

**MEETING AGENDA**  
**May 17, 2024, at 10:00 A.M.**  
**Remote Meeting Via Zoom**

**OPEN SESSION**

1. Welcome and Introductions
2. Review/Approval of Minutes from Meeting on April 12, 2024
3. Audit Reports
4. MCLE Board Meeting Dates for Next Fiscal Year
5. Hardship Petition Decision Matrix Discussion
6. MCLE Updates

**CLOSED SESSION**

1. Hardship Petitions

**Adjourn**

**Minutes**

**April 12, 2024**

The meeting of the Mandatory Continuing Legal Education Board was called to order by Board Chair Efrem Krisher at 10:03 A.M. on Friday, April 12, 2024. The meeting was held via videoconference. Board members in attendance were:

Efrem Krisher, Chair  
Christopher Bueter  
Ayanna Coleman (left at 11:57 A.M.)  
Darryl Coleman (left at 11:55 A.M.)  
Katie Denmark  
Brendon Taga  
Merri Hartse

Liaisons and Staff in attendance:

Ransom Smith	MCLE Analyst
Adelaine Shay	MCLE Board Staff Liaison
Bobby Henry	RSD Associate Director
Kevin Fay	Board of Governors Liaison

**Review of Minutes**

The MCLE Board reviewed the minutes from the January 19, 2024, meeting. The Board approved all minutes without change.

**Audit Reports**

Board members Katie Denmark and Merri Hartse presented audit reports of two accredited sponsor courses. These courses were *Drafting and Negotiating Corporate Agreements 2024* produced by the Practising Law Institute (WA approval ID 2003456) and *2024 Civil Appeals CLE: An Emphasis on Preserving Error, Stays and Supersedeas, and Ethical Considerations on Appeal* produced by Spokane County Bar Association (WA approval ID 2010587).

**Nomination of Board Chair for the 2024-2025 Fiscal Year**

The Board addressed who would be filling the position of Board Chair for the approaching 2024-2025 fiscal year. The Board Chair is nominated by the MCLE Board members, and their candidates are reviewed by the MCLE Board nomination team. Ultimately, the Washington Supreme Court will appoint

the MCLE Board Chair for the 2024-2025 term. The Board voted unanimously to nominate member Katie Denmark for the position.

#### MCLE Updates

The MCLE Staff Liaison provided updates of import to the Board including the opening of MCLE Board recruitment to fill vacancies for the coming term, the latest developments with the Task Force Team Administering Xenial Involvement with Court Appointed Boards (TAXICAB), the number of licensed legal professionals who had yet to complete their MCLE requirements, the opening of public comment for new suggested amendments regarding mental health and technology security, the possibility of reestablishing in-person meetings for fiscal year 2025, and an overview of the current budget summary.

#### MCLE Board Staff Liaison Decisions

The MCLE Board decided reviewed and approved by motion on 37 staff liaison undue hardship petition decisions. No further information is provided to protect member confidentiality.

#### MCLE Board Member Activity Application Review

The MCLE Board reviewed and decided by motion upon one member activity application. No further information is provided to protect member confidentiality.

#### MCLE Board Undue Hardship Petition Review

The MCLE Board reviewed and decided by motion on 15 petitions. No further information is provided to protect member confidentiality.

#### Adjournment

There being no further business at hand, the meeting was adjourned at 12:11 PM. The next regularly scheduled MCLE Board meeting will be held at 10:00 AM on Friday May 17, 2024.

Respectfully submitted,

Adelaine Shay  
MCLE Board Staff Liaison

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**MEMORANDUM**

**TO:** Mandatory Continuing Legal Education (MCLE) Board and  
Adeline Shay, MCLE Board Staff Liaison

**FROM:** Merri Hartse, MCLE Board member

**RE:** Audit Report

**COURSE SPONSOR:** Washington State Association for Justice and Coldstream  
Wealth Management

**COURSE TITLE:** Sudden Wealth Syndrome

**COURSE DATE(S):** Recorded on July 19, 2023

**ACTIVITY ID#:** 1249090

**ACCREDITATION:** 1.0 Credit (Law & Legal)

**DATE OF REPORT:** May 13, 2024

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*Nature of the Program*

This 1:06 hour program consists of three presenters discussing the topic of Sudden Wealth Syndrome. The program is aimed at attorneys working with clients who experience sudden wealth.

