

MEETING AGENDA

August 5, 2022
10:00 A.M.

OPEN SESSION - 10:00am:

10:00 – Review of Minutes

10:05 – Discussion on Preliminary Suggested Amendment to APR 11

- Credit for Law Clerk teaching

10:30 -- Discussion on Preliminary Suggested Correction to APR 11

- “Equity...” credit requirement

10:35 – Audit Reports

10:40 – MCLE Board Vice-Chair

10:45 – MCLE Board proposed meeting schedule Oct. 2022 – Sept. 2023

10:50 – MCLE Board’s Annual Report to WA Supreme Court

11:00 – MCLE Updates

CLOSED SESSION – 11:20 am

11:20 – Activity Review

11:35 – Petitions, Board Review, and Staff Liaison Decisions

End of Meeting

MCLE Board Minutes
5-13-2022

Minutes
May 13 2022

The meeting of the Mandatory Continuing Legal Education Board was called to order by Board Chair Todd Alberstone at 10:00 AM on Friday, May 13, 2022. The meeting was held via videoconference. Board members in attendance were:

Todd Alberstone, Chair
Robert Malae, Vice-Chair (briefly absent from 10:28-10:36)
Asia Wright
Chris Bueter
Merri Hartse

Liaisons and Staff in attendance:

Adelaine Shay	MCLE Manager/MCLE Board Staff Liaison
Ransom Smith	MCLE Analyst
Jonathan Burke	Innovative Licensing Manager and Regulatory Counsel
Bobby Henry	Associate Director for Regulatory Services
Renata Garcia	Director for Regulatory Services

Review of Minutes

The MCLE Board reviewed the minutes from the April 8, 2022 meeting. The Board approved all minutes without change.

Course Audit Report

MCLE Board member Asia Wright presented their audit report for District of Columbia Bar CLE course: *ACLM 62nd Annual Virtual Meeting – Health Law & Legal Medicine, Day One.*

Discussion: Ethics Credit Guidelines

The MCLE Board discussed a proposed amendment to APR 11(e)(6) which would extend the opportunity to earn MCLE credit to members engaged as law clerk program tutors. The Board reviewed public comment that had been received on the proposed amendment. After review, the Board unanimously moved forward to seek support for the amendment as drafted from the Board of Governors in accordance with APR 11. Board member, Robert Malae, volunteered to present the preliminary amendment seeking the Board of Governors' support on behalf of the MCLE Board.

MCLE Updates

The MCLE Staff Liaison discussed general updates with MCLE, including the passing of MCLE deadlines and referral to the Supreme Court of one hundred licensed legal professionals for suspension due to MCLE noncompliance, extensions of MCLE reporting period requirements for those members who obtained them by petition, progress on Project Jupiter and a tentative launch schedule for the website, and the departure of a MCLE analyst and recruitment efforts for a new MCLE analyst to fill the vacant position.

MCLE Hardship Petitions

The MCLE Board decided by motion on 2 hardship petitions. No listing of these motions is included in order to protect member confidentiality.

Adjournment

There being no further business at hand, the meeting was adjourned at 10:30 AM. The next regularly scheduled MCLE Board meeting will be held at 10:00 AM on Friday, August 5, 2022.

Respectfully submitted,



Adelaine Shay
MCLE Board Staff Liaison

Suggested Amendment to APR
11(e)(6)

DISCUSSION :
Suggested Amendment to APR 11(e)(6)

MCLE Board will review the preliminary suggested amendment to APR 11 (e)(6), and discuss feedback received at the July WSBA Board of Governors meeting. Taking the feedback into account the MCLE Board will consider any revisions to the current preliminary suggested amendment and will vote whether to move forward with the suggested amendment.

Possible Discussion Topics:

- Discuss feedback received from WSBA Board of Governors.
- Discuss MCLE staff suggested edits to redline:
 - o Per APR 11 (c)(1)(i) licensed legal professionals may meet their law and legal requirement by attending courses. The suggested edit clarifies law clerks are eligible for law and legal in addition to “other” and ethics credits by stating clerks are participating in courses.
 - o Moves to new category for law clerk tutoring instead of combining with law school teaching, which would create APR 11 (e)(10).
 - o The suggested edits may assist with implementing the suggested amendment and does not impact the spirit in which the original revisions were made (see attached document titled “Alternate Redline”).
- Finalize redline and vote on whether to move forward with the preliminary
- If proceeding, MCLE Board will nominate Board members to work on GR 9 coversheet.

Background:

At its April 9, 2021 meeting, the MCLE Board began discussing the potential for tutors to claim MCLE credit for instruction time. The MCLE Board stated it was open to working with the Law Clerk Board, and favored the idea of a rule change approach that would allow for tutors to claim teaching credit. Tutors are not currently eligible for teaching credit per APR 11. The MCLE Board formed a work group, prepared a report and recommendation, posted the suggested amendment for public comment, and solicited feedback from the WSBA Board of Governors. At the WSBA Board of Governors meeting held on July 22nd, Todd Alberstone and Robert Malae presented the preliminary suggested amendment on behalf of the MCLE Board. The WSBA Board of Governors held a vote and decided to support the MCLE Board’s preliminary suggested amendment.

Timeline:

Timeline for Suggested Amendment		
January 2022		Workgroup drafts report and recommendation.
February 4, 2022	Law Clerk Board Meeting	Law Clerk Board reviews report and recommendation draft and provides feedback to workgroup. (COMPLETE)
April 8, 2022	MCLE Board Meeting	MCLE Board reviews report and recommendation and any feedback from Law Clerk Board. MCLE Board will vote whether to move forward with suggested amendment. Vote on opening for member and other stakeholder comment period. (COMPLETE)
May 6, 2022		Close written comment period. (COMPLETE)

May 13, 2022	MCLE Board Meeting	Hear member and other stakeholder comments and discuss feedback. MCLE Board to vote on whether to proceed with suggested amendment. If proceeding, MCLE Board to nominate Board members to present to Board of Governors and work on presentation materials. (COMPLETE)
June 27, 2022	Board of Governors Materials	Board of Governors materials due. (COMPLETE)
July 21-22, 2022	Board of Governors Meeting	Present to WSBA Board of Governors for review and comment. (COMPLETE)
August 5, 2022	MCLE Board Meeting	Discuss feedback from Board of Governors and vote on whether to move forward with suggested amendment. If proceeding, MCLE Board will nominate Board members to work on GR 9 coversheet.
August 22, 2022		First draft due of GR 9 coversheet.
September 12, 2022		Final draft due of GR 9 coversheet.
September 22 & 23, 2022	Board of Governors Meeting	Notify Board of Governors of suggested amendment.
October 15, 2022	Suggested Amendment Deadline	Send recommendation to Court.

Enclosed Documents:

- **Alternate Redline**
- **Memo to WSBA Board of Governors**
 - APR 11 Preliminary Suggested Amendment—Redline
 - Public Comments—Collected Feedback from Survey
 - MCLE Board Report and Recommendation
 - APR 6 Rule and Regulations
 - APR 11
 - Primary Tutor Application
 - Resolution of the WSBA in Affirming the Law Clerk Program Value

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) – (e)(9) No Changes.**

5 **(e)(10) Tutoring clerks through the APR 6 Law Clerk Program courses when providing**

6 **“personal supervision” as defined in APR 6(d)(2).**

7 **Sections (f) – (k) No Changes.**

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WASHINGTON STATE BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Todd Alberstone, MCLE Board Chair
Robert Malae, MCLE Board Vice Chair
Adelaine Shay, WSBA MCLE Manager

DATE: June 24, 2022

RE: Suggested Amendment to Admission and Practice Rule (APR) 11 – FOR REVIEW

Discussion: The MCLE Board requests the WSBA Board of Governors to review and comment on the preliminary suggested amendment to Admission and Practice Rule (APR) 11 regarding the establishment of MCLE credit for tutors in the APR 6 Law Clerk Program.

Pursuant to APR 11(d)(2)(i), “The MCLE Board shall review and suggest amendments or make regulations to APR 11 as necessary to fulfill the purpose of MCLE and for the timely and efficient administration of these rules and for clarification of education requirements, approved activities, and approved course subjects. Suggested amendments are subject to review by the Board of Governors and approval by the Supreme Court.”

Over the years, there have been several requests by tutors in the APR 6 Law Clerk Program to receive MCLE credit for giving their time as tutors to clerks enrolled in the Law Clerk Program. As part of the Law Clerk Program, tutors provide three hours of personal supervision each week to clerks, including substantive discussion of the law. Within each year of this four-year program, clerks are required to study six subjects and to pass monthly examinations. The exams are developed, administered, and graded by the tutors. Requests for MCLE credit for tutoring have sought credit under both “teaching” credit and “mentoring” credit provisions of APR 11. However, neither credit provision is designed to accommodate for law clerk tutoring. Tutors cannot claim teaching credit under APR 11(e)(6) as such credit is specifically limited to the teaching of law school courses. Likewise, requests for mentoring credit would also not be successful because students of the Law Clerk Program are not active members of the WSBA and therefore any supervision of them does not qualify for mentoring credit as it is defined in APR 11(e)(8).

In response to requests and the need to address this dilemma, the MCLE Board formed a workgroup—including two members of the Law Clerk Board—to explore a potential amendment to APR 11. On August 12, 2021, the workgroup met to discuss the need for an amendment and potential language. During this meeting, the workgroup members suggested that the “personal supervision” time as defined in APR 6(d)(2) should be eligible for MCLE teaching credit, and that APR 11(e)(6) should be amended accordingly. The workgroup suggested an amendment to APR 11(e)(6) (teaching credit) instead of APR 11(e)(8) (mentoring credit), as teaching law school was deemed to be the most analogous activity to Law Clerk Program tutoring.



Per APR 11(d)(2)(i), the following preliminary suggested amendment is brought before the WSBA Board of Governors for review:

APR 11(e)(6)

Teaching law school courses, when the instructor is not a full-time law school professor; or providing “personal supervision” as a tutor for the Law Clerk Program, as defined in APR 6(d)(2);

BACKGROUND

The purpose of MCLE is “to enhance lawyers’, LLLTs’, and LPOs’ legal services to their clients and protect the public by assisting lawyers, LLLTs, and LPOs in maintaining and developing their competence . . .” (APR 11(a)). Therefore, the MCLE Board is continuing in its work to respond to the needs of the legal community, by suggesting an amendment to APR 11 that would allow tutors in the APR 6 Law Clerk Program to claim MCLE credit for their personal supervision of APR 6 law clerks. The need for this amendment is evidenced by requests from tutors in the APR 6 Law Program to receive credit for the supervisory and teaching work they perform and a current absence of a credit provision that permits them to do so. The MCLE Board believes the work performed by law clerk tutors should be recognized as valuable continuing legal education and that APR 11(e)(6) should be amended to allow those engaged in this work to receive MCLE credit for their efforts.

On February 4, 2022, the Law Clerk Board reviewed the report and recommendation at its regularly scheduled meeting. No edits or suggestions were made by the Law Clerk Board. The Law Clerk Board supports the amendment to APR 11.

On April 10, 2022, a public comment survey requesting feedback regarding the preliminary suggested amendment was posted on the WSBA website. The MCLE Board webpage also informed WSBA licensed legal professionals (and the general public) of the opportunity to make a public comment regarding the preliminary suggested amendment at the May 13, 2022, MCLE Board Meeting. The online public comment survey closed on May 6, 2022. As of May 6, 2022, the MCLE Board had received 183 survey responses. Out of those responses, respondents were largely in favor of the preliminary suggested amendment with 136 in favor and 35 not in favor. The remaining 12 respondents were partially in favor.

At its May 13, 2022, meeting, the MCLE Board reviewed and considered all feedback produced from the survey. At the same meeting, the MCLE Board opened the proposed amendment for public comment; however, no licensed legal professional or interested member of the public appeared for such purpose. After having given due consideration to any public concerns identified in the survey, the MCLE Board voted unanimously to continue to move forward with the preliminary suggested amendment by sending it to the Board of Governors for review. After review by the Board of Governors the MCLE Board will discuss any feedback provided by the Board of Governors and decide at its August 5, 2022, meeting whether to suggest the rule amendment to the Washington Supreme Court. If the MCLE Board moves forward with suggesting the amendment to the Court, the MCLE Board will ask the Board of Governors to support the amendment at its September meeting.

FACTORS IN SUPPORT OF THE SUGGESTED AMENDMENT

The MCLE Board reviewed and discussed the public feedback received about the preliminary suggested amendment. In response to the opposition, the MCLE Board subcommittee now presents the following as important factors in support of the amendment:

Value of the Law Clerk Program

The four-year Law Clerk Program stands as a viable alternative to traditional law school that provides education through a combination of work and study under the supervision of a lawyer or judge. The lawyer or judge must have at least ten (10) years of experience to qualify as a tutor and be in good standing with the Washington State Bar Association. With these provisions for quality supervision, the Law Clerk Program increases opportunities of non-traditional law school students by offering an affordable alternative for those seeking to practice law in Washington state. Those who complete its education requirements qualify to apply for the Washington State bar exam. For this reason, the MCLE Board supports the entire preliminary suggested amendment.

Teaching Credit for “Personal Supervision”

Tutors in the law clerk program spend an average of three hours per week week—over the course of the four-year program—personally instructing and advising the law clerk. As the coursework for this program includes 6 courses every 12 months, as prescribed by the Law Clerk Program Rules and Regulations, the supervision time is functionally equivalent to the “teaching” that would be done in fulfillment of APR 11(e)(6). Personal supervision is defined in APR 6(d)(2):

Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor's personal supervision of the law clerk. “Personal supervision” is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments.

As the personal supervision time includes exposition and discussion of the law, case recitation, and analysis of assignments as part of coursework, this time should be eligible for “teaching” credit per APR 11(e)(6). The Law Clerk Program curriculum includes “using an apprenticeship model that includes, theoretical, scholastic, and clinical components.” These components are designed to parallel the extensive and comprehensive nature of law school curriculum and include in their coverage topics such as civil procedure, contracts, property, and torts.

Benefit of Offering MCLE Credit

Offering MCLE credit for supervision and instruction time may encourage lawyers to serve as tutors for the Law Clerk Program. Tutors must commit an extensive amount of time both to instruct and supervise the law clerk. The tutor is not only responsible for the personal supervision of the law clerk but also charged with the responsibilities of guiding the law clerk's study of all subjects, selecting all reading and instructional material to be used throughout the clerk's education, and assisting law clerks with the development of elective curriculum. This time is uncompensated volunteer time separate from the full-time job of the tutor. This status is analogous to that of a law school instructor claiming credit under APR 11(e)(6) who, according to the rule cannot be “a full-time law school professor.” As the tutor's full-time job is not tutoring, the MCLE credit eligibility will be consistent with this law school teaching requirement.

Recognizing law clerk program tutoring for MCLE credit, deservingly rewards the incredible time commitment and dedication to advancing the profession through this program as a law school alternative. Such a measure will hopefully increase the appeal of serving as a law clerk program tutor and ultimately affirm the WSBA’s commitment to increasing access to justice.

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WSBA RISK ANALYSIS: *This will be provided in the memo for the September meeting.*

WSBA FISCAL ANALYSIS: *This will be provided in the memo for the September meeting.*

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5 **(e)(6)** Teaching law school courses, when the instructor is not a full-time law school professor, or
6 providing “personal supervision” as a tutor for the Law Clerk Program, as defined in APR 6 (d)(2);

7 **Sections (e)(7) – (k) No Changes.**

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Suggested Amendment – Collected Feedback

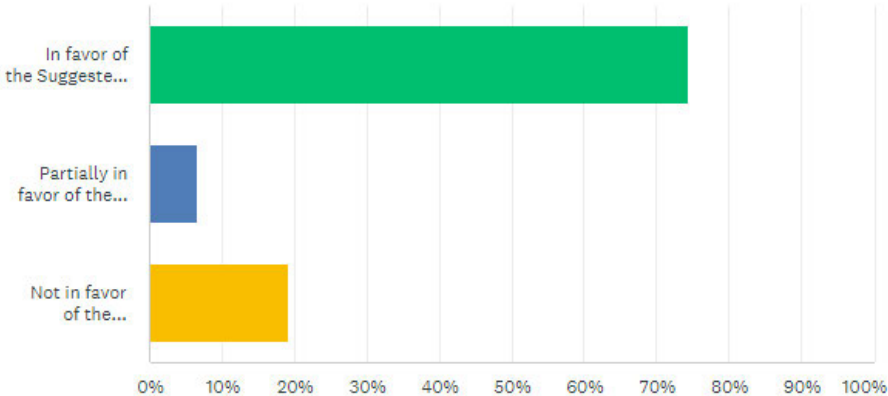
The below comments have not been edited in any way, including content, typographical errors, etc., and because the comments were submitted for consideration at a public meeting, we have included the commenters' names but not their email addresses or other identifying information.

Based on the survey questions, comments have been assigned to one of three categories: "In Favor of the Suggested Amendment", "Partially in Favor of the Suggested Amendment", and "Not in Favor of the Suggested Amendment". Within these three major groupings, comments are displayed in random order.

As of May 6, 2022:

Position on the MCLE Board's Suggested Amendment to APR 11(e)(6):

Answered: 183 Skipped: 0



ANSWER CHOICES	RESPONSES
▼ In favor of the Suggested Amendment	74.32% 136
▼ Partially in favor of the Suggested Amendment, with some changes	6.56% 12
▼ Not in favor of the Suggested Amendment	19.13% 35
TOTAL	183

TOTAL IN FAVOR OF SUGGESTED AMENDMENT - 136

Name	Feedback/Comments
	<p>This expansion appears to be consistent with the existing 11(e)(6) and also with the rule allowing CLE credit for hours spent volunteering for a QLSP. The one caution I give relates to a possible dilution of the original purpose of MCLE, which is to be sure that practitioners stay current in the law through training courses. Does the time spent tutoring a law clerk or advising a low-income client provide that function of educating the practitioner? Sometimes, yes, but not as effectively as an educational hour devoted to developments in the law.</p>
Andrea O'Rourke	<p>Awarding MCLE credit to LLPs creates an incentive structure for the Law Clerk Program that is mutually beneficial to tutors, clerks, the general public, and the state of Washington as a whole while addressing several intersecting DEI issues that affect many current and prospective LLPs throughout the course of their career in the law.</p>
Barbara Backman	N/A
Lawrence A. Bennett	<p>The amendment should be subject to some sort of limitation for this type of credit.</p>
Kim Lancaster	<p>My tutor has spent well over 1000 hours during the last four years reading a textbook and supplemental materials for each course, creating a syllabus and exam for each course, grading exams, and meeting with me to discuss the assigned reading.</p>
Justin Mucklestone	<p>I am a APR 6 Law Clerk Student who has been in the program since September 2020. Throughout my time in the Rule 6 program, my tutor has spent many hours along side me on a weekly basis breaking down all the nuanced concepts and practices of both federal and Washington state law. Quite often the concepts we explore together using textbooks and syllabi from ABA accredited law schools not only give me the knowledge and recourses to learn the law and analyze legal issues through appropriate case law framework, but along the way they also give my tutor a reinforced ability to do so as well in all aspects of his own legal practice. I believe it would certainly be in the best interests of the WSBA and Supreme Court to move forward in approving this suggested amendment. Thank you.</p>
	N/A

Emanuel Jacobowitz	I have learned more from teaching most of the classes to my law clerk, than from any CLE I ever took.
	N/A
D'Adre Cunningham	N/A
Michael Savage	I think this is great idea. While it might be too late for my tutor I think this would be a nice benefit to confer under the circumstances and may encourage tutors who wouldn't otherwise. It seems only fair that they should be conferred some benefit other than good will especially considering the amount of hours they have to put into it.
	N/A
	N/A
	N/A
	N/A
David Carico	N/A
Mark J. Carroll	I think this is a good idea
Cindy Elsberry	Legal professionals who volunteer their time to teach, tutor and train other legal professionals deserve to receive MCLE credit for this work, it is similar to preparing a CLE or writing a legal article - all these endeavors equally enhance and improve the legal profession.
Elizabeth Kim	This is a really great idea that I hope will provide more access to legal education for nontraditional students. And also recognize in a tangible way these hard-working volunteer-tutors who are spending so much of their valuable time with students. The only change I would make is to find some way to provide some type of compensation for the tutors. Maybe we can't find a way to pay the tutors while still making the program affordable for low income students, but we should look at other options, such as waiving their annual WSBA dues.
	It needs to be strictly regulated with evidence of said tutoring so we know it's not all about drinking and socializing.
John Acheson	As a past chair of the tutorship program for the WSBA under 6(d){2}, I can attest to the fact that tutors spend an enormous amt of time in their responsibilities doing all that is necessary in qualifying their tutees to sit for the WSBA exam. Cheers John Acheson (6942)

Evelyn Cruz Sroufe	I served as a tutor in the WSBA Law Clerk Program in the 1980's. I also taught a quarter at the UW Law School during my first year of Law Practice. I have since presented at many CLE's--both WSBA and other forums. The preparation I did for both the tutoring and the Law School teaching were at least comparably rigorous. I believe credit for such tutoring and teaching is merited.
william gaar	This amendment would provide incentive to get volunteer teachers and it would reward those that give back to young lawyers needing mentoring and practical skill guidance. This is a no-brainer for me.
Craig Evezich	Having been a mentor, it is obvious to me that mentoring provides the best exposure to many areas of the law that I would never have exposure and makes me internalize the law through discussing it with my mentee. There is no CLE that I believe gives an attorney better exposure to knowledge, and practical use of the same, other than through the Clerkship Program.
	N/A
	N/A
	This is a wonderful idea to broaden the areas for people to help others.
Stella Edens Pederson	The work of being a tutor in the Rule 6 program far surpasses the information received in a more passive CLE environment. As a tutor and an assistant tutor, the education and review of subject matter and argument was intensely informative and useful in my practice as well. I would suggest that almost all CLE requirements be waived while one is acting as a Rule 6 tutor.
	I concur with the Benefit of Offering MCLE Credit to tutors described in the MCLE Board report. MCLE credit is an important incentive to motivate lawyers to donate time to a valuable program aimed at those who cannot afford traditional law school study. In this extremely difficult economic climate, the Bar should promote access to the legal profession through the Law Clerk Program; doing so requires the volunteer assistance of current Bar members. Incentivizing volunteer work in this case is a means toward an important end.
	I am a tutor and it is very obvious that CLE credit is merited in this situation. There is a significant amount of work involved that reinforces both basic legal principles that CLE's are intended to reinforce but also identifies where the law has changed and evolved since law school.

