The State Bar
of California

OPEN SESSION
AGENDA ITEM
54-133 MAY 2019
PROGRAMS COMMITTEE III.C

DATE: **May 16, 2019**

TO: **Members, Programs Committee**
Members, Board of Trustees

FROM: **Robert McPhail, Program Manager, Attorney Regulation & Consumer Resources**
Donna Hershkowitz, Chief of Programs

SUBJECT: **Proposed Changes to State Bar Rules to Accommodate Minimum Continuing Legal Education (MCLE) Provider Course Upload Program - Return from Public Comment and Request for Approval**

EXECUTIVE SUMMARY

Objective c of Goal 2 of the 2017-2022 Strategic Plan calls for the State Bar of California to, "[begin] auditing attorney compliance with MCLE requirements in the most cost effective and efficient manner no later than December 31, 2020." To accomplish this goal, staff is developing a system that requires MCLE providers to transmit attendance information electronically in lieu of attorneys self-reporting compliance with their triennial requirement. The State Bar can use these electronic records to effectively, efficiently and comprehensively audit attorney compliance with MCLE requirements using automated methods. The attendance information supplied by the providers could also be used to provide licensees with access to ongoing progress reports to assist in tracking their own compliance. Compelling providers to supply attendance data requires changes to the current MCLE rules governing providers and attorneys.

At its November 2018 meeting, the Programs Committee approved circulating the proposed rules for public comment. After reviewing the public comment, staff conducted a meeting with the commenters to better understand and address their concerns. The changes made in response to the public comment are not substantive and do not require further circulation for public comment. This agenda item requests adoption of those rules.

BACKGROUND

Attorneys licensed by the State Bar of California have been required to certify completion of MCLE requirements since 1992. Since inception of the program, compliance reporting has been accomplished by declaration. Attorneys are expected to maintain their own records and then declare under penalty of perjury stating that they are in compliance at the end of each three-year reporting cycle.

The State Bar has conducted random audits of attorneys since the beginning of the MCLE program and has conducted an MCLE audit each year since 2011. A sample as large as 10 percent of those reporting compliance has been audited each year. Unfortunately, the results of these audits have not been encouraging. Staff found that about 20 percent of licensees audited are not in compliance with their MCLE requirement (or do not have documentation to support compliance) and approximately 5 percent of those audited have not completed any MCLE courses at all when they declare that they are in compliance. The deficiency rate indicates that serious compliance problems exist. Unfortunately, it is not cost effective to conduct an MCLE audit of every licensee using the current processes.

As part of the strategic planning process, a review of the audit process was conducted. After reviewing the process, State Bar staff determined that a more efficient and effective way of auditing MCLE compliance is to require MCLE providers to directly supply the State Bar with their course records. This will allow the State Bar to audit every licensee's MCLE compliance and provide independent verification of courses taken.

Requiring MCLE providers to electronically submit records requires changes to the State Bar MCLE rules. At its November 2018 meeting, the Programs Committee approved circulating the proposed rule changes for public comment. Approximately 50 public comments were received. After review by staff, a meeting was held with those who had commented to discuss their comments, clarify some issues and discuss possible solutions to some of the concerns raised. Based on the public comments, small adjustments were made to the proposed rule changes. The changes made to the proposed new rules were not significant enough to require additional circulation for public comment.

DISCUSSION

As part of ensuring that the State Bar effectively carries out its public protection mission, the State Bar has been evaluating MCLE best practices across the country in an effort to improve compliance with California MCLE requirements. The State Bar convened a meeting with providers two years ago to seek initial input and begin our research process. In addition, the practices of other states were reviewed. Rather than have attorneys simply maintain certificates of attendance and self-declare their compliance, many states require MCLE providers to electronically upload course attendance information to the regulating entity. There is no single system or approach used across the country, so staff reviewed these systems to identify what might best meet the State Bar's needs and best serve the needs of providers. Staff

developed preliminary specifications for an MCLE provider reporting system that will allow the State Bar to collect attendance data while not placing an undue burden on providers.