*Faculty*

One attorney and two wealth managers.

*Location/Time*

On demand. The course is a video recording of a webinar. Attendees can stop and start the recording at their leisure.

*Facilities*

Not applicable. This is a previously recorded CLE webinar available on demand through the Washington State Association for Justice website.

### List of Presenters and Their Qualifications

Todd W. Gardner, JD, is a founding partner and attorney at Swanson Gardner Myers Cohon PLLC. The firm specializes in personal injury and wrongful death litigation.

Roger Reynolds is a co-founder, team lead, and wealth manager at Coldstream Wealth Management.

Ian Curtiss, CFP, CFA, CPWA, ChSNC, is a wealth manager at Coldstream Wealth Management.

### Written Materials

A one-page handout accompanies the video presentation. The handout contains a list of presenters, topic objective, outline of the presentation, and additional resources.

### Attendance

Not applicable. This is a recording of a CLE webinar from July 19, 2023.

## **SUMMARY**

The overall objective of the program is to identify the emotional and behavioral issues associated with clients who suffer from Sudden Wealth Syndrome and to help those clients overcome the self-destructive impulses of the syndrome.

## **DISCUSSION**

Mr. Reynolds began by defining Sudden Wealth Syndrome (SWS); a term first coined in 2000 by Stephen Goldbart. The syndrome is taught in behavioral finance courses in universities such as Harvard, Duke, and University of Washington. SWS is a reaction to unexpected fortune such as a lottery win, unplanned large inheritance, cryptocurrency wealth, business success, gambling, or large personal injury settlements. Feelings of isolation, paranoia, guilt, and shock accompany this syndrome.

Mr. Gardner discussed the importance of helping clients take care of their funds in the long term. After funds have been recovered or settlements made attorneys have a duty to stay involved and advocate for clients, advising when to consult other professionals such as financial planners or tax experts.

Ian Curtis detailed four common SWS symptoms and their root causes. Symptoms include the purchase of luxury goods such as cars, expensive homes and jewelry; the purchase of assets with high maintenance costs like vacation homes or boats; excessive risk taking such as business ventures with family or friends to open a bar or restaurant, and excessive gifting like giving away money to family, friends, or organizations. Understanding the causes of these

symptoms are key to advising clients. Causes include lack of financial literacy; mental accounting (the concept that where money comes from often dictates how we view and spend it); pressure from family and community, and the discomfort or guilt with the source of wealth, especially when attached to some sort of trauma.

After the presentation of extensive background material on SWS, Mr. Gardner discussed his experiences with clients and provided strategies for counteracting the symptoms and causes of SWS. He stressed that with wealth comes great complexity and that complexity is overwhelming. Often, irrevocable decisions must be made withing a short amount of time. He discussed how to advise clients in terms they can follow and to let clients know before settlements are finalized what options are appropriate. While the attorney's role is to get the best financial deal for clients, in the cases of Sudden Wealth Syndrome, it's essential to advise clients to bring in investment experts and other professionals early in the process.

### **CONCLUSION**

In summary, this seminar provides practical content to enhance a legal professional's knowledge of Sudden Wealth Syndrome and therefore improve communication with clients experiencing sudden wealth. The nature of this syndrome and the ensuing complexities intertwine legal and financial expertise. Coldstream Wealth Management is a platinum level sponsor of the Washington State Association for Justice. By partnering with WSAJ the insights from the wealth managers coupled with Mr. Gardner's legal experience make this CLE more of a professional development opportunity rather than covering substantive law. I recommend assigning the 1.0 credit in the category Other – Professional Development, defined in APR 11 (f)(3).

**ISSUE SUMMARY:**  
**Proposed 2024-2025 MCLE Board Meeting Schedule**

**ISSUE:**

- The 2024-2025 MCLE Board meeting schedule needs to be approved by the Board so that it can be posted on the WSBA website.

