

MEETING AGENDA

April 17, 2023
10:00 A.M.

OPEN SESSION - 10:00am-11:00am:

10:00 – Review of Minutes

10:05 – MCLE Board Chair Nomination

10:10 – Audit Reports

10:15 – Suggested Amendment Workgroup Recommendation and Report

10:30 - MCLE Updates

CLOSED SESSION – 11:05am-12:00pm

11:05 – Activity Review

11:15 – Petitions, Appeals and Staff Liaison Decisions

End of Meeting

Minutes

January 13, 2023

The meeting of the Mandatory Continuing Legal Education Board was called to order by Board Chair Todd Alberstone at 10:03 AM on Friday, January 13, 2023. The meeting was held via videoconference. Board members in attendance were:

Todd Alberstone, Chair
Asia Wright
Efrem Krisher
Ayanna Coleman
Christopher Bueter
Merri Hartse
Katie Denmark

Liaisons and Staff in attendance:

Adelaine Shay	MCLE Manager/MCLE Board Staff Liaison
Ransom Smith	MCLE Analyst
Bobby Henry	Associate Director, Regulatory Services Department

Review of Minutes

The MCLE Board reviewed the minutes from the October 7, 2022 meeting. The Board unanimously approved all minutes without change.

Discussion: WSBA CLE Accredited Homework

The MCLE Board was presented with a presentation delivered by WSBA staff Shanthi Raghu (WSBA Education Program Manager) and Kevin Plachy (Advancement Department Director), which provided an overview of the homework components of WSBA CLE Practice Primers and the method by which they are assigned CLE credit value. After the presentation concluded, a vote was taken on whether to reaffirm a 2016 Board decision which permits WSBA CLE to accredit the homework components of their programming. It was further clarified in the motions for a vote that along with the affirmation of the 2016 Board decision, the Board would be explicitly authorizing WSBA CLE to accredit such content with respect to both live and recorded programming according to its established methodology for allocating credit. The Board voted unanimously in favor of reaffirming the 2016 decision and authorizing the continuation of WSBA CLE’s allocation methodology for both live and recorded homework components.

Discussion: Endorsement of TAXICAB draft document:

The MCLE Board discussed generally a document set forth by the TAXICAB (Task Force Administering Xenial Involvement with Court Appointed Boards) as a leading policy document. After the Board had opportunity to review the TAXICAB policy in its most recent version, a vote was taken to endorse the document. The Board voted unanimously to endorse the policy document.

Discussion: Accredited Sponsor Course Audits

The MCLE Board affirmed their collective goal of each Board member auditing at least two courses provided by organizations that hold accredited sponsor status under APR 11(j)(7). MCLE Board member Asia Wright also presented their specific audit report for the American Immigration Lawyers Association (AILA) course: *2022 AILA Virtual Midwinter Conference: Advanced Business and Removal/Family-Navigating New Developments and Addressing Persistent Challenges*.

MCLE Updates

The MCLE Staff Liaison discussed general updates with MCLE, including the Washington Supreme Court's decision to publish a proposed APR 11(e) rule amendment (which would allow law clerk tutors to claim credit for the personal supervision of those participating in the tutoring program) for public comment, the percentage of licensed legal professionals who have complete requirements for the 2020-2022 reporting period, health and safety policies for guests and attendees participating in WSBA events, and the department's budget for the previous fiscal year.

MCLE Board Activity Review

The MCLE Board decided by motion on two activity accreditation requests. No listing of these motions is included in order to protect member confidentiality.

MCLE Review of Staff Liaison Decisions on MCLE Petitions of Undue Hardship

The MCLE Board approved Staff Liaison decisions on 13 petitions. The Board reviewed and approved by motion on the 13 petitions. No listing of these motions is included to protect member confidentiality.

Adjournment

There being no further business at hand, the meeting was adjourned at 11:26 AM. The next regularly scheduled MCLE Board meeting will be held at 10:00 AM on Monday April 17, 2023.

Respectfully submitted,



Adelaine Shay
MCLE Board Staff Liaison

Discussion : Chair Selection

Summary: The MCLE Board needs to nominate a Board member to serve as the MCLE Board Chair for the 2023-2024 term.

Potential Action:

- Nominate a Board member to serve as MCLE Board Chair for the 2023-2024 term.

BACKGROUND:

Vice-Chair – 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. The Board created the Vice-Chair position to give more continuity to the functioning of the Board.

Chair Position – The Board member to fill the Chair position will be nominated by the MCLE Board members. Once a nomination has been made, candidates are reviewed by the MCLE Board nomination team. The WSBA Board of Governors nomination committee is notified of the recommendation. Ultimately, the Washington Supreme Court will appoint the MCLE Board Chair for the 2023-2024 term (October 1st – September 30th).

Role of the MCLE Board Chair – The MCLE Board Chair will lead the MCLE Board to pursue its goals and carry out its role as a Court-appointed Board, administered by the WSBA. Below are some of the specific duties of the MCLE Board Chair:

- Collaborate with the MCLE Staff Liaison to develop and approve meeting agendas and materials.
- Facilitate MCLE Board meeting discussions, keeping the Board on track and on time and ensuring full participation of Board members.
- Represent the MCLE Board (or identify who will) at Board of Governors meetings when the Board has an item on the agenda, and/or at meetings with the Court.
- Participate in nomination team (along with staff liaison and Board of Governors liaison) to recommend new MCLE Board members for appointment. At the end of their term as MCLE Board Chair, may meet with the incoming Chair to discuss scope of the role and work in progress.

ENCLOSED:

- **WSBA Entity Chairs and Liaisons: Roles and Responsibilities**

WSBA Entity Chairs and Liaisons: Roles and Responsibilities

This document applies to committees and councils created by the WSBA Board of Governors, Supreme Court boards administered by the WSBA, and WSBA regulatory boards created by Supreme Court rule. Any court or WSBA rule, order or directive pertaining to a specific committee or board that is inconsistent with this document supersedes the below. Note that "board" refers to entities performing regulatory functions and "committee" denotes entities performing professional association duties. In this document, the term "entity" is used to refer to both committees and boards.

Guiding Principles:

- Volunteers and staff work in partnership to further the mission of WSBA
- We leverage the unique experiences, knowledge and contributions of staff and volunteers
- Volunteers are central and important to accomplishing our shared goals
- Staff and volunteers share mutual respect

	Chair	Staff liaison(s)¹	Board of Governors liaison
Onboarding new members	<p>Collaborate with staff liaison to develop a new member orientation. Chair's focus is the entity's history, goals, work in process, and the entity's culture.</p> <p>Check in with new members periodically to monitor engagement and comprehension.</p>	<p>Collaborate with chair to develop a new member orientation. Staff liaison's focus is WSBA policies and procedures, entity's history and functions, Supreme Court rules, and WSBA's broader mission.</p>	<p>Participate in any new member orientation, both to learn the work of the entity and to share the work of the Board of Governors.</p>
Entity management	<p>Lead the entity to pursue its goals (as approved by the Board of Governors or the Supreme Court) by establishing subcommittees, timelines, project plans, etc.</p> <p>Help the entity refocus if changes to goals are needed, and lead entity to develop goals for following year.</p> <p>Set expectations for the entity at the start of the year and maintain expectations throughout the year regarding culture of the entity, following through on work, etc.</p> <p>Ensure that entity work is accomplished between meetings (check that tasks are being completed, nudge project and subcommittee volunteers as needed, identify if other resources are needed to</p>	<p>Advise the chair and entity on developing their goals to ensure they are consistent with the WSBA mission, priorities and commitments, and/or directives from the Supreme Court.</p> <p>Develop and manage the corresponding budget. The staff liaison is responsible for ensuring WSBA funds are spent appropriately and efficiently.</p> <p>Provide expertise as appropriate and advise the entity on WSBA policies and procedures and Supreme Court rules (e.g., GR 12, legislative/court rule commenting, open meetings).</p> <p>Connect the entity to WSBA resources</p>	<p>Be familiar with the work of the entity by reading meeting minutes and attending meetings when available to do so.</p> <p>Inform the entity of Board of Governors decisions or discussions that impact the entity's work.</p> <p>In concert with the staff liaison, bring the entity's attention to WSBA policies that are relevant to the entity's work.</p>

¹ Some entities have multiple staff liaisons, or the staff liaison may delegate some of the duties listed here to other WSBA staff.

