



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 705 MARCH 2020**

**DATE:** March 12, 2020

**TO:** Members, Board of Trustees

**FROM:** Elizabeth Hom, Program Supervisor, Office of Access & Inclusion  
Erica Carroll, Senior Program Analyst, Office of Access & Inclusion

**SUBJECT:** Changes in Elimination of Bias (EOB) Requirement in Minimum Continuing Legal Education (MCLE) Rules – Request to Circulate for Public Comment

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### **EXECUTIVE SUMMARY**

Goal 4, Objective (m) of the State Bar Strategic Plan provides that the State Bar will modify the Elimination of Bias requirements for the State Bar's rules for Minimum Continuing Legal Education (MCLE) by December 31, 2020. This includes revising the rules to possibly include sub-topics and expand the number of hours dedicated to the Elimination of Bias MCLE requirement.

At its meetings on December 6, 2019 and February 14, 2020, the State Bar's Council on Access and Fairness (COAF) recommended proposed changes to the MCLE rules, including: (1) increasing the Elimination of Bias (EOB) hours from one to a minimum of two hours, (2) requiring that at least one of those two hours be dedicated to courses focused on implicit bias and bias-reducing strategies, and (3) prescribing instructor experience requirements and high-level course elements for MCLE providers offering courses on the topic of implicit bias. COAF further recommended that the Board of Trustees direct the State Bar to produce an additional hour of online or "e-learning" MCLE content related to implicit bias, in order to assist attorneys in complying with the increased hours requirement.

COAF and staff recommend that the proposed MCLE rule changes be released for a 45-day public comment period, and that the Board of Trustees affirm COAF's recommendation to direct the State Bar to produce one hour of e-learning material related to implicit bias.

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## **BACKGROUND**

### **MCLE REQUIREMENTS**

The State Bar establishes and monitors compliance with the Minimum Continuing Legal Education (MCLE) requirements for attorneys licensed in California. The State Bar also approves proposed MCLE courses (also known as “activities”) and MCLE provider applications pursuant to Title 3, Division 5, Chapter 1 of the Rules of the State Bar.

Currently, attorneys are required to complete a minimum of 25 hours of MCLE every three years. State Bar Rule 2.72(A)(2) presently includes a requirement that attorneys participate in “at least one hour dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation” as part of the 25 hours.<sup>1</sup>

### **THE STATE BAR’S STRATEGIC PLAN AND BUSINESS AND PROFESSIONS CODE SECTION 6070.5**

In January 2019, the Board of Trustees updated the State Bar’s 2017-2022 Strategic Plan to adopt nine objectives related to diversity and inclusion. This included Objective (m), which focuses on modifying the current Elimination of Bias (EOB) MCLE curriculum and increasing the number of hours.

Concurrently, the California State Legislature advanced AB 242, a bill that required the State Bar to enact rules incorporating the topic of implicit bias and bias-reducing strategies into its MCLE curriculum for all licensees. Adding section 6070.5 to the Business and Professions Code, AB 242 was enacted into law.

This new statute also calls for the State Bar to require MCLE providers who offer implicit bias courses to meet minimum recruitment, training, and content requirements. Beginning no later than January 1, 2022, providers offering courses on implicit bias will have to meet the requirements of the statute. Licensees will have to meet the additional implicit bias MCLE requirement in the compliance period ending January 31, 2024.<sup>2</sup>

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<sup>1</sup> Attorneys must also participate in a minimum of four hours of legal ethics training and one hour related to competence issues (substance abuse and/or mental or physical issues that impair an attorney’s ability to competently perform legal services). Beyond these specialized topic requirements, attorneys may take any course approved for general MCLE credit. State Bar Rule 2.72(A).

<sup>2</sup> MCLE compliance periods run from February 1 through January 31 of the following year. AB 242 intended for the provisions in Business and Professions Code section 6070.5 to apply to licensees beginning with those reporting for the compliance period ending January 31, 2023. Statutory changes are being pursued in 2020 to address that intent. Should changes be made to the effective date in the statute, staff will move to conform the State Bar Rules.