**Proposed MCLE Board Meeting Schedule for the 2024-2025 term:**

Meeting #	MCLE Board Meeting Date
1	October 25, 2024
2	January 10, 2025
3	April 11, 2025
4	May 9, 2025
5	August 8, 2025

Alternate dates:

October 2024:

- 10/4/2024 – Rosh Hashana ends
- 10/11/2024 – Yom Kippur starts
- 10/18/2024 – Sukkot continues

January 2025:

- 1/3; 1/17; 1/24 and 1/31/2025 also available

April 2025:

- 4/4; 4/25/2025 – also available
- 4/18/2025 – Good Friday & Passover (continues)

May 2025:

- 5/2; 5/9 and 5/30/2025 also available
- 5/23 available but the Friday before Memorial Day weekend
- 5/16/2025 – Lag BaOmer Starts

June 2025 (noting June dates, in case May dates conflict):

- 6/20 and 6/27/2025 – available
- 6/6/2025 – Eid al Adha starts
- 6/13/2025 – Feast of St. Anthony

August 2025:

- 8/1 – Bar Exam is this week, all Regulatory Services Department staff may need to assist.
- 8/22 and 8/29/2025 – also available

- 8/15/2025 – Assumption Day



**DISCUSSION SUMMARY:**  
**Modification of the Hardship Matrices**

**Summary: At its April 12, 2024, meeting, the MCLE Board discussed the possibility of altering the hardship decision matrices to expand the definition of immediate family member and include maternity/paternity leave as a hardship type.**

Background: At the April 12 meeting, the Board reviewed a petition request that had to be referred to the Board due to the restrictive definition of family member currently in use. In that case, the petitioner requested for an extension of requirements because their grandmother's passing overshadowed the months of November and December of 2023. Petitioner played a highly involved role in caring for their grandmother's needs prior to their passing, but the standing definition of immediate family member is confined to "a parent, child, sibling, or spouse" which is taken from RPC 1.8(I). The Board ultimately decided in favor of petitioner's request for a fee waiver and considered the especially close relationship that they shared with their grandmother which was evidenced by their cohabitation and the extent on to which they were relied upon for consistent support. Coming out of this review, some Board members voiced ideas about how the definition of family member could be broadened to include some element of cohabitation and primary support.

At the same meeting, two petitions were before the Board that were premised on petitioners' ability to meet requirements being impaired by the time commitment to their newborn children. Again, the matrix as it is currently shaped, does not recognize parental leave as a qualifying hardship and does not allow the Staff Liaison to grant relief on that basis unless it is accompanied by some recognized hardship (medical effects or complications related to birth for example). However, the Board did decide favorably on both petitions citing parental leave as a hardship and granting a partial fee waiver in both cases. Similarly with the definition of immediate family member, the possibility of somehow incorporating parental leave into the hardship analysis was discussed as a subject of potential matrix reform.

The Board's interest in reconceptualizing the matrix to permit a wider consideration of the personal circumstances underpinning a potential hardship provides opportunity to further contemplate how current policy could be remolded to promote equitable treatment of hardship petitions. MCLE Staff have also thought about ways to make the matrix more sensitive to legitimate hardship situations that may be currently overlooked and how to strike a balance between firm and consistent criteria and equitable treatment. One approach to assist with this goal could be to draw from laws that also use some concept of hardship in their framework.

For example, the Washington Paid Family and Medical Leave program sets all the possible bases for qualifying for paid leave, many of which would be considered a hardship currently or could be considered a hardship under a more inclusive matrix. Relevant to the Board's current interest in who should be considered an "immediate family member," the Paid Family and Medical Leave Act takes a broad view of who is recognized as a family member defining the term as "child, grandchild, grandparent, sibling, or spouse...and also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care..." RCW 50A.05.010.

The act also affords paid leave to individuals to allow them to bond with a new child born or placed into their family and provides leave when a family member is about to be deployed overseas or is returning from overseas deployment. The former could be incorporated into the Board's definition of parental leave (should it choose to qualify it is a hardship) and the latter in the existing definition of military leave. Overall,

laws such as the Washington Paid Family and Medical Leave Act employ inclusive language and definitions that the Board could draw from if it wanted to consider a more encompassing reform of hardship policy.

**Issue:**

- Should the Board modify the matrix to specifically accommodate for parental leave and expand the definition of immediate family member in line with the above discussion?
- Is the Board interested in using existing definitions like those established in the Washington Paid Family and Medical Leave Act to promote an equitable treatment of hardships?

**Attachments:**

1. Informational explanation of paid leave taken from Washington Paid Family & Medical Leave site.
2. Definitions from Paid Family & Medical Leave Act (RCW 50A.05.020).