	<p>complete a project).</p> <p>Draft documents and other entity work product (also see "Reporting" below).</p>	<p>and departments, as needed, to fulfill entity goals. Ensure that the chair has access to WSBA information/resources that are helpful in strengthening their leadership of the entity.</p> <p>Ensure administrative support including meeting scheduling and logistics; roster, web page and email list maintenance; and expense report processing.</p>	
Meeting management	<p>Collaborate with staff liaison to develop meeting agendas and materials.</p> <p>Facilitate meeting discussions, keeping them on track and on time and ensuring full participation of entity members. Identify a member to serve as back-up chair in the chair's absence.</p>	<p>Collaborate with chair to develop meeting agendas and materials. Manage and track ongoing and potential agenda items. Distribute meeting notices, agenda, materials and other communication needed by the entity in a timely manner.</p> <p>Take meeting minutes.</p>	
Succession planning	<p>Actively participate in new member recruitment (identify needs of the entity, brainstorm outreach efforts).</p> <p>Participate in nomination team (along with staff liaison and Board of Governors liaison) to propose new entity members for appointment. At the end of their term as chair, meet with new chair to discuss scope of the role and work in progress.</p>	<p>Oversee logistics of entity recruitment and appointment processes, ensuring WSBA procedures and Supreme Court rules are followed and deadlines met.</p> <p>Participate in nomination team (along with chair and Board of Governors liaison) to propose new entity members for appointment. Provide guidance regarding WSBA's commitment to diversity and inclusion.</p> <p>Advise WSBA president-elect on recruitment and selection of new entity chair. (Does not apply to Supreme Court boards.)</p>	<p>Assist with outreach and recruitment efforts to identify potential new entity members.</p> <p>Participate in nomination team (along with chair and staff liaison) to propose new entity members for appointment.</p>
Reporting	<p>Represent the entity (or identify who will) at Board of Governors meetings when the entity has an item on the agenda, and/or at meetings with the Supreme Court.</p> <p>Collaborate with staff liaison to draft the entity's annual report to the WSBA Board of Governors and any other reports.</p>	<p>Collaborate with the chair to draft the entity's reports.</p>	<p>Serve as an information conduit between Board of Governors and the entity.</p> <p>Assist the entity in preparing for presentations to the Board of Governors, taking into consideration anticipated questions from the Board and setting expectations.</p>

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: TRTCLE

COURSE TITLE: Working Tools for Eliminating Cultural Bias

COURSE DATE(S): February 6, 2023

ACTIVITY ID#: 1189974

ACCREDITATION: 1 Total Credit (1.0 Ethics, specifically equity, inclusion, and
the mitigation of both implicit and explicit bias in the legal
profession and the practice of law)

DATE OF REPORT: February 7, 2023

Nature of the Program

The nature of the program consists of a presenter discussing the topic of eliminating bias and how it relates to the practice of law.

Faculty

One presenter, an attorney licensed in Israel and Florida.

Location/Time

On demand. The course is a recording available in video format. Attendees can stop and start the recording at their leisure. Recording is two segments: first 30 minutes, second 32 minutes.

Facilities

Not applicable. This is a previously recorded CLE available on demand through the TRTCLE website.

List of Presenters and Their Qualifications

Barry Schreiber is a partner in an Israel based law firm, Guy Bachar Law Offices, and a member of the Florida Bar. He serves as Marketing and Networking Director for Allied Interpreting. Mr. Schreiber is a professional mediator/arbitrator, executive business/life coach, and certified workplace mediator and trainer.

Written Materials

A PDF file of the presenter's PowerPoint slides is linked from the course webpage. Multiple ways to contact Mr. Schreiber post presentation are provided.

Attendance

Embedded codes are given, both written and spoken, half-way through each segment of the presentation. Attendees must enter the codes provided in order to submit a certificate of attendance.

SUMMARY

The overall objective of the program is to demonstrate the importance of eliminating cultural bias, prejudice, and racism in the practice of law and to provide basic tools for meeting this objective.

DISCUSSION

Mr. Schreiber placed bias in the context of the history of humankind. He offered that a more realistic and achievable objective is to ameliorate rather than eliminate bias. He defined prejudice, bias, and racism in straight-forward terms. He showed all three "concepts" share common symptoms such as unfounded hostility to others and dislike of non-English speakers. He identified and discussed three types of bias: belief bias, implicit bias, and cultural bias. He spent time discussing how bias can be ameliorated by the law office culture, such as no restrictions on dress or hair codes, and ensuring equity in office space assignment. He touched upon microaggressions in the law office culture but did not provide examples. 2018 research confirming that gender and racial bias are endemic in the legal profession was examined, and the question raised as to why such little progress has been made. Tools to address subconscious biases included more inclusive language in recruitment and removal of names from applications before applicant review. He examined how biases reveal themselves in the criminal justice system. Suggestions such as utilizing bias free language by being gender neutral and using people's preferred pronouns were simple and practical ideas.

CONCLUSION

In summary, this is an introductory course to understanding the importance of working towards the elimination of bias in the practice of law. The 1.0 Ethics credit is justified. Specifically, the course meets the one credit requirement for courses on the equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law as defined in APR 11(f)(2).

MEMORANDUM

TO: MCLE Board

FROM: Asia N. Wright

RE: CLE Audit Report

COURSE SPONSOR: Lawline

COURSE TITLE: Ethically Growing Your Law Firm, Part 1: Designing a Law Firm Business Plan and Preparing for Growth

COURSE DATE(S): Recorded Webcast October 27, 2022

ACTIVITY ID#: 1217547

ACCREDITATION: Listed as 1 Ethics Credit

DATE OF REPORT: March 23, 2022

Nature of the Program

The program consisted of a presenter speaking on starting and growing a law firm.

Location/Time

Recorded Live Webcast.

Facilities

Not applicable.

Presenters and Their Qualifications

Attorney Jackie Cara is a solo practitioner who also founded Elevated Strategies NY, a growth strategy firm designed to help lawyers and companies that serve lawyers.

Written Materials

The written materials consisted of a 18-page pdf that included the presentation slides as well as a 14-page pdf that contained a transcript of the presentation.

Attendance

At multiple times during the presentation, the presentation would pause, and a beeping countdown clock would pop up for attendees to click to confirm participation.

EXECUTIVE SUMMARY

This course does not meet the definition for 1 Ethics Credits per Admission and Practice Rule 11(f)(2), but instead 11(f)(5) Office Management.

