

MEETING AGENDA

April 3, 2020
10:00 A.M.

OPEN SESSION - 10:00am-10:30am:

- Review of Minutes
- Subcommittee Report
- Discussion: Impact of Covid-19 on MCLE
- Discussion: Military Spouses
- Discussion: GAL as Pro Bono Publico Service for MCLE Credit
- Course Audit Report
- FYI - MCLE Budget

CLOSED SESSION – 10:35am -12:30pm:

- Duplicate Attendance Issue
- Petitions, Appeals and Staff Liaison Decisions
- End of Meeting

Minutes
January 10, 2020

The meeting of the Mandatory Continuing Legal Education Board was called to order by Chair Asia Wright at 10:01 AM on Friday, January 10, 2020. Board members in attendance were:

Asia Wright, Chair
Ayanna Colman, via phone
Chris Bueter
Robert Malae
Melissa Skelton
Merri Hartse

Liaisons and Staff attending were:

Adelaine Shay	MCLE Manager/MCLE Board Staff Liaison
Jean McElroy	Chief Regulatory Counsel, Regulatory Services
Gabriel Moore	MCLE Analyst
Russell Knight, via phone	Board of Governors Liaison

Review of Minutes for October 4, 2019

The Board reviewed and approved the minutes from their October 4, 2019 meeting.

Discussion of Washington Supreme Court's decision on suggested APR 11 Ethics Amendment

The MCLE Board discussed the Washington Supreme Court's vote to reject their suggested rule change. The Board approved by motion to appoint a subcommittee to explore a revised suggested rule change. The subcommittee will explore suggesting a required equity and diversity credit. The subcommittee members are Robert Malae, Christopher Bueter, and Todd Alberstone.

Course Audit Reports

The Board heard reports from Asia Wright on her audits of *Becoming a Board Director: What Attorneys Should Know* and *Drafting Prenuptial Agreements*, and from Gabriel Moore on his audit of *Washington Family Law for Paralegals & LLLTs*. The Board was also provided with a written copy of former Board member Andrew Benjamin's audit of *Washington State Association for Justice's 2019 Convention*.

Board Recruitment

Adelaine Shay provided procedural information on recruiting new members for the MCLE Board.

MCLE Board April 2020 Schedule

Adelaine Shay explained the timeline for the pre-suspension process and how there may be a need for a later April meeting, if any undue hardship petitions are received between the April 3rd MCLE Board meeting and the undue hardship petition deadline of April 6, 2020. The MCLE Board opted for second meeting in the month of April in lieu of rescheduling the existing meeting. If the meeting is not needed to review petitions, it will be cancelled.

MCLE Board Activity Reviews

The Board decided by motion on three members requested review of accreditation decisions. No listing of this motion is included in order to protect member confidentiality.

Writing Credits Over Two Reporting Periods

MCLE Board decided by motion to allow the MCLE Manager to move writing credits forward to the reporting period when the writing is published, whenever a member's work dates and publication date straddle two reporting periods. These decisions will all be reported to the MCLE Board for review at the next regularly scheduled meeting.

MCLE Petitions

The Board approved Staff Liaison decisions on nine petitions. The Board reviewed and decided by motion on two petitions. No listing of these motions is included in order to protect member confidentiality.

