

MCLE Board Annual Report to Washington Supreme Court

MEETING AGENDA

September 6, 2023, at 10:00 A.M, in Tumwater, WA and via Zoom

OPEN SESSION – 10:00am-10:45am:

- Welcome & Introductions
- MCLE Board Report
 - Proposed Amendments to APR 11 RE: Mental Health and Technology Security
 - Q&A on Proposed Amendments
 - Update on New “Equity...” Credit Requirement
 - Diversity
 - Petitions & Board Decisions
 - Activity Applications & Certifications Review
- Open Discussion

To: Washington Supreme Court
From: MCLE Board
Date: August 23, 2023
RE: **2022-2023 MCLE BOARD ANNUAL 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 adjusts 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 six (6) WSBA members and one (1) community member. On average, the MCLE Board meets five times a year.

Proposed Amendments to APR 11: Mental Health and Technology Security

The MCLE Board is proposing amendments to APR 11 that would:

- require legal professionals to earn one credit per reporting period in the subject of technology security;
- require legal professionals to earn one credit per reporting period in the subject of mental health;
- simplify reporting and administration efforts by separating the already required credit in the subject of "equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law" from ethics and professional responsibility;
- as a result of moving the "equity..." subject to its own category (as described above), reduce the number of required ethics and professional responsibility credits from six to five¹;
- allow for additional credits earned beyond the required amount for any given reporting period in the subjects of mental health, technology security, and "equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law" to carry over as "Other" credits.

Legal professionals have an ethical and common law duty to take competent and reasonable measures to safeguard client information. They also have contractual and regulatory duties to protect confidential

¹ Although the suggested amendments would move "equity..." into its own category for ease of tracking compliance, the "equity..." credit is still rooted in ethics and professional responsibility. The change essentially retains six ethics credits overall when one includes the "equity..." credit.



information. With the advent of the global pandemic and an increasing number of legal professionals practicing “virtually,” it is imperative that lawyers, and all legal professionals, stay cognizant of their ethical responsibilities and possess the technological knowledge to safeguard client information and property.

By adding a required credit in technology security, Washington will join other states that recognize the necessity and value of this type of education to the legal profession. In 2023, Florida, New York, North Carolina and the U.S. Virgin Islands require or will require credits related to technology including topics related to cybersecurity.

Several recent studies concluded: Attorneys are prone to mental health issues, including substance abuse and addiction, depression, anxiety, and stress, more so than the general population. The need to address these issues, and to do so as early as possible, relates directly to competence and fitness to practice law. The proposal to require one hour of MCLE credit every three years is a crucial link in addressing this problem. The courses accredited to fulfill this requirement should not be designed nor viewed as a substitute for treatment. Nonetheless, requiring every legal professional to devote one hour every three years to education concerning these crucial issues will elevate the profession, improve the overall quality of legal services, and, ultimately, encourage greater public confidence in the integrity of the profession. Moreover, this requirement may encourage members to seek the help they need, and others to be supportive of their colleagues, while maintaining standards of excellence in the practice of law.

In 2017 the ABA adopted the Model Rule for Minimum Continuing Legal Education and Comments (“ABA Model Rule”)², the first such promulgation since 1988. In addition to the inclusion of a diversity and inclusion requirement, one of the main highlights was the addition of a model mental health MCLE requirement.

These suggested amendments would ensure lawyers, LLLTs, and LPOs focus on mental health and technology security topics (in addition to equity topics) at least once every three years. These are serious topics that can greatly impact a licensed legal professional’s competency to practice law and, if ignored, could result in serious consequences. The proposed requirements, therefore, are directed toward the protection of clients and the public, improving legal professional competency and integrity, and, ultimately, improving the legal community as a whole. In addition, having separate categories will make it easy for members to keep track of their requirements and which ones have been met.

Follow-up on New “Equity...” Credit Requirement

Effective September 1, 2022, and starting with the 2023-2025 reporting period, one of the six ethics credits must be earned in the subject of equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law (“equity...”). Since then, WSBA MCLE has approved 595 live activities and 63 recorded activities for “equity...” credit. This includes courses that solely cover this subject and courses where at least one session includes the “equity...” subject. Of these 658 activities, 137 have taken or will take place as part of an in-house training program.

The volume of activities in this subject area are an indication that CLE providers will respond to new requirements and provide CLE activities to meet the demand.