	To successfully tutor a Rule 6 law clerk, the tutor must essentially review all the materials and prepare discussions on all required topics. This is very similar to what a presenter would do for a CLE so it is fair that a tutor should receive similar CLE credits.
Roxanne Eberle	N/A
Kati Ortiz	I think allowing for CLE credit to APR 6 tutors is a great idea. As a tutor myself, I spend a lot of time creating lesson plans and providing direct instruction, similar to what I'd do if I were presenting a class where CLE credit was available. Thanks.
	N/A
Ann E Prezyna	N/A
Meredith Weaver	N/A
Claudia La Rose	N/A
Michael Vander Sys	Seems fair given the time, energy and preparation required to teach the course material. Must also understand and present it, very similar to teaching a CLE.
Scott Bergstedt	It is teaching credit to a limited number of individuals.
Brynjar Aaron Peterson	This is such a great program and the mentor's/tutor's spend an incredible amount of time teaching our future lawyers the law. If someone who teaches an MCLE receives credit, why would these very deserving people not receive MCLA credit. I am very much in favor of this change!!
Robert S. Apgood	I would also like to see the WSBA negotiate with the Oregon and Idaho Bar Associations to extend comity to members of the bar who completed the Rule 6 program and discontinue treating them like second class attorneys.
Greg Stadter	Great idea! Tutors perform a valuable service in sharing their expertise with future attorneys. An attorney's time is limited and valuable. MCLE credit will likely provide an opportunity and incentive for more attorneys to become tutors in the Law Clerk Program.
Donald Esau	N/A
Sarah Jones	It's a great idea!
Thomas Boeder	I believe that the proposed change is a good idea
Lynn Mounsey	N/A

	<p>Given the description in the MCLE Board report, the work done by tutors in the Law Clerk Program should be eligible for CLE credit. The work involved in preparing for a tutoring session and then performing the tutoring, appear at least analogous to preparing for and giving a presentation on a legal topic, for which a lawyer would get CLE credit. As noted in the report, another reason for providing CLE credit for the tutoring activity would be to encourage lawyers to volunteer for such tutoring activity.</p>
Andy Brassington	<p>I served on the Law Clerk Committee for 13 years, with several as Chair. I wholly endorse this Amendment. I have tutored several Law Clerks and know first hand the extra time required to perform the duties of a Tutor and the extra commitment to our Profession. This Amendment is a good idea. Andrew Brassington WSBA #18361</p>
Mark Jordan	<p>The tutors spend an enormous amount of time with the law clerks. It just makes sense giving them MCLE credits. Thank you.</p>
	N/A
Rob Tulloch, WSBA 9436	<p>I am a tutor for a law clerk who is finishing month 38 of 48. I happen to have sufficient CLEs that I do not need these, but given the massive time invested to be a tutor I am in support. The one change I would recommend (unless I am missing something) would be for Assistant Tutors to also receive credit. I have a vested interest because my law clerk works for me, but volunteers are fully just that and it would be a valuable "bonus" for them to receive CLE for the 2 month courses they teach when requested and are willing and able to volunteer.</p>
	<p>I tutored my wife, and it was a great experience for both of us. She completed the program, got the Board's approval to sit for the exam, and passed the bar exam on her first try. I spent an enormous amount of time preparing lessons and monthly exams, and grading them, and I think it makes a lot of sense to reward that time with CLE credits.</p>
	N/A
	N/A
Miriam Miller 14460	<p>Incentive to continue with WSBA in a responsible position.</p>

Barry M Meyers	I have served as a tutor in this very worthwhile and beneficial program. There is a substantial time commitment required to see a law clerk through this program from beginning to end. Offering some remuneration in the form of MCLE credits would seem reasonable and may encourage more tutor participation. The day my law clerk student was sworn in as a member of the WSBA was one of the most rewarding days of my law practice.
Asa LaMusga	Our firm has had one successful APR 6 graduate and two individuals currently in the program. Although I am not a tutor, watching others tutor demonstrates it is a ton of hard work for the tutor. MCLE credit is appropriate given the amount of time tutors must spend with the materials.
	N/A
Stephen John Henderson	We have a paralegal who is about half way through the rule 6 program. I have taught her the class in ethics and community property. The tutor winds reading more than the student as well as the one on one teaching the material. The testing, grading, and final review with the student is demanding, but quite rewarding. I would certainly welcome getting some CLE credit as a tutor. But I admit the real reward is seeing our student grow in their legal abilities. SJH
	I am surprised to learn that tutors don't get credit, especially when credit is available for prepping CLE presentations.
Thomas J. Van Norman	I have supervised law clerks before. Instructors can provide valuable training and if they do, this serves an important training and experience opportunity. Credit should be allowed in appropriate cases. Thank you.
	Makes sense and surprised this wasn't already in force.
Mel Simburg	Having served as a tutor for an aspiring lawyer, I realize that it is a lot of work and does refresh the tutor's knowledge at the same time. So, it makes sense to give CLE credit, but it should be limited to a reasonable amount.
Bob Baird-Levine	Providing incentives in the form of CLE credits for teaching future lawyers helps make clerking an easier path to becoming an attorney. Keep making becoming AND BEING an attorney less and not more costly. Way to go.

Klaus Snyder	<p>I have now been tutoring my son Brandon Snyder since September 2020 and I have to admit that the amount of time I have put in preparing for our classes and then conducting those classes which is part of the “personal supervision” of my law clerk student, it has certainly been quite a few more hours than I anticipated. However, I think it gives me A good perspective to evaluate this proposed new rule. I would say to all of you out there if you have the chance to be a tutor for a willing law clerk, expected to be a lot of hard work but expect it to be a great re-learning experience for you as a practicing lawyer. Just imagine going back and re-reading Pennoyer v. Neff and looking back at The Daubert case regarding scientific evidence and looking back again at property law. It has been a great ongoing CLE for me and certainly has helped me be better in my practice as I’ve refreshed my memory on many of these legal concepts. It is a requirement as a supervisor that we spend at least three hours per week of personal supervision with our law clerks and I find that my son and I spend that many hours and more each and every week, not only because I enjoy tutoring him, but I think we both are gaining a lot from the process. I would highly recommend and support the passage and inclusion of this provision in the CLE rules. I certainly would benefit from it, but I think it is reflective of a lot of good “education” for the lawyer/tutor as well.</p>
David B Trujillo	Those attorneys that provide that training should receive some credit. That’s a lot of work.
Jeanette Laffoon	<p>As a tutor myself, I am cognizant of the extensive time and energy committed to the program. I devote an average of 8 hours per week to mentoring my law clerk (meeting with her, reading, researching materials and drafting exams). It would be amazing to receive credit for 3 of those hours. It would also provide welcome incentive for other qualified attorneys to co-mentor in areas of their expertise, which would increase the quality of the experience for clerks.</p>
James Roy Wood	N/A
	N/A
Pamela Egan	I was a tutor in college. It improved my grades. One learns a lot tutoring.

D. James Tree	During the past decade I have acted as tutor for two different law clerks in the WSBA law clerk program. I found the program to be comprehensive and very time consuming. It was a rewarding experience mentoring these law clerks. I had to dive in-depth in many areas of the law. I believe the work and study necessary to be a tutor is at least equivalent to what an attorney learns through traditional CLE course, and I encourage the WSBA to allow tutors to earn credits for the hard work and service they are providing to our newest members of the bar.
Kristen Reid	As a former Law Clerk, and current Tutor, I am 100% for this. I know exactly how much work it is to be a Tutor, and it does require that I keep up on the law, and convey the concepts and rules effectively. Thanks!
	N/A
Scott F Lundberg	I was a former tutor under this program for Heather Webb - it takes a lot of time to create the syllabus and structure the outlines for each class, learn new and current law, spend and mentor with your time and then create meaningful exams. The goal is to be creative, have the mentee learn each subject, pass the bar and come out helping people solve problems. It takes a lot of time for the mentor and mentee to do it right and succeed. CLE credited for the mentor would be well earned and deserved. Scott WSBA 16178
Anthony F Menke	I believe this approach would encourage some attorneys to participate in this very worthy program. Being mentored by experienced and seasoned attorneys is a distinct advantage for law Clerks. I would respectfully recommend that there be a certain minimum number of years experience required before such attorneys may receive CLE credit.
Marya C. Noyes	This is a tremendous service to the profession. Frankly, I am surprised that it took so long to implement.
Eric Steven	The rule 6 program takes time and effort for both mentor and participant. The time spent seems like it furthers the mentors legal growth sufficient to warrant CLE credit.
Michael Graham	N/A
Adam Philipp	N/A
Doug Palmer	This is a lot of legal study/work that is verified with certification to the Bar. We're basically giving a personal, one-on-one CLE.

Gregory Hoover	I approve. The more CLE credits to members the better. It should be easier to give credits for CLEs to members. Always.
	<p>Being a tutor is a serious commitment of time and consistency; since the law clerk program is a four-year commitment, the tutor spends countless hours discussing each law subject under consideration, preparing appropriate exams for each subject, supervising the clerk's responses to the exam, reviewing/commenting on all written answers to each exam, and discussing each answer with the clerk. In addition, the tutor discusses each book which the clerk chooses for reading and written review; then the tutor reads and writes comments for discussion and analysis with the clerk. In addition, the tutor guides the clerk in all other aspects of professional rules of responsibility as the clerk learns how to serve clients responsibly and effectively. I believe this important time commitment by the tutor should be recognized for appropriate mcle consideration.</p>
Betsy Brinson	<p>I am currently supervising a Rule 6 intern. I graduated from law school 41 years ago this June and have been in a practice focused on single area of law for the last 30 years. Thus, it has been rude awakening as to how much I have forgotten and have had to relearn in order to be able to tutor my Rule 6. I've had other mentors tell me how much work tutoring a Rule 6 is, but until you do it yourself, you really don't appreciate what that means. I'm not in it for the credits, but it certainly is much more educational and intense than any CLE I've done in my 40 years of practice. It's also a much greater commitment of time than CLEs. For example, in the last 5 months I have spent between 8 and 16 hours every weekend boning up on the UCC and corporations because they are not areas that I practice in and have dealt with at most tangentially in the last 40 years. Given what the Bar has forecast about the declining numbers of attorneys in the future, offering credits for mentoring Rule 6's may be a way to counter the decline.</p>
Janet T. Kelly	<p>The proposed amendment is consistent with other teaching activities counting toward CLE requirements, and is in line with the spirit of the rule - to keep ourselves current and abreast with the law. I completed the law clerk program and have served as a tutor for about 6 months - it requires a lot of work, time and reading to serve as a tutor. My clerk successfully passed the bar.</p>
Robert C. Scanlon	

Robert Jones	I fully support this proposed change. It's a shame that this hasn't been done sooner. One of my partners has spend substantial amounts of time and effort to supervise the preparation of one of our paralegals to take the WA state bar exam this July (2022). It is a shame that my partner has not been able to claim CLE credits for the hours and hours of time he has spent in supervising this candidate.
	Supervising a Rule 6 student is a huge commitment of time and energy and requires significant knowledge and research on the part of the attorney. The 32 hours per month spent teaching and supervising dwarf the 15 hours per year required for CLEs, and if the WSBA can entice more attorneys to become Rule 6 supervisors it could help ease the financial burden of law school for many future lawyers.
Julie	This looks reasonable to me!
Timera Drake	I think this is a fantastic amendment and could boost participation in the Law Clerk program.
DEANE W MINOR, WSBA 12756	FROM MY 3+ YEARS AS A TUTOR, I CAN SAY WITH CONFIDENCE THAT I HAVE LEARNED AS MUCH FROM TUTORING AS I DO FROM THE BEST CLE'S I HAVE TAKEN -- AND MUCH MORE FROM TUTORING THAT FROM THE TYPICAL CLE. AFTER 40 YEARS, PALSGRAF MAKES SENSE!
William R. Kiendl	There should be no situation where a person devoting time to the training of aspiring professionals must do so using her / his own resources.
Alan Bornstein	The Apprenticeship program provides a path for those who wish to be lawyers, but lack the money or time to attend law school. Providing CLE credit to tutors rewards tutors for their efforts and, simultaneously, refreshes their legal knowledge.
Daniel J. Hess	I am currently tutoring a woman in the Law Clerk Program. This allows me to stay conversant with many areas of the law. I feel it should qualify for credit similar to that allowed for Law School Instructors. Dan Hess
	Teaching of law students and other legal professionals should also count for CLE credit as well so long as the teaching meet similar criteria with respect to content.
Cruz Turcott	N/A
Robert D. Gudmundson	Teaching is a great learning experience for the instructor. This amendment to allow tutors MCLE credit for time tutoring is a good idea. I support it.
Matthew McGowan	I think that's a great idea. Mentoring a Rule 6 can be hard work, and this is a reasonable and practical incentive.

	<p>Federal Administrative Judges should have the CLE requirement waived. Other judges and state administrative judges have this waived, it does not make sense that it is not waived for federal administrative judges.</p>
<p>Christopher Trent Kunz</p>	<p>I was a tutor in the law clerk program for Alexa Ritchie. I wholeheartedly endorse this amendment. I spent many, many hours providing "personal supervision" as to all tutors in the program. A major, sometimes insurmountable, hurdle for potential law clerks to enter the program is actually finding a qualified attorney who is willing to assist as a tutor. I believe, the amendment proposed, would allow potential tutors to free up some time, by not having to take CLE's. At the time I was participating in the program, many of the tutors were the parent of the law clerk participant. It is a HUGE ask to have a family member act as a tutor in this program, there is no incentive built into the program to do so – in fact, all of the duties of the tutor in the program become disincentives to participate as a tutor. Without incentives like this, and others not yet available, I would never participate as a tutor in the law clerk program again, unless it was a child or other close family member who was the participant. I hope this is helpful. Feel free to contact me if you would like further input, 360-576-5322.</p>
	<p>N/A</p>
<p>Sherri Marie Carr</p>	<p>I'd also provide for changes within the applicable rules and approve the mentoring aspect, per "Requests for MCLE credit for tutoring have sought credit under both "teaching" credit and "mentoring" credit provisions of APR 11. However, teaching credit is limited to law school courses and, therefore, is not applicable to the Law Clerk Program. Requests for mentoring credit are also not applicable, as the Law Clerk Program is not approved as a "Structured Mentoring Program" because the students are not active members of the WSBA as required per APR 11(e)(8). APR 11d (vii) Approve Mentoring Programs. The MCLE Board shall approve mentoring programs that meet requirements and standards established by the MCLE Board for the purposes of awarding MCLE credit under these rules." Being instructed and learning the applicable substance of the legal profession is just a portion of what is required. Folks also critically need mentors that guide them, that they feel comfortable asking questions of, and that teach them things that are not in the "textbooks" regarding how to progress ethically, professionally, and with the requisite well-being and skills necessary to succeed in this profession.</p>

Barry W. Brandenburg	Mentoring an APR 6 applicant is very time consuming. Time spent with the mentee takes away time from generating income for the firm as well as taking time away from the mentor to comply with the attorney's own MCLE obligations. By allowing MCLE credit for mentoring a potential new attorney, we encourage older, experienced attorneys to devote that time to the mentee.
Ada Danelo	N/A
	I am in favor of this amendment in the hope that more attorneys will be willing to supervise Rule 6 clerks. This is an extremely important alternative to law school and with the high cost of law school, this program is needed to diversify our profession.
Jennifer Jana	N/A
	As one who was a successful Rule 6 tutor, I totally support the proposal.
Dennis J. Beemer	As a current tutor, I am spending in excess of 8 hours per week reading law school textbooks and refreshing and updating my knowledge of the law. I am learning new material which significantly benefits me as a legal professional, and which I may then incorporate into my legal practice. Further, I spend approximately 12-15 hours each week in direct supervision of my student, reviewing case briefs, writing examinations, etc.. Essentially, I am assisting the next generation in their professional legal development. I believe both my knowledge and skill level has been substantially enhanced as a result of my participation in this program, which are the very essence of continuing legal education. Therefore, I believe it entirely appropriate to award CLE credits for tutors involved in this program.
KINNE HAWES	N/A
	Mentors provide many uncompensated hours and this change is a small way to support them and credit them for their work. This seems a small step, but better than not doing it.
Kate Gamble	Having studied under the APR 6 Law Clerk program, I can attest to the amount of time and attention required to be an effective tutor. Those willing to mentor not only impart the knowledge they have acquired through experience, but are actively learning themselves through the teaching process.

Jonathan Sprouffske	I've witnessed members of our firm serve as mentors to Rule 6 candidates. I think the time and attention they put into planning lessons and exams is commendable, it is likely they learn more undergoing that exercise than they would in an online CLE. I believe CLE credits would be appropriate.
	Tutors should absolutely receive MCLE teaching credit! This would provide incentives for attorneys to mentor Rule 6 clerks, thus providing more opportunities to the general public to have a shot as a lawyer without the additional financial strains of law school. It is a win-win for tutors and the public.
Matthew Campbell	This is an easy call in my opinion. Attorneys who take time from their regular practice to teach at our law schools or mentor law clerks provide a critical service to our legal community. They should receive CLE credit for that work. When I was in law school, most of my favorite professors were practicing attorneys. Their practical experience and focus on real application (vs. theoretical) was critical to my education. These attorneys made me the attorney I am today. I also came up through the law clerk program, and gained similar benefits from working with mentor attorneys. I know that these attorneys spend a significant amount of time keeping up to date to make sure they're passing on correct and accurate information. In my opinion, that work is at least as valuable, if not more, than anything we learn at a typical CLE. These attorneys add so much. They should received CLE credit for their efforts and time.
Kaustuv M. Das	Should there be some adjustment made in light of the fact that a typical law school class has more than one student? Also, would the tutor be entitled to claim another five hours of CLE credit under APR 11(e)(2) for every hour of "personal supervision?"
Brian L. Ernst	Tutors spend countless hours preparing their students by doing extensive legal research and preparation. This is akin to CLE presenters getting credit for their CLE preparations.
	N/A
	N/A
	I support this amendment. Although I went to traditional law school, I support the law clerk path to bar membership, and I believe this will encourage more lawyers to support law clerks.
Kristina Ralls	I think this amendment would encourage legal professionals to provide mentoring to rising APR 6 Law clerks

Lisa Brewer	Mentors and supervisors spend a huge amount of time overseeing Rule 11 etc students. It's like law school all over again. Plus, the WSBA would be wise to encourage volunteerism and mentoring as attorneys spend ever more time just making a living wage.
Kaylynn What	Yes! This is absolutely appropriate. Law school is great, but it's only when students get their feet wet in the field that they really understand what the practice is all about. This is so much work for the supervising attorney! They have to educate students about so many routine procedural issues, in addition to whatever area of law they are working within, and this process necessarily requires keeping up to speed with various aspects of the law, all the time, and understanding it all well enough to explain it to a person not well versed in it. This effort deserves the recognition that MCLE credit would provide.
	N/A
Salim Lewis	As a former law clerk and now lawyer, I saw the immense amount of work that goes into being a Rule 6 mentor firsthand. These lawyers are providing a service to the bar and the legal community at large and should be rewarded for that service with CLE credits.
	N/A
Erin Pierce	Teaching of any sort directed at other lawyers (through CLEs), or for students requires significant time and review of the relevant materials. It is appropriate for credit to be given for such efforts which enhance and update the teacher's knowledge in order to work with the student.
Carolyn Lake	Receiving credit is wildly appropriate recognition for the time and dedication these tutors devote to mentoring Law Clerks.
Aaron Ross	The law clerk program is a credit to the WSBA, and this change seems like it will increase interest in (and recognition for) tutoring -- it would be a welcome amendment.
Victoria Kesala	I was a tutor for two years. It is a huge time commitment and requires a lot of preparation. In my opinion, it is harder than teaching a CLE in your own subject matter area because you have to dig deep into other topics you may not have thought about much since the bar exam and make sure you understand them well enough to teach them properly to another person. It's a LOT. Offering credit is appropriate.

Malena Pinkham	I know the tutors do an enormous amount of work in their duties and learn a great deal from the material they are teaching.
	Participating in the time honored tradition of mentoring, even in this context, should be positively reinforced -- and it IS a lot of work!
Tiffany	N/A
	It completely makes sense! Particularly when the tutor is preparing the required monthly exams, they must review the law and be able to understand and apply it. That is just what the CLE is intended to do. This proposal should be approved without delay.
	N/A
Jason Pass	I think this is a great idea.
Jamie Olivares	I think this would be a wonderful amendment. I was lucky enough to have an attorney willing to clerk me. I would not have become an attorney otherwise, as the cost of law school was not an option. Giving the tutors CLE would encourage more attorneys do the law clerk program, which would result in a more diverse pool of attorneys in WA state that could not become an attorney via the traditional law school path.
	N/A
John Clynch	N/A

TOTAL PARTIALLY IN FAVOR OF SUGGESTED AMENDMENT - 12

Name	Feedback/Comments
Marjorie Simmons	As long as tutors are licensed attorneys
Lisa Johnson	<p>I have taught undergraduate students in law and legal studies for 18 years. No one has ever allowed me to earn MCLE credit for my teaching of substantive law to this constituency, and I have frankly felt quite disenfranchised from the WSBA because you do NOT address the important work of professors at the undergraduate level. To be absolutely honest, it is a major "hole" in the WSBA. I am a member, but I am often "left out." I am somewhat shocked at this suggestion "all of a sudden," give the - basically, what has at times seemed to be something of a dismissal of my work for the entirety of my career from this organization. I suppose the distinguishing factor is that the students considered here are law clerks, while my students are not. The objective teaching of law is the same, however. So, my suggestion is to yes, recognize it. But recognize ALL OF US who teach and allow ALL OF US to receive MCLE credit for our work.</p>
	<p>I guess I'm wondering what is different between any supervisor supervising any legal professional? Would you give a partner in a law firm CLE credit for supervising a subordinate that just joined the bar? If you're going to do one you might do the other. I don't think that I see anything special about law clerks that would set the supervisors apart and give them CLE credit and not give other supervisors silly credit. What about supervising paralegals? Should that count?</p>
Rhonna Kollenkark	<p>I think this is only fair. The amount of time devoted to properly mentor a law clerk is substantial. That said, lawyers that take time to teach a law school class have a lot more structure and objective requirements imposed on them by the institutions for whom they teach. I think the current amendment should offer either a credit limit or some firm guidelines for what will be considered acceptable to ensure a more evenly applied standard.</p>

Laird A. Pisto	The plan and changes make sense and will likely encourage attorney support for the underlying Law Clerk program. My recommendation is to place an annual "cap" on credits earned, perhaps around 8-10 CLE hours per year. The law firms supporting Law Clerk programs get a "lot" of benefit from the work performed by the clerks in their offices. Perhaps if there was more cross-training being done (teaching Law Clerks outside of the office they work in) which may be the case, where the teaching attorneys are subject-matter experts in the categories being taught, there would be less concern about a cap.
Eric Allen	Continuing legal education for presenters should be given based on the presenter having to do research or self education in order to teach others. It is not clear that personal supervision involves this. Giving credit under these circumstances does not show that the tutor is engaged in this self education.
	So many things qualify for CLE credits that it's become meaningless.
	Are there requirements for the number of hours that would qualify per credit? Please correct typo in proposed amendment.
Robert R. Fischer	I believe uncompensated tutors deserve credit for the services they are providing as "substitute" professors. However, adjunct professors who are receiving compensation should not receive credit unless being seriously underpaid, and then on a proportionate basis. For example, if an adjunct is receiving \$25 per hour then she should be some credits as determined by the board.
JIM ROHRBACK	IS THERE AN ANNUAL LIMIT ON HOW MUCH CLE CREDIT A "TUTOR" CAN GET BY SUPERVISING? I DO NOT BELIEVE THAT ALL 15 HOURS SHOULD BE ACCOMPLISHED BY THIS "TUTOR" DESIGNATION.
Neal Taylor	Any relief or benefit provided to Law Clerk Tutors will be greatly appreciated and MCLE credit is a good reward. How many MCLE credits would be granted and what will be the process for obtaining those MCLE credits? Depending on how many credits will be available, it might not be needed to ask you to find a way to provide MCLE credits for the lion's share of the time required to be a Tutor--studying the materials and creating, administering and grading the exams (one per month for 48 months)--especially those outside of the Tutor's active practice area. It has not been feasible to get Assistant Tutors for most of the classes.

	<p>Tutors should be allowed to earn credit, but should be limited as to how many credits per reporting period. For example, it would seem fair to allow up to about half of the credits be for tutoring, say 20-25 credits. The reason is that tutors should still be required to continue adding to their own continuing education, not just passing on what they know.</p>

TOTAL NOT IN FAVOR OF SUGGESTED AMENDMENT - 35

Name	Feedback/Comments
	N/A
	N/A
Stephen Faust	CLE requirements are justified for lawyers and others under your jurisdiction as a means to force professionals to maintain their professional competency. Mandatory CLE is not intended to create a form of currency the bar can spend to reward individuals for supporting programs the Bar finds interesting. If supervising clerks in the WSBA program is a practice that increases lawyer competency to the degree that it meets CLE requirements and justifies an award of credits, then so is the supervisory activity of any lawyer supervising any clerk or intern in their firm. You would never allow CLE for that, nor should you. Please confine the mandatory CLE concept within the bounds that give the bar any legitimate jurisdiction to require it of us in the first place!
Douglas Scott	Not in favor
	N/A
	N/A
	N/A
Britt L Ohlig	Tutoring is not the same as teaching.
	The Rule 6 sponsor could avoid any other CLEs simply by claiming they "personally supervised" the Rule 6 clerk...which is what they are supposed to do anyway when they agree to act as a sponsor. This would not give them any new or expanded legal knowledge, which is what CLEs are for.
	Providing oversight is not CLE, but more like being a managing partner, but much less on the education side.
	N/A
	We all applaud volunteer work, but MCLE is supposed to keep attorneys up to date in their legal education.