DISCUSSION

The presentation ran for 1 hour, 1 minute and 7 seconds. Attendees had the option of viewing the presentation slides on a big screen with the presenter shown in the corner on a small screen or vice versa.

Although the learning objectives listed, “Highlight” the ethical dilemmas solopreneurs face when building a law firm and explore how to address them” this topic was more of a throwaway comment than the focus of the presentation. The presentation mainly focused on exploring “why” an attorney should want to be self-employed and how to maximize client satisfaction to minimize complaints.

While the title of the CLE contained the word “Ethically,” Ms. Cara spent very little time going over the Ethical Rules. Not until the 12th slide, did Ms. Cara list three applicable ABA Model Rules of Professional Conduct. The slide, which was only up for 4 minutes and 24 seconds, only listed the name of the rule and did not list out the actual text of the rule. Ms. Cara also did not discuss real life ethical cases involving those rules or formal opinions. Doing so would have justified awarding an Ethics Credit.

It was not until slide 16 that Ms. Cara showed ABA Model Rule 1.1 with its text; however, for the less than three minutes the slide was shown, Ms. Cara did not provide substantive discussion on the rule itself, but rather common-sense advice of “staying in your lane.” At one point, Ms. Cara vaguely mentioned are “a lot of rules” about when you have a retainer and there are statutes that require retainers for certain services, but then did not outline which venues or practice areas that do or do not require retainers.

The remainder of the presentation was more tips and tricks to running a business. For the depth in which Ms. Cara went into ethically running a law practice, the same coverage could have been accomplished by looking at a 3-minute read on a legal blog about pitfalls to consider when setting up a practice. In the end, the limited substantive discussion of ethics rules did not justify a full hour credit for Ethics.

CONCLUSION

Unfortunately, this CLE, though filled with helpful common-sense advice, did not focus on the ethical rules a lawyer should abide by as it should have. Therefore, I would accredit the CLE with 1 “Other” (or Office Management Credit) Legal credits per Admission and Practice Rule 11(f)(5).

MEMORANDUM

TO: MCLE Board

FROM: Asia N. Wright

RE: CLE Audit Report

COURSE SPONSOR: Lawline

COURSE TITLE: Tax Matters in Estate Planning and Estate Administration: Don't Let the Grinch Steal Christmas

COURSE DATE(S): Recorded Webcast May 27, 2022

ACTIVITY ID#: 1204541

ACCREDITATION: Listed as 1 Law & Legal Credit

DATE OF REPORT: March 14, 2022

Nature of the Program

The program consisted of presenter speaking on tax matters.

Location/Time

Recorded Live Webcast.

Facilities

Not applicable.

Presenters and Their Qualifications

Leah Del Percio is the founder and CEO of Trustate. She has 12 plus years of experience as an estate attorney (JD & LLM) with multi-jurisdictional estate admin practice.

Written Materials

The written materials consisted of a 17-page pdf that included the presentation slides as well as a 16-page pdf that contained a transcript of the presentation.

Attendance

At multiple times during the presentation, the presentation would pause and a beeping countdown clock would pop for attendees to click to confirm participation.

EXECUTIVE SUMMARY

This course meets the definition for 1 Law & Legal Credits per Admission and Practice Rule 11(f)(1).

DISCUSSION

The presentation ran for 1 hour, 2 minutes and 6 seconds. The presentation covered substantive ground on taxes and estate law and explained the difference between the various taxes in property transfer situations. Ms. Del Percio presented the material in a very clear and understandable manner which was enhanced by the very professional and illustrative PowerPoint slides. You either saw Ms. Del Percio on the full screen or when referring to slides, the screen would change to the slides but you could still see Ms. Del Percio on a small screen in the corner. It became immediately apparent that Ms. Del Percio is an expert on tax matters because her presentation was unscripted, which helped in comprehending the material.

Ms. Del Percio covered a lot of ground on Tax law, but at a pace that was still digestible for a newbie to this area of the law. Even if the viewer found some areas of the presentation progressed too fast, they could rewind, look at the slides, or review the transcript at their leisure.

CONCLUSION

Overall, this CLE is a good introduction to tax matters involving estates and I would recommend it to others wanting to learn more about this area of law. I would accredit the CLE with 1 Law and Legal credits per Admission and Practice Rule 11(f)(1).

DISCUSSION :
Suggested Amendment to APR 11

MCLE Board will review the report and recommendation for a suggested amendment to APR 11, which would result in amendments to APR 11(c)(1) and APR 11(f). MCLE Board will vote whether to move forward with suggested amendment.

Possible Discussion Topics:

- Discuss and decide whether to move forward with the work group's recommendations

Possible Action Items:

- Vote on whether to move forward with suggested amendment
- If moving forward, potential discussion topics:
 - o Discuss Equity Assessment
 - o Decide whether to make any edits to the report and recommendation, and whether to adopt the work group's report and recommendation as the MCLE Board's report and recommendation
 - o Vote on opening for public, member, and stakeholders comment period
 - o Reaching out to stakeholders for feedback
 - o Communication with BOG Liaison
 - o Set special meeting of MCLE Board to review and consider comments received
 - Friday, June 23rd is a potential meeting date
 - o Discuss and vote on rescheduling August MCLE Board meeting to August 18, 2023 to be consistent with the timeline below

Background:

At its October 7, 2022 meeting, the MCLE Board discussed the need to establish specific MCLE requirements in the areas of mental health and technological competency. The MCLE Board formed a workgroup to explore a suggested amendment that would put in place specialized ethics credit requirements in the subjects of mental health and technological security. The workgroup is composed of three members from the MCLE Board (Asia Wright, Todd Alberstone, and Efreem Krisher).

Over the course of January to March of 2023, the workgroup met to discuss a total of four times to review discuss potential language for a suggested amendment. The workgroup decided to begin research and writing a report and recommendation, and to prepare a recommendation and report for the MCLE Board to consider.

Purpose of the Suggested Amendments

The MCLE Board workgroup recommends amending Rule 11 of the Admission and Practice Rules to:

- require legal professionals to earn one credit per reporting period in the course subjects of both mental health ethics and technology security ethics;
- separate the course subject of equity from the ethics and professional responsibility course subject while maintaining the requirement for legal professionals to earn one equity ethics credit per reporting period;

- reduce the number of required professional responsibility and ethics credits from six to five; and,
- allow for additional credits earned beyond the required amount for any given reporting period in the course subjects of equity, mental health ethics, and technology security ethics to count as ethics and professional responsibility credits.

As it is currently proposed, this amendment would yield changes to APR 11(c)(1) (minimum education requirements) and create three new independent credit categories under APR 11(f) (approved course subjects). This is intended to eliminate the confusion between "general" ethics and "equity" ethics credits. The three new approved course subjects, which all require an ethics component, would effectively increase the total number of ethics credits to eight per reporting period instead of 6. The suggested amendments do not increase the total number of credits required (45 for lawyers; 30 for LPOs and LLLTs). The new credit requirements for the three new approved course subjects would not be able to be fulfilled with carryover credit thereby ensuring that lawyers, LLLTs, and LPOs meet the requirements for the three new subjects at least once every three years.

