articulate and detailed. Her knowledge and experience working with nonprofit entities served to make this a captivating and useful webinar. Due to the presenter's detailed remarks, time ran out leaving the last topics skimmed over. However, the slides provided excellent summaries and plenty of detail. Several helpful resources were included in the references. The audio quality was excellent. The 1.5 Ethics credit is justified.