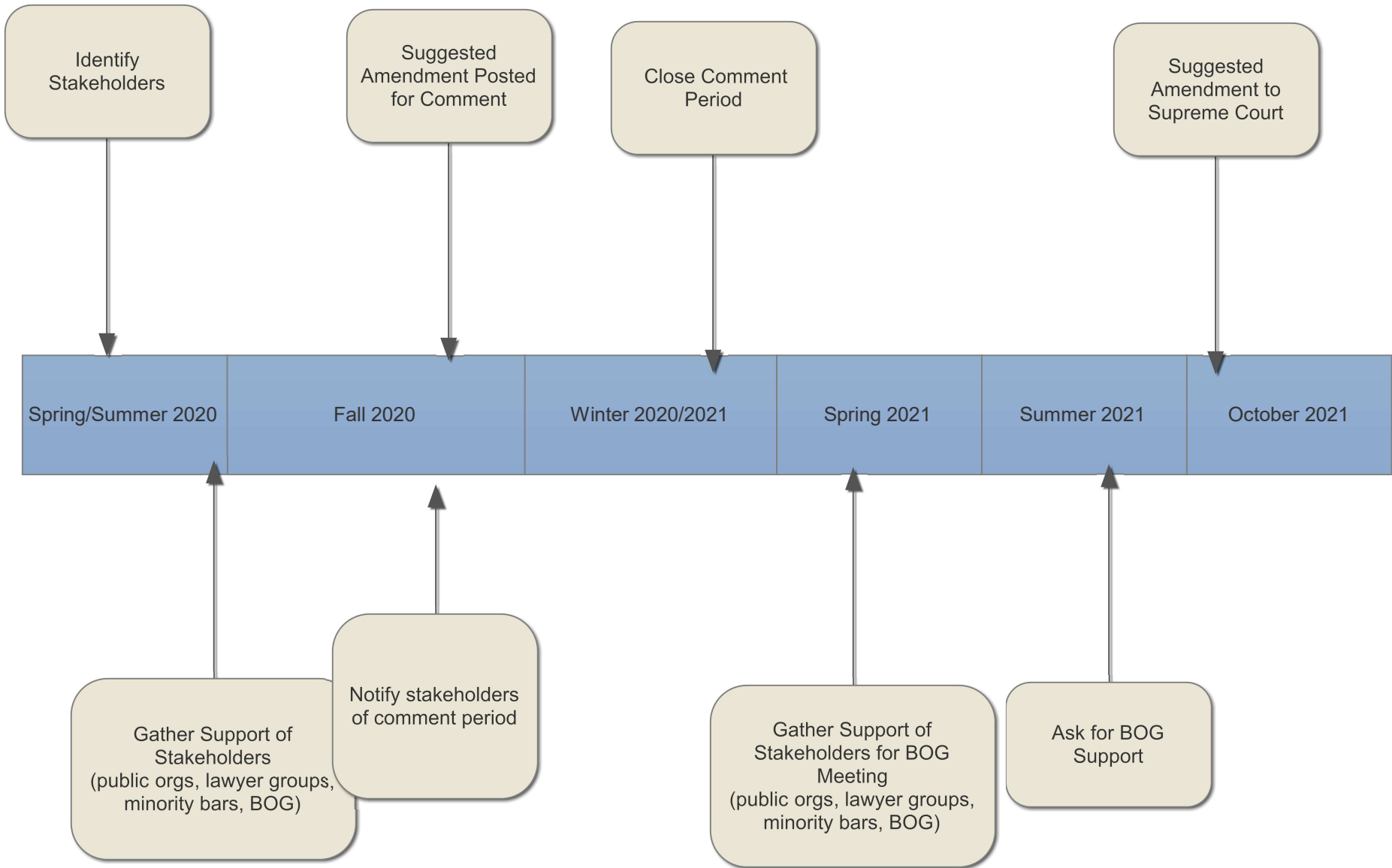
Adjournment

There being no further business at hand, the Board meeting was adjourned at 11:40 PM. The next regularly scheduled Board meeting will be at 10:00 AM on Friday, April 3, 2020.

Respectfully submitted,



Adelaine Shay
MCLE Board Staff Liaison



DISCUSSION :

Impacts of COVID-19 on MCLE

Background:

In light of Gov. Inslee's "[Stay Home-Stay Healthy](#)" order issued on March 23, 2020 addressing the coronavirus emergency, MCLE staff are working remotely. In order to facilitate timely processing of questions and documents, MCLE staff are asking members and sponsors to submit all queries and documentation via email to mcle@wsba.org. There will be some delay in processing all paper documentation.

At their March 19, 2020 meeting, the WSBA Board of Governors agreed to send a proposal to the Washington Supreme Court recommending an extension of the suspension recommendation date for members who are currently late in complying with license fee and MCLE certification requirements, due to the coronavirus pandemic.

MCLE will refund activity application fees (per sponsor request) for CLEs that have been cancelled due to the coronavirus emergency. Additionally, any approved CLE activity may be rescheduled to a later date, and staff are working with CLE sponsors who have requested format changes from a live in-person event to a webcast or recorded event.

Late submission fees are being waived for any CLE covering COVID-19 content taking place in March or April.

Discussion:

Possible factors to consider:

- How should the MCLE Staff Liaison handle undue hardship petitions referencing the coronavirus emergency as their undue hardship?
- Should we consider unemployment due to the coronavirus pandemic an undue hardship?
- Do the time constraints of taking care of family members (who are not sick) warrant extensions?

Supplemental Information:

- WSBA Board of Governors Meeting Materials RE: Extension of Suspension Recommendation Date – ACTION:

https://www.wsba.org/docs/default-source/about-wsba/governance/bog-meeting-materials-2019-2020/board-of-governors-late-late-meeting-materials-march-2020.pdf?sfvrsn=6d8f0ef1_10

D I S C U S S I O N :

Should Staff Liaison Petition Decision Matrix include military spouses in hardship?