## **COAF'S RECOMMENDATIONS TO THE BOARD OF TRUSTEES**

COAF recommended making the necessary rule changes to conform to the new Business and Professions Code section, and to increase the EOB MCLE required hours from one to two. It further recommended that the State Bar, with the assistance of COAF, develop one hour of free e-learning content for attorneys on the topic of implicit bias, and that the training be reviewed and updated every three years.

Staff consulted with the Office of Attorney Regulation & Consumer Resources, which is responsible for administering and auditing compliance with the MCLE requirements, to ensure that the proposed rule language is sufficiently clear to allow for appropriate enforcement. Both redline and clean versions of the final proposed rules are in Attachments B–E.

## **DISCUSSION**

### **THE PROPOSED MCLE RULE CHANGES FURTHER THE STATE BAR'S STRATEGIC PLAN OBJECTIVES RELATED TO DIVERSITY AND INCLUSION**

#### **Implicit Bias Is Well-Suited as a Sub-Topic under the Current EOB Definition**

The new Business and Professions Code section 6070.5 requires the State Bar to update the MCLE curriculum to include “training on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system” (Attachment A). Implicit bias is defined in AB 242 as “positive or negative associations that affect [all persons’] beliefs, attitudes, and actions towards other people,” further stating that these are unintended biases of which most individuals are unaware.

The current EOB MCLE rule, Rule 2.72(A)(2), calls for coursework related to “the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation.” This is a broad definition that could include topics such as cultural competence or humility, purposeful harassment or discrimination in the workplace or in the legal system, the impact of technology on diversity and inclusion efforts, language access, and more. Thus it encompasses, but is not synonymous with, coursework on implicit bias.

#### **The Proposed Rules Accomplish Objective (m) of the State Bar's Strategic Plan by Establishing the Sub-Topic and Increasing the Required Hours Dedicated to EOB**

The research and knowledge base related to implicit bias continues to expand, offering many opportunities for learning on new topics within that field. By making implicit bias a required EOB sub-topic, the new rules would acknowledge the primacy and relevance of the subject, which can affect individuals and institutions at all levels. This includes, but is not limited to, hiring and advancement decisions, allocation of work assignments, and workplace climate; all

have the potential to negatively impact the recruitment and retention of a diverse workforce when unrecognized implicit biases are not addressed.

Proposed State Bar Rule 2.72(B) for licensees would increase the EOB requirement from one hour to a minimum of two hours, and maintain the current definition for EOB courses while specifying that implicit bias is a required sub-topic. Licensees would participate in at least one hour of implicit bias coursework as part of the two hours dedicated to EOB. This would fulfill the requirement of Business and Professions Code section 6070.5 for implicit bias-focused coursework, while preserving the ability of licensees to explore other topics related to EOB if desired.

These changes are directly responsive to the aims of Objective (m) of Goal 4 from the State Bar's Strategic Plan, and are on track to comply with the December 31, 2020 deadline for adopting revised rules.

### **The Proposed Rules Changes Are the Best Way to Fulfill the Legislative Mandate to Update the Rules of the State Bar**

Though the proposed changes to the Rules of the State Bar will go out for public comment, it is worth noting that the underlying requirements of the new statute enacted by the Legislature are fixed. Under Business and Professions Code section 6070.5, the State Bar must incorporate content on implicit bias into its required MCLE curriculum, and establish clear requirements for providers and their MCLE activities related to implicit bias.<sup>3</sup> This will be achieved through the creation of the implicit bias sub-topic for licensees and changes to MCLE provider responsibilities; MCLE providers focused on implicit bias will have to attest to their compliance with the requirements of section 6070.5 when applying for or renewing their provider certification.

Staff and COAF believe that the best way to minimize confusion and misinterpretation among licensees, providers, and State Bar staff responsible for ensuring compliance, is to remain consistent across all applicable rules and statutes. Consequently, the updates to State Bar Rules 2.52, 2.72, 3.601, and 3.602 closely track the language of section 6070.5 where applicable. The requirements of the statute do not apply until January 1, 2022, and the proposed rules reflect this timeline as well.