Starting May 16: Accounts will be unavailable while we upgrade our system. [Learn more.](#)

✕

Washington  
**Paid Family & Medical Leave**



# Find out how Paid Leave works



## When can you take Paid Leave?

There are two main types of Paid Leave available:

### 1. Medical leave

**When a serious health condition prevents you from working.**

For example, you can qualify because of a major surgery, during pregnancy, to receive treatment for a chronic health condition and to receive inpatient treatment for substance abuse or mental health. The amount of paid leave you can take is determined by your medical provider (up to 12 weeks a year).

Learn more about [medical leave](#).

## 2. Family leave (includes bonding leave and military family leave)

You can take paid time off to care for a family member with a serious health condition, or if you're bonding with a new baby or child in your family. Military family leave allows you to spend time with a family member who is about to be deployed overseas or is returning from overseas deployment.

### You may use family leave to care for:

- Spouses and domestic partners
- Children (biological, adopted, foster or stepchild)
- Parents and legal guardians (or spouse's parents)
- Siblings
- Grandchildren
- Grandparents (or spouse's grandparents)
- Son-in-law and daughter-in-law
- Someone who has an expectation to rely on you for care—whether you live together or not.

We may require documentation about your relationship to the person or certification of their medical need.

Learn more about [family leave](#).

## You must have worked 820 hours in your qualifying period.

Nearly every worker can qualify for Paid Leave if they worked a minimum of 820 hours (about 16 hours a week) in Washington during their [qualifying period](#).

## Full-time, part-time, temporary and seasonal

## work count.

All hours you work in Washington count toward eligibility, even if you work multiple jobs or switch employers.

### **Certain workers are not automatically eligible for Paid Leave:**

- Federal employees
- Employees of a tribally-owned business on tribal land
- Self-employed people who do not opt into the state program
- Workers covered by their employer's approved [voluntary plan](#)

## Application process



1. Notify your employer at least 30 days before you plan to take leave (if the event is foreseeable)

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2. Experience a qualifying event

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3. Apply for leave within 30 days after your qualifying event happens

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4. Receive a determination letter in the mail

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5. Waiting week begins (exceptions: bonding leave or military exigency don't have a waiting week)

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6. File weekly claims to get paid (you may have an unpaid waiting week)

## How much time do I get?

Within your claim year, you can take:

**Up to 12 weeks of medical leave or family leave.** Medical leave is for recovering from or getting treatment for a serious health condition. Family leave is for taking care of a qualifying family member who has a serious health condition, for bonding with a new child or for certain military events.

**Up to 16 weeks of combined medical and family leave** if you have more than one qualifying event in the same claim year. This could include medical leave for pregnancy or to recover from giving birth, then family leave to bond with your baby. Or you could qualify for family leave to care for a family member, then medical leave for yourself within the same year.

**Up to 18 weeks of combined medical and family**

**leave** if you experience a condition in pregnancy that results in incapacity, like being put on bed rest or having a C-section. There is a checkbox on the [certification form](#) where your healthcare provider should certify that your serious health condition is related to pregnancy.

## Using your Paid Leave.

**A little at a time, or all at once:** You do not have to take your Paid Leave all at once. But you must claim eight consecutive hours of leave each week, or claim zero hours if taking intermittent leave. For example, you can take one day off a week to care for a family member undergoing chemotherapy treatment. Or you can take your leave in full weeks to recover from your own major surgery.

## How much will I get paid?

When you take Paid Leave, you can receive up to 90% of your weekly pay—up to a maximum of \$1,456 in 2024. Use our calculator to find out about how much your pay could be if your leave starts in 2024:

**Estimate My Pay**

## Get your weekly pay as a direct deposit or prepaid credit card

A direct deposit to your bank is only available if you file online. A prepaid credit card is like a gift card you can use anywhere.

**File My Weekly Claim**

## Job protection

Your employer is not required to keep your job for you if any of the following is true:

- You work for a company that employs fewer than 50 people
- You've worked for the company for less than a year
- You've worked less than 1,250 hours (about 24 hours a week) for the company in the year before you took leave

## When you need it most.

Paid Family and Medical Leave provides paid time off when you need it most. It's here for you when a serious health condition prevents you from working, when you need time to care for a family member or a new child, or for certain military-related events.