Discussion: At the January 10, 2020 MCLE Board meeting it was noted that the Staff Liaison Petition Decision Matrix references immediate family members in the exemptions, extensions, modifications, and fee waivers granted for medical hardship and death. However, family members of those in the military are not referenced in the Staff Liaison Decision Matrix. Should petitions submitted by military spouses be addressed in the decision matrix?

Staff Suggestion:

MCLE staff suggests that the staff liaison bring petitions that cite being a military spouse as a hardship to the MCLE Board for review. By bringing all petitions that reference their hardship being as a spouse of someone who is actively serving in the military the MCLE Board can identify if there are 1) enough petitions to warrant a change in the decision matrix 2) if there is a fact pattern that would merit an adjustment in the decision matrix.

Possible factors to consider:

- Would the petition be granted only to those with spouses that have been deployed to a foreign location?
- Does this apply to all spouses, or only those with additional family obligations (e.g. children)?
- Does the military spouse need to be actively deployed, or have orders to be deployed at the time of the petition?
- What timeframe would a military spouse deployment need to be in to grant a petition?
 - Within the three year reporting period?

Supplemental Information:

- **Admission and Practice Rule (APR) 11 military hardship references:**

APR 11(c)(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.

APR 11(i)(5) *Petition for Extension, Modification, or Waiver*. ...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...

• **Decision Matrix – Exemption, Modification, Extension, & Late Fee Waiver for Military Service:**

Reason No.	Situation						Decision
Exemption 3	On active military assignment in remote location or on a domestic base where it is difficult to access CLE courses.						Grant.
Extension 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
Late Fee Waiver Reason No.	Situation	Credits by 12/31	Credits After 12/31	Certified	1st Non Compliant Period	>1 Consecutive Non Compliant Period	Decision
D1	MILITARY – On active military assignment in remote non-U.S. location where mail is slow and unreliable and/or in active combat area.	Y/N	Y*/N	Y*/N	X		Waive late fee.
D6	MILITARY – See D1	Y/N	Y*/N	Y/N		X	Refer to the Board

I S S U E S U M M A R Y :

MCLE Credit for Providing Guardian Ad Litem (GAL) Service

Background Information:

We received a question from a qualified legal service provider as to whether pro bono volunteers are eligible for MCLE credit under Admission and Practice Rule (APR) 11(e)(7) for providing GAL service. The cases are accepted through the Volunteer Lawyer Program (a recognized QLSP).

Issue:

Should providing GAL service be considered legal service as referenced in APR 11(e)(7)?

Discussion:

The Washington Courts website states: "A GAL is an officer of the court..." Although, as GAL's are not technically practicing law, would providing GAL service be considered a "legal service"? Should these pro bono volunteers receive MCLE credit for their work as a GAL?

- APR 11(e)(7): Providing pro bono legal services provided the legal services are rendered through a qualified legal services provider as defined in APR 1;

Supplemental Information:

- APR 1 (e)(8): "Qualified legal services provider" means a not for profit legal services organization in Washington State whose primary purpose is to provide legal services to low income clients.
- Washington Courts Information on GAL

https://www.courts.wa.gov/committee/?fa=committee.display&item_id=314&committee_id=105

Guardian ad Litem (GAL)

Introduction

A *guardian ad litem* (GAL) is an adult who is appointed by the court to represent the best interests of an individual for a specific purpose for a specific period of time. Under the direction of the court, a GAL performs an investigation and prepares a report for the court of the GAL's findings and recommendations. To become a GAL, an individual must complete an approved training program, provide background information to the court(s) in which the GAL wishes to serve, and meet all eligibility requirements set by local court rule or policy.

GALs are often appointed to represent the best interests of minor children in [Title 26 Domestic Relations](#) (family law) cases, dependent children in [Title 13 dependency actions](#), or incapacitated persons in [Title 11 guardianships](#). They can be paid for their services, or serve as volunteer GALs. Paid GALs can be employed by a county (perhaps family court services) but more often are individuals who do GAL work as part- or full-time self-employment. Most volunteer GALs serve as court appointed special advocates (CASA) in dependency actions.