### **DEVELOPMENT OF ONE HOUR OF ELIMINATION OF BIAS E-LEARNING CONTENT THROUGH THE STATE BAR WILL FACILITATE COMPLIANCE WITH THE NEW RULES**

COAF recommended that the State Bar develop one hour of online instruction for the implicit bias curriculum. They further suggested that the course be offered free of charge, and that the State Bar develop the course content in conjunction with COAF.

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<sup>3</sup> Pursuant to statute, implicit bias MCLE providers must: (1) engage in efforts to recruit and hire diverse trainers; (2) have academic training or experience teaching legal professionals on the topic of implicit bias; (3) incorporate specific topics such as implicit bias, explicit bias, and systemic bias into the course; and (4) provide or teach actionable steps for participants to employ moving forward to address their biases.

With the recommendation to increase the EOB MCLE requirement from one hour to two, COAF seeks to encourage and ease attorney compliance. COAF views this as an opportunity for the State Bar to set the standard for future EOB course offerings by other MCLE providers. The skills and knowledge that COAF members bring to the State Bar on topics related to diversity and inclusion positions them well to consult and provide feedback on the course development.

### **STAFF PROPOSES MINOR CHANGES TO ADDITIONAL RULES NOT DIRECTLY RELATED TO ELIMINATION OF BIAS**

In addition to the rules relevant to the EOB curriculum for licensees and providers, staff suggests minor nonsubstantive modifications to related rules to conform to actual practice or recent organizational changes, or simply to clarify the rules. Amendment to the following rules are proposed: 2.71(B) (provide consistent language throughout rule); 3.601 (move footnote to apply to all provisions in the rule); 3.602(B) (in the list of information that providers must retain about courses, include the names and State Bar Numbers of MCLE participants, which is current practice); 3.603 (correct the name of the Board of Legal Specialization, and eliminate references to the now-defunct Advisory Commission, as well as members of the California Young Lawyers Association, an entity that is no longer part of the State Bar); and 3.604 (change “board” to “Board of Trustees” to avoid confusion).

The proposed revised rules are found in Attachments B (redline) and C (clean version) for licensees, and Attachments D (redline) and E (clean version) for providers.

### **FISCAL/PERSONNEL IMPACT**

If the Board of Trustees approves the online implicit bias training to be developed by the State Bar, the Office of Access & Inclusion has allocated \$45,000 of its 2020 budget to produce one hour of interactive e-learning content. This amount was estimated based on other courses of similar length and sophistication commissioned by the State Bar. The development of this online training would also require some staff time devoted to shepherding the project and coordinating with COAF with regard to the content and direction of the course. However, existing staff could manage these tasks.

### **RULE AMENDMENTS**

Title 2, Division 4, Chapters 1 and 2 of the Rules of the State Bar, rules 2.52, 2.71, and 2.72.  
Title 3, Division 5, Chapter 1, Article 1 of the Rules of the State Bar, rules 3.601, 3.602, 3.603, and 3.604.

### **BOARD BOOK AMENDMENTS**

None

## **STRATEGIC PLAN GOALS AND OBJECTIVES**

Goal: 4. Promote policies and programs to eliminate bias and promote an inclusive environment in the legal system and for the public it serves.

Objective: m. By December 31, 2020, adopt revised rules to modify the Elimination of Bias MCLE requirements in a manner that considers the creation of sub-topics and expanding the number of hours of requirement, and is consistent with the timelines adopted in Business and Professions Code section 6070.5.

## **RECOMMENDATION**

**Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that staff is authorized to make available the proposed revisions to State Bar Rules relating to the minimum continuing legal education elimination of bias curriculum in the forms attached as Attachments B-E, for a public comment period of 45 days; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment is not, and shall not be, construed as a recommendation or approval by the Board of Trustees of the proposal; and it is

**FURTHER RESOLVED**, that staff may develop one hour of MCLE e-learning content related to implicit bias, and provide to licensees without charge; staff will consult with the Council on Access and Fairness in planning and producing the e-learning course, and the course will be reviewed and updated every three years.