Vicki Beyer	I feel allowing CLE credit for personal tutoring is going too far. Every practicing lawyer "tutors" junior lawyers (and law clerks) in one way or another and allowing MCLE credit for tutoring in one context seems to be introducing a potentially very slippery slope. Personal tutoring, usually conducted one-on-one, does not usually involve preparation or reading of learning materials, which is usually a key component of any MCLE.
	Sounds like bullshit to me
	I'm opposed to this provision because licensed attorneys are not allowed to receive credit when they do their own "tutoring" to clients. The flexibility in crediting attorneys for their self-taught legal education is not available. That should happen first (before extending credits for "tutoring").
	Not learning any new law by teaching a clerk how you do law
	I've see a lot of attorneys with dysfunctional law practice getting free labor teaching someone to become another lawyer with a dysfunctional practice. Getting cle credit on top of the free labor is not helping that attorney become a better attorney or stay current with developments in the law.
	Not rationally related to lawyer's own continuing legal education. Ripe for abuse.
	I think it is important for people to obtain MCLE credits from a variety of sources, and I do not think that tutoring law clerks provides enough new and unique educational perspectives.
	This does little to further an attorney's skills or education. If this is okay why not also allow CLE credit for any pro bono work?
	Countless attorneys give of their time to mentor younger lawyers within their firms and communities without expectation of CLE credit. Although volunteering as a tutor is admirable, it is volunteering and should not be given CLE credit.

Steve Gordon	Tutoring others in areas the tutor already knows would seem to have little connection to the continuing the legal education of the tutor. It seems like a good idea to provide some benefit to the tutor but changing the purpose of continuing legal education to achieve social goals seems like a bad idea & a very slippery slope. The law is always changing and lawyers should be required to keep up with the changes through continuing legal education.
	This is bad precedent. What next? CLE credit for law school professors?
	Not needed.
	This starts a slippery slope: if such a tutor receives credit, then wouldn't an attorney supervising a Rule 9 also be eligible to receive such credit. How do you track that time on either such a tutor or a Rule 9-supervising attorney? It's how many years for such a tutor? How many hours is that? Is the tutor really doing all that work or is his/her paralegals actually doing the majority of the work?
	This is a horrible amendment and I am against it.
	N/A
	N/A
	make them go to law school
James Beard	Who should have CLE requirements more than law tutors.
	This dilutes the importance of the CLE's and appears to be a "favor" to a select few.
	N/A
	N/A
	🗨️

From: Mandatory Continuing Legal Education Board
Date: April 8, 2022
RE: REPORT AND RECOMMENDATION OF THE MCLE BOARD

Mandatory Continuing Legal Education Board

The Mandatory Continuing Legal Education Board (“MCLE Board”) consists of seven members: Todd Alberstone (Chair), Robert Malae (Vice-Chair), Asia Wright, Ayanna Eagan, Christopher Bueter, Efrem Krisher, and Merri Hartse.

Suggested Amendment

The MCLE Board workgroup recommends an amendment to Admission and Practice Rule (APR) 11 that would allow tutors in the APR 6 Law Clerk Program to claim MCLE credit for their personal supervision of APR 6 law clerks.

The MCLE Board recommends the following suggested amendment to APR 11:

APR 11(e)(6) Teaching law school courses, when the instructor is not a full-time law school professor; or providing “personal supervision” as a tutor for the Law Clerk Program, as defined in APR 6 (d)(2);

Background

Over the years, there have been several requests by tutors in the APR 6 Law Clerk Program to receive MCLE credit for giving their time as tutors to clerks enrolled in the Law Clerk Program. As part of the Law Clerk Program, tutors provide three hours of personal supervision each week to clerks, including substantive discussion of the law. Within each year of this four-year program, clerks are required to study six subjects and to pass monthly examinations. The exams are developed, administered, and graded by the tutors. Requests for MCLE credit for tutoring have sought credit under both “teaching” credit and “mentoring” credit provisions of APR 11. However, teaching credit is limited to law school courses and, therefore, is not applicable to the Law Clerk Program. Requests for mentoring credit are also not applicable, as the Law Clerk Program is not approved as a “Structured Mentoring Program” because the students are not active members of the WSBA as required per APR 11(e)(8).

In response to these requests, the MCLE Board formed a workgroup—including two members of the Law Clerk Board—to explore a potential amendment to APR 11. On August 12, 2021, the workgroup met to discuss the need for an amendment and potential language. During this meeting, the workgroup members decided that the “personal supervision” time as defined in APR 6(d)(2) should be eligible for MCLE teaching credit, and that APR 11(e)(6) should be amended accordingly. The workgroup suggested



an amendment to APR 11(e)(6) rather than to APR 11(e)(8), as the “teaching” requirement is more analogous to Law Clerk Program tutoring.

Factors & Information

Value of the Law Clerk Program

The four-year Law Clerk Program is an alternative to traditional law school that provides education through a combination of work and study, under the supervision of a lawyer or judge. The lawyer or judge must have at least ten (10) years of experience to qualify as a tutor, and be in good standing with the Washington State Bar Association.

The Law Clerk Program increases opportunities for non-traditional law school students, by offering an affordable alternative to those seeking to practice law in Washington State. Upon completion of the Program’s education requirements, students may sit for the Washington lawyer bar examination.

Teaching Credit for “Personal Supervision”

Tutors in the law clerk program spend an average of three hours per week—over the course of the four-year program—to personally instruct and advise the law clerk. As the coursework for this program includes 6 courses every 12 months, as prescribed by the Law Clerk Program Regulations, the supervision time can be considered “teaching” time. Personal supervision is defined in APR 6(d)(2):

“Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor’s personal supervision of the law clerk. “Personal supervision” is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk’s written assignments.”

As the personal supervision time includes exposition and discussion of the law, case recitation, and analysis of assignments as part of coursework, this time should be eligible for “teaching” credit per APR 11(e)(6). The Law Clerk Program curriculum includes “using an apprenticeship model that includes theoretical, scholastic and clinical components.” These components are designed to mirror the extensive and comprehensive nature of law school curriculum, and include law school course topics such as civil procedure, contracts, property, and torts.

Benefit of Offering MCLE Credit

Offering MCLE credit for this supervision and instruction time may encourage lawyers to serve as tutors for the Law Clerk Program.



REPORT AND RECOMMENDATION OF THE MCLE BOARD WORKGROUP

December 16, 2021

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Tutors must commit an extensive amount of time both to instruct and to supervise the law clerk. This time is considered volunteer time that is not the full-time job of the tutor, analogous to the current requirement for teaching credit per APR 11(e)(6): “Teaching law school courses, when the instructor is not a full-time law school professor;”. As the tutor’s full-time job is not tutoring, the MCLE credit eligibility will echo that of the law school course teaching requirement.

Offering this MCLE credit benefit rewards the incredible time commitment to advancing the profession through this program’s law school alternative and, by association, affirms the WSBA’s commitment to increasing access to justice.

Timeline

Possible Timeline for suggested amendment:		
January 2022		Workgroup drafts report and recommendation.
February 4, 2022	Law Clerk Board Meeting	Law Clerk Board reviews report and recommendation draft and provides feedback to workgroup.
April 8, 2022	MCLE Board Meeting	MCLE Board reviews report and recommendation and any feedback from Law Clerk Board. MCLE Board will vote whether to move forward with suggested amendment. Vote on opening for member and other stakeholder comment period.
May 6, 2022		Close written comment period.
May 13, 2022	MCLE Board Meeting	Hear member and other stakeholder comments and discuss feedback. MCLE Board to vote on whether to proceed with suggested amendment. If proceeding, MCLE Board to nominate Board members to present to BOG and work on presentation materials.
June 27, 2022	BOG Materials	BOG materials due.
July 21-22, 2022	BOG Meeting	Present to WSBA BOG and ask for support.
August 5, 2022	MCLE Board Meeting	Discuss feedback from BOG and vote on whether to move forward with suggested amendment. If proceeding, MCLE Board will nominate Board members to work on GR 9 coversheet.
August 22, 2022		First draft due of GR 9 coversheet.
September 12, 2022		Final draft due of GR 9 coversheet.
October 1, 2022	Suggested Amendment Deadline	Send recommendation to Court.



Attachments

1. APR 6 Rule and Regulations
2. APR 11
3. Primary Tutor Application
4. Resolution of the WSBA in Affirming the Law Clerk Program Value



WASHINGTON STATE
BAR ASSOCIATION

RULES AND REGULATIONS
GOVERNING THE WASHINGTON STATE
LAW CLERK PROGRAM

Effective Date: September 1, 2017

APR 6 Amended effective September 1, 1984; March 6, 1992; September 1, 1994; June 2, 1998; April 1, 2003; January 13, 2009; January 1, 2014; September 1, 2017.

Regulations approved by the Board of Governors September 26, 2013, effective January 1, 2014; amended effective May 19, 2017.



1325 4th Avenue | Suite 600 | Seattle, WA 98101-2539
800-945-9722 | 206-443-9722 | questions@wsba.org | www.wsba.org

ADMISSION AND PRACTICE RULES (APR)

RULE 6. LAW CLERK PROGRAM

(a) Purpose. The Law Clerk Program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, experiential, and clinical components. Successful completion of the Law Clerk Program provides a way to meet the education requirement to apply for the lawyer bar examination; it is not a special admission or limited license to practice law.

(b) Application. Every applicant for enrollment in the law clerk program shall:

- (1) Be of good moral character and fitness, as defined in APR 20;
- (2) Present satisfactory proof of having been granted a bachelor's degree by a college or university with approved accreditation; if the degree was earned in a non-US jurisdiction, the applicant shall provide supporting documentation as to its equivalency;
- (3) Be engaged in regular, full-time employment in Washington State for an average of 32 hours per week with the primary tutor or primary tutor's employer in a (i) law office, (ii) legal department or (iii) a court of general, limited, or appellate jurisdiction in Washington State. The employment must include tasks and duties which contribute to the practical aspects of engaging in the practice of law;
- (4) Submit in such form and manner as prescribed by the Bar (i) an application for enrollment in the program, (ii) the tutor's application, and, (iii) the application fee;
- (5) Appear for an interview, provide any additional information or proof, and cooperate in any investigation, as may be deemed relevant by the Bar; and
- (6) If applicable, present a petition for Advanced Standing based on law school courses completed or courses completed in this program during a previous enrollment. The Bar may grant Advanced Standing to an applicant approved for enrollment for courses deemed recently and successfully passed and equivalent to courses in the program.
- (7) Where the Bar is satisfied that a primary tutor has arranged a relationship with the applicant's full-time employer consistent with the purposes of the Program, the requirement that the primary tutor, or primary tutor's employer, be the law clerk's employer may be waived.

(c) Tutors. To be eligible to act as a tutor in the law clerk program, a lawyer or judge shall:

- (1) Act as a tutor for only one law clerk at a time;
- (2) Be an active member in good standing of the Bar, or be a judicial member who is currently elected or appointed to an elected position, who has not received a disciplinary sanction in the last 5 years, provided that if there is discipline pending or a disciplinary sanction has been imposed upon the member more than 5 years preceding the law clerk's application for enrollment, the Bar shall have the discretion to accept or reject the member as tutor;
- (3) Have active legal experience in the practice of law as defined by APR 1 or have held the required judicial position for at least 10 of the last 12 years immediately preceding the filing of the law clerk's application for enrollment. The 10 years of practice must include at least

2 years in Washington State and may be a combination of active practice and judicial experience but may not include periods of suspension for any reason;

- (4) Certify to the applicant's employment as required above and to the tutor's eligibility, and to agree to instruct and examine the applicant as prescribed under this rule; and
- (5) Act as a tutor only upon the approval of the Bar which may be withheld or withdrawn for any reason.

(d) Enrollment. When an application for enrollment has been approved by the Bar, an enrolled law clerk shall:

- (1) Pay an annual fee as set by the Board of Governors.
- (2) Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor's personal supervision of the law clerk. "Personal supervision" is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments.
- (3) Complete the prescribed course of study which shall be the equivalent of four years of study. Each year of study shall consist of 6 courses completed in 12 months. Months of leave, failed courses, and months in which the enrollee does not meet the minimum number of hours of work and study may not be counted toward the completion of a course and may extend the length of a year of study. Advanced Standing granted may reduce the months of program study. The course of study must be completed within 6 years from the initial date of enrollment.
- (4) Abide by APR 6 and the Law Clerk Program Regulations approved by the Board of Governors which provide the course of study, program requirements and other guidelines to successfully complete the program.

(e) Course of Study. The subjects to be studied, the sequence in which they are to be studied, and any other requirement to successfully complete the program shall be prescribed in the Law Clerk Program Regulations. Progress toward completion of the program shall be evaluated by submission of examinations, certificates, reports and evaluations as follows:

- (1) **Examinations.** At the end of each month, the law clerk shall complete a written examination prepared, administered, and graded by the tutor. The examination shall be answered without research, assistance, or reference to source materials during the examination. The examination shall be graded pass/fail.
- (2) **Certificates.** The tutor shall submit the examination, including the grade given for the examination and comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study and the tutor's personal supervision within 10 business days following the month of study. If an examination is not given, the monthly certificate shall be submitted stating the reason.
- (3) **Book Reports.** The law clerk shall submit three book reports for the Jurisprudence course requirement corresponding to each year of study.
- (4) **Evaluations.** Annually, or at other intervals deemed necessary, the law clerk shall participate with the tutor in an evaluation of the law clerk's progress.

(f) Completion of the program. A law clerk shall be deemed to have successfully completed the program when:

- (1) All required courses have been completed and passed as certified each month by the tutor, and all book reports have been submitted,
- (2) The tutor has certified that the law clerk, in the tutor's opinion, is qualified to take the lawyer bar examination and is competent to practice law; and
- (3) The Bar has certified that all program requirements are completed.

(g) Termination. The Bar may direct a law clerk to change tutors if approval of a tutor is withdrawn. The Bar may terminate a law clerk's enrollment in the program for:

- (1) Failure to complete the prescribed course of study within 6 years from the date of enrollment;
- (2) Failure of the tutor to submit the monthly examinations and certificates at the end of each month in which they are due;
- (3) Failure to comply with any of the requirements of the law clerk program; and
- (4) Any other grounds deemed pertinent.

(h) Effective Date. Revision of this rule shall not apply retroactively. A law clerk may complete the program under the version of the rule in effect at the start of enrollment.

(i) Confidentiality. Unless expressly authorized by the supreme court, the program applicant's, or a current or former law clerk's enrollment and related records, documents, and proceedings are confidential and shall be privileged against disclosure, except that the fact of successful completion of the program shall be subject to disclosure.

APR 6 LAW CLERK BOARD REGULATIONS

1-1 Authority

Regulation 1. GENERAL

- A. The law clerk program established in APR 6 and implemented in these regulations is conducted by the Bar Association at the direction of the Supreme Court. It is administered by the Law Clerk Board under the direction of the Board of Governors.
- B. The good moral character and fitness of an applicant is determined by the Character and Fitness Board pursuant to Admission and Practice Rules 7 and 20 through 24.4(a).
- C. To facilitate prompt administration of APR 6 and these regulations, designated staff of the Washington State Bar Association may act on behalf of the Law Clerk Board under APR 6 and these regulations.
- D. The Law Clerk Board, with the approval of the Board of Governors, may amend these regulations as necessary. Revisions of these regulations shall not apply retroactively to an enrolled law clerk. These changes shall apply to applications, petitions and requests made after the effective date of the revisions.

1-2 Purpose and Expectations.

- A. The law clerk program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, scholastic and clinical components. Successful completion of the law clerk program qualifies a person to apply for the Washington State bar exam. Participation in the law clerk program is not a special admission or limited license to practice law.
- B. The program relies on the good faith and integrity of the participants. The Board cannot administer and supervise the clerkship on a daily basis. The Board assumes the tutor and the law clerk will adhere to the letter and spirit of the program.
- C. The law clerk program is an alternative legal education. The program issues a certificate of completion; it is not approved by the American Bar Association and it does not confer a Juris Doctor degree or other degree.
- D. The Board will not assist an applicant for the law clerk program to find employment or to evaluate in advance the qualifications of a potential tutor.

1-3 Definitions.

For the purpose of these regulations, the following terms are defined:

- A. "Approved accreditation" means accredited by an accrediting agency recognized by the US Department of Education.
- B. "Assistant Tutor" means a qualifying lawyer or judge who has been approved to teach specific courses.
- C. "Bar Association" means the Washington State Bar Association.
- D. "Board of Governors" means the Board of Governors of the Washington State Bar Association.
- E. "Board" means the Law Clerk Board.

- F. "Board Liaison" means an individual member of the Law Clerk Board in his or her role as liaison between the law clerk and the Board.
- G. "Employment waiver" means a relationship in which the primary tutor is not the law clerk's direct employer but has received Board approval of an alternative relationship under APR 6(b)(7).
- H. "Law clerk" means a person whose application for enrollment in the law clerk program has been accepted by the Board. It refers to applicants to the program in that applicants must have employment as a law clerk, legal assistant, or equivalent to qualify for enrollment. Law clerks are not authorized or licensed to engage in the practice of law by virtue of APR 6.
- I. "Program" means the law clerk program established by APR 6 and implemented in these regulations.
- J. "Regular, full-time employment" means that the law clerk is hired by the tutor or the tutor's employer in a (i) law office, (ii) legal department, or (iii) a court of general, limited, or appellate jurisdiction located in Washington State, for an average of 32 hours per week for at least 48 weeks each calendar year.
- K. "Tutor" means a qualifying lawyer or judge who has agreed to teach the law clerk and be responsible for all aspects of compliance with the program.

Regulation 2. LAW CLERK BOARD

2-1 Responsibilities.

The Board will make decisions regarding:

- A. Approval or rejection of an application for enrollment in the program.
- B. Approval or rejection of a lawyer or a judge to act as a tutor.
- C. A petition for advanced standing.
- D. A direction to the law clerk to change tutors.
- E. A recommendation to the Board of Governors for the termination of a law clerk's enrollment in the program.
- F. A petition for readmission.
- G. Changes in course contents, course descriptions, or program completion requirements.
- H. Applicability of the effect of prior decisions regarding other law clerks and tutors.
- I. Recommendations to the Board of Governors regarding amendments to these regulations.
- J. Any other matter related to the program or referred to the Board by the Board of Governors.

2-2 Board Liaisons.

- A. A law clerk will be assigned to a Board member who shall act as a liaison between the law clerk and the Board.
- B. A Board liaison will make decisions regarding:
 - (1) Recommendations to the Board regarding the acceptance or rejection of an applicant.
 - (2) An annual evaluation of the law clerk's second and third years.
 - (3) Recommendations regarding any other matter related to the program or referred to the Board.

2-3 Staff Administration.

- A. The Board may delegate duties to staff to facilitate prompt administration of the program.
- B. The duties may regularly include but are not limited to:
 - (1) Review of applications to the program, recommendation regarding their qualifications for the program, and assignment of a Board Liaison;
 - (2) Approval of assistant tutors to teach specific courses;
 - (3) Approval of leaves of absence of less than 12 months;
 - (4) Approval of petitions by law clerks to take courses or electives out of order;
 - (5) Approval of the 4th year courses; and
 - (6) Notices of involuntary withdrawal.

2-4 Filing, general.

All applications, petitions or requests shall be in writing and shall be directed to the Board at the Bar Association office.

2-5 Review Procedure.

A. Review of Right. An applicant, law clerk or tutor, has a right to have the Board of Governors review the following decisions of the Board:

- (1) Rejection of an application for enrollment in the program;
- (2) Termination of a law clerk's enrollment in the program; or
- (3) Requiring a law clerk to change tutors.

B. Discretionary. An applicant, law clerk or tutor may ask the Board of Governors to review any decision made by the Board.

C. Filing. A petition requesting either review of right or discretionary review shall be:

- (1) in writing,
- (2) directed to the Board of Governors;
- (3) filed at the Bar Association office; and
- (4) filed within 30 days of the date the law clerk or applicant received notice of the decision.

Regulation 3. APPLICATION PROCEDURE

3-1 Applicants. Every applicant for enrollment in the program shall:

A. Be engaged in regular, full-time employment as defined in Regulation 1-3 unless requesting an employment waiver as defined in Reg. 1-3.

- (1) Under no circumstances may the tutor assess a fee or require any other form of compensation in return for instructing or employing the law clerk. The law clerk shall receive monetary compensation in compliance with federal and state law governing employment. The Board may require proof of employment as deemed necessary.
- (2) Approval of any relationship requiring an employment waiver is within the discretion of the Board. The applicant and proposed tutor must explicitly describe the alternative relationship, show how the purpose of the program will be maintained, and describe how client confidentiality and conflicts of interest will be resolved.

B. Submit the following with the application fee by the deadlines established by the Board:

- (1) A completed program application and all required supplemental information;
 - (2) Official transcripts from all undergraduate and graduate institutions attended, which show the grades received, the date a bachelor's degree was awarded by a school with approved accreditation, and the subject in which it was granted;
 - (3) Two letters attesting to the applicant's good moral character and appraising the applicant's ability to undertake and successfully complete the program; and
 - (4) The tutor's application establishing the applicant's and the tutor's eligibility and certifying to compliance with APR 6 and these regulations.
- C. Appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board, the Character & Fitness Board, or the Board of Governors.

3-2 Advanced Standing. A petition to request consideration for advanced standing for law school courses completed or previous enrollment in the law clerk program must be submitted with an application for enrollment.

A. Petition for Advanced Standing. All law clerks must pass the prescribed courses established in these regulations. No courses may be waived. Applicants seeking advanced standing must establish, to the satisfaction of the Board, that the courses for which they seek credit are equivalent to specified prescribed courses in these regulations. The petition shall include:

- (1) A list of courses in the law clerk program for which advanced standing is sought. No advanced standing may be sought for Basic Legal Skills;
- (2) A list of the law school courses and course descriptions from the law school course catalogue with an explanation of how each course is equivalent to the law clerk program courses;
- (3) Official transcripts for the law school courses. Courses in which the applicant earned a grade less than a B- or 2.7 and/or completed more than five years prior to the Law Clerk Program application date will not be considered. For applicants admitted to the practice of law in a foreign jurisdiction, grades older than five years may be considered in combination with proof of current good standing and active practice of law for three out of the last five years; and
- (4) Any additional information the applicant believes will be helpful or which the Board has requested.

B. Determination. In granting advanced standing, the Board will specify:

- (1) Any prescribed courses or portions thereof that the law clerk applicant has been deemed to have completed;
- (2) Any prescribed courses or portions thereof that the law clerk applicant will be required to pass; and
- (3) Any law school courses that the law clerk applicant will be allowed to use to satisfy the fourth-year curriculum.

3-3 Additional and Remedial Courses. In its discretion, the Board may also require the law clerk applicant to take and pass certain subjects which appear necessary to prepare the applicant to practice law in this state, regardless of whether or not those courses are prescribed courses or approved elective courses. The Board may require the law clerk applicant to take remedial or other legal or nonlegal instruction.

3-4 Notification. The Board will notify an applicant of acceptance or rejection of the application for enrollment. If accepted, the notification will specify the month the law clerk is authorized to begin the program. All programs shall begin the first day of the month specified in the notice. If rejected, the notification will provide the basis for the rejection.

3-5 Acknowledgement of Enrollment. Before beginning the program the law clerk must acknowledge enrollment, pay the annual fee, and agree to inform the Bar Association in writing of any incident that occurs while the law clerk is enrolled that might call the law clerk's moral character or fitness into question.

Regulation 4. TUTORS

4-1 Tutor's Responsibilities.