Statutes govern appointment of GALs (links to GAL laws are provided above). Each superior court maintains a list, or registry, of individuals who are qualified to serve as GALs. Appointments are made by agreement or by rotation from the GAL registry. The GAL's responsibilities and duties are set forth by statute, court rule, and the order appointing the GAL. Each superior court has a procedure for filing a grievance against a GAL.

https://www.courts.wa.gov/committee/?fa=committee.display&item_id=316&committee_id=105

Guardian ad Litem (GAL)

Duties and Responsibilities

The primary duty of a guardian ad litem (GAL) is to represent the best interests of the person for whom the GAL is appointed. Sometimes the person's wishes conflict with what is in the person's best interests. A GAL is an officer of the court and must maintain independence, conduct herself or himself professionally, avoid conflicts of interest, treat parties with respect, become informed about the case, timely inform the court of relevant information, limit duties to those ordered by the court, inform individuals about her or his role in the case, maintain the parties' privacy, perform duties in a timely manner, maintain documentation, and keep records of time and expenses. These requirements set forth ethical conduct standards, violation of which may subject the GAL to discipline. The duties and responsibilities of GALs are provided by court order, court rules, and statutes.

- ✦ [Forms for Appointing a Guardian Ad Litem in a Family Law Case](#)
- ✦ [State Guardian ad Litem Court Rules](#)
- ✦ Governing statutes are found in [RCW 2.56](#), [RCW 11.88](#), [RCW 13.34](#), [RCW 26.12](#)

Local court rules may be obtained from each superior court. Some local rules are available [online](#).

MEMORANDUM

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

FROM: Merri Hartse, MCLE Board member

RE: Audit Report

COURSE SPONSOR: Spokane County Bar Association (SCBA), Indian Law Section

COURSE TITLE: 11th Annual Indian Law Conference

COURSE DATE(S): March 6, 2020

ACTIVITY ID#: 1134068

ACCREDITATION: 6 Total Credits (5.0 Law & Legal Procedure, 1.0 Ethics)

DATE OF REPORT: March 23, 2020

Nature of the Program

This was a full day conference on Indian Law topics with a focus on sovereign immunity, Missing and Murdered Indigenous Women, current Indian Child Welfare Act (ICWA) challenges, local water issues, and legal ethics in advising tribal clients about marijuana.

Faculty

13 presenters, of which 11 were attorneys licensed in Washington or other states. One non-attorney presenter shared a personal experience, and the other provided education on water quality issues of the Spokane River.

Location/Time

Gonzaga University School of Law, Spokane, WA. 8:45 am – 4:30 pm

Facilities

The conference took place in the Moot Court Room, with ample tiered seating in a semi-circular design. Sightlines were excellent. Audio and video worked well. Coffee, cold beverages, pastries/cookies, were available throughout the conference. A catered hot lunch with vegetarian

offerings (generously sponsored by Gonzaga School of Law) took place in The Herak Club, a short walk to another building. Following the meal Justice Owens presented her keynote address in this setting.

List of Presenters and Their Qualifications

Kaighn Smith, Jr., Attorney, Tribal Nations Practice Group; associate reporter, Restatement of American Indian Law, and author, Labor and Employment Law in Indian Country.

Shona Voelckers, staff attorney, Yakama Nation Office to Legal Counsel

Joseph Harrington, Office of U.S. Attorney for the Eastern District of Washington

Idella King, Member of the Northern Arapaho Tribe, and social justice activist

Chief Judge Thomas O. Rice, U.S. District Court for the Eastern District of Washington

Kate E. Fort, Director, Indian Law Clinic, College of Law, Michigan State University

Justice Susan Owens, Washington State Supreme Court

Rhylee Marchand, Attorney, Couer d'Alene Tribe

Rachael Paschal Osborn, Senior Policy Advisor (retired), Center for Environmental Policy, and taught Water Law (retired) for Gonzaga and University of Washington law schools

Jerry White, Spokane Riverkeeper

Tommy Miller, General Counsel, Colville Tribal Federal Corporation

Lee Shannon, Attorney, Tulalip Tribes

Brooks Holland, Faculty Chair in Legal Ethics and Professionalism, Gonzaga School of Law

Written Materials

All attendees had online access to presenters' materials through a link provided by SCBA. Materials presented on the day of the conference were immediately posted and available.

Attendance

Over 50 people attended in person, and several attended via webcast. Online attendees requested consistent use of the microphone during Q&A sessions, so that participants could hear all the questions.

DISCUSSION

Kaighn Smith, Jr., spoke via Zoom, and clarified issues of when sovereign immunity can be claimed. He discussed identifying the real party of interest (The Tribe), and cited forthcoming sections of the *Restatement of The Law of American Indians*.

Shona Voelckers discussed how Yakama Nation is addressing the issue of Missing and Murdered Indigenous Women (MMIW).

