

AGENDA ITEM

A&E III-C MAY 2015

DATE: May 4, 2015

TO: Members, Admissions and Education Committee

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

SUBJECT: Proposal to Increase Required MCLE Hours and Require that Specified Number Be Relevant to Attorney's Practice Area
– Request to Circulate for Public Comment

EXECUTIVE SUMMARY

At its October 2013 meeting, the Board of Trustees approved a number of changes to the Minimum Continuing Legal Education (MCLE) rules. At that time, the Board also recommended that a proposal to increase the number of required hours of MCLE for State Bar members be further analyzed and brought back for discussion during a future meeting. Several Board members have indicated they would like to receive additional public comment on raising the number of required hours of MCLE before proceeding further. This agenda item recommends that the Board Committee authorize a 45-day public comment period for proposed amendments that would increase the number of required MCLE hours and require that a specified number of those hours be relevant to a member's practice area. Board members with questions about the proposal may contact Gayle Murphy at (415) 538-2322 or Gayle.Murphy@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. As discussed below, several changes have been made since the MCLE program began.

I. Original Requirements

When the MCLE program began on February 1, 1992, the requirements were:

Total hours required every three years: 36 hours.

- a. Maximum “self-study” hours: 18 hours.
- b. Members must fulfill at least one-half of their MCLE requirement with activities approved for “participatory” MCLE credit.
- c. At least 8 hours must 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.
- d. Prevention, detection, and treatment of substance abuse & emotional distress: 1 hour required, but no more than 6 could be related to emotional distress.
- 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.
- f. Exemptions: full-time law professors, elected state officials, full-time state employees; full-time federal employees; retired judges.

II. Changes Made Over Time

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, consistent with the legislative action. When the total hours required every three years was reduced to 25, the following changes were also made:
 - Maximum “self-study” hours: 12.5 hours.
 - Members must fulfill at least one-half of their MCLE requirement with activities approved for “participatory” MCLE credit.
 - Special requirements within the total hours required (may be taken as participatory or self-study):
 - Legal ethics: 4 hours required.
 - Detection/prevention of substance abuse & emotional distress : 1 hour required.
 - Elimination of bias in the legal profession: 1 hour required.
 - Exemptions: full-time law professors, elected state officials, full-time state employees; full-time federal employees. Former exemption for retired judges eliminated.
2. Effective February 1, 2003, the “emotional distress” course requirement was eliminated by the Board of Trustees.
3. Effective January 1, 2008, “mental illness” was added to the substance abuse course requirement by the Board of Trustees.
4. Effective January 1, 2013, the Board of Trustees modified the MCLE Rules to provide that the activity must relate to legal subjects directly relevant to members of the State Bar and **or** have significant current professional and practical content.

5. Effective July 1, 2014 the Board of Trustees modified the MCLE Rules to make the following changes:

- Bias – The scope of bias education was expanded to include “the recognition and elimination of bias in the legal profession and society.”
- Substance Abuse – A “competence issues” requirement was created to replace and expand “prevention, detection, and treatment of substance abuse or mental illness.”
- Members of the California Young Lawyers Association and others established MCLE Provider Auditors – an expanded provider audit system to include auditors of programs or classes.
- Written Material Requirement - MCLE activities for programs one hour or longer must have written materials.
- Definitions of “participatory” activity and “self-study” activity – Clarification to the definitions of “participatory” activities and “self-study” activities were included.

III. Summary of Current Requirements

The current MCLE requirements are:

Total hours required every three years: 25

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

IV. Pending Proposals

In November 2014, the Board of Trustees adopted a proposal from the Task Force on Admissions Regulation Reform (TFARR) that newly admitted State Bar members be required to complete ten hours of MCLE in addition to the 25 hours required of all active State Bar members every three years. The proposal recommends that the additional MCLE include 4 hours of first-year legal ethics and 6 hours of first-year basic skills training and that the additional MCLE be completed within one year following the date of admission. The requirements cannot be satisfied through self-study activities. As directed by the Board of Trustees, staff is pursuing adoption of proposed amendments to the Rule of Court and the Business and Professions Code that would authorize the proposed changes recommended by TFAAR, which includes other proposals for new admittees not related to MCLE.

VI. Comparisons of State Bar MCLE Credit Hour Requirements

California currently has the second lowest MCLE credit hour requirement among the 45 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

DISCUSSION

The issue of whether State Bar members should be required to complete additional MCLE is one that has been discussed by the Board of Trustees on many occasions over the years. Most recently in 2013, the Board Committee authorized a public comment period for a proposal that would have returned to a 36-hour MCLE requirement, which would have included 8 hours of legal ethics and/or law practice management, with at least 4 of the 8 hours in ethics. The State Bar received many public comments, a majority of them not in favor of the proposal. Staff at that time recommended that the proposal specifically addressing the number of hours required, including legal ethics and law practice management, be further analyzed, with a detailed proposal to be developed and considered at a future meeting, which the Board of Trustees agreed to.

This Agenda Item presents that issue for further consideration. In addition to possibly requiring more hours of MCLE, several members of the Board of Trustees would like to explore additional amendments to the MCLE requirements. There have been concerns expressed that some attorneys fulfill their MCLE requirement by taking courses that are not necessarily applicable to their area of practice, but for the sole purpose of satisfying their MCLE requirement. One way to address this concern is to require that a specified number of MCLE hours be relevant to an attorney's practice area.

Several members of the Board of Trustees have expressed their belief that increasing the number of MCLE hours required from 25 to 36 and requiring that at least 12 of those hours be relevant to an attorney's practice area is a public protection matter. Ensuring initial and continuing competence in the attorneys that are licensed by the State Bar is a primary objective of the Board of Trustees and one action that could be taken toward meeting that goal is to expand the MCLE requirements. Although it is difficult to measure the direct correlation between competence and additional education, which has been one of the past criticisms made by those in opposition to increasing the number of hours, this proposal will achieve greater competency by requiring additional continuing education of all actively practicing attorneys in California.

The following recommended changes to the requirements are suggested:

1. Increase the number of required MCLE hours from 25 to 36 per three-year compliance period.
2. Of the 36 hours, require that at least 12 be relevant to an attorney's practice area.
3. Increase the maximum number of "self-study" hours from 12.5 to 18.

Attached as Appendix A are proposed amendments to the Business and Professions Code, Rules of Court, and the Rules of the State Bar of California that would be used to implement the revised requirements. If the Board Committee agrees that these proposed changes to the requirements should be further considered, it is recommended that it authorize a 45-day public comment period.

FISCAL / PERSONNEL IMPACT

None

RULE AND STATUTORY AMENDMENTS

Business and Professions Code, amend sections 6070-6071

Rule of Court, amend rule 9.31

Rules of the State Bar, Title 2, Div. 4, amend rule 2.72

BOARD BOOK IMPACT

None.

BOARD COMMITTEE RECOMMENDATION

Staff recommends that the Admissions and Education Committee approve the following resolution:

RESOLVED, that the Admissions and Education Committee authorizes staff to make available for public comment for a period of 45 days, proposed revisions to Business and Professions Code Sections 6070-6071; proposed revisions to the Rule of Court 9.31; and proposed revisions to the Rules of the State Bar, Title 2, Div. 4; and it is

FURTHER RESOLVED, that the authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.

ATTACHMENTS LIST

Attachment A - Proposed Amendments to Business and Professions Code Sections 6070-6071

Attachment B - Proposed Amendments to California Rules of Court Rule 9.31

Attachment C - Proposed Amendments to Rules of the State Bar, Title 2, Div. 4