## **ATTACHMENTS LIST**

- A.** AB 242 Bill Text
- B.** Proposed Revisions to Rules Establishing Minimum Continuing Legal Education Requirements for Licensees – Redline
- C.** Proposed Revisions to Rules Establishing Minimum Continuing Legal Education Requirements for Licensees – Clean Version
- D.** Proposed Revisions to Rules Establishing Minimum Continuing Legal Education Standards for Providers – Redline
- E.** Proposed Revisions to Rules Establishing Minimum Continuing Legal Education Standards for Providers – Clean Version

## AB 242 Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** (a) The Legislature finds and declares all of the following:

(1) All persons possess implicit biases, defined as positive or negative associations that affect their beliefs, attitudes, and actions towards other people.

(2) Those biases develop during the course of a lifetime, beginning at an early age, through exposure to messages about groups of people that are socially advantaged or disadvantaged.

(3) In the United States, studies show that most people have an implicit bias that disfavors African Americans and favors Caucasian Americans, resulting from a long history of subjugation and exploitation of people of African descent.

(4) People also have negative biases toward members of other socially stigmatized groups, such as Native Americans, immigrants, women, people with disabilities, Muslims, and members of the LGBTQ community.

(5) Judges and lawyers harbor the same kinds of implicit biases as others. Studies have shown that, in California, Black defendants are held in pretrial custody 62 percent longer than White defendants and that Black defendants receive 28 percent longer sentences than White defendants convicted of the same crimes.

(6) Research shows individuals can reduce the negative impact of their implicit biases by becoming aware of the biases they hold and taking affirmative steps to alter behavioral responses and override biases.

(a) It is the intent of the Legislature to ameliorate bias-based injustice in the courtroom.

**SEC. 2.** Section 6070.5 is added to the Business and Professions Code, to read:

6070.5. (a) The State Bar shall adopt regulations to require, as of January 1, 2022, that the mandatory continuing legal education (MCLE) curriculum for all licensees under this chapter includes training on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system. A licensee shall meet the requirements of this section for each MCLE compliance period ending after January 31, 2023.

(b) When approving MCLE providers to offer the training required by subdivision (a), the State Bar shall require that the MCLE provider meets, at a minimum, all of the following requirements:

(1) The MCLE provider shall make reasonable efforts to recruit and hire trainers who are representative of the diversity of persons that California's legal system serves.

(2) The trainers shall have either academic training in implicit bias or experience educating legal professionals about implicit bias and its effects on people accessing and interacting with the legal system.

(3) The training shall include a component regarding the impact of implicit bias, explicit bias, and systemic bias on the legal system and the effect this can have on people accessing and interacting with the legal system.

(4) The training shall include actionable steps licensees can take to recognize and address their own implicit biases.

(c) As part of the certification, approval, or renewal process for MCLE-approved provider status, or more frequently if required by the State Bar, the MCLE provider shall attest to its compliance with the requirements of subdivision (b) and shall confirm that it will continue to comply with those requirements for the duration of the provider's approval period.

**SEC. 3.** [Omitted]

## Proposed Revisions to Rules Establishing Minimum Continuing Legal Education Requirements for Licensees – Redline

### Rule 2.52 MCLE Activities

To receive MCLE credit, a licensee must complete an MCLE activity that meets State Bar standards.

- (A) The MCLE activity must relate to legal subjects directly relevant to licensees of the State Bar or have significant current professional and practical content.
- (B) The presenter of the MCLE activity must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the MCLE activity is approved for MCLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required MCLE in legal ethics, elimination of bias, or competence issues.
- (D) If the activity lasts one hour or more, the provider must make substantive written materials relevant to the MCLE activity available either before or during every MCLE activity. Any materials provided online must remain online for at least thirty calendar days following the MCLE activity.
- (E) Programs and classes must be scheduled so that participants are free of interruptions.
- (F) On and after January 1, 2022, for all training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies, the MCLE provider must meet the requirements of Business and Professions Code section 6070.5.