CURRENT PROCESS

The current MCLE audit process is largely manual, and is inexact and time consuming. To conduct the audit, 6 months after the end of the compliance period (covering roughly one-third of active licensees) a random sample of up to 10 percent of licensees in the compliance group is selected. Notices are sent to those selected for audit, and they are requested to provide copies of attendance certificates and to input information online indicating the courses completed. Staff then manually reviews the certificates of attendance, calculates the total hours of MCLE completed, and verifies that each course is eligible for MCLE credit and was taken during the compliance period. Staff also analyzes the certificates to ensure they have not been altered or are not otherwise fake. From start to finish, the audit takes approximately 5 months to complete.

This manual review relies on licensee-provided information, and because of the nature of the review process, is necessarily limited in size. An alternative method used by at least 18 states requires MCLE providers to supply the attendance records.

BEST PRACTICES

After reviewing the technology other states have put in place, staff identified three primary methods for providers to submit electronic attendance records. The first method would allow providers to do mass uploads of large numbers of course attendance records through an FTP site, web services application, or similar tools. This method may be best suited to large online providers with sophisticated record keeping databases. The second method would allow providers to upload excel spreadsheets through an online portal. This method is simpler but still can be used to transfer large quantities of data. The final method is an internet interface which allows providers to input one attendee at a time. This could be used onsite at courses as a sign-in sheet or input by provider staff. Staff envisions having all three options available so providers can use the method that best meets their needs and technological and staffing capabilities. Providers can also select different options for different situations.

The State Bar convened a focus group of providers in July of this year to request input on the proposed approaches and identify any concerns or issues for further consideration. The focus group (which included in excess of 30 different MCLE providers) had large and small providers, national and California only providers, for-profit and non-profit providers, law firms, associations, those whose business is to provide MCLE, those that offer online education, and those that conduct multi-day or multi-session in person conferences at which MCLE is made available. Staff presented this multi-mode approach to the focus group. The focus group suggested also allowing, as a fourth method, the use of optical character recognition (OCR) technology to scan paper attendance sheets. Staff has determined that this approach is not practically feasible at this time.

Providers who currently operate in states that have similar requirements were generally supportive of the approach and thanked the Bar for identifying multiple methods for submission of data, and not restricting providers to a single approach. Providers who offer conferences with multiple MCLE sessions, especially those with fewer staff or administrative resources, raised concerns about the workload involved in requiring participants to sign-in for each session attended, to distribute certificates of attendance for each individual session, and to electronically submit attendance records after the conference. Some of these concerns relate to an arguable misapplication of existing MCLE provider rules. Importantly, the proposal would not require providers to verify attendance in ways or to an extent not currently required.

To supplement the input received from the focus group, staff sent a survey to 2,500 MCLE providers; more than 500 responses were received. The survey was designed to assess the size and technical capability of the MCLE providers as well as to find out how many providers are familiar with data uploading because they provide MCLE in other states. Staff also followed up with on the issues raised concerning multi-session, multi-track events to assess the prevalence of those type of courses. The results of the survey mirrored the comments of the focus group. It was also found that about 20 percent of respondents were doing multi-session courses which made it clear that additional attention to, and policy guidelines concerning that issue are necessary.

Staff believes that the processes described above requiring providers to electronically submit attendance records using any one of the three methods will meet the strategic goal of efficiently auditing attorney MCLE compliance and will, generally, impose little additional burden on providers. The State Bar will gain additional benefits from this change, as will licensees. In the current auditing process, some instances of noncompliance may simply be attributable to an attorney not being able to locate the certificate for MCLE courses they in fact completed. Having providers upload attendance records will eliminate findings of noncompliance attributable to such record-keeping errors. Furthermore, the State Bar will be able to provide licensees with accurate reporting on their progress towards meeting their MCLE requirements in advance of them having to report compliance. Finally, while this process change does not directly impact the quality of MCLE being provided, it does afford the State Bar more visibility into what activities are conducted by the MCLE providers.