- A. The tutor is responsible for supervising and guiding the law clerk's education, and for setting an example of the highest ethical and professional conduct. The tutor has an obligation not only to instruct the law clerk, but to ensure only fully competent law clerks are deemed to be qualified to sit for the bar examination.
- B. In addition to any other requirements, a potential tutor shall appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board.
- C. The tutor is required to continue to meet the qualifications for a tutor established in APR 6 and remain in good standing throughout the period of the clerkship.
- D. In addition to the "personal supervision" required by APR 6, defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments, the tutor's responsibilities include:
 - (1) Guiding and assisting the law clerk's study of each subject, using the course descriptions as a basic outline of course content and emphasizing pertinent state law;
 - (2) Choosing textbooks, casebooks, and other written, legal materials, selected from those in use at any of the law schools in the state, to guide the law clerk through the subject matter of each course;
 - (3) Assisting the law clerk in planning the sequence and timing of each prescribed course and of the fourth-year curriculum;
 - (4) Evaluating the law clerk's progress;
 - (5) Developing, administering, and grading the monthly examinations;
 - (6) Submitting the graded monthly examination with written comments and the required certificate to the Board within 10 working days of the end of the month in which it was administered;
 - (7) Assigning the law clerk tasks and duties which are intended to contribute to the law clerk's understanding of the practical aspects of engaging in the practice of law; and
 - (8) Providing the law clerk with an adequate work station and with reasonable access to an adequate law library.

4-2 Assistant Tutors. When an assistant tutor is proposed to teach a course instead of the primary tutor, the Board may approve the application(s) of one or more assistant tutors for up to 6 months of each year of study. The assistant tutor may teach only the course(s) for which he/she was approved by the Board. Informal assistance to a lesser degree, by other lawyers, judges or staff

is generally acceptable without specific approval.

A. Qualification. The assistant tutor shall meet all the qualifications and continuing qualifications established for the tutor in APR 6 and these regulations, except the assistant tutor shall have been actively and continuously engaged in the practice of law or have held the required judicial position for at least five years immediately preceding the commencement of the assistant tutorship.

B. Scope of Delegation.

(1) The assistant tutor may undertake the following duties for the course(s) for which he/she is approved:

- i. Choosing textbooks, casebooks, and resource materials for the course.
- ii. Guiding and assisting the law clerk's study of the subject, using the course description as a basic outline of course content and emphasizing pertinent state law.
- iii. Developing, administering, and grading the monthly examination.

(2) The primary tutor shall:

- i. In consultation with the assistant tutor, determine if the law clerk passed or failed the course;
- ii. Remain ultimately responsible for the conduct of the clerkship;
- iii. Complete all monthly and other certificates; and
- iv. Appear with the law clerk at all oral evaluations with the Board, although the assistant tutor may also be in attendance where appropriate.

Regulation 5. COURSE OF STUDY

5-1 Structure.

- A. The program is designed to be a four year course of study in combination with employment. Each year consists of 12 months during which the law clerk is required to study 6 subjects, pass 12 exams and submit 3 book reports.
- B. The program is structured so the law clerk studies only one subject at a time and passes it before beginning the next subject. All courses in a given year must be completed before the law clerk may study courses in a subsequent year. A law clerk may not take more course work in any calendar year than is prescribed by these regulations without prior Board approval. The length of time to be devoted to each subject is prescribed by regulation.
- C. A law clerk may take leave or vacation in increments of one month upon written notice to the Board. A law clerk may take leave of longer than one month only upon advance written request and approval by the Board. Exceptions for emergency medical situations may be considered. A law clerk may not request leave of more than 12 consecutive months.

5-2 Subjects.

- A. Jurisprudence Reading. Every law clerk is required to take the Jurisprudence course, which is a four year reading program, intended to familiarize the law clerk with legal history, philosophy, theory and biography.
- B. First Year. To complete the first year of the program, the law clerk shall pass the following prescribed courses. The course entitled "Basic Legal Skills" shall be studied and passed first. Thereafter, the courses may be studied in any order.

Course	Months
Basic Legal Skills	2
Civil Procedure	2
Torts	2
Contracts	2
Agency & Partnerships	2
Property	2

C. Second Year. To complete the second year of the program, the law clerk shall pass the following prescribed courses, in any order:

Course	Months
Community Property	1
Criminal Law	2
Constitutional Law I	2
Corporations	2
Evidence	2
Uniform Commercial Code	3

D. Third Year. To complete the third year of the program, the law clerk shall pass the following prescribed courses, in any order:

Course	Months
Constitutional Law II	2
Professional Responsibility	1
Domestic Relations	2
Wills, Estates, Trusts, Probate	3
Conflict of Laws	2
Criminal Procedure	2

E. Fourth Year. The fourth year of the program is devoted to elective subjects. The law clerk, in consultation with the tutor, shall develop a fourth year curriculum of six electives. The law clerk shall then make a written petition to the Board, at least six months prior to the commencement of the fourth year, for approval of the proposed fourth year course of study.

(1) Under no circumstances will approval or recognition be given to courses directed to fulfillment of a continuing legal or other professional education requirement, or intended to provide a preparation for a bar examination, or taught through correspondence or any equivalent.

(2) Recommended Electives. The following electives are recommended because they will broaden the law clerk's legal background, perspective, and skills. A law clerk may petition the Board for approval

of alternative areas of study by including a detailed course description for each proposed course.

Course	Months
Administrative Law	2
Personal Federal Income Tax	2
Land Use	2
Labor Law	2
Remedies	2
Antitrust	2
Creditor-Debtor Relations	2
Securities Regulation	2
Legal Accounting	2
International Law	2
Insurance	2
Consumer Protection	2
Environmental Law	2
Real Property Security	2
American Indian Law	2
Trial Practicum	2
Elder and Disability Law	2

5-3 Monthly Examinations. The tutor is responsible for the content and administration of all monthly examinations.

- A. Content. Although no specific substantive content is prescribed by the Board, it is anticipated such an examination will test the law clerk's comprehension of the current subject matter, and the law clerk's understanding of the ethical, professional and practical aspects of practicing law.
 - B. Course Descriptions. The course descriptions in Regulation 7 state the minimum level of knowledge the Board expects a law clerk to obtain in each subject, and provide guidance to the tutor in formulating monthly examinations.
 - C. Timing. The tutor shall administer an examination covering that month's subjects to the law clerk on or before the last business day of each month.
 - D. Grading. All courses in the program are to be graded as pass/fail only. "Pass" means that the law clerk has exhibited reasonable comprehension of the theory and practice of any given subject to the satisfaction of the tutor and the Board. If a law clerk earns a "Fail" grade he or she shall continue to study the subject for an additional month.
 - E. Certificates. The tutor shall submit the exam, including the grade given for the examination and written comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study and the tutor's personal supervision, within 10 business days following the month of study.
- (1) If an exam is not given, the monthly certificate shall be submitted stating the reason.

(2) The date of receipt will be recorded. A pattern of late certificates may be cause for remedial action or termination from the program.

5-4 Board Evaluations. Annually, or at such other intervals as may be established by the Board, the Board shall conduct an evaluation at which the law clerk and the tutor shall be personally present. The Board may at any other time, in its discretion, conduct an evaluation at which the law clerk and the tutor shall be personally present if required to do so.

A. The Board will not normally test the law clerk's substantive knowledge, but may do so to evaluate whether or not the law clerk is progressing satisfactorily in the program.

B. Materials. In making its evaluation, the Board may consider:

(1) The substantive contents of all monthly examinations;

(2) The tutor's monthly certificates and timeliness of receipt;

(3) Any written course work; and

(4) Any other written or oral materials deemed to be pertinent by the Board.

C. Decision. At the conclusion of the evaluation, the Board may:

(1) Determine the law clerk has successfully mastered the preceding year's course work and is eligible and authorized to begin the next year of the program;

(2) Determine the law clerk has satisfactorily completed the program and is qualified to sit for the bar examination, subject to any other requirements for sitting for the bar examination as set forth in the Admission and Practice Rules;

(3) Advise the tutor regarding the quality, timeliness, or appropriateness of coursework, exams, and certificates;

(4) Direct the law clerk to repeat designated prescribed or elective courses, devote more time to each course, take remedial legal or nonlegal instruction, appear before the Board at more frequent intervals for an examination which may be written or oral;

(5) Require the law clerk to change tutors;

(6) Advise the law clerk that the law clerk's enrollment in the program is terminated.

D. At the conclusion of any evaluation, the Board will provide a brief written summary of its decision to the law clerk and to the tutor.

Regulation 6. WITHDRAWAL AND TERMINATION OF ENROLLMENT

6-1 Withdrawal by Law Clerk.

A. Voluntary. A law clerk who wishes to withdraw from the program shall notify the Board in writing, filed as required by Regulation 2-4.

B. Involuntary. A law clerk will be deemed to have withdrawn from the program if:

(1) The law clerk is absent from the program for more than one month in any calendar year without the Board's prior approval of a petition for a leave of absence. Failure to submit exams and tutor's certificates shall be interpreted as absence from the program;

(2) The law clerk takes a leave of absence from the program for more than 12 consecutive months; or

(3) The annual fee is not paid by the established deadline.

6-2 Withdrawal by Tutor.

- A. Voluntary. A tutor who wishes to withdraw from that position shall notify the Board and the law clerk in writing, filed as required by Regulation 2- 4.
- B. Involuntary. If a disciplinary sanction is imposed upon a tutor, the tutor will be deemed to have withdrawn from that position. The Board may determine that the imposition of a sanction does not necessitate automatic withdrawal.
- C. The Board may direct a law clerk to change tutors if approval of a tutor is withdrawn.

6-3 Termination of Enrollment by the Board. The Board may terminate a law clerk's participation in the program for:

- A. Failure to complete the prescribed course of study within 6 years from the date of enrollment;
- B. The law clerk's failure to comply with the requirements of the program or a decision or order of the Board; or
- C. A determination by the Character and Fitness Board that the applicant does not meet the character or fitness requirement for enrollment in the program.

Regulation 7. COURSE DESCRIPTIONS

7-1 Jurisprudence Reading. A four-year course of reading consisting of three (3) books each year, to be selected from a list approved by the Board. The Board has discretion to select and require specific books which must be read to meet this requirement.

- A. Upon completion of each book, the law clerk shall prepare and submit to the Board a short book report. Reports shall be submitted every 4 months.
- B. A year's coursework shall not be deemed completed unless the book reports are submitted. A law clerk may not begin the next year's course work until the current year's book reports are completed and submitted to the Board.

7-2 First Year Clerkship.

- A. Basic Legal Skills. Introduction to basic legal reference materials (including judicial, legislative and administrative primary and secondary sources) and their use; techniques of legal reasoning, analysis and synthesis; legal writing styles. Familiarization with the structure of the federal and state court systems; the concept of case law in a common law jurisdiction; fundamental principles of stare decisis and precedent; the legislative process; principles of statutory construction and interpretation. Law Clerk should be assigned projects of increasing difficulty such as: case abstracts; analysis of a trial record to identify issues; short quizzes to demonstrate ability to locate primary and secondary sources; office memoranda or a trial oriented memorandum of authorities to demonstrate ability to find the law applicable to a factual situation and to differentiate unfavorable authority; an appellate level brief.
- B. Civil Procedure. Fundamentals of pleading and procedure in civil litigation, as structured by the Federal Rules of Civil Procedure and the Washington Superior Court Civil Rules. Study shall include: jurisdiction over the person and subject matter; venue; time limits; commencement of actions; pleadings; parties; impleader; interpleader; motions; class actions and intervention; res judicata and collateral estoppel; discovery and other pretrial devices; joinder; summary judgment;

judgments; post-trial motions. Law Clerk should be required to draft summons; pleadings; motions; findings of fact and conclusions of law; judgment; interrogatories; requests for admission.

- C. Contracts. Study of legal principles related to the formation, operation and termination of the legal relation called contract. General topics include: offer and acceptance; consideration; issues of interpretation; conditions; performance; breach; damages or other remedies; discharge; the parol-evidence rule; the statute of frauds; illegality; assignments; beneficiaries.
- D. Property. Study of the ownership, use, and transfer of real property in both historical and modern times. Topics include: estates and interests in land; concurrent ownership; easements; equitable servitudes; conveyances; real estate contracts; nuisance; adverse possession; land use controls; landlord-tenant; the recording system; title insurance.
- E. Torts. Study of the historical development, principles, concepts and purposes of the law relating to redress of private injuries. Topics include: conversion; trespass; nuisance; intentional tort; negligence; strict liability; products liability; concepts of duty, causation, and damage; limitations on liability such as proximate cause, contributory negligence, assumption of the risk, immunity; comparative negligence.
- F. Agency and Partnership. Legal principles of agency law including definition of the agency relationship, authority and power of agents, notice and knowledge, rights and duties between participants in the relationship, termination of agency relationship, master-servant relationship. Partnership law using the Revised Uniform Partnership Act as a model code. Topics include: formation, partners' rights and duties between themselves, powers, unauthorized acts, notice and knowledge, incoming partner liability, indemnification, contribution, partner's two-fold ownership interest, co-ownership interests and liabilities, creditor's claims and remedies, dissolution events, winding up, distribution of asset rules. Study of the Uniform Limited Partnership Act and joint venture law.

7-3 Second Year Clerkship.

- A. Community Property. Relationship necessary for creation of community property, classification of property as community or separate, management and control of community assets, rights of creditors, disposition of community property upon dissolution of the community, problems of conflict of laws encountered in transactions with common-law jurisdictions.
- B. Criminal Law. Study of substantive criminal law including concepts such as elements of criminal responsibility; principles of justification and excuse; parties; attempts, conspiracy; specific crimes; statutory interpretation; some introduction to sentencing philosophies and to juvenile offender law.
- C. Constitutional Law I. Course covers basic constitutional document, excluding the Bill of Rights. Topics include: taxing clause, commerce clause, contract clause, war power and treaty power. Allocation and distribution of power within the federal system, and between federal and state systems, including economic regulatory power and police power; limitations on powers of state and national governments; constitutional role of the courts.
- D. Corporations. Business corporations for profit using the Model Business Corporations Act and state law provisions. Topics include: promotion, formation and organization; theories of

corporations; corporate purposes and powers; disregard of corporateness; common law and statutory duties and liabilities of shareholders, directors, and officers; allocation of control, profit and risk; rights of shareholders; derivative suits and class action suits by shareholders; mergers and consolidations, sale of assets, and other fundamental changes in corporate structure; corporate dissolution; SEC proxy rules and Rule 10(b)(5).

- E. Evidence. Rules of proof applicable to judicial trials. Topics include: admission and exclusion of evidence, relevancy, hearsay rule and its exceptions, authentication of writings, the best evidence rule, examination and competency of witnesses, privileges, opinion and expert testimony, demonstrative evidence, presumptions, burden of proof, judicial notice.
- F. Uniform Commercial Code. Course covers Articles I, II, III, IV, VI, VII, and X of the Uniform Commercial Code. Course first examines problems in the sale of goods as governed by Article II (with a brief survey of its antecedents) including: warranty, risk of loss, acceptance and rejection, tender of delivery, revocation, remedies for breach of contract. Some discussion of other laws relating to warranties, Article VI on Bulk Sales, and Article VII on documents of title and bills of lading. Course next examines commercial paper, bank deposits and collections under UCC Articles III and IV, including: formation and use of negotiable instruments with an emphasis on checks, rights and liability of parties to negotiable instruments, defenses to liability, study of bank collection process and bank's relationship with its customers. Course finally examines secured transactions under UCC Article IX, including: types of security interests, perfection of such interests, priority of claims, rights to proceeds of collateral, multi-state transactions, rights of parties after debtor's default.

7-4 Third Year Clerkship.

- A. Constitutional Law II. Course examines the Bill of Rights. Topics include: free speech, prior restraint, obscenity, libel, fair trial and free press, loyalty oaths, compulsory disclosure laws, sedition and national security, picketing, symbolic conduct, protest, subversive advocacy; due process; equal protection development and analysis; fundamental rights and entitlements; religious clause; jury trial right in civil actions; constitutional protection and interpretation under state as contrasted to federal constitutional documents.
- B. Professional Responsibility. Study of legal ethics and a lawyer's roles in society, including lawyer-client relations, lawyer-public relations, and a lawyer's responsibility to the courts and the profession. Topics also include: organization of an integrated bar, Supreme Court's supervisory powers, professional service corporations, pre-paid legal services arrangements, malpractice, the Admission to Practice Rules, the Rules for the Enforcement of Lawyer Conduct, the Rules of Professional Conduct and the ABA Model Rules of Professional Conduct.
- C. Domestic Relations. Study of the substantive and procedural law affecting the formation, disintegration and dissolution of family relations, including those of husband and wife, parent and child, and non-marital. Topics include: jurisdiction, procedure, costs, maintenance, child support, property division, custody, modification and enforcement of orders, some discussion of conflict of laws, taxation, URESA and UPA.
- D. Wills, Estates, Trusts, Probate. Study of the voluntary transmission of assets in contemplation of and at death. Topics include: disposition by will, creation of and disposition by a trust, effectiveness of the disposition in the creation of present and future interests in property,

intestate succession, construction problems, powers of appointment, restrictions on perpetuities and accumulations, alternative methods of wealth transmission, some introduction to the basic tax framework important in formulating plans of disposition, and fiduciary administration and management of decedent's estates and trusts.

- E. Conflict of Laws. Study of that part of the law that determines by which state's law a legal problem will be solved. Topics include: choice-of-law problems in torts, contracts, property, domestic relations, administration of estates, and business associations.
- F. Criminal Procedure. Constitutional doctrines governing criminal procedure. Topics include: Fourth, Fifth, Sixth and Eighth Amendments, pertinent due process provisions of Fourteenth Amendment; search and seizure, confessions, identification procedures, right to counsel, arrest, jury trial, double jeopardy, and pertinent provisions of the state constitution. The Superior Court Criminal Rules are examined as they relate to the procedural aspects of raising the constitutional issues.

7-5 Fourth Year Clerkship; Electives.

- A. Administrative Law. Study of the administrative process and its role in the legal system. Subjects include: powers and procedures of administrative agencies, relationship of administrative agencies to executive, judicial and legislative departments of government.
- B. Personal Federal Income Tax. Examination of federal income tax law as it applies to individuals, but not in their role as partners, shareholders, or beneficiaries of trusts or estates. Topics include: concepts of income, gross income, net income, when income should be taxed, to whom it should be taxed and its character as unearned, earned or capital gain income. Deductions are also examined in detail.
- C. Land Use. Study of legal principles and constitutional limitations affecting systems for public regulation of the use of private land. Topics include: planning, zoning, variances, special use permits, subdivision controls, environmental legislation, nuisance, eminent domain, powers of public agencies, "taking" without just compensation, due process, administrative procedures and judicial review, exclusionary zoning and growth control.
- D. Labor Law. Study of the organizational rights of employees and unions and the governance of the use of economic force by employers and unions. Other topics include the duty to bargain collectively, the manner in which collective bargaining is conducted, subjects to which it extends, administration and enforcement of collective bargaining agreements, and relations between a union and its members.
- E. Remedies. Historical development and use of judicial remedies that provide relief for past or potential injuries to interests in real or personal property. Topics include: history of equity, power of equity courts, restitution, specific performance, injunctions, equitable defenses, compensatory and punitive damages, unjust enrichment, constructive trusts, equitable liens, tracing and subrogation.
- F. Antitrust. An examination of the antitrust laws including the Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act; and topics such as monopolies, restraint of trade, mergers, price fixing, boycotts, market allocation, tying arrangements, exclusive dealing and state antitrust law.
- G. Creditor-Debtor Relations. Rights and remedies of creditors and debtors under the Federal

Bankruptcy Code, particularly in straight bankruptcy cases and under state laws relating to judgments, judgment liens, executions, attachments, garnishments, fraudulent conveyances, compositions, assignments for the benefit of creditors, and debtor's exemptions.

- H. Securities Regulation. Study of legal control over the issuance and distribution of corporate securities. Topics include: registration and distribution of securities under the Federal Securities Act of 1933, including the definition of a security; basic structure, applicability, and prohibitions of the Act; underwriting; preparation, processing and use of registration statement and prospectuses; exemptions from registration under the Act, including Regulation A, private offerings, and business reorganizations and recapitalizations; secondary distributions; brokers transactions; and civil liability for violation of the Act. Registration, distribution and regulation of securities under state "blue sky" laws, including the State of Washington Securities Act. Regulation of franchise arrangements under the Federal Securities Act of 1933 and the State of Washington Franchise Investment Protection Act. Regulation of national securities exchanges and broker-dealers; registration and listing of securities on national securities exchanges; periodic reporting and public disclosure of information requirements for companies whose securities are traded on national securities exchanges; and civil liability for violation of the Act. Regulation of mutual funds and other types of investment companies under the Federal Investment Company Act of 1940.
- I. Legal Accounting. Bookkeeping, use of journals and ledgers, analysis of financial statements, professional responsibility of a lawyer to a corporate client and relationship to accountants involved in a client's financial affairs. Course also addresses lawyer's accounting and recordkeeping obligations to his or her client under the Rules of Professional Conduct or its successor.
- J. International Law. Legal process by which interests are adjusted and authoritative decisions made on the international level. Topics include: nature and source of international law, law of treaties, jurisdiction, some discussion of international legal organizations, state responsibility and international claims for wrongs to citizens abroad, and application of international law in United States courts.
- K. Insurance. Legal principles governing formal mechanisms for the distribution of risk of loss. Emphasis is on property, casualty, life insurance. Topics include: marketing of insurance, indemnity principle, insurable interest, amount of recovery and subrogation, persons and interests protected, brokers, and identification of risks transferred by insurance.
- L. Consumer Protection. Selected laws for protection of consumers, including federal, state and local laws that prohibit deceptive advertising, mandate disclosure of information, regulate credit practices, license occupations, establish quality standards for products and services, and condemn "unfair" practices. Emphasis on the theoretical justifications for governmental intervention in the marketplace. Attention to problems of consumer justice administration, including informal dispute resolution procedures and representation of consumer interests in administrative and legislative proceedings.
- M. Environmental Law. Survey of citizen, legislative, administrative and judicial action in response to the reality and the threat of man-induced alteration to the natural environment; focuses on National Environmental Policy Act, federal air and water pollution control legislation, state air and water pollution control statutes and shoreline management.

- N. Real Property Security. Methods by which an obligation may be secured by real property of the obligor or of a third person. Covers the common-law principles and statutes that regulate the creation, operation, and extinguishment of the legal relations known as the real property mortgage and deed of trust, considered in the context of financing the purchase or development of land. Some attention must be given to principles governing operation of the lending industry.
- O. American Indian Law. Tribal/state/federal judicial and legislative jurisdiction in Indian country. Criminal and civil jurisdiction. Indian religious freedom. Indian water rights. Special hunting and fishing rights. History of federal laws and policies towards Indians. Current federal law and policy. Judicial trends in Indian cases. The federal trust responsibility toward Indian tribes; tribal powers of self government. Tribal courts. Federal supremacy (preemption) over state law in Indian country.
- P. Trial Practicum. Advanced course in preparing for trial. Resources should include sample cases and text books as well as evidence and civil rules. The clerk will write a fully researched brief, motions in limine, prepare ER 904; prepare objections to opposition motions in limine and ER 904; argue pretrial motions; research and perform voir dire; prepare and give an opening statement; prepare and give a direct exam with introduction of multiple exhibits; prepare and give a cross exam with introduction of exhibits; draft and argue jury instructions; prepare and give a closing statement.
- Then to be assigned an actual case in litigation and add to the above, a mock trial which includes: prepared statement of the “story” of the case; illustrate how each witness fits into the story and what evidence is to be used with each witness; develop direct examination of one witness, cross examination of one witness and at least one exhibit for each witness; prepare and give an opening; conduct voir dire of volunteers; examine a witness; handle objections; and argue sample motions in limine. The clerk is expected to attend court proceedings regularly, and participate to the extent permitted by APR 9, if licensed.
- Q. Elder and Disability Law. An examination and study of the complex legal needs of people who are elderly and people who have a disability. This course examines major issues and substantive laws affecting people who are elderly or who have a disability including income protection, asset preservation and protection, options for financing long-term care and healthcare, planning for incapacity and the use of traditional and nontraditional estate and life care planning devices such as wills, trusts, special needs trusts, powers of attorney, guardianships, adult protection actions and other devices but in the context of the needs of people who are elderly or who have a disability. This course will also address the special ethical challenges and concerns of lawyers who are practicing elder and disability law.

