

AGENDA ITEM

133 JULY 2015

DATE: July 14, 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 — Return From 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 indicated they would like to receive additional public comment on raising the number of required hours of MCLE before proceeding further.

At its May 2015 meeting, the Board Committee authorized 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. This agenda item discusses the public comments that were received (122 public comments were received).

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):
 - o Legal ethics: 4 hours required.
 - o Competency Issues (formerly detection/prevention of substance abuse or mental illness): 1 hour required.
 - o 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.

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. 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 do.

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. There have also 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.

A 45 day request for public comment period began May 12, 2015 on the following recommended changes to the MCLE requirements:

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; and
3. Increase the maximum number of "self-study" hours from 12.5 to 18.

Of the 122 comments received, seven (7) were in favor, 98 were opposed and 17 were impartial. There were 59 comments specifically relating to the 12 hour requirement for courses relevant to an attorney's practice area. A compilation of the comments is available by request.

The comments followed a series of themes as follows:

Proposal to increase required MCLE hours

There is no evidence to support the conclusion that increasing the required MCLE hours will improve public protection or the competence of attorneys. The proposal will only result in an increased financial burden on all members, particularly solo practitioners, small firm practitioners, and attorneys working for non-profit legal service providers. Many of those who commented questioned the quality of some MCLE courses, and believe that if the proposal is approved, it will simply serve to provide more income for the providers.

Proposal to require that 12 hours be relevant to an attorney's practice area

Newer attorneys may not have a practice area. Attorneys may be seeking to change their practice area or expand into other areas, and would therefore need and benefit from training in an area in which they do not currently practice. Several of those who commented questioned how a member's "practice area" will be determined (e.g., for new attorneys, general

practitioners, attorneys who specialize in more than one practice area, attorneys transitioning to a different practice area).

Staff recommends that further consideration of this proposal be deferred until after a new Executive Director has been hired. With the input of the new Executive Director and working with the Board and other staff, the same or a modified proposal will be prepared for consideration by the Board at a future meeting.

FISCAL/PERSONNEL IMPACT

None

BOARD COMMITTEE RECOMMENDATIONS

The Admissions and Education Committee recommends approval of the following resolution:

RESOLVED, that the Admissions and Education Committee defers consideration of the proposal to increase the number of MCLE hours for State Bar members, which includes requiring 12 hours be relevant to a member's practice area, until after a new Executive Director has been hired.