PROPOSED RULE CHANGES

Currently, MCLE providers register with the State Bar as a Single Activity Provider (SAP, which allows them to offer a specific course for a two year period) or as a Multiple Activity Provider (MAP, which allows them to offer any MCLE activity for a period of 3 years without State Bar course approval). While SAP's and MAP's are required to maintain course records, they have no requirement to provide those records to the State Bar. Therefore, rule changes are necessary. Following the approval of the Programs Committee in November 2018, the proposed rules were circulated for a 45 day public comment period. In addition, the State Bar reached out to all current MAP's and SAP's to invite them to submit public comment. The proposals circulated for public comment are included as Attachments C and D.

PUBLIC COMMENT

We received 50 separate comments: 25 were opposed to the proposal, 9 supported the rule change, 12 supported, but proposed specific changes or exemptions to the rule, and 4 did not clearly state whether they were writing in support or in opposition to the rule change. 9 of the 25 who were opposed also proposed changes to the rule. A number of those both in favor or opposed had questions or suggestions about the administration and technology for the program.

The key themes that emerged from the comments included the following:

- Providers do not have the resources to report attendance.
- Implementing this requirement would be particularly challenging and labor intensive for multi-day, multi-track events where large number of courses are offered.
- The provider upload system must be accessible to those with disabilities.
- General questions about the design of the reporting system and administration of the requirement.
- The rule change places a burden on the providers to verify attendance.
- The requirement that providers must submit attendance reports within 30 days is too onerous.

After review of the public comment, State Bar staff brainstormed additional solutions to mitigate some of the concerns raised. All commenters were invited to a feedback session to further discuss the proposal and respond to the newly developed solutions. Approximately 50 people representing about 20 of the commenting entities attended.

Response To Public Comment: Burden of Reporting Attendance

The State Bar is making every effort to make the reporting requirement as user friendly as possible. The system development is being designed to accommodate the different levels of technological sophistication across providers and to minimize the amount of time spent keying or inputting attendance records.

Based on a suggestion provided during the feedback session from the Sacramento Public Defenders Office, to make the recording of attendance even more simple, the State Bar will include a QR barcode on the licensee's "My State Bar Profile" and/or Bar card, which would allow providers to use readily available and affordable scanning technology to collect attendance information.

Response to Public Comment: Multi-Day / Multi-Track Events

Staff proposed a solution to this issue during the feedback session which was very well received. The solution permits providers with multi-session events to upload the full roster of courses available during the session, and the complete list of attendees. Attendees, as part of their continuing obligation to certify compliance with their MCLE requirements, will be required

to indicate which courses they attended during that multi-session event, and confirm the amount of time attended. This is a minor addition to the current plan to require attorneys to affirmatively verify attendance that is reported by providers for all other MCLE taken.

Response to Public Comment: Ensuring the System is Accessible

The provider upload will be a web-based solution hosted by the State Bar of California. The State Bar will ensure the application is developed in accordance with State Bar policies and procedures to be accessible and in compliance with all applicable rules.

Response to Public Comment: Burden on Providers to Verify Attendance

The proposed rule change does not alter the current requirement that providers verify attendance for participatory MCLE. It has become clear that some confusion surrounds this issue. Consequently if this rule is implemented, the State Bar will create documents to describe best practices that should be used by providers to create attendance records. There were concerns expressed, however, that the technological solution would require providers to identify the amount of time each attendee was present at the event (e.g., if you arrived 15 minutes late to a one hour MCLE course, the provider would need to report 45 minutes for that attendee). Currently, attendees are required to report only the amount of time attended if less than the full length of the course. At the feedback session, we explained that the provider will have the option of uploading the amount of time for which the course is offered, and the licensee would need to validate the amount of time he or she attended.

Public Comment: Conclusion

The feedback session was well received, and many attendees indicated that the concerns they had raised in their written comment had now been addressed to their satisfaction. Although staff did not have the opportunity to reach out to all commenters who indicated concerns with or opposition to the initial proposal, because we believed their input may be representative of many of the commenters State Bar staff reached out to the California Lawyers Association and the Legal Aid Association of California. Both agreed that the State Bar responses addressed all of the concerns they had raised.

Two minor changes to the rules changes as circulated for public comment are being proposed in response to the comment received.