² See ABA Model Rule for Minimum Continuing Legal Education, American Bar Association (February 6, 2017), https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2017/2017_hod_midyear_106.pdf.

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. Additionally, 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.

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.”

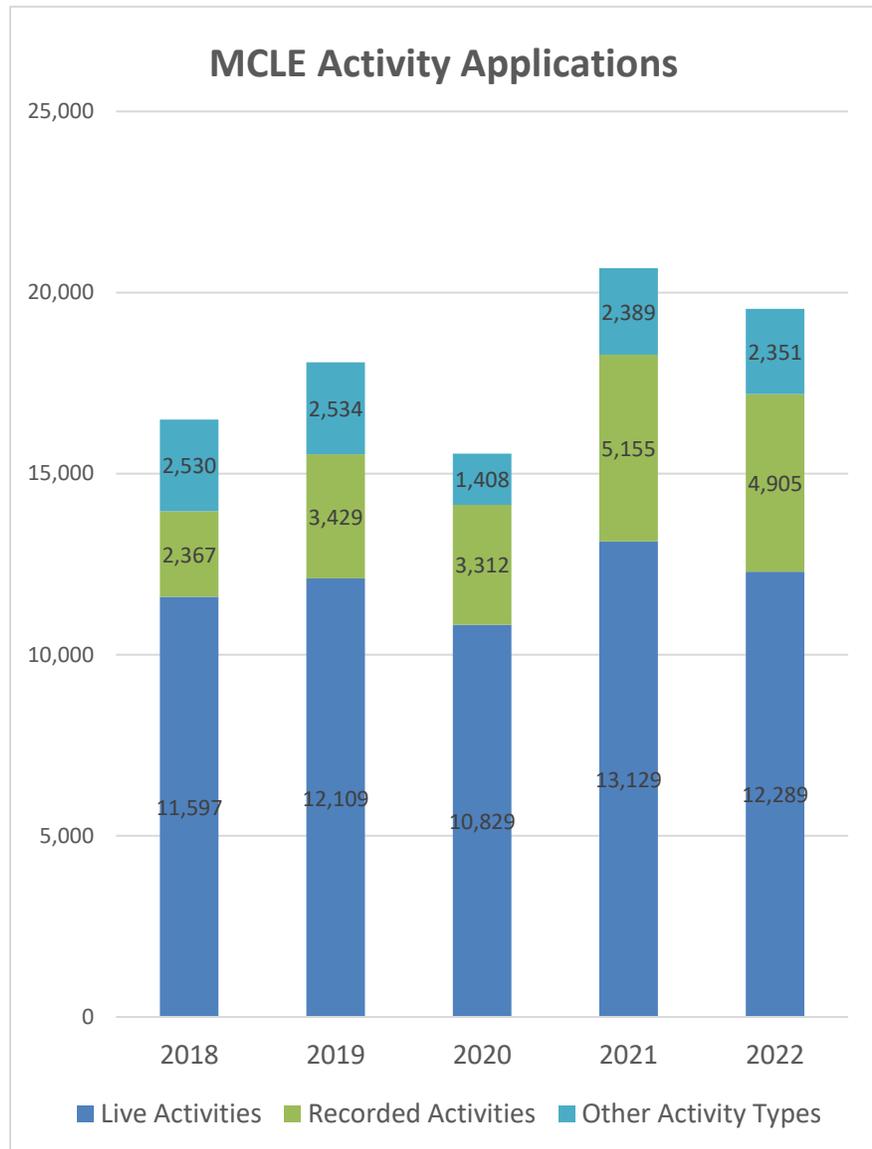
All petitions are first reviewed by the MCLE staff liaison and approved, denied, or forwarded to the MCLE Board based on the Board-approved decision matrix, which defines applicable hardships. The MCLE Board reviews appeals of denials and holds hearings at the request of licensed legal professionals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

In total, 49 petitions of undue hardship were reviewed by the MCLE Board during the 2022-2023 meeting term.

MCLE Activity Applications & Certifications Review

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 from both sponsors and WSBA members. MCLE analysts review and approve thousands of activity applications each year. In 2022 nearly 20,000 applications were approved for MCLE credit.

In addition to CLE activity reviews, MCLE staff reviews all certifications from members who are due to report their MCLE compliance. 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 the active membership each year. This last year that was more than 10,300 certifications.



Attachments:

1. 2022-2023 MCLE Board Roster

2022-2023 MCLE BOARD
(Updated 10/4/2022)

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