*Rule 2.52 adopted effective January 1, 2008; amended effective January 1, 2013; amended effective July 1, 2014; amended effective January 25, 2019.*

Rule 2.71 Compliance periods

- (A) A compliance period consists of thirty-six months. It begins on the first day of February and ends three years later on the last day of January. The three compliance groups begin and end their compliance periods in different years. A licensee must report MCLE compliance no later than the day following the end of the compliance period. The report must be made online using My State Bar Profile or with an MCLE Compliance Form. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.
  
- (B) Compliance with State Bar New Attorney Training must be effectuated and reported completed, in a manner established by the State Bar, by the last day of the month of an attorney's one-year anniversary as a State Bar licensee. Fees for noncompliance are set forth in [a the](#) Schedule of Charges and Deadlines.

*Rule 2.71 adopted effective January 1, 2008; amended effective February 1, 2018; amended effective January 25, 2019.*

Rule 2.72 Requirements

**(A) Until December 31, 2021, all licensees shall be subject to the following:**

- (1) Unless these rules indicate otherwise, a licensee who has been active throughout a thirty-six-month compliance period must complete twenty-five credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.<sup>4</sup> Total hours must include no less than 6 hours as follows:
  - (a) at least four hours of legal ethics;
  - (b) at least one hour dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation; and
  - (c) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee's ability to perform legal services with competence.
- (2) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic.
- (3) A licensee may reduce the required twenty-five hours in proportion to the number of full months the licensee was inactive or exempt in the thirty-six-month compliance period. Up to half the reduced hours may be self-study.<sup>5</sup> A tool for applying this formula is available at the State Bar Web site.
- (4) Excess credit hours may not be applied to the next compliance period.<sup>6</sup>

**(B) On and after January 1, 2022, all licensees shall be subject to the following:**

- (1) Licensees reporting for the compliance periods ending January 31, 2022 and January 31, 2023, shall be subject to the requirements set forth in paragraphs (A)(1), (A)(2), (A)(3), and (A)(4) for the compliance periods ending January 31, 2022 and January 31, 2023.**

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<sup>4</sup> Rule 2.83.

<sup>5</sup> Rule 2.83.

<sup>6</sup> But see Rule 2.93.

(2) Beginning with the compliance period ending January 31, 2024, all licensees shall comply with the following:

(a) Unless these rules indicate otherwise, a licensee who has been active throughout a thirty-six-month compliance period must complete twenty-five credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.<sup>7</sup> Total hours must include no less than ~~6~~7 hours as follows:

(i) at least four hours of legal ethics;

(ii) at least two hours dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation;

1. Of those two hours, at least one hour must focus on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system; and

(iii) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee's ability to perform legal services with competence.

~~(a)~~(b) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic, consistent with the requirements of Rule 2.52(F).

~~(b)~~(c) A licensee may reduce the required twenty-five hours in proportion to the number of full months the licensee was inactive or exempt in the thirty-six-month compliance period, except that the requirements of paragraphs (B)(2)(a)(ii) and (B)(2)(a)(iii) may not be reduced to less than one hour each. Up to half the reduced hours may be self-study.<sup>8</sup> A tool for applying this formula is available at the State Bar Web site.

~~(c)~~(d) Excess credit hours may not be applied to the next compliance period.<sup>9</sup>

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<sup>7</sup> Rule 2.83.

<sup>8</sup> Rule 2.83.

<sup>9</sup> But see Rule 2.93.

*Rule 2.72 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

## Proposed Revisions to Rules Establishing Minimum Continuing Legal Education Requirements for Licensees – Clean Version

### Rule 2.52 MCLE Activities

To receive MCLE credit, a licensee must complete an MCLE activity that meets State Bar standards.