**Questions? Visit the Help Center.**

**Visit the Help Center**

**Sign up for newsletters from Employment Security Department.**

**Sign up**



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Disputes	Career opportunities	Advisory Committee	Equity and access

**Other languages:**

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Soomaali Tagalog 繁體中文 Tiếng Việt

**Questions about Paid Family and Medical Leave? Please reach out.**

Give us a call at [\(833\) 717-2273](tel:8337172273)

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**RCW 50A.05.010****Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1)(a) "Casual labor" means work that:

(i) Is performed infrequently and irregularly; and

(ii) If performed for an employer, does not promote or advance the employer's customary trade or business.

(b) For purposes of casual labor:

(i) "Infrequently" means work performed twelve or fewer times per calendar quarter; and

(ii) "Irregularly" means work performed not on a consistent cadence.

(2) "Child" includes a biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

(3) "Commissioner" means the commissioner of the department or the commissioner's designee.

(4) "Department" means the employment security department.

(5)(a) "Employee" means an individual who is in the employment of an employer.

(b) "Employee" does not include employees of the United States of America.

(6) "Employee's average weekly wage" means the quotient derived by dividing the employee's total wages during the two quarters of the employee's qualifying period in which total wages were highest by twenty-six. If the result is not a multiple of one dollar, the department must round the result to the next lower multiple of one dollar.

(7)(a) "Employer" means: (i) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title; (ii) the state, state institutions, and state agencies; and (iii) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

(b) "Employer" does not include the United States of America.

(8)(a) "Employment" means personal service, of whatever nature, unlimited by any employment relationship as known to the common law or any other legal relationship performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied. The term "employment" includes an individual's entire service performed within or without or both within and without this state, if:

(i) The service is localized in this state; or

(ii) The service is not localized in any state, but some of the service is performed in this state;

and

(A) The base of operations of the employee is in the state, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or

(B) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) "Employment" does not include:

(i) Self-employed individuals;

(ii) Casual labor;

(iii) Services for remuneration when it is shown to the satisfaction of the commissioner that:

(A)(I) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service; or

(B) As a separate alternative:

(I) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(IV) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(V) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(VI) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; or

(iv) Services that require registration under chapter **18.27** RCW or licensing under chapter **19.28** RCW rendered by an individual when:

(A) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact;

(B) The service is either outside the usual course of business for which the service is performed, or the service is performed outside of all the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(C) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes, other than that furnished by the employer for which the business has contracted to furnish services;

(D) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(E) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business

identifier number from the state of Washington;

(F) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business that the individual is conducting; and

(G) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter **18.27** RCW or an electrical contractor license pursuant to chapter **19.28** RCW.

(9) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions.

(10) "Family leave" means any leave taken by an employee from work:

(a) To participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;

(b) To bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of a child under the age of eighteen with the employee;

(c) Because of any qualifying exigency as permitted under the federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E) and 29 C.F.R. Sec. 825.126(b)(1) through (9), as they existed on October 19, 2017, for family members as defined in subsection (11) of this section; or

(d) During the seven calendar days following the death of the family member for whom the employee:

(i) Would have qualified for medical leave under subsection (15) of this section for the birth of their child; or

(ii) Would have qualified for family leave under (b) of this subsection.

(11) "Family member" means a child, grandchild, grandparent, parent, sibling, or spouse of an employee, and also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. "Family member" includes any individual who regularly resides in the employee's home, except that it does not include an individual who simply resides in the same home with no expectation that the employee care for the individual.

(12) "Grandchild" means a child of the employee's child.

(13) "Grandparent" means a parent of the employee's parent.

(14) "Health care provider" means: (a) A person licensed as a physician under chapter **18.71** RCW or an osteopathic physician and surgeon under chapter **18.57** RCW; (b) a person licensed as an advanced registered nurse practitioner under chapter **18.79** RCW; or (c) any other person determined by the commissioner to be capable of providing health care services.

(15) "Medical leave" means any leave taken by an employee from work made necessary by the employee's own serious health condition.

(16) "Paid time off" includes vacation leave, personal leave, medical leave, sick leave, compensatory leave, or any other paid leave offered by an employer under the employer's established policy.

(17) "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse, or an individual who stood in loco parentis to an employee when the employee was a child.

(18) "Period of incapacity" means an inability to work, attend school, or perform other regular daily activities because of a serious health condition, treatment of that condition or recovery from it, or subsequent treatment in connection with such inpatient care.

(19) "Postnatal" means the first six weeks after birth.