One proposed new sentence concerning provider verification of “participatory activity” was removed from both the Licensee Rules and Provider Rules. (See Rules of the State Bar of California, Title 2, Div. 4, Ch. 1, Rule 2.51(F); Rules of the State Bar of California, Title 3, Div. 5, Ch. 1, Art. 1, (“Provider Rules”), Rule 3.600(H).)

The amount of time allowed for providers to report attendance has been changed from 30 days to 60 days. (See Provider Rules, Rule 3.602(C) .)

These changes, highlighted in Attachments E and F, are not substantive enough to require an additional public comment period.

FISCAL/PERSONNEL IMPACT

Funding for the development of the reporting system has been included in the State Bar's budget. While the provider MCLE reporting system will require staff administration and oversight, this new workload should replace the existing work required to perform the audits. Implementation of the system will likely also result in increased call center volume from licensees and providers, particularly during its implementation.

RULE AMENDMENTS

Title 2, Division 4, Chapter 1
Title 3, Division 5, Chapter 1

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

Objective: c. Begin auditing attorney compliance with MCLE requirements in the most cost effective and efficient manner no later than December 31, 2020.

RECOMMENDATIONS

It is recommended that the Programs Committee and Board of Trustees approve the following resolution:

> **RESOLVED**, that following the 60-day public comment period, the Board of Trustees hereby adopts the amendments to MCLE Attorney and Provider rules as set forth in Attachments A and B; and it is
>
> **FURTHER RESOLVED**, that the amendments to the rules be effective on December 1, 2020.

ATTACHMENT(S) LIST

A. MCLE Provider Rule, as proposed for adoption

B. MCLE Attorney Rule as proposed for adoption

C. MCLE Provider Rule as circulated for public comment

D. MCLE Attorney Rule as circulated for public comment

E. MCLE Provider Rule reflecting changes made following public comment

F. MCLE Attorney Rule reflecting changes made following public comment

G. Summary of Public Comment

H. Public Comment

TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007
Amended effective March 10, 2017

DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES

Chapter 1. Providers of Continuing Legal Education

Article 1. Global provisions

Rule 3.600 Definitions

(A) An "MCLE activity" is minimum continuing legal education that the State Bar approves as meeting standards for MCLE credit.

(B) A "provider" is an individual or entity approved by the State Bar to grant MCLE credit for an MCLE activity.

(C) A "Single Activity Provider" is approved to grant credit for a single MCLE activity after submitting an application for approval of the activity in accordance with State Bar procedures and paying the appropriate processing fee.

(D) A "Multiple Activity Provider" is approved to grant credit for any MCLE activity that complies with the terms of the Multiple Activity Provider Agreement.[1]

(E) "MCLE credit" is the number of credit hours that a member may claim to meet the requirements of these rules.

(F) A "credit hour" is sixty minutes actually spent in an MCLE activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals. MCLE credit includes time for introductory and concluding remarks and for questions and answers.

(G) An "approved jurisdiction" is recognized by the State Bar as having MCLE requirements that substantially meet State Bar standards for MCLE activities and computing MCLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.

(H) A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means. Methods for verification include sign-in in writing or electronically at the start of the course.

[1] 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.

(I) A "self-study activity" is any MCLE activity identified in Rule 2.83. Self-study activities may be presented in person or delivered by electronic means.

(J) "State Bar MCLE Activity Auditors" are individuals designated by the State Bar to conduct audits of MCLE activities on behalf of the State Bar for the purpose of evaluating compliance by providers with these rules.

Rule 3.600 adopted as Rule 3.500 effective January 1, 2008; renumbered as Rule 3.600 effective November 4, 2011; amended effective July 1, 2014.

Rule 3.601 MCLE Activities

To be approved for MCLE credit, an MCLE activity must meet State Bar standards.

(A) The MCLE activity must relate to legal subjects directly relevant to members 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.[2]

(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.

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.

Rule 3.602 Responsibilities of every provider

Every provider must

[2] 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 member 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.

(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, and whether the activity is participatory or self-study;

(C) provide the State Bar of California with electronic attendance records in a form acceptable to the State Bar of California within 60 days of completion of the activity;

(D) furnish an MCLE Certificate of Attendance upon completion of the program 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 the course was completed, 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;

(E) 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

(F) notify the State Bar in writing of any change in the name, address, or other contact information required by the State Bar.