Potential timeline for suggested amendment:		
April 17, 2023	MCLE Board Meeting	Workgroup presents report and recommendation to MCLE Board. MCLE Board will vote whether to move forward with suggested amendment. Reach out to stakeholders for initial feedback. Vote on opening for member and stakeholders comment period
June 16, 2023		Close written comment period.
Special Meeting of MCLE Board June 23rd	MCLE Board Meeting	Public comment period during meeting. Hear member, public, and other stakeholder comments. Discuss feedback. MCLE Board to vote on whether to make any proposed edits, and 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.
July 7, 2023	Agenda items due	BOARD OF GOVERNORS agenda items due
July 24, 2023	BOARD OF GOVERNORS Materials	BOARD OF GOVERNORS materials due.
August 11-12, 2023	BOARD OF GOVERNORS Meeting	Present to WSBA BOARD OF GOVERNORS and ask for support.
Reschedule MCLE meeting to August 18, 2023	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 25, 2023		First draft due of GR 9 coversheet.
Sept 1, 2023		Final draft due of GR 9 coversheet.

September 5, 2023	BOARD OF GOVERNORS Meeting Materials deadline	If needed, send materials to or present at the BOARD OF GOVERNORS meeting September 22-23.
October 15, 2023	Suggested Amendment Deadline	Send GR9 coversheet to Court by October 15 th .

Enclosed Documents:

- **MCLE Board Workgroup- Report and Recommendation Mental Health and Substance Abuse and Technology**
- **Information for Equity Analysis**

Information for Equity Analysis

The purpose of the equity assessments is to understand how entities incorporated an equity lens into the action items presented to the Board of Governors. Equity is meeting impacted parties according to their needs to produce fair and equal outcomes for all. Please answer all questions completely in order to receive a comprehensive equity assessment.

- *IMPACTED GROUPS: Please describe the direct and indirect impacts of 1) the overall work of your entity and 2) this specific action on the categories below. If you do not believe the action has a direct or indirect impact on any of these categories, please explain why.*
 - *The general WSBA membership*
 - *WSBA staff*
 - *A subgroup of WSBA membership (e.g. LLLTs, family law practitioners, Minority Bar Association members, legal professionals from specific marginalized and underrepresented communities)*
 - *Members of the public in need of legal services (if applicable, please include specific client communities)*

- *PROCESS: How did you collaborate with impacted groups identified above? How did you integrate input or leadership from impacted groups into this project or proposed action? If you did not collaborate with or integrate input from impacted groups identified above, please explain why. What resources do you need to sustain relationships with impacted groups? If you do not plan to sustain relationships with impacted groups, please explain why.*

- *OUTCOMES: What are the intended outcomes of this specific action? Are there potential unintended consequences? Of the impacted groups outlined above, who benefits most from this action? Conversely, are there groups who may be burdened?*

- *EVALUATION: How will you measure the impact of the action, including unintended consequences and disparities among impacted groups? What resources do you need to evaluate the impact of this action and track any unintended consequences or disparities?*

- *FUTURE LEARNING: Learning to lead with an equity lens is an ongoing process. Please reflect on how you might improve on how you collaborate with impacted groups for future projects and actions. What additional trainings or resources would be helpful to your entity to improve in this area?*

From: Mandatory Continuing Legal Education Board Workgroup
To: MCLE Board
Date: March 15, 2023
RE: REPORT AND RECOMMENDATION OF THE MCLE BOARD WORKGROUP

Executive Summary

The Mandatory Continuing Legal Education Board Workgroup which is comprised of Todd Alberstone, Efreem Krisher, and Asia Wright has met four times to review and discuss potential amendments to Admission and Practice Rule (APR) 11. After conducting extensive research and engaging in thoughtful discussions, the workgroup asks that the MCLE Board recommend an amendment to APR 11 as discussed below.

Purpose of the Suggested Amendments

The MCLE Board workgroup recommends amending rule 11 of the Admission and Practice Rules to:

- require legal professionals to earn one credit per reporting period in the course subjects of both mental health ethics and technology security ethics;
- separate the course subject of equity from the ethics and professional responsibility course subject while maintaining the requirement for legal professionals to earn one ethics credit per reporting period;
- reduce the number of required professional responsibility and ethics credits from six to five; and,
- allow for additional credits earned beyond the required amount for any given reporting period in the course subjects of equity, mental health ethics, and technology security ethics to count as ethics and professional responsibility credits.

The suggested amendments do not increase the total number of credits required. Nor do they dilute the ethics and professional responsibility or law and legal procedure requirements. Although the amendments reduce the ethics requirement to five credits, it does not change the overall ethics requirement because equity, which is currently part of ethics, will be its own credit category with a one credit requirement. This will eliminate the confusion between "general" ethics and "equity" ethics credits. The suggested amendments will not place a financial burden on licensed legal professionals. In 2019, the WSBA Board of Governors passed a motion directing WSBA CLE to offer free CLEs in the topics of mental health ethics, technology security ethics, and equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law. The WSBA Board of Governors directed that the CLEs be offered in-person and on-demand for free, eliminating the concern that this requirement would pose barriers to access or a financial burden for licensed legal professionals.



These amendments ensure that lawyers, LLLTs, and LPOs focus on mental health and technology security topics at least once every three years. These are two serious topics that can greatly impact their competency to practice and, if ignored, can result in serious consequences. The proposed requirements therefore are directed toward the protection of clients and the public, improving legal professionals' competency and integrity, and, ultimately, improving the legal community as a whole.

Suggested Amendments

The workgroup recommends the following suggested amendments to APR 11:

APR 11

(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~~ five credits must be in ethics and professional responsibility, as defined in subsection (f)(2), ~~with at least one credit in credit in equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law;~~

(iii) at least one credit must be in equity, as defined in subsection (f)(8);

(iv) at least one credit must be in technology security ethics, as defined in subsection (f)(9); and

(v) at least one credit must be in mental health ethics, as defined in subsection (f)(10).

(vi) The education requirement in subsections (iii), (iv), and (v) cannot be fulfilled with carryover credit. After the education requirement is met in subsections (iii), (iv), and (v) above, additional credits earned for any one reporting period in the course subjects of equity, mental health ethics, and technology security ethics will count as ethics and professional responsibility credits.

...

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

...

(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 equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practices of law, and the risk to ethical practices associated with diagnosable mental health conditions, addictive behavior, and stress;~~



...

(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;

...

(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 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-;

(8) *Equity*, defined as subjects relating to equity, inclusion, and the mitigation of both implicit and explicit bias in the legal profession and the practice of law;

(9) *Technology security ethics*, defined as subjects that educate and inform lawyers, LLLTs, or LPOs about their ethical obligations and professional responsibilities under the rules of professional conduct regarding cybersecurity and the privacy and protection of electronic data and communication. This includes protection of confidential, privileged, and proprietary information; client counseling and consent; storage protection policies and protocols; risk and privacy implications; protection of escrow funds; inadvertent and unauthorized electronic disclosure of confidential information, including through social media, data breaches and cyber-attacks; and supervision of employees, vendors, and third parties; and

(10) *Mental health ethics*, defined as subjects that educate and inform lawyers, LLLTs, or LPOs about their ethical obligations and professional responsibilities under the rules of professional conduct regarding mental health issues. This includes courses covering the risk to ethical practices associated with, but not treatment for, substance abuse, addictive behaviors, stress management, work-life balance, anxiety disorders, depression, bipolar disorder, suicide prevention, schizophrenia, and other mental health issues.