- (A) The MCLE activity must relate to legal subjects directly relevant to licensees of the State Bar or have significant current professional and practical content.
- (B) The presenter of the MCLE activity must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the MCLE activity is approved for MCLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required MCLE in legal ethics, elimination of bias, or competence issues.
- (D) If the activity lasts one hour or more, the provider must make substantive written materials relevant to the MCLE activity available either before or during every MCLE activity. Any materials provided online must remain online for at least thirty calendar days following the MCLE activity.
- (E) Programs and classes must be scheduled so that participants are free of interruptions.
- (F) On and after January 1, 2022, for all training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies, the MCLE provider must meet the requirements of Business and Professions Code section 6070.5.

*Rule 2.52 adopted effective January 1, 2008; amended effective January 1, 2013; amended effective July 1, 2014; amended effective January 25, 2019.*

Rule 2.71 Compliance periods

- (A) A compliance period consists of thirty-six months. It begins on the first day of February and ends three years later on the last day of January. The three compliance groups begin and end their compliance periods in different years. A licensee must report MCLE compliance no later than the day following the end of the compliance period. The report must be made online using My State Bar Profile or with an MCLE Compliance Form. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.
- (B) Compliance with State Bar New Attorney Training must be effectuated and reported completed, in a manner established by the State Bar, by the last day of the month of an attorney's one-year anniversary as a State Bar licensee. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.

*Rule 2.71 adopted effective January 1, 2008; amended effective February 1, 2018; amended effective January 25, 2019.*

Rule 2.72 Requirements

- (A) Until December 31, 2021, all licensees shall be subject to the following:
- (1) Unless these rules indicate otherwise, a licensee who has been active throughout a thirty-six-month compliance period must complete twenty-five credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.<sup>4</sup> Total hours must include no less than 6 hours as follows:
    - (a) at least four hours of legal ethics;
    - (b) at least one hour dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation; and
    - (c) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee's ability to perform legal services with competence.
  - (2) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic.
  - (3) A licensee may reduce the required twenty-five hours in proportion to the number of full months the licensee was inactive or exempt in the thirty-six-month compliance period. Up to half the reduced hours may be self-study.<sup>5</sup> A tool for applying this formula is available at the State Bar Web site.
  - (4) Excess credit hours may not be applied to the next compliance period.<sup>6</sup>
- (B) On and after January 1, 2022, all licensees shall be subject to the following:
- (1) Licensees reporting for the compliance periods ending January 31, 2022 and January 31, 2023, shall be subject to the requirements set forth in paragraphs (A)(1), (A)(2), (A)(3), and (A)(4) for the compliance periods ending January 31, 2022 and January 31, 2023.

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<sup>4</sup> Rule 2.83.

<sup>5</sup> Rule 2.83.

<sup>6</sup> But see Rule 2.93.

- (2) Beginning with the compliance period ending January 31, 2024, all licensees shall comply with the following:
- (a) Unless these rules indicate otherwise, a licensee who has been active throughout a thirty-six-month compliance period must complete twenty-five credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.<sup>7</sup> Total hours must include no less than 7 hours as follows:
    - (i) at least four hours of legal ethics;
    - (ii) at least two hours dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation;
      - 1. Of those two hours, at least one hour must focus on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system; and
    - (iii) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee's ability to perform legal services with competence.
  - (b) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic, consistent with the requirements of Rule 2.52(F).
  - (c) A licensee may reduce the required twenty-five hours in proportion to the number of full months the licensee was inactive or exempt in the thirty-six-month compliance period, except that the requirements of paragraphs (B)(2)(a)(ii) and (B)(2)(a)(iii) may not be reduced to less than one hour each. Up to half the reduced hours may be self-study.<sup>8</sup> A tool for applying this formula is available at the State Bar Web site.
  - (d) Excess credit hours may not be applied to the next compliance period.<sup>9</sup>

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<sup>7</sup> Rule 2.83.