MANDATORY CONTINUING LEGAL EDUCATION (MCLE)

(a) Purpose. Mandatory continuing legal education (MCLE) is intended to enhance lawyers', LLLTs', and LPOs' legal services to their clients and protect the public by assisting lawyers, LLLTs, and LPOs in maintaining and developing their competence as defined in RPC 1.1 or equivalent rule for LLLTs and LPOs, fitness to practice as defined in APR 20, and character as defined in APR 20. These rules set forth the minimum continuing legal education requirements for lawyers, LLLTs, and LPOs to accomplish this purpose.

(b) Definitions. For the purposes of this rule, the following definitions shall apply:

(1) "Activity" means any method by which a lawyer, LLLT, or LPO may earn MCLE credits.

(2) "Attending" means participating in an approved activity or course.

(3) "Calendar year" means a time period beginning January 1 and ending December 31.

(4) "Identical activity" means any prior course or other activity that has not undergone any substantial or substantive changes since last offered, provided, or undertaken.

(5) "Lawyer, LLLT, or LPO" means an active lawyer, LLLT, or LPO of the Bar, a judicial member of the Bar classified as an administrative law judge, and any other lawyer licensed or authorized to practice law in Washington who is required by the Admission and Practice Rules (APR) to comply with this rule.

(6) "Reporting period" means a three-year time period as assigned by the Bar in which a lawyer, LLLT, or LPO must meet the education requirements of this rule.

(7) "Sponsor" means a provider of continuing legal education activities.

(c) Education Requirements.

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

(i) at least 15 credits must be from attending approved courses in the subject of law and legal procedure, as defined in subsection (f)(1); and

(ii) at least six credits must be in ethics and professional responsibility, as defined in subsection (f)(2).

(2) *Earning Credits.* A lawyer, LLLT, or LPO earns one credit for each 60 minutes of attending an approved activity. Credits are rounded to the nearest quarter hour. A lawyer, LLLT, or LPO may earn no more than eight credits per calendar day. A lawyer, LLLT, or LPO cannot receive credit more than once for an identical activity within the same reporting period.

(3) *New Lawyers, LLLTs, and LPOs.* Newly admitted lawyers, LLLTs, and LPOs are exempt for the calendar year of admission.

(4) *Military Personnel.* Military personnel in the United States Armed Forces may be granted an exemption, waiver, or modification upon proof of undue hardship, which includes deployment outside the United States. A petition shall be filed in accordance with subsection (i)(5) of these rules.

(5) *Exemptions.* The following are exempt from the requirements of this rule for the reporting period(s) during which the exemption applies:

(i) *Judicial Exemption.* Judicial members of the Bar, except for administrative law judges;

(ii) *Supreme Court Clerks.* The Supreme Court clerk and assistant clerk(s) who are prohibited by court rule from practicing law;

(iii) *Legislative Exemption.* Members of the Washington State Congressional Delegation or the Washington State Legislature; and

(iv) *Gubernatorial Exemption.* The Governor of Washington State.

(6) *Comity.* The education requirements in Oregon, Idaho, and Utah substantially meet Washington's education requirements for lawyers. These states are designated as comity states. A lawyer may certify compliance with these rules in lieu of meeting the education requirement by paying a comity fee and filing a Comity Certificate of MCLE Compliance from a comity state certifying to the lawyer's subjection to and compliance with that state's MCLE requirements during the lawyer's most recent reporting period.

(7) *Carryover Credits.* If a lawyer, LLLT, or LPO completes more than the required number of credits for any one reporting period, up to 15 of the excess credits, 2 of which may be ethics and professional responsibility credits, may be carried forward to the next reporting period.

(d) MCLE Board.

(1) *Establishment.* There is hereby established an MCLE Board consisting of seven members, six of whom must be active lawyers, LLLTs, or LPOs of the Bar and one who is not licensed to practice law. The Supreme Court shall designate one board member to serve as chair of the MCLE Board. The members of the MCLE Board shall be appointed by the Supreme Court. Appointments shall be staggered for a three-year term. No member may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year.

(2) *Powers and Duties.*

(i) *Rules and Regulations.* The MCLE Board shall review and suggest amendments or make regulations to APR 11 as necessary to fulfill the purpose of MCLE and for the timely and efficient administration of these rules and for clarification of education requirements, approved activities, and approved course subjects. Suggested amendments are subject to review by the Board of Governors and approval by the Supreme Court.

(ii) *Policies.* The MCLE Board may adopt policies to provide guidance in the administration of APR 11 and the associated regulations. The MCLE Board will notify the Board of Governors and the Supreme Court of any policies that it adopts. Such policies will become effective 60 days after promulgation by the MCLE Board.

(iii) *Approve Activities.* The MCLE Board shall approve and determine the number of credits earned for all courses and activities satisfying the requirements of these rules. The MCLE Board shall delegate this power to the Bar subject to MCLE Board review and approval.

(iv) *Review.* The MCLE Board shall review any determinations or decisions regarding approval of activities made by the Bar under these rules that adversely affect any lawyer, LLLT, or LPO or sponsor upon request of the lawyer, LLLT, or LPO, sponsor, or Bar. The MCLE Board may take appropriate action consistent with these rules after any such review and shall notify the lawyer, LLLT, or LPO or sponsor in writing of the action taken. The MCLE Board's decision shall be final.

(v) Fees. The MCLE Board shall determine and adjust fees for the failure to comply with these rules and to defray the reasonably necessary costs of administering these rules. Fees shall be approved by the Board of Governors.

(vi) Waive and Modify Compliance. The MCLE Board shall waive or modify a lawyer's, LLLT's, or LPO's compliance with the education or reporting requirements of these rules upon a showing of undue hardship filed in accordance with these rules. The MCLE Board may delegate this power to the Bar subject to (1) parameters and standards established by the MCLE Board and (2) review by the MCLE Board.

(vii) Approve Mentoring Programs. The MCLE Board shall approve mentoring programs that meet requirements and standards established by the MCLE Board for the purposes of awarding MCLE credit under these rules.

(viii) Audits for Standards Verification. The MCLE Board may audit approved courses to ensure compliance with the standards set forth in these rules.

(3) *Expenses and Administration.* Members of the MCLE Board shall not be compensated for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties according to the Bar's expense policies. The Bar shall provide administrative support to the MCLE Board.

(e) Approved Activities. A lawyer, LLLT, or LPO may earn MCLE credit by attending, teaching, presenting, or participating in activities approved by the Bar. Only the following types of activities may be approved:

(1) Attending, teaching, presenting, or participating in or at a course, provided that any prerecorded audio/visual course is less than five years old;

(2) Preparation time for a teacher, presenter, or panelist of an approved activity at the rate of up to five credits per hour of presentation time, provided that the presentation time is at least 30 minutes in duration;

(3) Attending law school courses with proof of registration or attendance;

(4) Attending bar review courses for jurisdictions other than Washington with proof of registration or attendance;

(5) Writing for the purpose of lawyer, LLLT, or LPO education, when the writing has been published by a recognized publisher of legal works as a book, law review, or scholarly journal article of at least 10 pages, will earn one credit for every 60 minutes devoted to legal research and writing;

(6) Teaching law school courses, when the instructor is not a full-time law school professor;

(7) Providing pro bono legal services provided the legal services are rendered through a qualified legal services provider as defined in APR 1;

(8) Participating in a structured mentoring program approved by the MCLE Board, provided the mentoring is free to the mentee and the mentor is an active member of the Bar in good standing and has been admitted to the practice of law in Washington for at least five years. The MCLE Board shall develop standards for approving mentoring programs; and

(9) Judging or preparing law school students for law school recognized competitions, mock trials, or moot court. The sponsoring law school must comply with all sponsor requirements under this rule.

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

(1) *Law and legal procedure*, defined as legal education relating to substantive law, legal procedure, process, research, writing, analysis, or related skills and technology;

(2) *Ethics and professional responsibility*, defined as topics relating to 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, and the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;

(3) *Professional development*, defined as subjects that enhance or develop a lawyer's, LLLT's, or LPO's professional skills including effective lawyering, leadership, career development, communication, and presentation skills;

(4) *Personal development and mental health*, defined as subjects that enhance a lawyer's, LLLT's, or LPO's personal skills, well-being, and awareness of mental health issues. This includes, stress management, and courses about, but not treatment for, anxiety, depression, substance abuse, suicide, and addictive behaviors;

(5) *Office management*, defined as subjects that enhance the quality of service to clients and efficiency of operating an office, including case management, time management, business planning, financial management, office technology, practice development and marketing, client relations, employee relations, and responsibilities when opening or closing an office;

(6) *Improving the legal system*, defined as subjects that educate and inform lawyers, LLLTs, or LPOs about current developments and changes in the practice of law and legal profession in general, including legal education, global perspectives of the law, courts and other dispute resolution systems, regulation of the practice of law, access to justice, and pro bono and low cost service planning; and

(7) *Nexus subject*, defined as a subject matter that does not deal directly with the practice of law but that is demonstrated by the lawyer, LLLT, or LPO, or sponsor to be related to a lawyer's, LLLT's, or LPO's professional role as a lawyer, LLLT, or LPO.

(g) Applying for Approval of an Activity. In order for an activity to be approved for MCLE credit, the sponsor or lawyer, LLLT, or LPO must apply for approval as follows.

(1) *Sponsor.* A sponsor must apply for approval of an activity by submitting to the Bar an application fee and an application in a form and manner as prescribed by the Bar by no later than 15 days prior to the start or availability of the activity.

(i) *Late fee.* A late fee will be assessed for failure to apply by the deadline. The Bar may waive the late fee for good cause shown.

(ii) *Repeating Identical Course.* A sponsor is not required to pay an application fee for offering an identical course if the original course was approved and the identical course is offered less than 12 months after the original course.

(iii) *Waiver of Application Fee.* The Bar shall waive the application fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.

(2) *Lawyer, LLLT, or LPO.* A lawyer, LLLT, or LPO may apply for approval of an activity not already approved or submitted for approval by a sponsor by submitting to the Bar an application in a form and manner as prescribed by the Bar. No application fee is required.

(h) Standards for Approval. Application of the standards for approval, including determination of approved subject areas and approved activities in subsections (e) and (f) of this rule, shall be liberally construed to serve the purpose of these rules. To be approved for MCLE credit, all courses, and other activities to the extent the criteria apply, must meet all of the following criteria unless waived by the Bar for good cause shown:

(1) A course must have significant intellectual or practical content designed to maintain or improve a lawyer's, LLLT's, or LPO's professional knowledge or skills, competence, character, or fitness;

(2) Presenters must be qualified by practical or academic experience or expertise in the subjects presented and not disbarred from the practice of law in any jurisdiction;

(3) Written materials in either electronic or hardcopy format must be distributed to all lawyers, LLLTs, and LPOs before or at the time the course is presented. Written materials must be timely and must cover those matters that one would expect for a professional treatment of the subject. Any marketing materials must be separate from the written subject matter materials;

(4) The physical setting must be suitable to the course and free from unscheduled interruption;

(5) A course must be at least 30 minutes in duration;

(6) A course must be open to audit by the Bar or the MCLE Board at no charge except in cases of government-sponsored closed seminars where the reason is approved by the Bar;

(7) Presenters, teachers, panelists, etc. are prohibited from engaging in marketing during the presentation of the course;

(8) A course must not focus directly on a pending legal case, action, or matter currently being handled by the sponsor if the sponsor is a lawyer, LLLT, or LPO, private law firm, corporate legal department, legal services provider, or government agency; and

(9) A course cannot have attendance restrictions based on race, color, national origin, marital status, religion, creed, gender, age, disability, or sexual orientation.

(i) Lawyer, LLLT, or LPO Reporting Requirements.

(1) *Certify Compliance.* By February 1 of the year following the end of a lawyer's, LLLT's, or LPO's reporting period, a lawyer, LLLT, or LPO must certify compliance, including compliance by comity certification, with the education requirements for that reporting period in a manner prescribed by the Bar.

(2) *Notice.* Not later than July 1 every year, the Bar shall 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.

(3) *Delinquency.* A lawyer, LLLT, or LPO who does not certify compliance by the certification deadline or by the deadline set forth in any petition decision granting an extension may be ordered suspended from the practice of law as set forth in APR 17.

(4) *Lawyer, LLLT, or LPO Late Fee.* A lawyer, LLLT, or LPO will be assessed a late fee for either (i) or (ii) below but not both.

(i) **Education Requirements Late Fee.** A lawyer, LLLT, or LPO will be assessed a late fee for failure to meet the minimum education requirements of this rule by December 31. Payment of the late fee is due by February 1, or by the date set forth in any decision or order extending time for compliance, or by the deadline for compliance set forth in an APR 17 presuspension notice.

(ii) **Certification and Comity Late Fee.** A lawyer, LLLT, or LPO will be assessed a late fee for failure to meet the certification requirements or comity requirements by February 1. Payment of the late fee is due by the date set forth in any decision or order extending time for compliance or by the deadline for compliance set forth in an APR 17 presuspension notice.

(iii) **Failure to Pay Late Fee.** A lawyer, LLLT, or LPO who fails to pay the MCLE late fee by the deadline for compliance set forth in an APR 17 presuspension notice may be ordered suspended from the practice of law as set forth in APR 17.

(5) *Petition for Extension, Modification, or Waiver.* A lawyer, LLLT, or LPO may file with the MCLE Board an undue hardship petition for an extension, waiver, and/or modification of the MCLE requirements for that reporting period. In consideration of the petition, the MCLE Board shall consider factors of undue hardship, such as serious illness, extreme financial hardship, disability, or military service, that affect the lawyer's, LLLT's, or LPO's ability to meet the education or reporting requirements. The petition shall be filed at any time in a form and manner as prescribed by the Bar, but a petition filed later than 30 days after the date of the APR 17 presuspension notice will not stay suspension for the reasons in the APR 17 presuspension notice.

(6) *Decision on Petition.* The MCLE Board shall as soon as reasonably practical notify the lawyer, LLLT, or LPO of the decision on a petition. A lawyer, LLLT, or LPO may request review of the decision by filing, within 10 days of notice of the decision, a request for a hearing before the MCLE Board.

(7) *Hearing on Petition.* Upon the timely filing of a request for hearing, the MCLE Board shall hold a hearing on the petition.

(i) The MCLE Board shall give the lawyer, LLLT, or LPO at least 10 days' written notice of the time and place of the hearing.

(ii) Testimony taken at the hearing shall be under oath and recorded.

(iii) The MCLE Board shall issue written findings of fact and an order consistent with these rules as it deems appropriate. The MCLE Board shall provide the lawyer, LLLT, or LPO with a copy of the findings and order.

(iv) The MCLE Board's order is final unless within 10 days from the date thereof the lawyer, LLLT, or LPO files a written notice of appeal with the Supreme Court and serves a copy on the Bar. The lawyer, LLLT, or LPO shall pay to the Clerk of the Supreme Court any required filing fees.

(8) *Review by the Supreme Court.* Within 15 days of filing a notice with the Supreme Court for review of the MCLE Board's findings and order, after such a noncompliance petition hearing, the lawyer, LLLT, or LPO shall cause the record or a narrative report in compliance with RAP 9.3 to be transcribed and filed with the Bar.

(i) The MCLE Board chairperson shall certify that any such record or narrative report of proceedings contains a fair and accurate report of the occurrences in and evidence introduced in the cause.

(ii) The MCLE Board shall prepare a transcript of all orders, findings, and other documents pertinent to the proceeding before the MCLE Board, which must be certified by the MCLE Board chairperson.

(iii) The MCLE Board shall then file promptly with the Clerk of the Supreme Court the record or narrative report of proceedings and the transcripts pertinent to the proceedings before the MCLE Board.

(iv) The matter shall be considered by the Supreme Court pursuant to procedures established by order of the Court, which may in the Court's discretion consist of consideration solely on the basis of the record presented to the MCLE Board.

(v) The times set forth in this rule for filing notices of appeal are jurisdictional. The Supreme Court, as to appeals pending before it, may, for good cause shown, (1) extend the time for the filing or certification of said record or narrative report of proceedings and transcripts or (2) dismiss the appeal for failure to prosecute the same diligently.

(9) *Compliance Audits.* The Bar may audit an individual lawyer's, LLLT's, or LPO's compliance certification to substantiate participation in the activities listed in the certification. The Bar may request records from a lawyer, LLLT, or LPO, or sponsor for the purpose of conducting the audit and the lawyer, LLLT, or LPO must comply with all such requests. Where facts exist that indicate a lawyer, LLLT, or LPO may not have participated in the activities certified to, the lawyer, LLLT, or LPO may be referred to the Bar's Office of Disciplinary Counsel and/or credit for the activities may be rescinded.

(j) Sponsor Duties. All sponsors must comply with the following duties unless waived by the Bar for good cause shown:

(1) The sponsor must not advertise course credit until the course is approved by the Bar but may advertise that the course credits are pending approval by the Bar after an application has been submitted. The sponsor shall communicate to the lawyer the number of credits and denominate whether the credits are "law and legal procedure" as defined under subsection (f)(1), "ethics and professional responsibility" as defined under subsection (f)(2), or "other," meaning any of the other subjects identified in subsections (f)(3)-(7).

(2) The sponsor must provide each participant with an evaluation form to complete. The forms or the information from the forms must be retained for two years and provided to the Bar upon request.

(3) The sponsor must submit an attendance report in a form and manner as prescribed by the Bar and pay the required reporting fee no later than 30 days after the conclusion of the course. A late fee will be assessed for failure to report attendance by the deadline.

(i) **Waiver of Reporting Fee.** The Bar shall waive the reporting fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.

(4) The sponsor must retain course materials for four years from the date of the course. Upon request of the Bar, a sponsor must submit for review any written, electronic, or presentation materials, including copies of audio/visual courses.

(5) The sponsor must keep accurate attendance records and retain them for six years. The sponsor must provide copies to the Bar upon request.

(6) The sponsor shall not state or imply that the Bar or the MCLE Board approves or endorses any person, law firm, or company providing goods or services to lawyers, LLLTs, or LPOs, or law firms.

(7) *Accredited Sponsors.* The Bar may approve and accredit sponsoring organizations as “accredited sponsors” subject to procedures and fees established by the Bar. Accredited sponsors have the same duties as sponsors but have the additional responsibility of approving their own courses and determining appropriate MCLE credit in accordance with this rule. Accredited sponsors pay an annual flat fee for all course applications submitted in lieu of an application fee for each individual course.

(k) Confidentiality. Unless expressly authorized by the Supreme Court or by the lawyer, LLLT, or LPO, all files and records relating to a lawyer’s, LLLT’s, or LPO’s individual MCLE requirements are confidential and shall be privileged against disclosure except as necessary to conduct an investigation, hearing, and appeal or review pursuant to these rules. This provision does not apply to the Bar except that such records shall not be disclosed to Bar staff responsible for creating or marketing CLE products.

[Adopted effective February 12, 1965; Amended effective January 1, 2016; September 1, 2017.]

**WASHINGTON STATE
BAR ASSOCIATION**
PRIMARY TUTOR APPLICATION
APR 6 LAW CLERK PROGRAM

Re: _____
Name of Law Clerk Applicant

(Please print or type)

1. Full Name: _____
Last First Middle

2. WSBA Bar Number: _____

3. Business Address: _____
Name of Business, Firm or Court

Street or P.O. Box

City State Zip Code

Work Email Address

4. Work Telephone: () _____

5. Is the law clerk applicant employed by you or your employer? Yes No
If no, you must complete questions 13-16.

6. Are you eligible to apply as a Primary Tutor as defined in APR 6(c)? Yes No

7. Have you ever been disbarred, suspended, reprimanded, censured, or otherwise disciplined by any jurisdiction? *If yes, give full details on an attached sheet.* Yes No

8. Name all jurisdictions and courts in which you have been admitted to the practice of law, including any limited practice and *pro hac vice*. Give the date of admission and current standing:

9. Please describe your legal education. List when you completed the Law Clerk Program or law school, degrees and dates earned:

**WASHINGTON STATE
BAR ASSOCIATION**

- 10. Please attach a brief statement of your employment during the previous ten years, including the name of employer, inclusive dates, and primary area of law you practiced. You may provide a resume or CV if it covers the past ten years.
- 11. Please attach a brief statement explaining why you wish to act as a tutor and why you believe the applicant is suitable to enroll in the Law Clerk Program.
- 12. Have you read “Rules and Regulations Governing the Washington State Law Clerk Program” Yes No
and do you agree to abide by them?

**Questions 13-16 are to be completed only if the applicant is applying for an
employment waiver under APR 6(b)(7)**

- 13. Does the law clerk applicant have regular, full-time, paid employment working with a lawyer or a judge (“workplace lawyer”) that meets the requirements of APR 6, the law clerk program regulations and the employment waiver guidelines, except that the employer is not the tutor or the tutor’s employer? Yes No

- 14. Describe the alternative relationship between yourself, the workplace lawyer and the law clerk.
(Use a separate sheet if necessary)

- 15. Describe how client confidentiality and conflicts of interest will be resolved given the alternative relationship between yourself, the workplace lawyer and the law clerk. (Use a separate sheet if necessary)

- 16. How will the purpose of the program be maintained given the alternative relationship between yourself, the workplace lawyer and the law clerk? (Use a separate sheet if necessary)

WASHINGTON STATE BAR ASSOCIATION

Tutor's Certificate

I, _____, state under penalty of perjury under the laws of the State of Washington that I am an attorney at law duly admitted to practice law in the State of Washington; that I have read the foregoing application to act as a tutor and that the statements made therein are full, true and correct; and that I am eligible to act as a primary tutor.

I further certify that _____ (law clerk applicant) is employed on a regular, full-time basis: (*initial one below*)

_____ in my office in compliance with APR 6(3) and the Law Clerk Program Regulations.

_____ with the law clerk applicant's workplace lawyer in compliance with the employment waiver guidelines.

I further certify that I will instruct and examine the law clerk applicant faithfully in the branches of the law prescribed by the course of study approved by the Board of Governors, and that I will comply with the Rules and Regulations relating to the Law Clerk Program.

Signature

Print Name

Date and City/State where signed

WASHINGTON STATE BAR ASSOCIATION

Office of the President

TO: WSBA Membership, Washington Supreme Court, General Release
FROM: President Rajeev D. Majumdar
DATE: June 28, 2020
RE: Resolution of the WSBA in Affirming the Rule 6's Program Value and Role in Providing an Additional Path to Justice for Underrepresented Communities, and Support for Rule 6 Diploma Privilege

On June 26, 2020, the Washington State Bar Association adopted the following resolution:

WHEREAS, the Washington Supreme Court's Admission and Practice Rule (APR), 6 commonly known as the "Law Clerk" Program ("Program"), is an alternative to traditional law school education that might otherwise be unattainable due to economic and institutional barriers, and,

WHEREAS, the Program is a four-year course of study designed to provide educational and practical experience through a combination of work and study with an experienced lawyer or judge with at least ten (10) years of experience and in good standing with the Washington State Bar Association ("WSBA") during their Tutoring, and

WHEREAS, the Program is operated under court supervision by the Law Clerk Board which is comprised of volunteer WSBA members, and is comprised of WSBA volunteer Law Clerk Tutors who volunteer their time teaching the law to APR Rule 6 students for no financial compensation, and

WHEREAS, the Program offers an increased opportunity for non-traditional law school students, working parents, and other members of the public that are interested in becoming an attorney to serve the public, and

WHEREAS, without the Program, the WSBA and the members of the public would be deprived of many talented, hardworking attorneys that have provided valuable legal services to clients, and

WHEREAS, the Program has consistently provided a steady stream of competent, skilled, and proficient lawyers that have practical experience from having worked directly with a licensed attorney when they pass the Washington State Bar Exam, and,

WHEREAS, given the ever-increasing costs of traditional law school debt that face the overwhelming majority of most traditional law school graduates, the Program's graduates are frequently in an advantageous position to offer pro bono and/or moderate means legal services to their clients, and

WHEREAS, the Program offers increased access to justice, increasing the public good and benefiting the citizens of the State of Washington; Now therefore,

Be it resolved by the Board of Governors of the WSBA that we memorialize our full and continued support for the court approved and supervised Program and urge every qualified Member of the WSBA to consider serving as a Tutor for a prospective Law Clerk student.