Background

Equity Credit

The recommended amendment separates the course subject of equity from the ethics and professional responsibility course subject while maintaining the requirement for legal professionals to earn one credit



per reporting period. Additionally, the suggested amendment clarifies that the requirement needs to be met each individual reporting period. It does not dilute the ethics and professional responsibility requirements. Although the amendments reduce the ethics requirement to five credits, it does not change the overall ethics requirement because equity, which is currently part of ethics, will be its own credit category with a one credit requirement. This will eliminate the confusion licensed legal professionals may experience between "general" ethics and "equity" ethics credits.

Technology Security Ethics Credit

The suggested amendment includes a new requirement for all licensed legal professionals to complete one credit each reporting period in technology security ethics which is about the ethical obligations and professional responsibilities regarding the protection of electronic data and communication.

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 information. Rules 1.1, 1.3, and 1.4 of the Rules of Professional Conduct (RPC) address lawyers' core ethical duties of competence, diligence and communication with their clients. Possessing technological knowledge to safeguard client information as a fundamental requirement is explained in comment eight to RPC 1.1 which states that in order for legal professionals to, "[m]aintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practices, including the benefits and **risks associated with relevant technology**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject." (emphasis added) With the advent of the global pandemic and more and more legal professionals practicing "virtually," it is imperative that lawyers, and all legal professionals, stay cognizant of their ethical responsibilities.¹

A Technology Security Ethics Credit Must be Mandatory Because Lack of Knowledge in This Area Can Result in Significant Consequences to Legal Professionals and Their Clients.

With each passing year, cybercrimes become more rampant and cyber insecurity results in increasingly costly and catastrophic events. Electronic security breaches today are now so prevalent, that the question is not if, but when, it will happen. The Federal Bureau of Investigation Internet Crime Complaint Center ("IC3") received 847,376 complaints relating to extortion, identity theft, and personal data breaches representing potential losses exceeding \$6.9 billion in 2021.² The IC3 receives an average of over 2,300 cybercrime complaints each day, with over 6.5 million complaints since the IC3's inception in 2000.³ Washington state is ranked as the 9th highest state where internet crime victims reside.⁴ Washington state victims reported losing \$157,454,331 in 2021 as a result of internet crimes.⁵

¹ ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 498 (2021) (issuing cautionary ethics guidance on virtual law practices), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-498.pdf

² Internet Crime Complaint Center, *2021 Internet Crime Report*, at 3 (2022), https://www.ic3.gov/Media/PDF/AnnualReport/2021_IC3Report.pdf.

³ *Id.* at 18 n.16.

⁴ *Id.* at 26.

⁵ *Id.* at 27.



In 2021, the IC3 received 19,954 compromised business email complaints resulting in adjusted losses at nearly \$2.4 billion.⁶ The cybercrimes involved sophisticated scams targeting businesses, including law firms, and individuals, such as law firm clients, performing monetary transfers. Criminals will hack emails and spoof business representatives' credentials to initiate fraudulent wire transfers.

Law firms are being specifically targeted. Such targeted attacks have become so frequent that the State Bar of Texas maintains an updated list on their blog notifying attorneys of recent scams.⁷

Additionally, back in October of 2018 the American Bar Association warned,

Data breaches and cyber threats involving or targeting lawyers and law firms are a major professional responsibility and liability threat facing the legal profession. As custodians of highly sensitive information, law firms are inviting targets for hackers. In one highly publicized incident, hackers infiltrated the computer networks at some of the country's most well-known law firms, likely looking for confidential information to exploit through insider trading schemes.⁸

The IC3 report details a complaint filed by a victim law office in June 2021 regarding a wire transfer of more than \$198,000 to a fraudulent U.S. domestic account.⁹ However, other law firms have reported bigger breaches with higher stakes at risk. In May of 2020, law firm hackers behind a ransomware attack on a New York celebrity law firm threatened to publish compromising information on former U.S. President Donald Trump if they did not receive their \$42 million demand.¹⁰ As proof, the hackers gained access to sensitive client information and published legal contracts related to the law firm's client, Madonna.¹¹ The hackers also released 2.4 GB of legal data related to client Lady Gaga.¹²

One in four law firms that participated in the ABA's 2021 Legal Technology Survey reported their firms experienced a data breach at some time.¹³ A breach includes incidents like a lost/stolen computer or smartphone, hacker, break-in, or website exploit.¹⁴ The actual number of victim firms could be higher as the firm may have experienced a security breach and never detected it.¹⁵ The survey revealed that only 53% of law firms have a policy to manage the retention of information/data held by the firm, and only 36% of respondents have an incident response plan.¹⁶

⁶ *Id.* at 3.

⁷ See Joanna Herzik, *Scams Continue to Target Texas Attorneys*, State Bar of Texas Blog (June 28, 2022), <https://blog.texasbar.com/2022/12/articles/law-firms-and-legal-departments/scams-continue-to-target-texas-attorneys/>.

⁸ ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 483 (2018) (discussing lawyers' obligations after an electronic data breach or cyberattack), https://www.americanbar.org/content/dam/aba/images/news/formal_op_483.pdf.

⁹ Internet Crime Complaint Center, *supra* note 2 at 11.

¹⁰ Alex Scroxton, *Law Firm Hackers Threaten to Release Dirt on Trump*, ComputerWeekly.com (May 15, 2020, 10:19 AM), <https://www.computerweekly.com/news/252483193/Law-firm-hackers-threaten-to-release-dirt-on-Trump>.

¹¹ *Id.*

¹² *Id.*

¹³ David G. Ries, *2021 Cybersecurity*, American Bar Association, https://www.americanbar.org/groups/law_practice/publications/techreport/2021/cybersecurity/ (last visited Dec. 4, 2022).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*



Law firms are not the only legal targets. In May of 2020, a ransomware attack hit Texas courts and took down the courts' websites and case management systems for the state's appellate and high courts.¹⁷ While there is no evidence that hackers accessed sensitive or personnel information, the hack left Texas' top civil and criminal courts without a working case management system or internet in their offices which forced staff to put out rulings over Twitter.¹⁸

Cybercriminals attacked our own Washington State Bar Association ("WSBA") website, malicious code was introduced to the website targeting credit card numbers entered into the website.¹⁹ The myWSBA.org portal was taken offline in mid-November 2020, causing a major disruption for members who wanted to log into their Fastcase and Casemaker accounts, purchase a Continuing Legal Education ("CLE") product, pay their license fee, and report Mandatory Continuing Legal Education credits.²⁰ As a precaution, the WSBA asked members who purchased a CLE product or paid their license fee at myWSBA.org during the previous year to monitor their credit card for potential fraudulent activity.²¹

The fact is, anyone with a computer connected to the Internet is susceptible to a cyberattack from computer hackers who use phishing scams, spam email, instant messages and bogus websites to deliver dangerous malware to the computer.²² Once the malware program is installed on the computer, it may quietly transmit the user's private and financial information without their knowledge.²³ During the period of March 2021 to February 2022, 153 million new malware programs, including ransomware programs, were discovered.²⁴ This is a 5% increase from the previous year.²⁵

Unfortunately, the learning curve is steep for users who find their computers infected.²⁶ In 2020, almost 50% of business personal computers and 53% of personal computers that became infected experienced a second malware infection within the same year.²⁷ Continuing education in this field is necessary given the pace of technology development. Cyberattacks that will occur in a few years' time are not conceivable today.

A Technology Security Ethics Credit Must be Mandatory Because Lack of Knowledge in This Area Can Result in Significant Ethical Dilemmas.