(20) "Premium" or "premiums" means the payments required by RCW **50A.10.030** and paid to the department for deposit in the family and medical leave insurance account under RCW **50A.05.070**.

(21) "Qualifying period" means the first four of the last five completed calendar quarters or, if eligibility is not established, the last four completed calendar quarters immediately preceding the application for leave.

(22)(a) "Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash.

(b) Previously accrued compensation, other than severance pay or payments received pursuant to plant closure agreements, when assigned to a specific period of time by virtue of a collective bargaining agreement, individual employment contract, customary trade practice, or request of the individual compensated, is considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation serves to make the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.

(c) Remuneration also includes settlements or other proceeds received by an individual as a result of a negotiated settlement for termination of an individual written employment contract prior to its expiration date. The proceeds are deemed assigned in the same intervals and in the same amount for each interval as compensation was allocated under the contract.

(d) Remuneration does not include:

(i) The payment of tips;

(ii) Supplemental benefit payments made by an employer to an employee in addition to any paid family or medical leave benefits received by the employee; or

(iii) Payments to members of the armed forces of the United States, including the organized militia of the state of Washington, for the performance of duty for periods not exceeding seventy-two hours at a time.

(23)(a) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or

(ii) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(A) A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(I) Treatment two or more times, within thirty days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services, such as a physical therapist, under orders of, or on referral by, a health care provider; or

(II) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;

(B) Any period of incapacity due to pregnancy, or for prenatal care;

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(I) Requires periodic visits, defined as at least twice a year, for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(II) Continues over an extended period of time, including recurring episodes of a single underlying condition; and

(III) May cause episodic rather than a continuing period of incapacity, including asthma, diabetes, and epilepsy;

(D) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider, including Alzheimer's, a severe stroke, or the terminal stages of a disease; or

(E) Any period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for: (I) Restorative surgery after an accident or other injury; or (II) a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, or kidney disease.

(b) The requirement in (a)(i) and (ii) of this subsection for treatment by a health care provider means an in-person visit to a health care provider. The first, or only, in-person treatment visit must take place within seven days of the first day of incapacity.

(c) Whether additional treatment visits or a regimen of continuing treatment is necessary within the thirty-day period shall be determined by the health care provider.

(d) The term extenuating circumstances in (a)(ii)(A)(I) of this subsection means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the thirty-day period, but the health care provider does not have any available appointments during that time period.

(e) Treatment for purposes of (a) of this subsection includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of continuing treatment includes, but is not limited to, a course of prescription medication, such as an antibiotic, or therapy requiring special equipment to resolve or alleviate the health condition, such as oxygen. A regimen of continuing treatment that includes taking over-the-counter medications, such as aspirin, antihistamines, or salves, or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of this title.

(f) Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, and periodontal disease are examples of conditions that are not serious health conditions and do not qualify for leave under this title. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this section are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(g)(i) Substance abuse may be a serious health condition if the conditions of this section are met. However, leave may only be taken for treatment for substance abuse by a health care provider or by a licensed substance abuse treatment provider. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for leave under this title.

(ii) Treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action against the employee because the employee has exercised his or her right to take medical leave for treatment. However, if the employer has an established policy, applied in a nondiscriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking medical leave. An employee may also take family leave to care for a covered family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

(h) Absences attributable to incapacity under (a)(ii)(B) or (C) of this subsection qualify for leave under this title even though the employee or the family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

(24) "Service is localized in this state" has the same meaning as described in RCW [50.04.120](#).

(25) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

(26) "State average weekly wage" means the most recent average weekly wage calculated under RCW [50.04.355](#) and available on January 1st of each year.

(27) "Supplemental benefit payments" means payments made by an employer to an employee as salary continuation or as paid time off. Such payments must be in addition to any paid family or medical leave benefits the employee is receiving.

(28) "Typical workweek hours" means:

(a) For an hourly employee, the average number of hours worked per week by an employee within the qualifying period; and

(b) Forty hours for a salaried employee, regardless of the number of hours the salaried employee typically works.

(29) "Wage" or "wages" means:

(a) For the purpose of premium assessment, the remuneration paid by an employer to an employee. The maximum wages subject to a premium assessment are those wages as set by the commissioner under RCW [50A.10.030](#);

(b) For the purpose of payment of benefits, the remuneration paid by one or more employers to an employee for employment during the employee's qualifying period. At the request of an employee, wages may be calculated on the basis of remuneration payable. The department shall notify each employee that wages are calculated on the basis of remuneration paid, but at the employee's request a redetermination may be performed and based on remuneration payable; and

(c) For the purpose of a self-employed person electing coverage under RCW [50A.10.010](#), the meaning is defined by rule.