Joseph Harrington provided an update to federal and state strategies to address what he said is now an expanded topic of Missing and Murdered Indigenous People (MMIP).

Idella King related a personal experience on the topic of MMIW, and discussed efforts to raise awareness on this topic.

Chief Judge Thomas O. Rice gave a compelling brief request for attorneys to provide pro bono work, under the POWER Act, to help domestic violence victims and survivors. His materials included points of contact within the four tribes of Eastern Washington for offering services.

Kate Fort summarized recent constitutional challenges to ICWA, providing an overview of major 2019 ICWA cases identifying state jurisdiction, tribal jurisdiction, and concurrent transfer cases.

Rhylee Marchand gave an excellent overview the current state of tribal water rights of the Couer d'Alene and Spokane River basin.

Rachael Paschal Osborn reviewed the current law regarding instream flows and PCB standards, discussing how water rights belong to the public, but are subject to existing rights, which are often tribal.

Jerry White focused on the Spokane River, and spoke about variances, which represent a retreat from the essential regulatory process of protecting public health.

Tommy Miller gave an overview on federal and state rules of professional conduct regarding marijuana.

Lee Shannon explained the approach taken by one tribe related to marijuana funds.

Brooks Holland gave a detailed lecture on what lawyers can do to advise clients about a cannabis business. He touched on federalism, sovereignty, and the Rules of Professional Conduct. He discussed a recent Washington State Ethics Opinion regarding this topic.

CONCLUSION

The conference provided timely updates on important Indian Law topics. The mix of local, national, and tribal attorneys, along with updates from federal district court judges, made for a captivating and excellent CLE. The legal ethics portion, with the main content delivered by the Faculty Chair in Legal Ethics and Professionalism Chair at Gonzaga, provided a critical insight into the legal ethics considerations in advising tribal clients about marijuana. The addition of non-attorneys to enhance panel presentations, along with a keynote address from a Washington Supreme Court justice, rounded out the day. The Spokane County Bar Association Indian Law Section invited attendees for a reception at a local brewery.

The 5.0 Law & Legal and 1.0 Ethics credits are justified.



MEMORANDUM

TO: Mandatory Continuing Legal Education Board

FROM: Asia N. Wright

RE: Audit Report

COURSE SPONSOR: Lorman Business Center

COURSE TITLE: Influence of EU GDPR and New California Privacy Law

COURSE DATES(S): Live Webcast on February 26, 2020

ACTIVITY ID#: 1129665

ACCREDITATION: 1.5 L&L

DATE OF REPORT: 03/03/2020

Executive Summary

The entire program is creditable and 1.5 L&L credit should be awarded.

Sponsor

Lorman is a provider of online training and continuing education for professionals and organizations in multiple fields.

Nature of the Program

The course is a 90-minute lecture on the EU GDPR and California privacy law and how it impacts businesses.

Faculty

Attorney Oliver M. Krischik is a trade law attorney who focuses on representing businesses, individuals, and non-profit organizations with issues surrounding economic sanctions, export controls, and financial regulations. He also assists the firm's Association Practice Group in assessing the European Union's General Data Protection Regulation (GDPR), including educating organizations on the key implications of the GDPR.

Location/Time

This was a live webcast. You had to watch in real time. You could not stop listening and resume at a later time. The course started and ended on time and as advertised.

Facilities

Not applicable.

Written Materials

The CLE course materials consisted of a 39-page pdf of the PowerPoint presentation used by Mr. Krischik during the course.

Attendance

At various intervals attendees had to click a button within a certain time frame to confirm they were actively watching the presentation. Also, an interactive box popped up so that attendees could submit questions. Only one person submitted a question, which was answered during the presentation.

Session Presentation Analysis

The method of the presentation was 100% lecture. The learning objectives were as follows:

- 1) Overview of GDPR and CCPA;
- 2) Identification of Key Risks;
- 3) Discussion of Representations, Warranties, Indemnities;
- 4) Discussion of Ancillary Documents; and
- 5) Discussion of Post-Deal Considerations.

Mr. Krischik is very knowledgeable about GDPR and CCPA. He spoke slowly and clearly. He presented the information in a very easy to understand way.

The PowerPoint Mr. Krischik used in his presentation was very well done. The materials could have been improved by including sample documents of the ancillary documents. Also, the course would have been more impactful if he included more case law and citations would have been helpful. Mr. Krischik mentioned cases but more in an offhand way than a meaningful discussion.

Conclusion

This CLE was a good CLE to attend if you are interested in learning the basics of GDPR and CCPA. The entire program is accreditable and 1.5 L&L credit should be awarded.