Be it further resolved that the Board of Governors respectfully encourages the Washington Supreme Court to amend the Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules dated June 12, 2020 to include qualified graduates of the Program.

Be it further resolved that the Board of Governors hereby thanks all of the volunteers of the APR Rule 6 Law Clerk Board, and all of the APR Rule 6 Law Clerk Tutors who have spent countless hours to make this Program an ongoing success for the benefit of the citizens of the State of Washington.

Approved by the WSBA Board of Governors on June 26, 2020.



Rajeev D. Majumdar
WSBA President, 2019-2020

Preliminary Suggested
Correction to APR 11

**DISCUSSION:
MCLE Equity Credit Correction**

RSD is sending the Court suggested corrections and small edits to the Admission and Practice Rules this fall. As a part of those suggested edits staff would like to suggest a correction to the newly adopted ethics requirement under APR 11(c)(1)(ii).

Current 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.

Proposed 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~~ or the mitigation of both implicit and explicit bias in the legal profession and the practice of law.

APR 11(c)(1)(ii)	Correction	Changing the word “and” to “or” allows courses on either equity, inclusion, or mitigation of bias, rather than requiring a course to have all three elements to qualify.
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Discussion and Potential Talking Points:

- Does the MCLE Board support this suggested edit?

Course Audits

MEMORANDUM

TO: MCLE Board

FROM: Asia N. Wright

RE: CLE Audit Report

COURSE SPONSOR: The Seminar Group

COURSE TITLE: *CLE Bootcamp*

COURSE DATE(S): Live Webcast December 7 & 8, 2021

ACTIVITY ID#: 1189835

ACCREDITATION: Listed as 10.75 Law & Legal, 3 Ethics, 1 Other Credits;
Recommendation to change to: 10 Law & Legal, 3 Ethics, 1.75 Other Credits.

DATE OF REPORT: June 17, 2022

Nature of the Program

The program consisted of various speakers discussing various topics.

Location/Time

Live Webcast. The speakers could be seen in a video screen with their slides shown on a separate screen.

Facilities

Not applicable.

List of Presenters and Their Qualifications

See below for each session.

Written Materials

Materials consisted of a 649-page pdf containing PowerPoint slides, outlines, case law, and other written materials.

Attendance

At least in the viewing platform I had access to, there was no way to confirm attendance (no codes).

EXECUTIVE SUMMARY

This course meets the definition for 10 Law & Legal, 3 Ethics, 1.75 Other Credits.

DISCUSSION

High Profile Cases (01:01:06) (1 Law and Legal Credit)

Attorneys Anne Bremner and Todd Maybrown presented on high profile cases. Ms. Bremner spoke about her case against the Washington State Department of Social and Health Services for the negligence in the deaths of Susan Cox Powell's sons Charlie, 5, and Braden, 7. Ms. Bremner could have focused more on the legal nuisances and proving the case rather than the horrific facts and irrelevant facts (like whether Susan's parents think she will be found). She spoke as if people knew about the case and should have approached the presentation as if the audience was unfamiliar with the case. Ms. Bremner's red flag exhibit was very persuasive and powerful. She glossed over several practices tips and this should have been given more "air time" during her 30-minute presentation.

Mr. Maybrown spoke about representing protestors. He asked great questions like, "Who decides what is reasonable?" Mr. Maybrown's presentation as very thought provoking. He also spoke about a protestor case he handled and did a good job of educating the audience about the case and the reasoning behind the defense of necessity. Ultimately, the case resulted in the Washington Supreme Court ruling that is a question of fact whether no legal alternative exists in a necessity defense. Mr. Maybrown did a great job of showing why his presentation is important, which is something that was lacking from Ms. Bremner's presentation (it was there, but I think it was overshadowed by all the shock factor statements). At the end, Mr. Maybrown made an attempt of trying to help Ms. Bremner make sense of her presentation and tie it together.

The Business Case for a More Sustainable Practice (01:02:05) (1 Other Credit)

Attorney Nicole DeNamur spoke on the intersection of sustainability, business, and ethics and made the case for a making your law practice a more sustainable practice. Law firms are part of the supply chain and are becoming scrutinized for sustainability. She discussed 1) how to stand out in a market that increasingly demands sustainable processes/disclosures; 2) how sustainable design and operational strategies can increase retention and improve performance; and 3) how sustainable objectives and practices align with evolving ethical obligations and equity work. Using statistics and study results made Ms. DeNamur's case persuasive.

Guardian/Conservator Laws (01:02:05) (1 Law and Legal Credit)

Attorney Sage Graves while very knowledgeable could have made the presentation more engaging. At times, Ms. Graves read off the slides and introduced the concepts in a very dry technical vacuum. She could have used real life examples to bring the concepts to life and make it very interesting. For example, Ms. Graves could have even used Brittny Spears' conservatorship as an example to illustrate points and learnings.

Real Estate and Housing (00:58:31) (1 Law and Legal Credit)

Attorney Evan Loeffler presented on changes to landlord tenant law (unfortunately the video feed was not available). Given the high number of changes, Mr. Loeffler focused on eviction issues.

He called attention to the important changes, often citing the RCWs, and provided helpful practice tips.

Basics of Selling a Business (00:59:21) (1 Law and Legal Credit)

As advertised, attorney Stephan Coonrod gave a presentation on the basics of selling a business. He spoke at a very good speed for comprehension and his outline for his presentation was very informative and helpful.

Marijuana, CBD and Psychedelics (01:01:21) (1 Law and Legal Credit)

Attorney Daniel Shortt gave an interesting presentation on marijuana, CBD and psychedelics. The operational issue discussion identified the basics for lawyers wishing to enter this field. My only feedback would be to give more time to the psychedelics part of the presentation as the presentation focused mostly on marijuana and CBD.

Climate Change (00:50:04) (1 Law and Legal Credit)

Attorney Clara Park from Van Ness Feldman tackled a very complex topic and made it easy to understand, especially for those who are not familiar with the subject matter, Ms. Park used regulations and diagrams to illustrate the issues. She also did a great job of fielding the attendees' questions (there were several).

Construction Defects (01:08:41) (1 Law and Legal Credit)

Katie Comstock is a partner at Levy Von Beck Comstock PS and specializes in construction litigation. Ms. Comstock gave a comprehensive primer on Construction Defects law with good practice tips. She made good use of photos and case law examples.

Land Use Law (01:02:28) (1 Law and Legal Credit)

John C. "Jack" McCullough and Pat Schneider are experienced land use attorneys. The first half of the session gave a helpful primer of this area of the law although the material is geared toward audience with some background in land use law. The second half of the session had a good in-depth discussion of case law developments.

Insurance Law (00:57:37) (1 Law and Legal Credit)

Presenters Greg Pendleton, Brendan Winslow-Nason have experience representing the insurer and the policy holders. The Mr. Pendleton and Mr. Winslow-Nason gave a very thorough overview of insurance law basics as well as provided helpful practice tips. The Case Law review was also very helpful for new and veteran practitioners.

Labor & Employment Law (01:01:08) (1 Law & Legal Credit)

Jamal Whitehead and Ada Wong are both attorneys working in the employment law field. They gave a high-level overview of Equal Employment Opportunity laws. Great use of a vignette to illustrate a hostile work environment. The presenters did a great job of crafting hypotheticals for Claim or No Claim that would raise several hidden issues. Mr. Whitehead and Ms. Wong made the presentation very entertaining. The employer haiku was also a nice touch. Both, Mr. Whitehead and Ms. Wong fielded questions extremely well.

Start-Ups (00:48:48) (.75 Other Credit)

Dave Parker is not an attorney but is a consultant who helps companies launch their go-to-market strategies, design business and revenue models, and analyze pricing. Is a very good speaker and teacher. This session focused on helping attorneys evaluate and value startup companies. While very interesting, the discussion became very advanced. Although Mr. Parker is a good teacher, given the advanced topic a third of the way in I became lost with undefined terms and the practice tips went over my head. It is a great “Other” credit for those in the field but not appropriate for people brand new to the field. Thus, I do not think this topic suitable for a “bootcamp.”

Ethical Considerations – A Year in Review of “Horror Stories” (01:01:30) (1 Ethics Credit)

David Elkanich presented during the session. Mr. Elkanich is an attorney from Buchalter and is the chair of the firm's new Professional Responsibility Group. He is an excellent and entertaining speaker who made good use of case law and rules while applying it to real-life scenarios. He also provided good practical tips on what to do or not do in various situations. Mr. Elkanich did a great job of fielding the online questions.

Ethical Considerations – Confidentiality, Conflicts and COVID (01:03:14) (1 Ethics Credit)

Nellie Barnard and Trisha Thompson are with Holland & Knight LLP. They changed the topic and spoke on *Social Media and Lawyers: Raising Your Profile without Jeopardizing Your License*. The speakers picked a timely topic that many lawyers could relate to and find pitfalls. Ms. Barnard and Ms. Thompson made good use of tying the discussion to the Rules of Professional Conduct and ABA Formal Opinions.

Ethical Considerations – Use of Witness Evidence (00:58:39) (1 Ethics Credit)

Attorney Lara Zarowsky is the Executive Director of the Washington Innocence Project, leading its policy efforts. Ms. Zarowsky had impactful slides and spoke with passion. She is an excellent speaker who discussed theories as well as the rules of Professional Conduct. She also asked good questions of the audience on how to move ethics forward in criminal cases.

CONCLUSION

Overall, this was an interesting boot camp made up of interesting and timely presentations. I would accredit the boot camp as follows:

- 10 Law and Legal credits per Admission and Practice Rule 11(f)(1)
 - *High Profile Cases*
 - *Guardian/Conservator Laws*
 - *Real Estate and Housing*
 - *Basics for Selling a Business*
 - *Marijuana, CBD and Psychedelics*
 - *Climate Change*
 - *Construction Defects*
 - *Land Use Law*
 - *Insurance Law*
 - *Labor & Employment Law*
- 3 Ethics credits per Admission and Practice Rule 11(f)(2)
 - *Ethical Considerations – A Year in Review of “Horror Stories”*
 - *Ethical Considerations – Raising Your Profile without Jeopardizing Your License*

- *Ethical Considerations – Use of Witness Evidence*
- 1.75 Other credits per Admission and Practice Rule 11(f)
 - *The Business Case for a More Sustainable Practice – APR 11(f)(5) Office Management*
 - *Start Ups - APR 11(f)(7) Nexus*

MEMORANDUM

TO: MCLE Board

FROM: Asia N. Wright

RE: CLE Audit Report

COURSE SPONSOR: Practising Law Institute (PLI)

COURSE TITLE: *Economic Sanctions Against Russia: Where Things Stand and What May Be Next*

COURSE DATE(S): Recorded March 23, 2022

ACTIVITY ID#: 1199820

ACCREDITATION: 1 Law & Legal Credit

DATE OF REPORT: May 10, 2022

Nature of the Program

The program consisted of various panel speakers discussing the following:

- An overview of U.S. sanctions laws relating to Russia, as well as recent developments;
- An overview of the EU and UK sanctions regimes for Russia and related recent developments;
- Potential targets in Russia for future sanctions; and
- Practical steps to ensure compliance – due diligence, contracting, legal advice – and ensure that you can get the deal done.

Location/Time

The course is a video recording. Attendees can video at their leisure and resume the recording at a later time. The video only shows the panel speaker currently speaking.

Facilities

Not applicable.

List of Presenters and Their Qualifications

All the presenters are experienced lawyers in the field of sanctions. They are as follows:

- Bruce G. Paulsen, co-chair of the Litigation Department at Seward & Kissel LLP (New York);
- Andrew S. Jacobson, a former New York State Department of Financial Services enforcement attorney and current attorney at Seward & Kissel LLP;
- Stephen Gentle (partner at Simmons & Simmons LLP (London)); and
- Cherie Spinks (Of Counsel of Simmons & Simmons LLP (London)).

Written Materials

A 30-page pdf that listed some of recent sanctions updates from Seward & Kissel LLP and copies of executive orders.

Attendance

Attendance is confirmed by the viewer pressing a button on a pop-up box that popped up every so often.

EXECUTIVE SUMMARY

This course meets the definition for 1 Law & Legal accreditation. However, the course would have been more impactful if there had been PowerPoint slides.

DISCUSSION

I found it difficult to follow the speakers sometimes. I am a visual learner so not having slides made it more difficult to comprehend what the speakers said. I understand that this area of the law is very dynamic, but it would be helpful to have basic concepts and definitions that do not change listed on the slides. The saving grace was that the PLI platform made it possible to download a transcript of the CLE so I could read what was said.

Only about five minutes were spent on practical steps to ensure compliance and due diligence. I think practitioners would have appreciated the program more if more time was dedicated to this topic.

CONCLUSION

Although improvements could be made to the course to maximize learning objectives, this course fits the definition of the approved course subject of Law & Legal as outlined by Admission and Practice Rule 11(f)(1). One Law & Legal credit should be awarded.

MCLE Board Vice- Chair Selection

DISCUSSION SUMMARY:**Vice-Chair Selection**

ISSUE: The MCLE Board needs to select a Board member to be the Vice-Chair for the 2022-2023 term.

BACKGROUND: At the MCLE Board's July 15, 2005 meeting the MCLE Board created a new position of "Vice-Chair".

- **Vice-Chair Position** – The Board member to fill the "Vice-Chair" position will be selected by the MCLE Board members each year. During the term of the Vice-Chair, the Board member filling this position will train in the duties of the Board Chair, become familiar with the history of the Board, and step in as acting Chair during meetings when the Chair cannot be present for some or all of the Board meeting. The Vice-Chair may also be called on to represent the MCLE Board at a Board of Governors meeting, Court hearing, or other official function if the Chair is unable to attend. The intent of the Vice-Chair position is to be a likely successor to the current Chair, as a potential candidate to recommend to the Washington Supreme Court for the next term. Ultimately, the Supreme Court appoints the MCLE Board Chair, taking into account the recommendation of the MCLE Board nomination team and the Board of Governors.
- **Purpose** – The Board created the Vice-Chair position to give more continuity to the functioning of the Board. Because the Board has evolved into much more of a policy-making Board than previously, it is more critical now that a potential candidate for next term's Chair position have a good working knowledge of the history of the issues that have come before the Board. In addition, it is also critical that the candidate be fully cognizant of all the connections with outside groups that need to be made in order for effective policies to be developed and promulgated. These connections are also vital for developing high quality rules, regulations, and policies that best serve the members, sponsors, administrators, and citizens of the State of Washington.

MCLE Board Proposed Meeting Schedule

ISSUE SUMMARY:**Proposed 2022-2023 MCLE Board Meeting Schedule****ISSUE:**

- The 2022-2023 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 2022-2023 term:

Meeting #	MCLE Board Meeting Date
1	October 7, 2022
2	January 13, 2023
3	April 14, 2023 *
4	May 19, 2023
5	August 4, 2023

*Christian Orthodox Good Friday and Vaisakhi

Discussion of MCLE Board
Annual Report to WA Supreme
Court

DISCUSSION: Annual Report to the Supreme Court

The MCLE Board will discuss topics to include in their annual report to the Supreme Court.

Background:

Each year, the MCLE Board meets with the Supreme Court to provide an annual report to the Court. Typically, the report is presented by the MCLE Board Chair, and all available MCLE Board members attend. The MCLE Board's annual meeting with the Supreme Court is scheduled to take place virtually during their Admin En Banc on Wednesday, September 7th from 11:00 AM-11:45 AM.

Discussion and Potential Talking Points:

1. Which topics, goals, or achievements would the MCLE Board would like to highlight in the report?
2. Possible topics to be included in this year's annual report:
 - MCLE Board member Robert Malae's participation in the TAXICAB group
 - Preliminary suggested amendment to allow MCLE Credit for Law Clerk Tutors
 - Outreach and implementation of new ethics requirement
 - Board Goals
 - Recent MCLE Board interpretations of Admission and Practice Rule 11
 - Overview of the number of Petitions, Board Decisions, and hearings
 - Strategies for Mitigating Implicit and Explicit Bias – redaction of petitions brought before the board
 - MCLE Certification and Activity Submissions Numbers
 - **Possible Attachments:**
 - 2020-2021 MCLE Board Roster
 - WSBA Board of Governors Law Clerk Memo
 - MCLE Board Undue Hardship Decision Matrix
 - Fee Structure & Budget
 - Admission and Practice rule (APR) 11

Enclosed Documents:

- MCLE Board's 2021 Annual Report to the Supreme Court & Attachments
- Agenda from 2021 meeting with the Supreme Court

To: Washington Supreme Court Justices
From: MCLE Board
Date: August 20, 2021
RE: **2020-2021 MCLE BOARD TERM REPORT**

Background & Purpose:

The Mandatory Continuing Legal Education (MCLE) Board derives its authority from the Washington Supreme Court. Under Admission and Practice Rule (APR) 11(d)(2), the MCLE Board is authorized to accredit courses and educational programs that satisfy the educational requirements of the mandatory CLE rule, consider MCLE policy issues, determine and adjust fees, consider member and sponsor petitions for waivers from requirements and appeals from decisions, and suggest amendments or regulations to APR 11. The MCLE Board is comprised of 6 WSBA members and 1 community members. On average, the MCLE Board meets five times a year.

FY 2020-2021 MCLE Board Goals:

1. Suggested Amendment

Taking into consideration feedback from the public, licensed legal professionals, and the WSBA Board of Governors, the MCLE Board made a goal of determining whether to recommend to the Washington Supreme Court an amendment to the Admission and Practice Rule (APR) 11 ethics requirement. On October 15, 2020, the MCLE Board submitted the suggested amendment to the Washington Supreme Court. On July 1, 2021, the Washington Supreme Court entered order 25700-A-1349 approving the MCLE Board's suggested amendment. The order is effective September 1, 2022. The amendment to APR 11 requires, per each three-year MCLE reporting period, that each licensed legal professional complete at least one ethics credit in the topic of equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law.

2. Course Audits

MCLE Board members have a goal of auditing two or more CLE courses each year, focusing on accredited sponsors. The MCLE Board has completed five (5) audit reports throughout the 2020-2021 term, and are in the process of auditing three (3) additional courses. Accredited sponsors have the same duties as general sponsors, but have the additional responsibility of approving their own courses and determining appropriate MCLE credit in accordance with APR 11. Accredited sponsors pay an annual flat fee for all course applications submitted in lieu of an application fee for each individual course.

3. Diversity



The MCLE Board will continue to examine and work to increase the diversity of the MCLE Board. The MCLE Board continues to seek board members who represent diversity in geography, and all other diversity criteria used by the WSBA. In addition, the MCLE Board has done targeted outreach to WSBA members and CLE sponsors regarding topics that the Board has considered during the year. Also, the Board routinely receives and considers input from petitions filed by WSBA members affected by the MCLE rules.

The MCLE Board fosters an atmosphere of civility and collegiality insofar as how the Board receives comments from WSBA members, staff, fellow board members, and others. This is accomplished by active listening and respectful discussion. Consistency in the application of the rules is maintained by active discussion on the merits of each issue brought before the MCLE Board. The MCLE Board aims to achieve Board consensus whenever possible.

Newly Adopted MCLE Board Policies

At its August 6, 2021 meeting, the MCLE Board adopted two policies with the intent to provide guidance for the implementation of the Court's order NO. 25700-A-1349, which requires at least one MCLE credit in equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law (hereinafter referred to as "equity credit"). Pursuant to APR 11(d)(2)(ii) the policies will become effective 60 days after promulgation by the MCLE Board. Below is a brief description of each policy.

MCLE Board Policy – Implementation of New Ethics Requirement

This policy establishes 2023-2025 as the first reporting period required to report and certify the new requirement. The policy is intended to allow time for WSBA staff to develop tracking mechanisms in the MCLE database for certification and course accreditation according to the new requirements. In addition, this policy provides time to notify both licensed legal professionals and CLE sponsors of the new requirement.

MCLE Board Policy – Credit Carryover

This policy clarifies that while all ethics credit earned in excess of the reporting period requirement will be carried over as ethics credit in accordance with APR 11(c)(7), a new equity requirement must be earned in each reporting period. This policy is consistent with the current administration of ethics carryover credits: excess ethics credits carryover in its broader, general definition. For example, activities that relate to: the ethical risks to practice associated with diagnosable mental health issues, Rules of Professional Conduct, diversity and antibias as it relates to the legal system all currently carryover as ethics credit.

MCLE Credit for Law Clerk Tutors Workgroup



Over the years, there have been several requests by Law Clerk tutors to receive MCLE credit for giving their time as tutors. Tutors provide three hours of personal supervision each week, including instruction and substantive discussion of the law. It's a four-year program, and each year law clerks are required to study six subjects and pass monthly examinations. The exams are developed, administered, and graded by the tutors. At its May 25, 2021 meeting, the MCLE Board nominated two members to serve on the workgroup alongside two members from the Law Clerk Board to explore the possibility of suggesting an amendment to APR 11(e)(6) to allow Law Clerk tutors to obtain MCLE credit for teaching. On August 12, 2021, the workgroup met to discuss and draft potential language for an amendment to APR 11(e)(6).

WSBA Task Force Administering Xenial Involvement with Court Appointed Boards

MCLE Board member Robert Malae serves as the MCLE Board representative on the WSBA Task Force Administering Xenial Involvement with Court Appointed Boards (TAXICAB), and provides regular updates to the MCLE Board regarding the actions of the task force, at each MCLE Board meeting. The task force was created to begin a collaborative discussion with the Washington Supreme Court and to coordinate efforts to administer Court Boards, as well as to facilitate cooperation and the sharing of information between the Court and the WSBA on issues related to substantive, fiscal, and administrative concerns.

Board Interpretations of APR 11

After receiving a request for course accreditation guidance from MCLE staff, the MCLE Board determined that courses not designed nor intended for licensed legal professionals—that cover issues of diversity, inclusion, and elimination of bias—are not eligible for MCLE credit under APR 11(h). The MCLE Board requested MCLE staff to bring additional course applications in this topic to future meetings, in order to explore potential accreditation.

Petitions & Board Decisions

At each meeting, the MCLE Board reviews petitions that have been submitted on the basis of undue hardship. Per APR 11(i)(5): “a lawyer, LLLT, or LPO may file with the MCLE Board an undue hardship petition for an extension, waiver, and/or modification of the MCLE requirements.”

All petitions are first reviewed by the MCLE staff liaison and approved, denied, or forwarded to the MCLE Board based on the Board-approved decision matrix, which defines applicable hardships. The MCLE Board also reviews appeals of denials and holds hearings at the request of licensed legal professionals who also have the option to appeal a denial by the MCLE Board to the Supreme Court.

