

AGENDA ITEM

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DATE: February 21, 2013

TO: Members, Member Oversight Committee

FROM: Robert Hawley, Deputy Executive Director

SUBJECT: Proposed Changes to MCLE Requirements

EXECUTIVE SUMMARY

The Board of Trustees is interested in seeking comment on raising the requirements for continuing legal education. At its December 18 meeting, the Board Committee on Member Oversight discussed proposed changes to the Minimum Continuing Legal Education (MCLE) requirements. Staff was asked to research the MCLE requirement, provide background and a comparative study of California requirements among other state bars. This item brings forth a several options to consider including increasing the number of required hours of MCLE per compliance period. The request is for public hearings that will assist in developing a proposal. Board members with questions about the proposal may contact Robert Hawley (415) 538-2270 or at Robert.Hawley@calbar.ca.gov; or, Pam Wilson at (415) 538-2395 or Pam.Wilson@calbar.ca.gov.

BACKGROUND

California's MCLE program is the result of a process that began in 1989, when Governor Deukmejian signed into law Senate Bill 905 (Davis), the continuing legal education bill. (SB 905, Ch. 1425, added Section 6070 to the Business and Professions Code.) The 1989 legislation required the State Bar to request the California Supreme Court to adopt a rule of court authorizing the State Bar to establish and administer an MCLE program. On December 7, 1990, the Court adopted Rule 9.31, the MCLE Rule of Court.

Rule 9.31 provides a skeletal outline of an MCLE program and authorizes the State Bar Board of Trustees to adopt more detailed rules and regulations. MCLE Rules and Regulations were approved by the Board of Trustees on December 8, 1990 and the MCLE program officially began on February 1, 1992. The current MCLE Rules became effective January 1, 2008.

I. Original Requirement: February 1992 – October 2000. These requirements were set forth in the enabling statute, Supreme Court rule, or Board regulation.

Total hours required every three years: 36 hours. (statute)

- a. Maximum “self-study” hours: 18 hours. (regulation)
- b. Members must fulfill at least one-half of their MCLE requirement with activities approved for “participatory” MCLE credit. (regulation)
- c. At least 8 hours shall be in the areas of legal ethics and/or law practice management, with at least 4 of the 8 hours in legal ethics. One of the 8 hours may, instead, be satisfied by legal education in the civil and criminal remedies available for civil rights violations. However, members shall complete no less than 4 of the 8 hours in legal ethics. (statute)
- d. Prevention, detection, and treatment of substance abuse & emotional distress: 1 hour (required), but no more than 6 shall relate to emotional distress. (regulation)
- e. Elimination of bias in the legal profession based on any of, but not limited to the following characteristics: sex, color, race, religion, ancestry, national origin, blindness or other physical disability, age, and sexual orientation: 1 hour (required). (regulation)
- f. Exemptions: full-time law professors, elected state officials, full-time state employees (statute); full-time federal employees (court rule).

II. Current Requirements: October 2000 – present. Following a special commission study, the governing authorities were revised to require the following again reflected in amended statutes, rules or regulations.

Total hours required every three years: 25 (statute)

- Maximum “self-study” hours: 12.5 hours. (regulation)
- Members must fulfill at least one-half of their MCLE requirement with activities approved for “participatory” MCLE credit. (regulation)
- Special requirements within the total hours required (may be taken as participatory or self-study): (regulation)
 - Legal ethics: 4 hours (required). (statute)
 - Detection/prevention of substance abuse or mental illness: 1 hour (required). (regulation)
 - Elimination of bias in the legal profession: 1 hour (required). (regulation)
- Exemptions: full-time law professors, elected state officials, full-time state employees (statute); full-time federal employees (court rule).

III. Summary of Changes made to MCLE Requirement

1. In 1999, the Legislature reduced the MCLE requirements from 36 hours to 25 hours and removed the law practice management component. The Rule of Court was changed effective September 27, 2000 and the State Bar Rules were changed effective October 27, 2000 to comply with the legislative action.
2. Effective February 1, 2003, the “emotional distress” course requirement was eliminated by the State Bar’s Board of Trustees.

3. Effective January 1, 2008, “mental illness” was added to the substance abuse course requirement by the State Bar’s Board of Trustees (State Bar Rule 2.72(A)).
4. The State Bar’s Board of Trustees modified MCLE Rules 2.52(A) and 3.601(A); the activity must relate to legal subjects directly relevant to members of the State Bar and **or** have significant current professional and practical content. This change is effective January 1, 2013.

IV. Comparisons of State Bar MCLE Credit Hour Requirements

California currently has the second lowest MCLE credit hour requirement among states that have a mandatory continuing legal education requirement, averaging 8.33 hours per year. Alaska and Hawaii both have a requirement of 3 hours per year, tying for the lowest MCLE requirement.

Average MCLE hours/year by state

- Arizona 15
- California 8.33
- Florida 10
- Nevada 12
- New York 12
- Oregon 15
- Texas 15
- Washington 15

Continuing Education requirements among major professions in California (average hours per year within a compliance period)

- CPA 40 hours
- Physician 25 hours
- Dentist 25 hours
- Pharmacist 15 hours
- Nurses 15 hours
- Architect 15 hours
- Lawyers 8.33 hours

REQUEST FOR PUBLIC HEARINGS

The Board is seeking comment on enhancing the MCLE requirements for lawyers, including but not limited to the following:

- Increasing the number of required hours of MCLE per compliance period.
- Increasing the number of required hours of ethics education.
- Including law practice management topics as an option to satisfy a portion of the ethics obligation.
- Examining the required subfields (such as bias, substance abuse) and whether to continue to require courses in these areas.

FISCAL / PERSONNEL IMPACT:

None

RULE AMENDMENTS:

Changes to the Business and Professions Code Sections 6070-6071 and California Rules of Court Rule 9.31[Minimum continuing legal education], will be required if any modifications are made to the MCLE requirements. Additional public comment will be sought when the Board determines what modifications, if any, to recommend and implement.

BOARD BOOK IMPACT:

None

RECOMMENDATION

Staff recommends that the Member Oversight Committee authorize staff to identify and develop topics pertaining to MCLE requirements to be discussed at public hearings over the course of the next 90 days. The purpose of the hearings will be to gather comment in order to report back to the Member Oversight Committee at its July meeting the development of a proposal on this subject

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Member Oversight Committee agree with the above recommendations, the following resolutions would be appropriate:

RESOLVED, that the Member Oversight Committee authorizes staff to identify and develop topics pertaining to MCLE requirements to be discussed at public hearings over the course of the next 90 days. The findings of the public hearings will be reported to the Member Oversight Committee at its July meeting; and it is

FURTHER RESOLVED, that the authorization for public hearings is not, and shall not be construed as, a statement or recommendation of approval of any specific option.