¹⁷ Jake Ble berg, *Texas High Courts Hit By Ransomware Attack, Refuse to Pay*, APNEWS.com (May 12, 2020), <https://apnews.com/article/hacking-tx-state-wire-technology-us-news-courts-474453285863aebab0a2fe239f493548>.

¹⁸ *Id.*

¹⁹ E-mail from Terra Nevitt, Interim Executive Director, Wash. St. B. Ass'n, to WSBA Members (Nov. 13, 2020, 13:32 PST) (email available for records request).

²⁰ *Id.*

²¹ *Id.*

²² *The Dangers of Hacking and What a Hacker Can Do to Your Computer*, Webroot, <https://www.webroot.com/us/en/resources/tips-articles/computer-security-threats-hackers> (last visited Nov. 30, 2022).

²³ *Id.*

²⁴ Andra Zaharia, *300+ Terrifying Cybercrime and Cybersecurity Statistics (2023 Edition)*, Comparitech (last updated Feb. 8, 2023), <https://www.comparitech.com/vpn/cybersecurity-cyber-crime-statistics-facts-trends/>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Webroot BrightCloud, *2021 Threat Report Mid-Year Addendum*, 2021, at 8.



The following are only a few examples of technology scenarios that lead to ethical pitfalls for legal professionals. CLEs on these topics can give members critical guidance that prevent negative outcomes for legal professionals and their clients.

After A Cyber Breach

Do firms have an ethical duty to notify their clients if a breach occurs? If so, there is a significant ethical issue not being addressed by lawyers given only 24% of the law firms nationwide reported a breach in the ABA 2021 Legal Technology Survey notified their clients of the data breach.²⁸

Public Wi-fi

It has become commonplace for lawyers to connect to public wi-fi when working in coffee shops or hotels.²⁹ However, by doing so, the lawyer can expose confidential and privileged client information because the “packets” or pieces of information they send or receive from their devices can be intercepted and decoded.³⁰ Additionally, lawyers may be tricked into logging on to a fake wi-fi network set up by cyber criminals to look like the legitimate public wi-fi network.³¹ And unknowingly, offer up their clients’ information to criminals on a platter.

Chatbots

Law firms are increasingly using Artificial Intelligence such as “chatbots” to deliver legal services and communicate with clients about their legal needs.³² As such, do legal professionals have an ethical duty to train and supervise bots?³³ Can a legal professional or law firm be disciplined for the conduct of a chatbot? Chatbots have access to a person’s personally identifiable information and other sensitive financial and medical data. Thus, are law firms in the United States that service international corporate clients subject to the requirements of the General Data Protection Regulation enacted in the European Union?

Texting

Legal professionals use text messages to contact prospective clients.³⁴ If RPC 7.3 prohibits lawyers from directly soliciting prospective clients using real-time electronic contact, do text messages constitute real-time electronic contact?³⁵ If not, must the texts follow Rule 7.2, which requires communications to include the name and office address of at least one lawyer responsible for its content?³⁶

²⁸ Ries, *supra*.

²⁹ Alison Austin, *Public Wi-fi: Lawyers Beware of Coffeehouse Practice*, American Bar Association (May 20, 2017), <https://www.americanbar.org/groups/litigation/committees/trial-practice/practice/2017/beware-of-public-wifi/>.

³⁰ *Id.*

³¹ *What Is An Evil Twin Attack?*, Panda Security (Dec. 13, 2021), <https://www.pandasecurity.com/en/mediacenter/security/what-is-an-evil-twin-attack/>.

³² Lisa Dimyadi, *Chatbots for Lawyers*, Clio, <https://www.clio.com/blog/chatbots-for-lawyers/> (last visited Dec. 4, 2022).

³³ See e.g., Wash. Rules of Prof'l Conduct R. 5.1, 5.3 (2022).

³⁴ *Text Message Marketing for Lawyers*, CosmoLex, <https://www.cosmolex.com/text-message-marketing-for-lawyers-the-next-big-thing/> (last visited Dec. 4, 2022).

³⁵ See Wash. Rules of Prof'l Conduct R. 7.3 (2022).

³⁶ See Wash. Rules of Prof'l Conduct R. 7.2 (2022).



Legal professionals also use texting to communicate with existing clients.³⁷ The use of text messages raises concerns whether and how confidentiality can be maintained in these communications and what steps a legal professional should take to ensure client information is protected. At a minimum, is the legal professional aware that others may have access to the client's mobile device? Additionally, text messages are not kept by the cellular provider indefinitely for future reference. Therefore, do legal professionals need to transfer and backup text messages from their mobile phones to their computers?

Use of Unencrypted Email

The use of unencrypted email to communicate with clients is generally accepted.³⁸ However, the American Bar Association warns,

... cyber-threats and the proliferation of electronic communications devices have changed the landscape and it is not always reasonable to rely on the use of unencrypted email. For example, electronic communication through certain mobile applications or on message boards or via unsecured networks may lack the basic expectation of privacy afforded to email communications. Therefore, legal professionals must, on a case-by-case basis, constantly analyze how they communicate electronically about client matters, applying the Comment [18] factors to determine what effort is reasonable.³⁹

A Technology Security Ethics Credit Must be Mandatory Because Members Are Not Fulfilling Their Responsibilities of Competence and Diligence.

Despite the duty to keep abreast of the risks associated with relevant technology and that legal professionals increasingly use technology in their practice, most legal professionals lack training and experience in technology security to recognize and prevent a cyber-attack. Long gone are the days of the clearly dodgy email from a Nigerian prince in need, now the emails look like legitimate communications from your bank, Amazon, shipping carrier, or even your friend. With phishing, vishing, smishing, pharming, and spoofing tactics continually evolving and becoming more sophisticated and harder to detect, legal professionals not keeping up with the trends are at serious risk of jeopardizing client information and funds. The following statistics are troubling:

- More than 70% of phishing emails, socially engineered fraudulent messages designed to trick a person into revealing sensitive information or deploy malicious software, are opened by their targets.⁴⁰
- More than 59.4 million Americans fell victim to voice phishing, also known as “vishing” in 2021.⁴¹

³⁷ Mark C. Palmer, *Ethical Considerations for Lawyers When Texting Clients*, 2Civility (Jan. 6, 2022), <https://www.2civility.org/ethical-considerations-for-lawyers-when-texting-clients/>

³⁸ ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 477R (2017) (discussing securing communication of protected client information), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_477.pdf.

³⁹ *Id.* (referring to Model Rules of Prof'l Conduct R. 1.6 cmt. 18 (2016)).

⁴⁰ Nikolina Cveticanin, *Phishing Statistics & How To Avoid Taking the Bait*, DataProt (Nov. 16, 2022), <https://dataprot.net/statistics/phishing-statistics/>.

⁴¹ Trevor Cooke, *Vishing Statistics 2022: Costs of Voice Phishing Attacks*, EarthWeb (Nov. 12, 2022), <https://earthweb.com/vishing-statistics>.



- Less than 35% of the United States population can correctly define smishing, phishing scams operating through text or short message service messages.⁴²
- Millions in the US, Europe, and the Asia-Pacific region fell victim to a sophisticated pharming scam where the attackers directed bank customers to a fake website which downloaded malware to collect banking credentials before being redirected to their bank's real website.⁴³
- During the first half of 2021, 62.6% of all identity deception-based attacks, or "spoofing" attacks, leveraged display name deception that impersonated a trusted individual or brand.⁴⁴

Keeping clients' information safe is no longer just about keeping hard paper copies secure. The rise of technology in the practice of law creates several risks and raises several ethical questions. The monetary and ethical risks of failing to keep up with the benefits and risks associated with technology are significant and therefore mandating continuing legal education in this area is necessary.