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 Legal Specialization Board or Commission 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, 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.

Rule 3.605 Complaints about Providers

The State Bar does not intervene in disputes between a provider and an attendee or potential attendee, but complaints the State Bar receives regarding a provider are considered in assessing the provider's compliance with these rules.

Rule 3.605 adopted effective July 1, 2014

Article 2. Multiple Activity Providers

Rule 3.620 Applying for Multiple Activity Provider status

To be considered for Multiple Activity Provider status, a provider must

(A) within a two-year period receive State Bar approval for four different MCLE activities and hold them on four different dates; and

(B) submit an application and processing fee for Multiple Activity Provider status within that same period.

Rule 3.620 adopted as Rule 3.520 effective January 1, 2008; renumbered as Rule 3.620 effective November 4, 2011.

Rule 3.621 Renewing Multiple Activity Provider status

To be eligible for renewal of up to three years, a Multiple Activity Provider must

(A) apply for renewal using the State Bar form for Multiple Activity Provider Renewal;

(B) submit evidence that it has offered four different MCLE activities that meet the requirements of these rules within the two years preceding its application for renewal;

(C) submit the completed form and any required documentation by the deadline set by the State Bar;

(D) submit any complaints it may have received regarding compliance with these rules; and

(E) pay the appropriate fees.

Rule 3.621 adopted as Rule 3.521 effective January 1, 2008; renumbered as Rule 3.621 effective November 4, 2011; amended effective July 1, 2014.

TITLE 2. RIGHTS AND RESPONSIBILITIES OF MEMBERS

Adopted July 2007
Amended effective February 1, 2018

DIVISION 4. MINIMUM CONTINUING LEGAL EDUCATION

Chapter 1 Purpose and scope

Rule 2.50 Purpose of MCLE

Rules for Minimum Continuing Legal Education (MCLE) 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. A member's involuntary enrollment as inactive for failing to comply with these rules is public information available on the State Bar Web site.

Rule 2.50 adopted effective January 1, 2008.

Rule 2.51 Definitions

(A) An "MCLE activity" is continuing legal education that the State Bar approves as meeting standards for MCLE credit.

(B) A "provider" is an individual or entity approved by the State Bar to grant MCLE credit for an MCLE activity.

(C) "MCLE credit" is the number of credit hours that a member may claim to meet the requirements of these rules.

(D) A "credit hour" is sixty minutes actually spent in an MCLE activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals.

(E) An "approved jurisdiction" is recognized by the State Bar as having MCLE requirements that substantially meet State Bar standards for MCLE activities and computing MCLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.

(F) A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means. Methods for verification include sign-in in writing or electronically at the start of the course.

(G) A "self-study activity" is any MCLE activity identified in Rule 2.83. Self-study activities may be presented in person or delivered by electronic means.

(H) State Bar New Attorney Training is MCLE that is developed and made available directly from the State Bar and is focused on law practice competency for newly admitted members.

Rule 2.51 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective February 1, 2018.

Rule 2.52 MCLE Activities

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

(A) The MCLE activity must relate to legal subjects directly relevant to members 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.

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

Rule 2.53 New members

(A) A new member is permanently assigned to a compliance group on the date of admission.

(B) The initial compliance period for a new member begins on the first day of the month in which the member was admitted. It ends when the period ends for the compliance group. If the initial period is less than the period for the compliance group, the required credit hours may be reduced as provided in these rules.[1]

[1] Rule 2.72 (C).

(C) A new member may not claim credit for education taken before the initial compliance period.

(D) A new member is required to complete a State Bar New Attorney Training program during the first year of admission which can also be applied to the regular MCLE requirement.

Rule 2.53 adopted effective January 1, 2008; amended effective February 1, 2018.

Rule 2.54 Exemptions

(A) The following active members are exempt from MCLE requirements, provided they claim the exemption in their assigned compliance periods using My State Bar Profile online or an MCLE Compliance Form:

(1) officers and elected officials of the State of California;

(2) full-time professors at law schools accredited by the State Bar of California or the American Bar Association;

(3) those employed full-time by the State of California on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law; and

(4) those employed full-time by the United States government on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law.