[ [2023 c 25 § 2](#); [2022 c 233 § 1](#); [2021 c 232 § 2](#); [2020 c 125 § 1](#); [2019 c 13 § 1](#); [2018 c 141 § 1](#); [2017 3rd sp.s. c 5 § 2](#). Formerly RCW [50A.04.010](#).]

## NOTES:

**Intent—2023 c 25:** See note following RCW [50.04.100](#).

**Intent—2021 c 232:** "The legislature intends to prevent impacts, based on this act, to the family and medical leave insurance account or the application of a solvency surcharge." [ [2021 c 232 § 1](#).]

**Expenses for individuals utilizing leave in excess of 500 prior to July 1, 2023, to be paid by the general fund—2021 c 232:** "If the number of individuals utilizing leave under Title [50A](#) RCW as a result of the amended definition of family member in this act exceeds 500 individuals in any calendar year before July 1, 2023, the expenses of the additional leave must be paid by the general fund into the family and medical leave insurance account created in RCW [50A.05.070](#)." [ [2021 c 232 § 4](#).]

**Effective date—2020 c 125 § 1:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2020]." [ **2020 c 125 § 19.**]



## **DISCUSSION: MCLE Updates**

The MCLE Staff Liaison will provide general updates to the MCLE Board

### **Discussion Topics:**

- **MCLE Board Recruitment**

Applications for volunteer positions through the WSBA, including the MCLE Board, opened on May 1<sup>st</sup>. Priority will be given to applicants who apply by May 31<sup>st</sup>. For the 2023-2024 fiscal year, two MCLE Board member's terms will expire in September of 2024. Of the two MCLE Board members, one will have finished their second term and will therefore not be eligible to reapply to the MCLE Board for the next MCLE Board year. As of May 5<sup>th</sup>, we have received no applications with volunteers selecting the MCLE Board as their first choice.

Nominations for open positions on the MCLE 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.

- **MCLE Certification**

On May 1, 2024, 220 licensed legal professionals were suspended for not completing their licensing and/or MCLE requirements. Out of those suspended 32 were suspended for a combination of not completing licensing and MCLE requirements, and 14 were suspended solely for not meeting their MCLE requirements.

- **MCLE Online System**

The new MCLE system went live on October 16, 2023. The MCLE staff continues to work with WSBA IT on fixing postproduction bugs and on developing the remaining features for the system.

- **Suggested Amendments to APR 11 re Mental Health and Technology Security**

The MCLE Board's suggested amendments to APR 11 for a new MCLE credit requirement in both mental health and technology security were submitted to the Washington Supreme Court together with the GR 9 cover memo. The court comment period is closed. MCLE Board Chair submitted a comment to the Court in response to the comment provided by the SCJA on the proposed changes to APR 11 Comments can be viewed [here](#).

- **Budget**

The MCLE Board Staff Liaison will provide a brief overview of the current MCLE Budget Summary.

### **Attachments:**

- MCLE Board Chair APR 11 Comment
- MCLE Budget Summary

April 29, 2024

Honorable Mary I. Yu, Chair  
Supreme Court Rules Committee  
c/o Clerk of the Supreme Court

RE: Proposed Changes to APR 11

Dear Justice Yu:

I write on behalf of the MCLE Board to respond to the comment and recommendation submitted by the Superior Court Judges' Association (SCJA) as it relates to proposed amendment to APR 11(f)(10) which was published for comment. The SCJA suggests replacing "mental health" with "health" citing a concern that defining mental health beyond "...things we more traditionally associate with mental health like anxiety disorders, depression, etc... could offend or marginalize people who have diagnosed mental health disorders."

