

AGENDA ITEM

134 NOVEMBER

DATE: October 26, 2012

TO: Members, Member Oversight Committee
Members, Board of Trustees

FROM: Gayle Murphy, Senior Director for Admissions
Pam Wilson, Interim Senior Director of Education

SUBJECT: Return from Public Comment – Rules of the State Bar, Title 2, Div. 4, Rule 2.52 and Title 3, Div. 5, Ch. 1, Rule 3.601

EXECUTIVE SUMMARY

An educational activity must meet State Bar standards to be approved for Minimum Continuing Legal Education (MCLE) credit. The activity must relate to legal subjects directly relevant to members of the State Bar and have significant current professional and practical content.

Under this standard, an MCLE provider is authorized to provide approved credit for a program or activity that offers legal education that relates to *both* a legal subject *and* has direct professional relevance to the practice of law.

To clarify and to eliminate any ambiguity as to what constitutes permissible and credit-worthy MCLE, and to expand the scope of acceptable MCLE to expressly cover programs and activities that relate directly to the management and operation of a member's law office and to mediation training, staff has prepared proposed amendments to the rules and circulated the proposed amendment for public comment for a 45-day public comment ending on September 8, 2012. Eleven comments were received. All of the comments supported the amendments to Rule 2.52(A) and Rule 3.601(A). A summary of the comments is attached (Attachment B). The full public comment is available upon request.

It is recommended that the Board approve the amendments to Rule 2.52 (A) and Rule 3.601(A) shown below and on Attachment A, to be effective January 1, 2013.

BACKGROUND

This agenda item requests approval of amendments to State Bar Rule 2.52(A) and Rule 3.601(A) to authorize Minimum Continuing Legal Education (MCLE) credit for a program or activity that either relates to legal subjects directly relevant to members or has significant current professional and practical content.

The stated purpose of MCLE is to require active members of the State Bar of California to remain current regarding the law, the obligations and standards of the legal profession, and the management of their practices. (State Bar Rule 2.50)

The amendments will clarify and eliminate any ambiguity as to what constitutes permissible and credit-worthy MCLE for certain programs. In the past, there has been some confusion by MCLE providers as to the types of programs that will qualify for MCLE credit under certain broad categories. The proposed amendment will also expand the scope of acceptable MCLE to expressly cover programs and activities that directly relate to the management and operation of a member's law office and to mediation training, which was the rule prior to the current version of the rule.

ISSUE

Whether to adopt the amendments to State Bar Rules 2.52(A) and 3.601(A) identified in this agenda item and at Attachment A.

DISCUSSION

The stated purpose of MCLE includes educating members of the State Bar of California to remain current regarding the law, the obligations and standards of the legal profession, and the management of their practices. (State Bar Rule 2.50)

Education courses on the management of a law practice do not qualify for MCLE credit under the current MCLE rules. Examples of subjects that are not approved for MCLE credit but that can have significant professional and practical content to California lawyers include the following:

- Topics related to business or financial management of a law firm;
- Topics related to law office operation, including but not limited to facilities, staffing, systems and equipment;
- Topics related to creation and improvement of legal case work and work flow management, including time management of attorneys and support staff, and delegation of responsibility;
- Topics related to the competent delivery of legal services and/or the establishment and maintenance of effective law office management;
- Topics related to communications by and between attorneys and support staff
- Topics related to the use of computer and/or Internet technology in the practice of law or the management of a law office.

- Topics related to the lawful and ethical management of a law office's financial accounts including client trust accounts.
- Topics relating to lawful and ethical client fee agreements, fee sharing and referral arrangements.

Since these are areas in which attorneys often encounter difficulties, i.e., discipline and attorney malpractice, staff believes that it would be appropriate to permit MCLE credit for these types of courses. If the rule amendments are adopted, guidelines with much more specificity will be prepared, with the input of the MCLE providers, which would then be used to assist them in determining the kinds of courses that would be permitted.

The proposal was circulated for public comment for a 45-day public comment ending on September 8, 2012. Eleven comments were received. All of the comments supported the amendments to Rule 2.52(A) and Rule 3.601(A). A summary of the comments is attached (Attachment B). The full public comment is available upon request.

The eleven supporting comments were received from the following individuals and organizations:

1. Paul Dubow, attorney
2. Matthew J. Geyer, attorney
3. Law Practice Management and Technology Section of the State Bar
4. Michael Marx, attorney
5. Shahrar Milanfar, attorney
6. Orange County Bar Association
7. Herman Papa
8. Herb Rubenstein, out of state attorney
9. San Diego County Bar Association
10. Perry L. Segal, attorney
11. Malcolm Sher, attorney

The amendments that were published for comment used the convention of “and/or”. The State Bar Rules do not use this convention, however. Accordingly, the amendments are now shown below and at Attachment A as deleting the word “and” and adding the word “or” in its place. This is an editorial change and not a substantive change.

CONCLUSION

After circulation for a 45-day public comment period and no comments received opposing the proposed amendment, staff proposes that the Board approve the amendment to the MCLE rules in the form attached hereto as Attachment A, which deletes the word “and” and adds the word “or” to the education standards in MCLE rules 2.52(A) and 3.601(A) as follows:

“The activity must relate to legal subjects directly relevant to members of the State Bar ~~and~~ or have significant current professional and practical content.”

If the Board of Trustees approves the amendment to the rules, it is recommended that the rule change become effective January 1, 2013.

FISCAL / PERSONNEL IMPACT:

None

RULE AMENDMENTS:

Rules of the State Bar, Title 2, Div. 4, Rule 2.52 and Title 3, Div. 5, Ch. 1, Rule 3.601, effective January 1, 2013.

BOARD BOOK IMPACT:

None

RECOMMENDATION

Staff recommends that the Board Committee on Member Oversight's recommend to the Board of Trustees that they adopt the amendments to the MCLE Rules, as attached as Attachment A.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Member Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that following a period of public comment and consideration of the comments received, the Member Oversight Committee recommends that the Board approve amendments to Rules of the State Bar, Title 2, Div. 4, Rule 2.52 and Title 3, Div. 5, Ch. 1, Rule 3.601 in the form attached as Attachment A, effective January 1, 2013.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Member Oversight Committee's recommendation, the following resolution would be in order:

RESOLVED, that following a period of public comment and consideration of the comments received, upon the recommendation of the Member Oversight Committee, the Board hereby approve amendments to Rules of the State Bar, Title 2, Div. 4, Rule 2.52 and Title 3, Div. 5, Ch. 1, Rule 3.601 in the form attached as Attachment A, effective January 1, 2013.