In total, two (2) petitions of undue hardship were reviewed by the MCLE Board during the 2020-2021 meeting term; however, both petitions were for the 2017-2019 reporting period. Due to the Court ordered extension of the 2018-2020 reporting period, and as of August 11, 2021, no petitions have been submitted to the MCLE Board for either the 2018-2021 extended reporting period or the 2019 -2021 reporting period. However, it is anticipated that the MCLE Board will begin to receive petitions for both

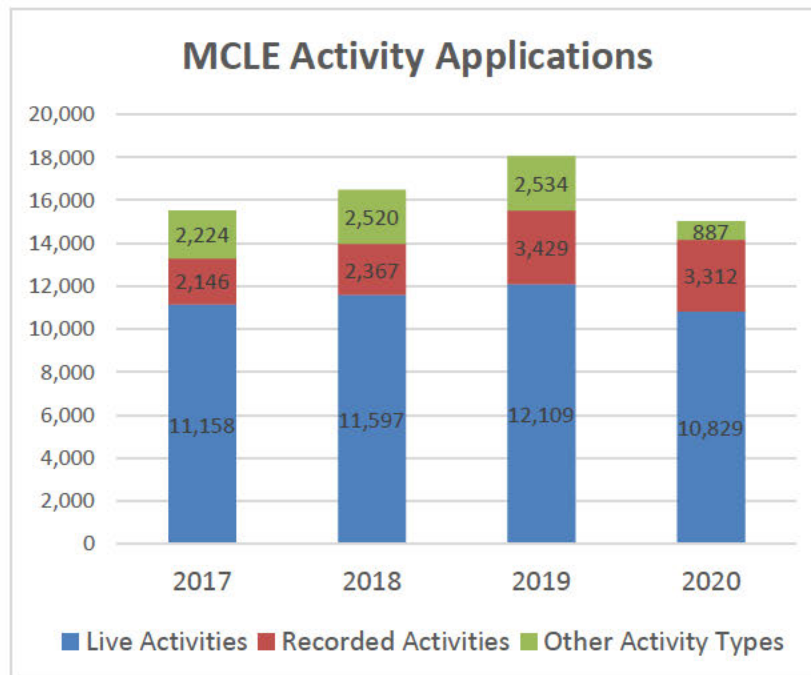


reporting periods this fall. For comparison, the MCLE Board received a total of sixty-eight (68) petitions during the 2017-2019 reporting period.

Strategies for Mitigating Implicit and Explicit Bias

In an effort to mitigate implicit and explicit bias from the MCLE petition review process, MCLE staff will begin to redact information pertaining to the petitioner’s identity, such as name, email, and license number before forwarding it to the MCLE Board.

MCLE Certification and Activity Submissions



The MCLE Board has delegated approval of courses to the WSBA’s MCLE staff. MCLE analysts regularly review CLE course submissions and accredit activities per standards outlined in APR 11. Hundreds of CLE activity applications are received each month, and MCLE analysts review and approve thousands of activity applications each year.

In addition to CLE activity reviews, MCLE staff handle the certification review process. As MCLE reporting and certification are based on a three-year reporting period, MCLE analysts review and verify that the MCLE requirements

are completed for one-third of active membership each year.

Due to the Court-ordered extension of the 2018-2020 reporting period (now 2018-2021), twice as many licensed legal professionals are due to certify credits by February 1, 2022. In order to meet and accomplish this increased workload (each individual certification must be reviewed by an MCLE analyst), MCLE staff worked with WSBA IT to open the MCLE certification in July 2021—several months ahead of the normal certification opening month of November. As of August 11, 2021, 1,538 licensed legal professionals have certified and are compliant for the 2018-2021 and 2019-2021 reporting periods, out of the 21,376 individuals that are due to report.

Sponsor Fees during COVID-19

MCLE staff provided an overview to the MCLE Board 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. MCLE staff had encountered several examples of CLE sponsors attempting to apply for webinars as a package, to avoid multiple application fees. MCLE staff requested sponsors to separate such applications where non-consecutive days could cause confusion for 8-hour violation tracking (required per APR 11(c)(2)). The MCLE Board agreed with the current fee assessment procedure—to ensure that courses advertised as individual webinars be applied for individually—and requested MCLE staff to watch for any unique application issues that may require an additional assessment of the MCLE fee structure.

Attachments:

- 2020-2021 MCLE Board Roster
- MCLE Board Policies and Letter to Court (Ethics Requirement Implementation and Credit Carryover)
- WSBA Board of Governors Memo
- MCLE Board Undue Hardship Decision Matrix
- Fee Structure & Budget
- Admission and Practice Rule (APR) 11



2020-2021 MCLE Board Term Report

Attachments

- 2020-2021 MCLE Board Roster
- MCLE Board Policies and Letter to Court (Ethics Requirement Implementation and Credit Carryover)
 - WSBA Board of Governors Memo
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 - Fee Structure & Budget
 - Admission and Practice Rule (APR) 11

MCLE Board Members:

Ayanna Colman (Chair)
Todd Alberstone (Vice-Chair)
M. Christopher Bueter
Robert J Malae
Asia Noel Wright
Melissa Skelton
Merri Hartse

WSBA Board of Governors Liaisons:

Russell Knight
Sunitha Anjilvel

WSBA Staff Liaison:

Adelaine Shay



August 13, 2021

The Honorable Steven González
Chief Justice
Washington State Supreme Court
PO Box 40929
Olympia WA 98504-0929

RE: Notification of MCLE Board Policies

Dear Chief Justice González:

The purpose of this letter is to inform the Supreme Court of the MCLE Board's recently adopted policies. Pursuant to Admission and Practice Rule (APR) 11(d)(2)(ii), the MCLE Board is authorized to adopt policies to provide guidance in the administration of APR 11 and the associated regulations. Under that same section of APR 11, the MCLE Board is required to notify the Board of Governors and the Supreme Court of any policies that it adopts.

At its August 6, 2021 meeting, the MCLE Board adopted the attached policies with the intent to provide guidance for implementation of the Court's [order NO. 25700-A-1349](#) which requires at least one MCLE credit in equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law. Pursuant to APR 11(d)(2)(ii) the policies will become effective 60 days after promulgation by the MCLE Board. Below is a brief description of each policy.

MCLE Board Policy – Implementation of New Ethics Credit

This policy establishes 2023-2025 as the first reporting period required to report and certify the new requirement. The policy is intended to allow time for WSBA staff to develop tracking mechanisms in the MCLE database for certification and course accreditation according to the new requirements. In addition, this policy provides time to notify both licensed legal professionals and CLE sponsors of the new requirement.

MCLE Board Policy – Credit Carryover

This policy clarifies that while all ethics credit earned in excess of the reporting period requirement will be carried over as ethics credit in accordance with APR 11(c)(7), a new equity requirement must be earned in each reporting period. This policy is consistent with the current administration of ethics carryover credits which is that excess ethics credits carryover in its broader, general definition. (e.g. activities that relate to: the ethical risks to practice associated with diagnosable mental health issues, Rules of Professional Conduct, diversity and antibias as it relates to the legal system, etc... all carryover as "ethics" credit.)

If you would like additional information, please don't hesitate to contact the MCLE Board Staff Liaison at AdelaineS@wsba.org or (206) 727-8249.



Sincerely,

Ayanna Colman
MCLE Board Chair

cc: Kyle Sciuchetti, WSBA President
Terra Nevitt, WSBA Executive Director
Renata de Carvalho Garcia, Chief Regulatory Counsel
Adelaine Shay, MCLE Board Staff Liaison

Enclosed: MCLE Board Policies



BOARD POLICY : Implementation of the New Ethics Credit

The Supreme Court adopted Order No. 25700-A-1349, which amended APR 11(c)(1)(ii) and APR 11(f)(2), to require licensed legal professionals to earn one credit in the category of equity, inclusion, and the mitigation of both implicit and explicit bias (hereinafter referred to as “equity credit”). The MCLE Board issues the following policy to clarify which MCLE reporting period will be the first required to report the new equity credit.

1. The MCLE Board will track the new equity credit—as outlined in APR 11(c)(1)(ii) and APR 11(f)(2)—starting with the 2023-2025 MCLE reporting period. Licensed legal professionals in the 2023-2025 and subsequent MCLE reporting periods will be required to report and certify fulfillment of the equity credit requirement.

BOARD POLICY: Ethics Credit Carryover

The Supreme Court adopted order NO. 25700-A-1349, which amended APR 11(c)(1)(ii) and APR 11(f)(2), to require licensed legal professionals to earn one credit in the category of equity, inclusion, and the mitigation of both implicit and explicit bias (hereinafter referred to as “equity credit”). The MCLE Board issues the following policy to clarify ethics carryover credit. The MCLE Board has determined the following:

1. Equity credit earned in excess of the reporting period requirement may be carried over as ethics credit in accordance with APR 11(c)(7), but a new equity credit must be earned in each reporting period.

WASHINGTON STATE BAR ASSOCIATION

TO: WSBA Board of Governors
FROM: Ayanna Colman, MCLE Board Chair
Adelaine Shay, WSBA MCLE Manager
DATE: August 20, 2021
RE: MCLE Board Adopted Policies – Notification

Notification Summary

Pursuant to Washington Supreme Court Admission and Practice Rule (APR) 11 (d)(2)(ii) the MCLE Board is notifying the Board of Governors of two policies adopted at its August 6, 2021 meeting. The attached policies are intended to provide guidance in the administration of the newly adopted APR 11 amendment and will become effective 60 days from promulgation.

APR 11 (d)(2)(ii): Policies. The MCLE Board may adopt policies to provide guidance in the administration of APR 11 and the associated regulations. The MCLE Board will notify the Board of Governors and the Supreme Court of any policies that it adopts. Such policies will become effective 60 days after promulgation by the MCLE Board.

MCLE Board Policy – Implementation of New Ethics Credit

This policy establishes 2023-2025 as the first reporting period required to report and certify the new requirement. The policy is intended to allow time for WSBA staff to develop tracking mechanisms in the MCLE database for certification and course accreditation according to the new requirements. In addition, this policy provides time to notify both licensed legal professionals and CLE sponsors of the new requirement.

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This policy clarifies that while all ethics credit earned in excess of the reporting period requirement will be carried over as ethics credit in accordance with APR 11(c)(7), a new equity requirement must be earned in each reporting period. This policy is consistent with the current administration of ethics carryover credits which is that excess ethics credits carryover in its broader, general definition. (e.g. activities that relate to: the ethical risks to practice associated with diagnosable mental health issues, Rules of Professional Conduct, diversity and antibias as it relates to the legal system, etc... all carryover as “ethics” credit.)

Attachments:

- MCLE Board Policy – Implementation of New Ethics Credit
- MCLE Board Policy – Credit Carryover



MCLE Board Approved

Undue Hardship Petition Decision Matrix

EXTENSION (EXT) REQUESTS MATRIX

Reason No.	SITUATION <i>Applies to first period of non-compliance, and multiple consecutive periods of non-compliance.</i>	DECISION
EXT 1	(1) Significant medical hardship of self or immediate family member for whom member is primary support; and (2) Requested extension deadline is in the same calendar year in which the lawyer is due to report.	* First request -- grant extension with reasonable deadline * Second request -- refer to the MCLE Board
EXT 2	(1) Death of immediate family member which caused lawyer hardship (e.g., emotional, physical, financial, scheduling); and (2) Requested extension deadline is in the same calendar year in which the lawyer is due to report.	* First request -- grant extension with reasonable deadline * Second request -- refer to the MCLE Board
EXT 3	(1) Financial hardship -- due to (a) being unemployed or employed with poverty-level wages; (b) major medical expense for self or family member; or (c) bankruptcy; and (2) Requested extension deadline is in the same calendar year in which the lawyer is due to report.	* First request -- grant extension with reasonable deadline * Second request -- refer to MCLE Board
EXT 4	On an active military assignment in a location where it is possible to access CLE courses but military obligations do not allow enough time to complete credits by the deadline.	* First request -- grant extension with reasonable deadline * Second request -- refer to MCLE Board
EXT 5	All other requests	Deny

CREDIT MODIFICATION (MOD) DECISION MATRIX

Reason No.	SITUATION <i>Applies to first period of non-compliance, and multiple consecutive periods of non-compliance.</i>	DECISION
MOD 1	Significant medical hardship of self or immediate family member for whom lawyer is primary support.	Grant as appropriate
MOD 2	Death of immediate family member which caused lawyer hardship (e.g., emotional, physical, financial, scheduling).	Grant as appropriate
MOD 3	Financial hardship (as defined by the "First Time Late Fee Waiver Requests Decision Criteria" table)	Grant as appropriate
MOD 4	All other reasons	Deny

EXEMPTION (EXM) DECISION MATRIX

Reason No.	SITUATION <i>Applies to first period of non-compliance, and multiple consecutive periods of non-compliance for EXM 3 only. For EXM 1&2, for multiple consecutive periods of non-compliance, bring to board.</i>	DECISION Note: If a waiver is approved and some credits have already been completed, grant the waiver only for the number of credits still needed for compliance. There should be no carry-over as a result of this waiver.
EXM 1	(1) Significant medical hardship of self or immediate family member for whom member is primary support; and (2) Petition is filed by certification deadline; and (3) <u>Less</u> than 15 credits due of which no more than 2 are ethics.	Grant.
EXM 2	(1) Significant medical hardship of self or immediate family member for whom member is primary support; and (2) Petition is filed by certification deadline; and (3) 15 or <u>more</u> credits still due and/or more than 2 ethics credits due.	Grant request if medical hardship is for lawyer and: (a) is life-threatening; or (b) is of long duration (in years); or (c) lawyer is 75 or older. All others: Deny request and grant extension instead
EXM 3	On active military assignment in remote location or on a domestic base where it is difficult to access CLE courses.	Grant.
EXM 4	All other requests.	Deny.

LATE FEE WAIVER DECISION CRITERIA

Note: If "Credits by 12/31" is "Y," then late fee was assessed because certification was submitted after the February 1 deadline.

Y* = Complete at time petition considered

No.	SITUATION	CREDITS BY 12/31?	CREDITS DONE After 12/31?	CERTIFIED?	1st Non-Comp RP	>1 Con-secutive Non-Comp RP	DECISION
MEDICAL HARDSHIP/DEATH <ul style="list-style-type: none"> • "Immediate family member" as defined by RPC 1.8(l) subpart 1 as: parent, child, sibling, or spouse • Death must have occurred within six months of end of reporting period • Refer petition requests on basis of death liberally to the Board if any doubt exists 							
A1	Significant medical hardship of self or immediate family member for whom licensed legal professional is primary support, or Death of immediate family member which caused lawyer hardship (e.g., emotional, physical, financial, scheduling)	Y/N	Y*	Y/N	X		Waive if certification submitted or once it is submitted.
A2	Significant medical hardship of self or immediate family member for whom licensed legal professional is primary support, or Death of immediate family member which caused lawyer hardship (e.g., emotional, physical, financial, scheduling)	Y/N	Y*	Y/N		X	Reduce or waive [depending on the circumstance] if certification submitted or once it is submitted.
A3	Significant medical hardship of self or immediate family member for whom licensed legal professional is primary support, or Death of immediate family member which caused lawyer hardship (e.g., emotional, physical, financial, scheduling)	N	N	Y/N	X	X	<15 credits remaining = Reduce or waive [depending on the circumstance] if Certification submitted by the deadline (with all credits needed for compliance completed). >15 credit remaining = Refer to the Board

No.	SITUATION	CREDITS BY 12/31?	CREDITS DONE After 12/31?	CERTIFIED?	1st Non-Comp RP	>1 Consecutive Non-Comp RP	DECISION
	<p>FINANCIAL HARDSHIP as defined by 200% of Federal Poverty Guidelines based on <u>gross household</u> annual income due to (1) being unemployed or employed with poverty-level wages; (2) major medical expense for self or family member; or (3) bankruptcy. The guidelines are the same ones approved by the BOG in 2010 for determining a one-time waiver of the annual license fee based on financial hardship. (See attached "WSBA License Fee Exemption Request Form".) Offer a payment extension if necessary, taking the following guidelines into consideration:</p> <ul style="list-style-type: none"> • Petition received for financial hardship waiver of late fee; • Waiver was denied or late fee was reduced; • Gross household income between 200-400% of the Federal Poverty Guidelines; • Credit requirements have been met and certified; • The late fee amount owed is equal to or more than \$450; • The fee is paid in full within 3-5 months depending on the amount. 						
B1	FINANCIAL HARDSHIP	Y		Y	X		Waive
B2	FINANCIAL HARDSHIP		Y*	Y*	X		Reduce to \$50 [<i>waive</i> \$100] if paid by the deadline.
B3	FINANCIAL HARDSHIP	Y		N	X		Reduce to \$50 [<i>waive</i> \$100] if paid and certified by the deadline.
B4	FINANCIAL HARDSHIP		Y*/N	Y/N	X		Reduce to \$75 [<i>waive</i> \$75] if paid and certified by the deadline.
B5	FINANCIAL HARDSHIP	Y		Y*		X	Waive \$300 if paid by the deadline.
B6	FINANCIAL HARDSHIP		Y*	Y*		X	Waive \$200 if paid by the deadline.
B7	FINANCIAL HARDSHIP	Y		N		X	Waive \$250 if paid and certified by the deadline.
B8	FINANCIAL HARDSHIP		Y*/N	Y/N		X	Waive \$150 if paid and certified by the deadline.
B9	FINANCIAL HARDSHIP qualifying criteria not met		Y*/N	Y/N	X	X	Deny - Include payment extension language in denial letter.
	<p>MILITARY -- On active military assignment in remote non-U.S. location where mail is slow and unreliable and/or in active combat area. No deadline for payment due to mail unreliability (but will not be compliant until it is paid).</p>						
D1	MILITARY -- See header criteria	Y/N	Y*/N	Y*/N	X		Waive late fee.
D6	MILITARY -- See header criteria	Y/N	Y*/N	Y/N		X	Refer to the Board
	MAIL DELIVERY PROBLEM						

No.	SITUATION	CREDITS BY 12/31?	CREDITS DONE After 12/31?	CERTIFIED?	1st Non-Comp RP	>1 Consecutive Non-Comp RP	DECISION
E1	Claims certified by 2/1.	Y	Y*	Y*	X	X	Grant if licensed legal professional establishes timely certification or if administrative error; otherwise deny.
MIS-INFORMATION FROM WSBA / LICENSED LEGAL PROFESSIONAL'S FAILURE TO LEARN MCLE REQUIREMENTS							
F1	Reports that certification completed online by 2/1 and it was the <u>first time</u> licensed legal professional certified online. Certification was not submitted correctly, therefore 2/1 deadline not met.	Y		Y*	X	X	Waive the late fee once certification has been completed successfully. (This policy was passed by the Board on 3/19/10.)
F2	Reports being told by WSBA staff certification not needed	Y/N	Y*	Y*/N	X	X	Deny
F3	Licensed legal professional reports receiving other errant information from the WSBA [and it was reasonable for the licensed legal professional to be dependent on the information] or other WSBA administrative error occurred causing the late fee.	Y	Y*	Y*	X	X	Reduce or waive the late fee depending on the circumstances.
F4	Licensed legal professional reports receiving the previous petition decision letter after the deadline that had to be met for a fee reduction.	Y	Y*	Y*	X	X	Reduce or waive the late fee depending on the circumstances.
	SPONSOR MIS-ADVERTISEMENT						
G1	Short credits due to sponsor error or mis-advertisement of CLE credits (if < or = 2 credits)	See note	See note	Y	X	X	Grant if * At least 43 credits are in reporting period * Shortfall made up in timely manner after notification of misaccreditation * All credits needed for compliance are complete * Certification is complete

No.	SITUATION	CREDITS BY 12/31?	CREDITS DONE After 12/31?	CERTIFIED?	1st Non-Comp RP	>1 Consecutive Non-Comp RP	DECISION
	MISC. REASONS FOR NON-COMPLIANCE						
K1	<p>Certified reporting period roster with a duplicate course; deletion of the course causes credit non-compliance after 12/31.</p> <p>* All other credits were taken within the RP</p> <p>* < or = 4 credits need to be taken to make up credit deficiency.</p> <p>* Credits made up and certified in a timely manner.</p> <p>* Never late before.</p>	Y		Y	X		Reduce late fee to \$75 [<i>waive</i> \$75]. if payment postmarked/delivered to the WSBA by the deadline.
K2	<p>Busy practice / Oversight / Other non-medical or non-financial hardship reason [See "Misc." list below]</p>						Deny
MISC. REASONS FOR NON-COMPLIANCE							
Claims mailed certification to WSBA but not received by WSBA.							
Class that licensed legal professional planning to take cancelled at last minute and licensed legal professional still has time in reporting period to take needed credits.							
Did not know certification had to be submitted since all credits are on the MCLE web site (even though instructions about requirement for certification is in APR 11, and in the July 1st letter, in the NW Lawyer FYI column Sept.-April each year, on the certification forms in the annual license packet and in all email reminders about license renewal).							

MCLE Board Direction on Petitions

04/03/2020 Meeting:

- **Regarding Military Spouses Submitting Petitions:** The MCLE Board approved by motion to direct the WSBA Staff Liaison to bring any military spouse petitions to the Board for review.

Current MCLE Fee Structure

Fee For CLE Sponsors	
Course Application and Late Fees for CLE Sponsors	Fees
Course Application <i>Note: Government agencies and Nonprofit organizations are not required to pay the application fee when a course is offered for free.</i>	\$ 100 / course
Course Application Late Fee	\$50 / course
Attendance Late Fee	\$50 / submission

Fees For Accredited Sponsor Annual Fees	
<i>Accredited sponsors have the same duties as sponsors but have the additional responsibility of approving their own courses and determining appropriate MCLE credit in accordance with Washington Supreme Court Admission and Practice Rule 11. Accredited sponsors pay an annual flat fee for all course applications submitted in lieu of an application fee for each individual course.</i>	
Number of annual courses	Fees
0-50 courses	\$ 500
51-100 courses	\$ 1,500
101-250 courses	\$ 2,250
251-500 courses	\$ 3,000
501-1000 courses	\$ 4,500
1001 + courses	\$ 6,000

Late Certification By Licensed Legal Professionals	
Certification Late Fees	Fees
Lawyer, LLLT, and LPO Certification Late Fee	Start at \$ 150 and increase by \$ 300 for every consecutive (three-year) period of late compliance.

Washington State Bar Association

Statement of Activities

For the Period from June 1, 2021 to June 30, 2021

75.00% OF YEAR COMPLETE

	MONTHLY BUDGET vs. ACTUAL			YEAR TO DATE BUDGET vs. ACTUAL			ANNUAL BUDGET COMPARISON		
	FISCAL 2021 REFORECAST CURRENT MONTH	CURRENT MONTH ACTUAL	MONTHLY VARIANCE	YEAR TO DATE REFORECAST	YEAR TO DATE ACTUAL	YEAR TO DATE VARIANCE	FISCAL 2021 ANNUAL REFORECAST	REMAINING BALANCE OF YEAR	% USED OF ANNUAL REFORECAST
MANDATORY CONTINUING LEGAL EDUCATION									
REVENUE:									
ACCREDITED PROGRAM FEES	40,000	42,600	2,600	377,600	434,400	56,800	497,600	63,200	87.30%
FORM 1 LATE FEES	12,500	18,450	5,950	143,700	180,450	36,750	190,200	9,750	94.87%
MEMBER LATE FEES	-	3,300	3,300	2,400	6,346	3,946	2,700	(3,646)	235.05%
ANNUAL ACCREDITED SPONSOR FEES	(63)	(500)	(438)	41,938	42,250	313	41,750	(500)	101.20%
ATTENDANCE LATE FEES	6,667	11,600	4,933	74,833	92,250	17,417	94,000	1,750	98.14%
COMITY CERTIFICATES	100	650	550	12,687	13,312	625	13,000	(312)	102.40%
TOTAL REVENUE:	59,204	76,100	16,896	653,158	769,009	115,850	839,250	70,242	91.63%
DIRECT EXPENSES:									
DEPRECIATION	7,447	5,530	1,917	120,703	126,456	(5,753)	143,045	16,589	88.40%
STAFF MEMBERSHIP DUES	-	-	-	500	-	500	500	500	0.00%
ONLINE LEGAL RESEARCH	152	154	(2)	1,217	1,224	(8)	1,672	448	73.22%
LAW LIBRARY	13	11	2	110	100	10	150	50	66.43%
MCLE BOARD	-	-	-	-	-	-	650	650	0.00%
STAFF TRAVEL/PARKING	6	-	6	31	-	31	50	50	0.00%
STAFF TRAINING	-	-	-	1,170	-	1,170	1,170	1,170	0.00%
TOTAL DIRECT EXPENSES:	7,619	5,695	1,924	123,731	127,779	(4,049)	147,237	19,458	86.78%
INDIRECT EXPENSES:									
SALARY EXPENSE (3.80 FTE)	24,132	19,148	4,984	197,367	186,113	11,253	269,761	83,648	68.99%
BENEFITS EXPENSE	10,488	10,541	(53)	76,222	76,174	47	106,179	30,004	71.74%
OTHER INDIRECT EXPENSE	11,366	7,262	4,104	93,593	77,263	16,331	135,803	58,540	56.89%
TOTAL INDIRECT EXPENSES:	45,986	36,950	9,036	367,182	339,550	27,631	511,743	172,192	66.35%
TOTAL ALL EXPENSES:	53,604	42,645	10,960	490,913	467,330	23,583	658,980	191,650	70.92%
NET INCOME (LOSS):	5,600	33,455	27,855	162,246	301,679	139,433	180,271	(121,408)	167.35%

APR 11
MANDATORY CONTINUING LEGAL EDUCATION (MCLE)

(a) Purpose. Mandatory continuing legal education (MCLE) is intended to enhance lawyers', LLLTs', and LPOs' legal services to their clients and protect the public by assisting lawyers, LLLTs, and LPOs in maintaining and developing their competence as defined in RPC 1.1 or equivalent rule for LLLTs and LPOs, fitness to practice as defined in APR 20, and character as defined in APR 20. These rules set forth the minimum continuing legal education requirements for lawyers, LLLTs, and LPOs to accomplish this purpose.