First, it is important to note that mental health is much broader than the absence of mental disorders. As stated by the World Health Organization: "Mental health is a state of mental well-being that enables people to cope with the stresses of life, realize their abilities, learn well and work well, and contribute to their community... Mental health is more than the absence of mental disorders. It exists on a complex continuum, which is experienced differently from one person to the next, with varying degrees of difficulty and distress and potentially very different social and clinical outcomes. Mental health conditions include mental disorders and psychosocial disabilities as well as other mental states associated with significant distress, impairment in functioning, or risk of self-harm."<sup>1</sup>

In addition, the term "mental health" was adopted by the MCLE Board in part because of the feedback received from the Washington Attorneys with Disabilities Association back in 2019, in which it was conveyed that limiting the mental health definition with words "diagnosable" and "conditions" as qualifiers to credits earned in the category of mental health currently under APR 11(f)(2)(ii) may stigmatize those with mental health illnesses and discourage licensed professionals from seeking treatment due to fear of being diagnosed with a condition.

Finally, replacing "mental health" with "health" would essentially broaden the definition – and topics eligible for CLE credit – beyond what was intended by the MCLE Board. The term "health" is very broad and may have the unintended consequence of allowing the definition to include courses on a wide range of health topics such as "Choosing the right vitamin for lawyers" or "The best fitness routine for lawyers" for MCLE credit which although

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<sup>1</sup> <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response>



are important, go beyond the intent of MCLE Board for the proposed mental health credit requirement.

For the reasons set forth above and conveyed in the original GR 9, the MCLE Board believes it is important for the suggested requirement to incorporate more than diagnosable mental health conditions.

If the Court finds that the category of mental health should be broadened or renamed, the MCLE Board would welcome the opportunity to work with the Court to find alternate language.

Respectfully,



Efreem Krisher  
MCLE Board Chair

CC: MCLE Board  
Adelaine Shay, MCLE Board Staff Liaison



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## Washington State Bar Association

Statement of Activities

For the Period from March 1, 2024 to March 31, 2024

**50% OF YEAR COMPLETE**

	FISCAL 2024 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
<b>MANDATORY CONTINUING LEGAL EDUCATION</b>						
<b>REVENUE:</b>						
ACTIVITY APPLICATION FEE	550,000	66,200	372,700	177,300	68%	97,700
ACTIVITY APPLICATION LATE FEE	220,000	23,400	142,100	77,900	65%	32,100
MCLE LATE FEES	190,000	21,150	227,325	(37,325)	120%	132,325
ANNUAL ACCREDITED SPONSOR FEES	36,000	-	36,000	-	100%	18,000
ATTENDANCE LATE FEES	90,000	7,700	73,000	17,000	81%	28,000
COMITY CERTIFICATES	27,800	1,475	25,072	2,728	90%	11,172
<b>TOTAL REVENUE:</b>	<b>1,113,800</b>	<b>119,925</b>	<b>876,197</b>	<b>237,603</b>	<b>79%</b>	<b>319,297</b>
<b>DIRECT EXPENSES:</b>						
DEPRECIATION	130,449	10,736	59,048	71,401	45%	6,177
STAFF MEMBERSHIP DUES	500	-	-	500	0%	250
MCLE BOARD	5,000	-	-	5,000	0%	2,500
STAFF TRAVEL/PARKING	50	-	-	50	0%	25
STAFF CONFERENCE & TRAINING	4,000	-	600	3,400	15%	1,400
<b>TOTAL DIRECT EXPENSES:</b>	<b>139,999</b>	<b>10,736</b>	<b>59,648</b>	<b>80,351</b>	<b>43%</b>	<b>10,352</b>
<b>INDIRECT EXPENSES:</b>						
SALARY EXPENSE (5.88 FTE) **	454,500	48,445	264,288	190,212	58%	(37,038)
BENEFITS EXPENSE	144,327	12,463	72,180	72,147	50%	(16)
OTHER INDIRECT EXPENSE	177,078	12,219	84,571	92,507	48%	3,968
<b>TOTAL INDIRECT EXPENSES:</b>	<b>775,905</b>	<b>73,128</b>	<b>421,039</b>	<b>354,866</b>	<b>54%</b>	<b>(33,086)</b>
<b>TOTAL ALL EXPENSES:</b>	<b>915,904</b>	<b>83,864</b>	<b>480,687</b>	<b>435,217</b>	<b>52%</b>	<b>(22,735)</b>
<b>NET INCOME (LOSS):</b>	<b>197,896</b>	<b>36,061</b>	<b>395,511</b>	<b>(197,615)</b>	<b>200%</b>	<b>296,563</b>

\*\*Budget reallocations apply to this line item For details, see FY24 Budget Reallocations memo(s) included in the Board of Governors meeting materials