Other Jurisdictions with Mandatory Technology Related Credits

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.

Mental Health Ethics Credit

A Mental Health Ethics Credit Requirement Must be Mandatory Because of the Prevalence of Mental Health Issues Among Legal Professionals

The suggested amendment includes a new requirement for all licensed legal professionals to complete one credit each reporting period in mental health ethics which should cover the ethical obligations and professional responsibilities under the rules of professional conduct regarding mental health issues.

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. A nationwide study published in the Journal of Addiction Medicine in 2016 (the "ABA Study")⁴⁵, supported by the American Bar Association, studying licensed attorneys currently employed in the legal profession, who voluntarily completed surveys sent by their respective bar associations. The study found:

⁴² Ben Martens, *11 Facts + Stats on Smishing (SMS Phishing) in 2022*, <https://www.safetymdetectives.com/blog/what-is-smishing-sms-phishing-facts/> (last visited Dec. 4, 2022).

⁴³ *What Is Pharming and How To Protect Against It*, Avast.com, <https://www.avast.com/c-pharming> (last visited Dec. 4, 2022).

⁴⁴ Zaharia, *supra*.

⁴⁵ Patrick R. Krill, Ryan Johnson & Linda A bert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, Journal of Addiction Medicine, pp. 46-52, 10(1) Jan/Feb 2016 https://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx



- a. 20.6% of respondents screened positive for hazardous, harmful, and potentially alcohol-dependent drinking, as compared with 6.4% of the general US population;
- b. 28% experienced symptoms of depression;
- c. 19% experienced symptoms of anxiety;
- d. 23% experienced symptoms of stress.

The study concluded, “attorneys experience problematic drinking that is hazardous, harmful, or otherwise consistent with alcohol use disorders at a higher rate than other professional populations.” Attorneys under 30 years old were found to be at the higher level of 32%. Further, the study found that the data underscore the need for resources devoted to address the issues of mental health and substance abuse within the legal profession, through prevention, as well as lawyers’ assistance programs and, where necessary, treatment intervention. That 2016 study cited data from a 1990 study, specific to Washington State lawyers, which found that 18% of lawyers in Washington, at that time, were “problem drinkers,” compared with an estimated 10% among American adults in the general population. The 1990 study found that 19% of Washington lawyers suffered from statistically significant elevated levels of depression, contrasted with estimated levels of depression in Western industrialized countries in the range of 3% - 9%.

Similarly, a recent survey conducted by ALM Intelligence and Law.com (“ALM Study”)⁴⁶ found:

- e. 74% of respondents feel the legal profession has had a “negative impact” on their mental health;
- f. 44% use alcohol to deal with stress;
- g. 10% self-identify as having a problem with alcohol;
- h. 4% use illegal drugs or abuse prescription drugs to deal with stress;
- i. 64% feel they suffer from anxiety;
- j. 31% self-identify as depressed;
- k. 74% feel their work environment contributes negatively to their own or colleagues’ well-being;
- l. 18% have contemplated suicide at some point in their careers.

Beyond self-assessment by respondents, the ALM Study also found that 62% of respondents know a colleague who is depressed, and 50% know a colleague with an alcohol problem.

Moreover, actual and perceived stigma is a contributing factor to mental health and addiction issues in lawyers. The ALM Study found that 65% of respondents felt they could not take extended leave to tend to mental health issues, and 77% were fearful of what their employer would think if they sought treatment through an extended leave.

Continuing Legal Education Can Assist in Ameliorating Attorney Mental Health Issues, and Therefore the Competence of Practitioners.

⁴⁶ALM’s Mental Health and Substance Abuse Survey (2020), reported and summarized by Leigh Jones, *Lawyers Reveal the Truth Depth of Mental Health Struggles, ALM’s Mental Health and Substance Abuse Survey*, <https://www.law.com/international-edition/2020/02/19/lawyers-reveal-true-depth-of-the-mental-health-struggles-378-134739/> (February 19, 2020); see also, *By the Numbers: The State of Mental Health in the Legal Industry*, <https://www.law.com/2020/02/19/by-the-numbers-the-state-of-mental-health-in-the-legal-industry/> (February 19, 2019)



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. While other elements are necessary to address the problem, including lawyers' assistance programs, available treatment, etc., the MCLE requirement is an entry point to provide a broad base of legal professionals with the knowledge they need for self-assessment, recognizing issues in colleagues, destigmatizing the need for help, knowledge and understanding of available tools and programs, including new developments.

A typical course may include current legal requirements and standards concerning competence and mental health issues, whether in oneself or colleagues; available resources, including lawyers' assistance programs; data concerning the prevalence of mental health issues in the profession; deeper understanding of the nature of mental health issues; tools for self-assessment; common warning signs in colleagues, and deeper understanding of causes and treatments.

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.

Other Jurisdictions with Mandatory Mental Health CLE Requirements

In 2017 the ABA adopted the Model Rule for Minimum Continuing Legal Education and Comments ("ABA Model Rule")⁴⁷, 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. As the ABA stated:

The Mental Health and Substance Use Disorder Credit recognizes that requiring all lawyers to receive education about these disorders can benefit both individual lawyers and the profession. This requirement is in part a response to the 2016 landmark study conducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs, entitled, "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys."⁴⁸

At the time, only five states had any form of mental health MCLE requirement. At present, at least eight states (as well as the U.S. Virgin Islands) adopted some form of this requirement.

The clear trend is toward states and other jurisdictions adopting some form of a mandatory mental health CLE, whether as a separate requirement, or couched in terms of a "professional competence" requirement. This trend suggests the importance and value of a mandatory mental health CLE. The CLE

⁴⁷ 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.

⁴⁸ ABA Model Rule Implementation Resources, American Bar Association (February 2017), <https://www.americanbar.org/events-cle/mcle/modelrule/>.



requirement elevates the importance of mental health and self-care for legal professionals. Introducing this requirement can destigmatize mental health and promote awareness and self-care. By adding a required credit in Mental Health Ethics, Washington will join other states who recognize the necessity and value of this type of education to the legal profession.

Conclusion

Based on the above discussion detailing the importance of the subjects required in the potential suggested amendment, the MCLE Board Workgroup recommends that the MCLE Board pursue the above suggested amendments to APR 11. It is the belief of this workgroup that these requirements increase the protection of clients and the public and improve legal professionals’ competency and integrity.

Timeline

Potential timeline for suggested amendment:		
April 17, 2023	MCLE Board Meeting	Workgroup presents report and recommendation to MCLE Board. MCLE Board will vote whether to move forward with suggested amendment. Reach out to stakeholders for initial feedback. Vote on opening for member and stakeholders comment period
June 16, 2023		Close written comment period.
Special Meeting of MCLE Board June 23rd	MCLE Board Meeting	Public comment period during meeting. Hear member, public, and other stakeholder comments. Discuss feedback. MCLE Board to vote on whether to make any proposed edits, and 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.
July 7, 2023	Agenda items due	BOARD OF GOVERNORS agenda items due
July 24, 2023	BOARD OF GOVERNORS Materials	BOARD OF GOVERNORS materials due.
August 11-12, 2023	BOARD OF GOVERNORS Meeting	Present to WSBA BOARD OF GOVERNORS and ask for support.
Reschedule MCLE meeting to August 18, 2023	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 25, 2023		First draft due of GR 9 coversheet.



