

**To:** Washington Supreme Court Justices  
**From:** MCLE Board  
**Date:** August 29, 2022  
**RE:** **2021-2022 MCLE BOARD TERM REPORT**

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## 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 six (6) WSBA members and one (1) community member. On average, the MCLE Board meets five times a year.

## FY 2021-2022 MCLE Board Goals:

### 1. MCLE Credit for Law Clerk Tutors

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.” Taking into consideration feedback from the public, licensed legal professionals, and with the support of both the Law Clerk Board and the unanimous support of the WSBA Board of Governors at their July 2022 meeting, the MCLE Board decided at their August 5, 2022 meeting to recommend to the Washington Supreme Court an amendment to APR 11 which would allow MCLE credit for tutors in the APR 6 Law Clerk Program.

The MCLE Board plans to submit a GR 9 cover sheet by October 15, 2022, for the Supreme Court to consider.

### 2. Explore an amendment to the APR 11 ethics requirement—in the topics of both mental health and technology

The MCLE Board formed a workgroup to explore whether to suggest additional amendments to the APR 11 ethics requirement- in the topics of both mental health and technology. This workgroup was delayed in meeting due to the limitations of staff resources during this unprecedented reporting period (the Court ordered extension of the 2018-2021 reporting period resulted in two times the number of



licensed legal professionals reporting during this MCLE Board term), as staff were unable to support the MCLE Board with two preliminary suggested amendments simultaneously. MCLE Board may revisit this topic to see if they would like to explore this in October 2022.

### **3. Course Audits**

MCLE Board members have a goal of auditing two or more CLE courses each year, focusing on accredited sponsors as well as courses covering topics of diversity, equity and inclusion. The MCLE Board has completed five (5) audit reports throughout the 2021-2022 term and are in the process of auditing four (4) additional courses. Accredited sponsors have the same duties as general sponsors, however they 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.

### **4. 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.

## **WSBA Task Force Team 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 charter lists the team's responsibilities as:

1. Assessing the WSBA's collaborative role in administering Court appointed Boards, to include current and future boards appointed or established by the Court. Currently, these Boards include the Access to Justice Board, Disciplinary Board, Limited License Legal Technician Board, Limited Practice Board, Mandatory Continuing Legal Education Board and the Practice of Law Board (Court Appointed Boards).
2. Working with the Court to ensure that WSBA's administration of current Court Appointed Boards is consistent with the Court's intent and to share information that will enable the Court Appointed Boards to better serve their missions. This includes providing information regarding the fiscal impact of the Court Appointed Board and substantive measures that could be taken to improve and better facilitate the Boards.
3. Conveying to the court substantive information about the Boards and member concerns.

## Implementation of the amendment to the APR 11 ethics requirement.

On October 15, 2020, the MCLE Board submitted a 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.

After receiving a request for course accreditation guidance from MCLE staff, the MCLE Board has continued to provide guidance on courses—that cover issues of diversity, inclusion, and elimination of bias—and whether they will meet the new ethics requirement that went into effect on 9/1/2022. MCLE staff worked with WSBA IT to update the MCLE online system to allow CLE sponsors to apply for “equity...” credit and determine if those courses held on or after 9/1/2022 meet the new ethics requirement.

As the MCLE Board previously reported to the Court, during the annual meeting between the Court and MCLE Board in September 2021, the MCLE Board adopted two policies with the intent to provide guidance for the implementation of “equity credit”.

### 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 credits 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.

The MCLE Board drafted an article for the *Washington State Bar News* in an effort to provide guidance to licensed legal professionals and answer frequently asked questions<sup>1</sup>. MCLE staff is continuing to work

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<sup>1</sup> Set to publish in September, the MCLE Board *Bar News* article can be viewed online at: <https://wabarnews.org/archive/>

with WSBA IT to implement tracking of the new ethics requirement for licensed legal professionals into the new online MCLE system.

## 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, one hundred and eleven (111) petitions of undue hardship were reviewed by the MCLE Board during the 2021-2022 meeting term. Due to the Court ordered extension of the 2018-2020 reporting period, the 2018-2021 extended reporting period and the 2019 -2021 reporting period were reporting and certifying their MCLE requirements concurrently. The MCLE Board began to receive petitions for both reporting periods in the fall of 2022. Twenty-seven (27) petitions were approved, thirty-eight (38) denied, and forty (40) petitions received a partial approval/partial denial. Five (5) denial decision reviews were requested, and one (1) denial was subsequently reversed, and the petition approved, with the remaining four (4) denials upheld. The MCLE Board held one (1) hearing to review a previous partial denial at the request of a lawyer. At the hearing, the partial denial was subsequently reversed, and the petitioner’s request was granted. Please note that one petition may include several requests regarding MCLE requirements. For comparison, the MCLE Board received a total of sixty-eight (68) petitions during the 2017-2019 reporting period.