(B) Members whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro bono legal services through a California qualified legal services project or a qualified support center[2], or through a legal services project or support center that primarily provides legal services without charge to indigent persons in another jurisdiction and is funded by the Legal Services Corporation or the Older Americans Act or receives funding administered by the jurisdiction's interest on lawyers trust accounts program.

Rule 2.54 adopted effective January 1, 2008; amended effective February 23, 2017.

Rule 2.55 Modifications

A member prevented from fulfilling the MCLE requirement for a substantial part of a compliance period because of a physical or mental condition, natural disaster, family emergency, financial hardship, or other good cause may apply for modification of MCLE compliance requirements. The State Bar must approve any modification.

Rule 2.55 adopted effective January 1, 2008.

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[2] Business & Professions Code § 6213.

Chapter 2. Compliance

Rule 2.70 Compliance groups

A member is permanently assigned to one of three compliance groups on the basis of the first letter of the member's last name at the date of admission.[3] The three groups are A-G, H-M, and N-Z. The member remains in the compliance group despite any subsequent change of last name.

Rule 2.70 adopted effective January 1, 2008.

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 member 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 member. Fees for noncompliance are set forth in a Schedule of Charges and Deadlines.

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

Rule 2.72 Requirements

(A) Unless these rules indicate otherwise, a member 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.[4] Total hours must include no less than 6 hours as follows:

(1) at least four hours of legal ethics;

(2) 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

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[3] A historical exception exists. When the MCLE program was established in 1992, members were permanently assigned to compliance groups on the basis of their last names at the time, regardless of any different last names they might have used previously.

[4] Rule 2.83.

(3) at least one hour of education addressing substance abuse or other mental or physical issues that impair a member'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.

(C) A member may reduce the required twenty-five hours in proportion to the number of full months the member was inactive or exempt in the thirty-six-month compliance period. Up to half the reduced hours may be self-study.[5] 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.[6]

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

Rule 2.73 Record of MCLE

For a year after reporting MCLE compliance, a member must retain and provide upon demand and to the satisfaction of the State Bar

(A) a provider's certificate of attendance;

(B) a record of self-study that includes the title, provider, credit hours, and date of each MCLE activity; or

(C) proof of exempt status.

Rule 2.73 adopted effective January 1, 2008; amended effective July 1, 2014.

Chapter 3. MCLE Activities approved for MCLE credit

Rule 2.80 Attending programs and classes

A member may claim MCLE credit for attending a MCLE activity, such as a lecture, panel discussion, or law school class, in person or by technological means.

Rule 2.80 adopted effective January 1, 2008.

Rule 2.81 Speaking

A member may claim participatory MCLE credit for speaking at an approved MCLE activity.

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[5] Rule 2.83.

[6] But see Rule 2.93.

(A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim

(1) actual speaking time multiplied by four for the first presentation; or

(2) actual speaking time only for each time a presentation is repeated without significant change.

(B) A panelist may claim

(1) either of the following for the first panel presentation:

(a) scheduled individual speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or

(b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus the actual time spent in attendance at the remainder of the presentation.

(2) actual speaking time only for each time a presentation is repeated without significant change.

(C) A member who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.

Rule 2.81 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.82 Teaching

A member may claim participatory MCLE credit for teaching a law school course.

(A) A member assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by twelve or actual speaking time for required MCLE in legal ethics, elimination of bias, or competence issues.

(B) A guest lecturer or substitute teacher may claim

(1) actual speaking time multiplied by four for the first presentation; or

(2) actual speaking time only for each time a presentation is repeated without significant change.

Rule 2.82 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.83 Self-study

A member may claim up to half the credit hours required in a compliance period for

(A) completing MCLE activities for which attendance is not verified by a provider and the MCLE activities were prepared within the preceding five years;

(B) taking an open- or closed-book self-test and submitting it to a provider who returns it with a grade and explanations of correct answers; or

(C) authoring or co-authoring written materials that

(1) have contributed to the member's legal education;

(2) have been published or accepted for publication; and

(3) were not prepared in the ordinary course of employment or in connection with an oral presentation at an approved MCLE activity.