REPORT AND RECOMMENDATION OF THE MCLE BOARD WORKGROUP

January 13, 2023

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Sept 1, 2023		Final draft due of GR 9 coversheet.
September 5, 2023	BOARD OF GOVERNORS Meeting Materials deadline	If needed, send materials to or present at the BOARD OF GOVERNORS meeting September 22-23.
October 15, 2023	Suggested Amendment Deadline	Send GR9 coversheet to Court by October 15 th .



DISCUSSION: MCLE Updates

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

Discussion Topics:

- **MCLE Certification**

On March 3, 2023, a notice of presuspension was sent to 398 licensed legal professionals who had not completed their MCLE requirements. These individuals were notified via certified mail that they have until May 2, 2023, at 5:00 p.m. to complete all MCLE and Licensing requirements. Additionally, an email and an attempt to call non-compliant individuals was made. Failure to complete the requirements will result in a recommendation from the WSBA to the WA Supreme Court for administrative suspension under APR 17. As of April 11, 2023, 234 lawyers and 10 LPOs have not yet met their MCLE requirements.

- **MCLE Board Recruitment**

The application process for the 2023-2024 fiscal year opened on March 2, 2023. For the 2023-2024 fiscal year, two MCLE Board member's terms will expire in September of 2023. The two MCLE Board members will have finished their second term and will therefore not be eligible to reapply to the MCLE Board for the next MCLE Board year. The deadline for applications is April 21, 2023. Currently, the MCLE Board has two open positions for licensed legal professionals and as of April 11th we have received one application to serve on the MCLE Board.

Nominations for open positions on the MCLE Board are made by a nomination team comprising the staff liaison, BOG liaison, and chair. Supreme Court boards may also share redacted applications with and solicit feedback from their board members. MCLE Board members may serve two consecutive terms.

- **MCLE 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. The new MCLE system is tentatively scheduled to go live in late summer or early fall 2023.

- **Discuss Setting Annual Supreme Court Meeting**

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 usually scheduled to take place during their Admin En Banc in September. If the MCLE Board has no objection the MCLE staff liaison will reach out to the Court staff and attempt to schedule the meeting for this September.

- **Update on Suggested Amendment Regarding Credit for Law Clerk Tutors**

Comments to the Court on the suggested amendment must be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than April 30, 2023. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or supreme@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

- **Budget**

The MCLE Board Staff Liaison will provide a brief overview of the MCLE Budget Summary and the current budget draft for fiscal year 2024.

Attachments:

- MCLE Budget – First Draft FY24
- MCLE Budget Summary – October 2022 (FY23)

INITIAL MCLE COST CENTER DRAFT

Washington State Bar Association Budget Summary

Cost Center
MCLE

FTEs
5.88

	Fiscal Year 2024 Budget	Fiscal Year 2023 Budget	FY24 vs FY23 Comparison	% of Change	2023 Actuals	2022 Actuals
REVENUE:						
45210 ACCREDITED PROGRAM FEES	550,000	550,000	-	0%	278,200	615,700
45215 FORM 1 LATE FEE	220,000	220,000	-	0%	111,250	226,200
45220 MCLE MEMBER LATE FEES	190,000	190,000	-	0%	153,725	422,350
45230 ANNUAL ACCREDITED SPONSOR FEES	36,000	38,250	(2,250)	-6%	38,250	34,500
45250 ATTENDANCE LATE FEES	90,000	98,000	(8,000)	-8%	59,150	119,450
45255 COMITY CERTIFICATES - REQUEST	13,800	14,000	(200)	-1%	8,750	16,825
45260 COMITY CERTIFICATES - SUBMIT	14,000	15,000	(1,000)	-7%	16,700	29,325
TOTAL REVENUE:	1,113,800	1,125,250	(11,450)	-1%	666,025	1,464,350
DIRECT EXPENSES:						
50100 STAFF TRAVEL/PARKING	50	50	-	0%	-	-
50110 STAFF CONFERENCE & TRAINING	12,000	4,900	7,100	145%	250	100
50120 STAFF MEMBERSHIP DUES	500	500	-	0%	500	500
54380 ONLINE LEGAL RESEARCH	-	-	-	-	-	1,908
54390 LAW LIBRARY	-	-	-	-	-	138
55210 MCLE BOARD EXPENSES	5,000	2,000	3,000	150%	-	-
55220 DEPRECIATION-SOFTWARE	147,331	59,565	87,766	147%	4,061	24,455
TOTAL DIRECT EXPENSES:	164,881	67,015	97,866	146%	4,811	27,102
INDIRECT EXPENSES:						
51110 SALARIES	488,420	437,860	50,560	12%	236,150	409,522
51299 BENEFITS EXPENSE	152,019	125,455	26,563	21%	50,247	118,014
51900 OTHER INDIRECT EXPENSE	182,652	151,014	31,638	21%	60,421	131,306
TOTAL INDIRECT EXPENSES:	823,091	714,329	108,762	15%	346,818	658,842
TOTAL ALL EXPENSES:	987,972	781,344	206,628	26%	351,629	685,944
NET INCOME (LOSS):	125,828	343,906	(218,078)	-63%	314,396	778,406

Washington State Bar Association

Statement of Activities

For the Period from February 1, 2023 to February 28, 2023

42% OF YEAR COMPLETE

	FISCAL 2023 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	550,000	60,100	278,200	271,800	51%	49,033
FORM 1 LATE FEES	220,000	22,600	111,250	108,750	51%	19,583
MEMBER LATE FEES	190,000	79,775	153,725	36,275	81%	74,558
ANNUAL ACCREDITED SPONSOR FEES	38,250	-	38,250	-	100%	22,313
ATTENDANCE LATE FEES	98,000	6,200	59,150	38,850	60%	18,317
COMITY CERTIFICATES	29,000	1,375	25,450	3,550	88%	13,366
TOTAL REVENUE:	1,125,250	170,050	666,025	459,225	59%	197,170
DIRECT EXPENSES:						
DEPRECIATION	59,565	595	4,061	55,504	7%	20,758
STAFF MEMBERSHIP DUES	500	-	500	-	100%	(292)
MCLE BOARD	2,000	-	-	2,000	0%	833
STAFF TRAVEL/PARKING	50	-	-	50	0%	21
STAFF CONFERENCE & TRAINING	4,900	250	250	4,650	5%	1,792
TOTAL DIRECT EXPENSES:	67,015	845	4,811	62,204	7%	23,112
INDIRECT EXPENSES:						
SALARY EXPENSE (4.88 FTE)	437,860	45,470	225,116	212,744	51%	(42,674)
BENEFITS EXPENSE	125,455	11,458	50,247	75,209	40%	2,026
OTHER INDIRECT EXPENSE	151,014	16,553	60,421	90,593	40%	2,501
TOTAL INDIRECT EXPENSES:	714,329	73,481	335,784	378,545	47%	(38,147)
TOTAL ALL EXPENSES:	781,344	74,326	340,595	440,749	44%	(15,035)
NET INCOME (LOSS):	343,906	95,724	325,430	18,476	95%	182,136