(b) Definitions. For the purposes of this rule, the following definitions shall apply:

- (1) "Activity" means any method by which a lawyer, LLLT, or LPO may earn MCLE credits.
- (2) "Attending" means participating in an approved activity or course.
- (3) "Calendar year" means a time period beginning January 1 and ending December 31.
- (4) "Identical activity" means any prior course or other activity that has not undergone any substantial or substantive changes since last offered, provided, or undertaken.
- (5) "Lawyer, LLLT, or LPO" means an active lawyer, LLLT, or LPO of the Bar, a judicial member of the Bar classified as an administrative law judge, and any other lawyer licensed or authorized to practice law in Washington who is required by the Admission and Practice Rules (APR) to comply with this rule.
- (6) "Reporting period" means a three-year time period as assigned by the Bar in which a lawyer, LLLT, or LPO must meet the education requirements of this rule.
- (7) "Sponsor" means a provider of continuing legal education activities.

(c) Education Requirements.

- (1) *Minimum Requirement.* Each lawyer must complete 45 credits and each LLLT and LPO must complete 30 credits of approved continuing legal education by December 31 of the last year of the reporting period with the following requirements:
 - (i) at least 15 credits must be from attending approved courses in the subject of law and legal procedure, as defined in subsection (f)(1); and
 - (ii) at least six credits must be in ethics and professional responsibility, as defined in subsection (f)(2).

- (2) *Earning Credits.* A lawyer, LLLT, or LPO earns one credit for each 60 minutes of attending an approved activity. Credits are rounded to the nearest quarter hour. A lawyer, LLLT, or LPO may earn no more than eight credits per calendar day. A lawyer, LLLT, or LPO cannot receive credit more than once for an identical activity within the same reporting period.
- (3) *New Lawyers, LLLTs, and LPOs.* Newly admitted lawyers, LLLTs, and LPOs are exempt for the calendar year of admission.
- (4) *Military Personnel.* Military personnel in the United States Armed Forces may be granted an exemption, waiver, or modification upon proof of undue hardship, which includes deployment outside the United States. A petition shall be filed in accordance with subsection (i)(5) of these rules.
- (5) *Exemptions.* The following are exempt from the requirements of this rule for the reporting period(s) during which the exemption applies:
 - (i) *Judicial Exemption.* Judicial members of the Bar, except for administrative law judges;
 - (ii) *Supreme Court Clerks.* The Supreme Court clerk and assistant clerk(s) who are prohibited by court rule from practicing law;
 - (iii) *Legislative Exemption.* Members of the Washington State Congressional Delegation or the Washington State Legislature; and
 - (iv) *Gubernatorial Exemption.* The Governor of Washington State.
- (6) *Comity.* The education requirements in Oregon, Idaho, and Utah substantially meet Washington's education requirements for lawyers. These states are designated as comity states. A lawyer may certify compliance with these rules in lieu of meeting the education requirement by paying a comity fee and filing a Comity Certificate of MCLE Compliance from a comity state certifying to the lawyer's subjection to and compliance with that state's MCLE requirements during the lawyer's most recent reporting period.
- (7) *Carryover Credits.* If a lawyer, LLLT, or LPO completes more than the required number of credits for any one reporting period, up to 15 of the excess credits, 2 of which may be ethics and professional responsibility credits, may be carried forward to the next reporting period.

(d) MCLE Board.

- (1) *Establishment.* There is hereby established an MCLE Board consisting of seven members, six of whom must be active lawyers, LLLTs, or LPOs of the Bar and

one who is not licensed to practice law. The Supreme Court shall designate one board member to serve as chair of the MCLE Board. The members of the MCLE Board shall be appointed by the Supreme Court. Appointments shall be staggered for a three-year term. No member may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year.

(2) *Powers and Duties.*

- (i) **Rules and Regulations.** The MCLE Board shall review and suggest amendments or make regulations to APR 11 as necessary to fulfill the purpose of MCLE and for the timely and efficient administration of these rules and for clarification of education requirements, approved activities, and approved course subjects. Suggested amendments are subject to review by the Board of Governors and approval by the Supreme Court.
- (ii) **Policies.** The MCLE Board may adopt policies to provide guidance in the administration of APR 11 and the associated regulations. The MCLE Board will notify the Board of Governors and the Supreme Court of any policies that it adopts. Such policies will become effective 60 days after promulgation by the MCLE Board.
- (iii) **Approve Activities.** The MCLE Board shall approve and determine the number of credits earned for all courses and activities satisfying the requirements of these rules. The MCLE Board shall delegate this power to the Bar subject to MCLE Board review and approval.
- (iv) **Review.** The MCLE Board shall review any determinations or decisions regarding approval of activities made by the Bar under these rules that adversely affect any lawyer, LLLT, or LPO or sponsor upon request of the lawyer, LLLT, or LPO, sponsor, or Bar. The MCLE Board may take appropriate action consistent with these rules after any such review and shall notify the lawyer, LLLT, or LPO or sponsor in writing of the action taken. The MCLE Board's decision shall be final.
- (v) **Fees.** The MCLE Board shall determine and adjust fees for the failure to comply with these rules and to defray the reasonably necessary costs of administering these rules. Fees shall be approved by the Board of Governors.
- (vi) **Waive and Modify Compliance.** The MCLE Board shall waive or modify a lawyer's, LLLT's, or LPO's compliance with the education or reporting requirements of these rules upon a showing of undue hardship filed in accordance with these rules. The MCLE Board may delegate this power to the Bar subject to (1) parameters and standards established by the MCLE Board and (2) review by the MCLE Board.

(vii) Approve Mentoring Programs. The MCLE Board shall approve mentoring programs that meet requirements and standards established by the MCLE Board for the purposes of awarding MCLE credit under these rules.

(viii) Audits for Standards Verification. The MCLE Board may audit approved courses to ensure compliance with the standards set forth in these rules.

(3) *Expenses and Administration.* Members of the MCLE Board shall not be compensated for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties according to the Bar's expense policies. The Bar shall provide administrative support to the MCLE Board.

(e) **Approved Activities.** A lawyer, LLLT, or LPO may earn MCLE credit by attending, teaching, presenting, or participating in activities approved by the Bar. Only the following types of activities may be approved:

- (1) Attending, teaching, presenting, or participating in or at a course, provided that any pre-recorded audio/visual course is less than five years old;
- (2) Preparation time for a teacher, presenter, or panelist of an approved activity at the rate of up to five credits per hour of presentation time, provided that the presentation time is at least 30 minutes in duration;
- (3) Attending law school courses with proof of registration or attendance;
- (4) Attending bar review courses for jurisdictions other than Washington with proof of registration or attendance;
- (5) Writing for the purpose of lawyer, LLLT, or LPO education, when the writing has been published by a recognized publisher of legal works as a book, law review, or scholarly journal article of at least 10 pages, will earn one credit for every 60 minutes devoted to legal research and writing;
- (6) Teaching law school courses, when the instructor is not a full-time law school professor;
- (7) Providing pro bono legal services provided the legal services are rendered through a qualified legal services provider as defined in APR 1;
- (8) Participating in a structured mentoring program approved by the MCLE Board, provided the mentoring is free to the mentee and the mentor is an active member of the Bar in good standing and has been admitted to the practice of law in Washington for at least five years. The MCLE Board shall develop standards for approving mentoring programs; and

- (9) Judging or preparing law school students for law school recognized competitions, mock trials, or moot court. The sponsoring law school must comply with all sponsor requirements under this rule.

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

- (1) *Law and legal procedure*, defined as legal education relating to substantive law, legal procedure, process, research, writing, analysis, or related skills and technology;
- (2) *Ethics and professional responsibility*, defined as topics relating to 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, and the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;
- (3) *Professional development*, defined as subjects that enhance or develop a lawyer's, LLLT's, or LPO's professional skills including effective lawyering, leadership, career development, communication, and presentation skills;
- (4) *Personal development and mental health*, defined as subjects that enhance a lawyer's, LLLT's, or LPO's personal skills, well-being, and awareness of mental health issues. This includes, stress management, and courses about, but not treatment for, anxiety, depression, substance abuse, suicide, and addictive behaviors;
- (5) *Office management*, defined as subjects that enhance the quality of service to clients and efficiency of operating an office, including case management, time management, business planning, financial management, office technology, practice development and marketing, client relations, employee relations, and responsibilities when opening or closing an office;
- (6) *Improving the legal system*, defined as subjects that educate and inform lawyers, LLLTs, or LPOs about current developments and changes in the practice of law and legal profession in general, including legal education, global perspectives of the law, courts and other dispute resolution systems, regulation of the practice of law, access to justice, and pro bono and low cost service planning; and
- (7) *Nexus subject*, defined as a subject matter that does not deal directly with the practice of law but that is demonstrated by the lawyer, LLLT, or LPO, or sponsor to be related to a lawyer's, LLLT's, or LPO's professional role as a lawyer, LLLT, or LPO.

(g) Applying for Approval of an Activity. In order for an activity to be approved for MCLE credit, the sponsor or lawyer, LLLT, or LPO must apply for approval as follows.

- (1) *Sponsor.* A sponsor must apply for approval of an activity by submitting to the Bar an application fee and an application in a form and manner as prescribed by the Bar by no later than 15 days prior to the start or availability of the activity.
 - (i) *Late fee.* A late fee will be assessed for failure to apply by the deadline. The Bar may waive the late fee for good cause shown.
 - (ii) *Repeating Identical Course.* A sponsor is not required to pay an application fee for offering an identical course if the original course was approved and the identical course is offered less than 12 months after the original course.
 - (iii) *Waiver of Application Fee.* The Bar shall waive the application fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.
- (2) *Lawyer, LLLT, or LPO.* A lawyer, LLLT, or LPO may apply for approval of an activity not already approved or submitted for approval by a sponsor by submitting to the Bar an application in a form and manner as prescribed by the Bar. No application fee is required.

(h) Standards for Approval. Application of the standards for approval, including determination of approved subject areas and approved activities in subsections (e) and (f) of this rule, shall be liberally construed to serve the purpose of these rules. To be approved for MCLE credit, all courses, and other activities to the extent the criteria apply, must meet all of the following criteria unless waived by the Bar for good cause shown:

- (1) A course must have significant intellectual or practical content designed to maintain or improve a lawyer's, LLLT's, or LPO's professional knowledge or skills, competence, character, or fitness;
- (2) Presenters must be qualified by practical or academic experience or expertise in the subjects presented and not disbarred from the practice of law in any jurisdiction;
- (3) Written materials in either electronic or hardcopy format must be distributed to all lawyers, LLLTs, and LPOs before or at the time the course is presented. Written materials must be timely and must cover those matters that one would expect for a professional treatment of the subject. Any marketing materials must be separate from the written subject matter materials;
- (4) The physical setting must be suitable to the course and free from unscheduled interruption;
- (5) A course must be at least 30 minutes in duration;

- (6) A course must be open to audit by the Bar or the MCLE Board at no charge except in cases of government-sponsored closed seminars where the reason is approved by the Bar;
- (7) Presenters, teachers, panelists, etc. are prohibited from engaging in marketing during the presentation of the course;
- (8) A course must not focus directly on a pending legal case, action, or matter currently being handled by the sponsor if the sponsor is a lawyer, LLLT, or LPO, private law firm, corporate legal department, legal services provider, or government agency; and
- (9) A course cannot have attendance restrictions based on race, color, national origin, marital status, religion, creed, gender, age, disability, or sexual orientation.

(i) Lawyer, LLLT, or LPO Reporting Requirements.

- (1) *Certify Compliance.* By February 1 of the year following the end of a lawyer's, LLLT's, or LPO's reporting period, a lawyer, LLLT, or LPO must certify compliance, including compliance by comity certification, with the education requirements for that reporting period in a manner prescribed by the Bar.
- (2) *Notice.* Not later than July 1 every year, the Bar shall 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.
- (3) *Delinquency.* A lawyer, LLLT, or LPO who does not certify compliance by the certification deadline or by the deadline set forth in any petition decision granting an extension may be ordered suspended from the practice of law as set forth in APR 17.
- (4) *Lawyer, LLLT, or LPO Late Fee.* A lawyer, LLLT, or LPO will be assessed a late fee for either (i) or (ii) below but not both.
 - (i) *Education Requirements Late Fee.* A lawyer, LLLT, or LPO will be assessed a late fee for failure to meet the minimum education requirements of this rule by December 31. Payment of the late fee is due by February 1, or by the date set forth in any decision or order extending time for compliance, or by the deadline for compliance set forth in an APR 17 presuspension notice.
 - (ii) *Certification and Comity Late Fee.* A lawyer, LLLT, or LPO will be assessed a late fee for failure to meet the certification requirements or comity requirements by February 1. Payment of the late fee is due by the

date set forth in any decision or order extending time for compliance or by the deadline for compliance set forth in an APR 17 presuspension notice.

- (iii) *Failure to Pay Late Fee.* A lawyer, LLLT, or LPO who fails to pay the MCLE late fee by the deadline for compliance set forth in an APR 17 presuspension notice may be ordered suspended from the practice of law as set forth in APR 17.
- (5) *Petition for Extension, Modification, or Waiver.* A lawyer, LLLT, or LPO may file with the MCLE Board an undue hardship petition for an extension, waiver, and/or modification of the MCLE requirements for that reporting period. In consideration of the petition, the MCLE Board shall consider factors of undue hardship, such as serious illness, extreme financial hardship, disability, or military service, that affect the lawyer's, LLLT's, or LPO's ability to meet the education or reporting requirements. The petition shall be filed at any time in a form and manner as prescribed by the Bar, but a petition filed later than 30 days after the date of the APR 17 presuspension notice will not stay suspension for the reasons in the APR 17 presuspension notice.
- (6) *Decision on Petition.* The MCLE Board shall as soon as reasonably practical notify the lawyer, LLLT, or LPO of the decision on a petition. A lawyer, LLLT, or LPO may request review of the decision by filing, within 10 days of notice of the decision, a request for a hearing before the MCLE Board.
- (7) *Hearing on Petition.* Upon the timely filing of a request for hearing, the MCLE Board shall hold a hearing on the petition.
 - (i) The MCLE Board shall give the lawyer, LLLT, or LPO at least 10 days', written notice of the time and place of the hearing.
 - (ii) Testimony taken at the hearing shall be under oath and recorded.
 - (iii) The MCLE Board shall issue written findings of fact and an order consistent with these rules as it deems appropriate. The MCLE Board shall provide the lawyer, LLLT, or LPO with a copy of the findings and order.
 - (iv) The MCLE Board's order is final unless within 10 days from the date thereof the lawyer, LLLT, or LPO files a written notice of appeal with the Supreme Court and serves a copy on the Bar. The lawyer, LLLT, or LPO shall pay to the Clerk of the Supreme Court any required filing fees.
- (8) *Review by the Supreme Court.* Within 15 days of filing a notice with the Supreme Court for review of the MCLE Board's findings and order, after such a noncompliance petition hearing, the lawyer, LLLT, or LPO shall cause the record

or a narrative report in compliance with RAP 9.3 to be transcribed and filed with the Bar.

- (i) The MCLE Board chairperson shall certify that any such record or narrative report of proceedings contains a fair and accurate report of the occurrences in and evidence introduced in the cause.
 - (ii) The MCLE Board shall prepare a transcript of all orders, findings, and other documents pertinent to the proceeding before the MCLE Board, which must be certified by the MCLE Board chairperson.
 - (iii) The MCLE Board shall then file promptly with the Clerk of the Supreme Court the record or narrative report of proceedings and the transcripts pertinent to the proceedings before the MCLE Board.
 - (iv) The matter shall be considered by the Supreme Court pursuant to procedures established by order of the Court, which may in the Court's discretion consist of consideration solely on the basis of the record presented to the MCLE Board.
 - (v) The times set forth in this rule for filing notices of appeal are jurisdictional. The Supreme Court, as to appeals pending before it, may, for good cause shown, (1) extend the time for the filing or certification of said record or narrative report of proceedings and transcripts or, (2) dismiss the appeal for failure to prosecute the same diligently.
- (9) *Compliance Audits.* The Bar may audit an individual lawyer's, LLLT's, or LPO's compliance certification to substantiate participation in the activities listed in the certification. The Bar may request records from a lawyer, LLLT, or LPO, or sponsor for the purpose of conducting the audit and the lawyer, LLLT, or LPO must comply with all such requests. Where facts exist that indicate a lawyer, LLLT, or LPO may not have participated in the activities certified to, the lawyer, LLLT, or LPO may be referred to the Bar's Office of Disciplinary Counsel and/or credit for the activities may be rescinded.
- (j) Sponsor Duties.** All sponsors must comply with the following duties unless waived by the Bar for good cause shown:
- (1) The sponsor must not advertise course credit until the course is approved by the Bar but may advertise that the course credits are pending approval by the Bar after an application has been submitted. The sponsor shall communicate to the lawyer the number of credits and denominate whether the credits are "law and legal procedure" as defined under subsection (f)(1), "ethics and professional responsibility" as defined under subsection (f)(2), or "other," meaning any of the other subjects identified in subsections (f)(3)-(7).

- (2) The sponsor must provide each participant with an evaluation form to complete. The forms or the information from the forms must be retained for two years and provided to the Bar upon request.
- (3) The sponsor must submit an attendance report in a form and manner as prescribed by the Bar and pay the required reporting fee no later than 30 days after the conclusion of the course. A late fee will be assessed for failure to report attendance by the deadline.
 - (i) *Waiver of Reporting Fee.* The Bar shall waive the reporting fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.
- (4) The sponsor must retain course materials for four years from the date of the course. Upon request of the Bar, a sponsor must submit for review any written, electronic, or presentation materials, including copies of audio/visual courses.
- (5) The sponsor must keep accurate attendance records and retain them for six years. The sponsor must provide copies to the Bar upon request.
- (6) The sponsor shall not state or imply that the Bar or the MCLE Board approves or endorses any person, law firm, or company providing goods or services to lawyers, LLLTs, or LPOs, or law firms.
- (7) *Accredited Sponsors.* The Bar may approve and accredit sponsoring organizations as “accredited sponsors” subject to procedures and fees established by the Bar. Accredited sponsors have the same duties as sponsors but have the additional responsibility of approving their own courses and determining appropriate MCLE credit in accordance with this rule. Accredited sponsors pay an annual flat fee for all course applications submitted in lieu of an application fee for each individual course.

(k) Confidentiality. Unless expressly authorized by the Supreme Court or by the lawyer, LLLT, or LPO, all files and records relating to a lawyer’s, LLLT’s, or LPO’s individual MCLE requirements are confidential and shall be privileged against disclosure except as necessary to conduct an investigation, hearing, and appeal or review pursuant to these rules. This provision does not apply to the Bar except that such records shall not be disclosed to Bar staff responsible for creating or marketing CLE products.

[Adopted effective January 1, 2016; amended effective September 1, 2017.]

MEETING AGENDA

September 1, 2021
11:00 A.M.

OPEN SESSION - 11:00am-12:00pm:

- Introductions
- MCLE Board Report
 - Board Goals
 - Newly Adopted MCLE Board Policies
 - MCLE Credit for Law Clerk Tutors Workgroup
 - Recent MCLE Board interpretations of Admission and Practice Rule 11
 - Petitions & Board Decisions
 - Strategies for Mitigating Implicit and Explicit Bias
 - MCLE Certification and Activity Submissions
 - Sponsor Fees during COVID-19
- Open Discussion

MCLE Updates

DISCUSSION: MCLE Updates

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

Discussion Topics:

- **MCLE Certification**

On 6/28/2022, MCLE staff sent notice of upcoming MCLE deadlines to 10,833 licensed legal professionals in the 2020-2022 reporting period. The notice was sent in accordance with APR 11 (i)(2) "Notice. Not later than July 1 every year, the Bar shall 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."

- **WSBA Task Force Administering Xenial Involvement with Court Appointed Boards**

MCLE Board member Robert Malae will give an update on the meeting of the WSBA Task Force Administering Xenial Involvement with Court Appointed Boards (TAXICAB).

- **MCLE Online System**

MCLE staff continues to work with the WSBA IT department to create and implement a new MCLE online system and database. The intent of the updated system is to improve the user experience for all users, allow all licensed legal professionals online access to their MCLE records, and to track the new MCLE ethics requirement.

- **MCLE Staff Updates**

MCLE staff Rachel M. had her last day with the MCLE team on 7/15/2022. WSBA is currently in the process of recruiting for a fulltime MCLE Analyst.

- **Budget**

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

Attachments:

- MCLE Budget Summary

Washington State Bar Association

Statement of Activities

For the Period from May 1, 2022 to May 31, 2022

67% OF YEAR COMPLETE

	FISCAL 2022 BUDGET	CURRENT MONTH	YEAR TO DATE	REMAINING BALANCE	% USED OF BUDGET	YEAR TO DATE VARIANCE FAVORABLE/(UNFAVORABLE)
MANDATORY CONTINUING LEGAL EDUCATION						
REVENUE:						
ACCREDITED PROGRAM FEES	515,000	54,500	422,000	93,000	82%	78,667
FORM 1 LATE FEES	220,000	20,550	161,650	58,350	73%	14,983
MEMBER LATE FEES	300,000	43,550	420,700	(120,700)	140%	220,700
ANNUAL ACCREDITED SPONSOR FEES	39,250	-	34,500	4,750	88%	8,333
ATTENDANCE LATE FEES	95,000	5,500	86,000	9,000	91%	22,667
COMITY CERTIFICATES	40,500	850	44,650	(4,150)	110%	17,650
TOTAL REVENUE:	1,209,750	124,950	1,169,500	40,250	97%	363,000
DIRECT EXPENSES:						
DEPRECIATION	24,263	1,799	17,735	6,528	73%	(1,560)
STAFF MEMBERSHIP DUES	500	-	500	-	100%	(167)
ONLINE LEGAL RESEARCH	1,895	-	945	950	50%	318
LAW LIBRARY	158	-	80	77	51%	25
MCLE BOARD	3,250	-	-	3,250	0%	2,167
STAFF TRAVEL/PARKING	50	-	-	50	0%	33
STAFF CONFERENCE & TRAINING	5,550	-	-	5,550	0%	3,700
TOTAL DIRECT EXPENSES:	35,666	1,799	19,261	16,405	54%	4,516
INDIRECT EXPENSES:						
SALARY EXPENSE (4 88 FTE)	399,930	28,370	306,899	93,032	77%	(40,279)
BENEFITS EXPENSE	113,757	8,898	75,316	38,441	66%	522
OTHER INDIRECT EXPENSE	142,744	9,283	92,079	50,665	65%	3,084
TOTAL INDIRECT EXPENSES:	656,431	46,552	474,294	182,137	72%	(36,673)
TOTAL ALL EXPENSES:	692,097	48,351	493,555	198,542	71%	(32,157)
NET INCOME (LOSS):	517,653	76,599	675,945	(158,292)	131%	330,843