<sup>8</sup> Rule 2.83.

<sup>9</sup> But see Rule 2.93.

*Rule 2.72 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective January 25, 2019.*

## Proposed Revisions to Rules Establishing Minimum Continuing Legal Education Standards for Providers – Redline

### Rule 3.601 MCLE Activities

To be approved for MCLE credit, an MCLE activity must meet State Bar standards.<sup>2</sup>

- (A) The MCLE activity must relate to legal subjects directly relevant to licensees of the State Bar or have significant current professional and practical content.
- (B) The presenter of the MCLE activity must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the MCLE activity is approved for MCLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required MCLE in legal ethics, elimination of bias, or competence issues.<sup>3</sup>
- (D) If the activity lasts one hour or more, the provider must make substantive written materials relevant to the MCLE activity available either before or during the activity. Any materials provided online must remain online for at least thirty calendar days following the MCLE activity.

(E) Programs and classes must be scheduled so that participants are free of interruptions.

~~(E)(F)~~ On and after January 1, 2022, for all training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies, an MCLE provider must meet the requirements of Business and Professions Code section 6070.5.

*Rule 3.601 adopted as Rule 3.501 effective January 1, 2008; renumbered as Rule 3.601 effective November 4, 2011; amended effective January 1, 2013; amended effective July 1, 2014; amended effective January 25, 2019.*

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<sup>2</sup> Business & Professions Code § 6070(b) provides that programs offered by the California District Attorneys Association and the California Public Defenders Association are deemed to be approved MCLE. State Bar Rule 2.84 provides that “A licensee may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.”

<sup>3</sup> ~~Business & Professions Code § 6070(b) provides that programs offered by the California District Attorneys Association and the California Public Defenders Association are deemed to be approved MCLE. State Bar Rule 2.84 provides that “A licensee may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.”~~ See State Bar Rule 2.72 for a description of competence issues and elimination of bias.

Rule 3.602 Responsibilities of every provider

Every provider must

- (A) comply with any State Bar rules and terms applicable to an approved MCLE activity;
- (B) retain the Record of Attendance for an MCLE activity for four years from the date of the activity and submit it to the State Bar upon request. The record must include the title of the MCLE activity, date, total hours awarded, any credits awarded for legal ethics, elimination of bias, or competence issues as a component of the topic of the activity, whether the activity is participatory or self-study, and the name and State Bar number of each attendee;
- (C) furnish an MCLE Certificate of Attendance to each attendee who has met the requirements for the MCLE activity. The certificate must include the provider name, title of the MCLE activity, date, total hours awarded, any credits awarded for legal ethics, elimination of bias, or competence issues as a component of the topic of the activity, and whether the activity is participatory or self-study;
- (D) give each attendee who completes an MCLE activity a State Bar MCLE Activity Evaluation Form or its equivalent; retain the completed form for at least one year; and submit it to the State Bar upon request; ~~and~~
- (E) notify the State Bar in writing of any change in the name, address, or other contact information required by the State Bar; and
- (F) beginning January 1, 2022, if providing training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system, attest to the following:
  - (1) The provider makes reasonable efforts to recruit and hire trainers who are representative of the diversity of persons that California's legal system serves.
  - (2) The trainers have either academic training in implicit bias or experience educating legal professionals about implicit bias and its effects on people accessing and interacting with the legal system.
  - (3) The training includes a component regarding the impact of implicit bias, explicit bias, and systemic bias on the legal system and the effect this can have on people accessing and interacting with the legal system.
  - ~~(4)~~(4) The training includes actionable steps licensees can take to recognize and address their own implicit biases.

*Rule 3.602 adopted as Rule 3.502 effective January 1, 2008; renumbered as Rule 3.602 effective November 4, 2011; amended effective July 1, 2014.*

### 3.603 State Bar MCLE Activity Auditors

A State Bar MCLE Activity Auditor may be a State Bar staff member, Board of Trustees member, California Board of Legal Specialization ~~Board or Commission~~ member, ~~California Young Lawyers Association member~~ or other person designated by the State Bar to conduct an audit of a particular MCLE program or class on behalf of the State Bar. A State Bar MCLE Activity Auditor may not have a business, financial or personal relationship with or oversight responsibility for the provider of the program or class being audited. A State Bar MCLE Activity Auditor may audit the particular MCLE program or class at no cost.