Rule 2.83 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.84 Legal specialization

A member may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.

Rule 2.84 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.85 Education taken while physically out of state

(A) A member may claim MCLE credit for an MCLE activity authorized by an approved jurisdiction if it meets the requirements of these rules and if the member attends or does the MCLE activity outside California. A member may not claim credit for such an activity, including self-study, when physically present in California unless the State Bar has specifically approved it.

(B) A member who qualifies for an MCLE activity authorized by an approved jurisdiction may claim the amount of credit authorized by the jurisdiction. No special procedure is required to claim the credit.

Rule 2.85 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.86 Member credit request

A member may apply for MCLE credit for an educational activity directly relevant to the member's practice but not otherwise approved if the activity substantially meets State Bar standards. The application must be submitted with the appropriate fee.

Rule 2.86 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.87 Bar examinations and MPRE

A member may not claim MCLE credit for preparing for or taking a bar examination or the Multistate Professional Responsibility Examination (MPRE).

Rule 2.87 adopted effective January 1, 2008.

Chapter 4. Noncompliance

Rule 2.90 Definition Noncompliance is

failure to

(A) complete the required education during the compliance period or an extension of it;

(B) report compliance or claim exemption from MCLE requirements;

(C) keep a record of MCLE compliance[7]; or

(D) pay fees for noncompliance.

Rule 2.90 adopted effective January 1, 2008.

Rule 2.91 Notice of noncompliance

(A) A member who is sent a notice of noncompliance must comply with its terms or be involuntarily enrolled as inactive. An inactive member is not eligible to practice law.

(B) If the notice requires the member to complete credit hours for the previous compliance period, any excess credit hours may be counted toward the current compliance period.

Rule 2.91 adopted effective January 1, 2008.

Rule 2.92 Enrollment as inactive for MCLE noncompliance

A member who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative and no hearing is required.

Rule 2.92 adopted effective January 1, 2008.

[7] Rule 2.73.

Rule 2.93 Reinstatement following MCLE noncompliance

Enrollment as inactive for MCLE noncompliance terminates when a member submits proof of compliance and pays noncompliance fees. Credit hours that exceed those required for compliance may be counted toward the current period.

Rule 2.93 adopted effective January 1, 2008.

TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007
Amended effective March 10, 2017

DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES

Chapter 1. Providers of Continuing Legal Education

Article 1. Global provisions

Rule 3.600 Definitions

(A) An "MCLE activity" is minimum continuing legal education that the State Bar approves as meeting standards for MCLE credit.

(B) A "provider" is an individual or entity approved by the State Bar to grant MCLE credit for an MCLE activity.

(C) A "Single Activity Provider" is approved to grant credit for a single MCLE activity after submitting an application for approval of the activity in accordance with State Bar procedures and paying the appropriate processing fee.

(D) A "Multiple Activity Provider" is approved to grant credit for any MCLE activity that complies with the terms of the Multiple Activity Provider Agreement.[1]

(E) "MCLE credit" is the number of credit hours that a member may claim to meet the requirements of these rules.

(F) A "credit hour" is sixty minutes actually spent in an MCLE activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals. MCLE credit includes time for introductory and concluding remarks and for questions and answers.

(G) An "approved jurisdiction" is recognized by the State Bar as having MCLE requirements that substantially meet State Bar standards for MCLE activities and computing MCLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.

(H) A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means. Participatory activity credit may only be awarded if the provider verifies the attendee has taken the course on the date of completion of the course. Methods for verification include sign-in in writing or electronically at the start of the course.

[1] 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.

(I) A "self-study activity" is any MCLE activity identified in Rule 2.83. Self-study activities may be presented in person or delivered by electronic means.

(J) "State Bar MCLE Activity Auditors" are individuals designated by the State Bar to conduct audits of MCLE activities on behalf of the State Bar for the purpose of evaluating compliance by providers with these rules.