## Board APR 11 Interpretations

The MCLE Board reviewed eighteen (18) activities at the request of either the MCLE staff or a licensed legal professional. The MCLE Board also discussed various hypothetical CLE applications to assist staff with the accreditation of courses covering equity, inclusion, and the mitigation of bias. The Board discussed issues of target audience, content, and speaker biographies as important points for each accreditation decision, in light of the amendment to the ethics credit category defined in APR 11(f)(2), effective September 1, 2022. The hypotheticals included:

1. A presentation on implicit bias presented by a diversity training professional to a law firm, but with no specific link to the legal profession.
2. A presentation discussing implications of harassment and hostile work environments on marginalized communities, presented by a human resources professional to a government office.

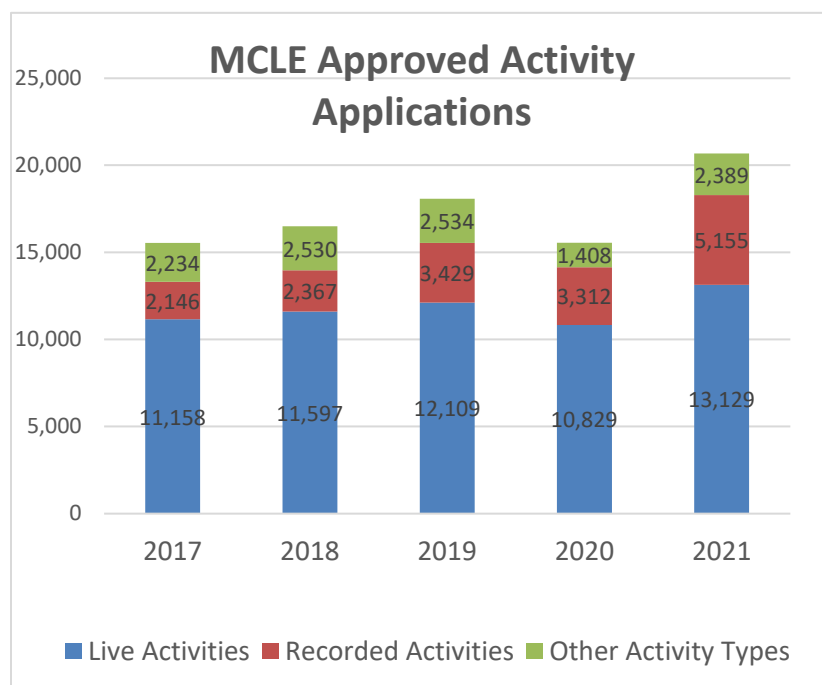
3. A presentation covering the effects of historical bias and legislation and the effects of that legislation today, presented by two lawyers to a university forum. The course is designed for a mixed audience of lawyers, teachers, and law students.

The MCLE Board discussed all three hypothetical courses and decided unanimously that all three would be approved as ethics. The Board encouraged MCLE staff to bring additional ethics accreditation issues to future Board meetings.

## Strategies for Mitigating Implicit and Explicit Bias

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

## 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. <sup>2</sup>

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 were 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 customary certification opening month of November.

<sup>2</sup> The 2020 column of the MCLE Approved Activity Applications table accounts for an additional 514 approved course preparation activities not accounted for in the 2021 annual report.

Over 20,000 licensed legal professional certifications were reviewed and are compliant for the 2018-2021 and 2019-2021 reporting periods. On May 3, 2022, the suspension deadline passed for lawyers, LLLTs, and LPOs in the 2018-2021 and the 2019-2021 MCLE reporting periods. Certification opened on July 1, 2021. On March 4, 2022, the pre-suspension notice was sent to all licensed legal professionals that had not yet completed their licensing or MCLE requirements. On May 5, 2022, a list of 100 licensed legal professionals (96 lawyers and 4 LPOs) were recommended to the WA Supreme Court for administrative suspension for failure to meet their MCLE requirements for the 2018-2021 and 2019-2021 reporting periods. Out of the 100 individuals suspended, 69 licensed legal professionals had outstanding licensing requirements, in addition to incomplete MCLE requirements, listed on the Court order.

**Attachments:**

1. 2021-2022 MCLE Board Roster
2. MCLE Board Policies
  - Ethics Requirement Implementation
  - Credit Carryover
3. MCLE Board Undue Hardship Decision Matrix
4. MCLE Fee Structure
5. MCLE June 2022 Budget Summary
6. Admission and Practice Rule (APR) 11