*Rule 3.603 adopted effective July 1, 2014.*

Rule 3.604 Suspension or revocation of provider approval

The State Bar may revoke a provider's approval for failure to comply with these rules or the terms of any applicable State Bar agreement only by majority vote of the ~~board~~ Board of Trustees, after notice and hearing, and for good cause shown.

*Rule 3.604 adopted as Rule 3.503 effective January 1, 2008; renumbered as Rule 3.603 effective November 4, 2011; renumbered as Rule 3.604 effective July 1, 2014; amended effective March 10, 2017.*

## Proposed Revisions to Rules Establishing Minimum Continuing Legal Education Standards for Providers – Clean Version

### Rule 3.601 MCLE Activities

To be approved for MCLE credit, an MCLE activity must meet State Bar standards.<sup>2</sup>

- (A) The MCLE activity must relate to legal subjects directly relevant to licensees of the State Bar or have significant current professional and practical content.
- (B) The presenter of the MCLE activity must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the MCLE activity is approved for MCLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required MCLE in legal ethics, elimination of bias, or competence issues.<sup>3</sup>
- (D) If the activity lasts one hour or more, the provider must make substantive written materials relevant to the MCLE activity available either before or during the activity. Any materials provided online must remain online for at least thirty calendar days following the MCLE activity.
- (E) Programs and classes must be scheduled so that participants are free of interruptions.
- (F) On and after January 1, 2022, for all training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies, an MCLE provider must meet the requirements of Business and Professions Code section 6070.5.

*Rule 3.601 adopted as Rule 3.501 effective January 1, 2008; renumbered as Rule 3.601 effective November 4, 2011; amended effective January 1, 2013; amended effective July 1, 2014; amended effective January 25, 2019.*

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<sup>2</sup> Business & Professions Code § 6070(b) provides that programs offered by the California District Attorneys Association and the California Public Defenders Association are deemed to be approved MCLE. State Bar Rule 2.84 provides that “A licensee may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.”

<sup>3</sup> See State Bar Rule 2.72 for a description of competence issues and elimination of bias.

Rule 3.602 Responsibilities of every provider

Every provider must

- (A) comply with any State Bar rules and terms applicable to an approved MCLE activity;
- (B) retain the Record of Attendance for an MCLE activity for four years from the date of the activity and submit it to the State Bar upon request. The record must include the title of the MCLE activity, date, total hours awarded, any credits awarded for legal ethics, elimination of bias, or competence issues as a component of the topic of the activity, whether the activity is participatory or self-study, and the name and State Bar number of each attendee;
- (C) furnish an MCLE Certificate of Attendance to each attendee who has met the requirements for the MCLE activity. The certificate must include the provider name, title of the MCLE activity, date, total hours awarded, any credits awarded for legal ethics, elimination of bias, or competence issues as a component of the topic of the activity, and whether the activity is participatory or self-study;
- (D) give each attendee who completes an MCLE activity a State Bar MCLE Activity Evaluation Form or its equivalent; retain the completed form for at least one year; and submit it to the State Bar upon request;
- (E) notify the State Bar in writing of any change in the name, address, or other contact information required by the State Bar; and
- (F) beginning January 1, 2022, if providing training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system, attest to the following:
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  - (3) The training includes a component regarding the impact of implicit bias, explicit bias, and systemic bias on the legal system and the effect this can have on people accessing and interacting with the legal system.
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*Rule 3.604 adopted as Rule 3.503 effective January 1, 2008; renumbered as Rule 3.603 effective November 4, 2011; renumbered as Rule 3.604 effective July 1, 2014; amended effective March 10, 2017.*