Rule 3.600 adopted as Rule 3.500 effective January 1, 2008; renumbered as Rule 3.600 effective November 4, 2011; amended effective July 1, 2014.

Rule 3.601 MCLE Activities

To be approved for MCLE credit, an MCLE activity must meet State Bar standards.

(A) The MCLE activity must relate to legal subjects directly relevant to members 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.[2]

(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.

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.

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;

[2] 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 member 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.

(B) comply with any State Bar rules and terms applicable to an approved MCLE activity;

(C) 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, and whether the activity is participatory or self-study;

(D) provide the State Bar of California with electronic attendance records in a form acceptable to the State Bar of California within 30 days of completion of the activity;

~~(D)~~(E) furnish an MCLE Certificate of Attendance upon completion of the program 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 the course was completed, 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;

~~(E)~~(F) 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

~~(F)~~(G) notify the State Bar in writing of any change in the name, address, or other contact information required by the State Bar.

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 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, 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.

Rule 3.605 Complaints about Providers

The State Bar does not intervene in disputes between a provider and an attendee or potential attendee, but complaints the State Bar receives regarding a provider are considered in assessing the provider's compliance with these rules.

Rule 3.605 adopted effective July 1, 2014

Article 2. Multiple Activity Providers

Rule 3.620 Applying for Multiple Activity Provider status

To be considered for Multiple Activity Provider status, a provider must

(A) within a two-year period receive State Bar approval for four different MCLE activities and hold them on four different dates; and

(B) submit an application and processing fee for Multiple Activity Provider status within that same period.

Rule 3.620 adopted as Rule 3.520 effective January 1, 2008; renumbered as Rule 3.620 effective November 4, 2011.

Rule 3.621 Renewing Multiple Activity Provider status

To be eligible for renewal of up to three years, a Multiple Activity Provider must

(A) apply for renewal using the State Bar form for Multiple Activity Provider Renewal;

(B) submit evidence that it has offered four different MCLE activities that meet the requirements of these rules within the two years preceding its application for renewal;

(C) submit the completed form and any required documentation by the deadline set by the State Bar;

(D) submit any complaints it may have received regarding compliance with these rules; and

(E) pay the appropriate fees.

Rule 3.621 adopted as Rule 3.521 effective January 1, 2008; renumbered as Rule 3.621 effective November 4, 2011; amended effective July 1, 2014.

TITLE 2. RIGHTS AND RESPONSIBILITIES OF MEMBERS

Adopted July 2007
Amended effective February 1, 2018

DIVISION 4. MINIMUM CONTINUING LEGAL EDUCATION

Chapter 1 Purpose and scope

Rule 2.50 Purpose of MCLE

Rules for Minimum Continuing Legal Education (MCLE) 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. A member's involuntary enrollment as inactive for failing to comply with these rules is public information available on the State Bar Web site.

Rule 2.50 adopted effective January 1, 2008.

Rule 2.51 Definitions

(A) An "MCLE activity" is continuing legal education that the State Bar approves as meeting standards for MCLE credit.

(B) A "provider" is an individual or entity approved by the State Bar to grant MCLE credit for an MCLE activity.

(C) "MCLE credit" is the number of credit hours that a member may claim to meet the requirements of these rules.

(D) A "credit hour" is sixty minutes actually spent in an MCLE activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals.

(E) An "approved jurisdiction" is recognized by the State Bar as having MCLE requirements that substantially meet State Bar standards for MCLE activities and computing MCLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.

(F) A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means. Participatory activity credit may only be awarded if the provider can directly verify that the attendee has taken the course on the date of completion of the course.

(G) A "self-study activity" is any MCLE activity identified in Rule 2.83. Self-study activities may be presented in person or delivered by electronic means.

(H) State Bar New Attorney Training is MCLE that is developed and made available directly from the State Bar and is focused on law practice competency for newly admitted members.

Rule 2.51 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective February 1, 2018.

Rule 2.52 MCLE Activities

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

(A) The MCLE activity must relate to legal subjects directly relevant to members 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.

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

Rule 2.53 New members

(A) A new member is permanently assigned to a compliance group on the date of admission.

(B) The initial compliance period for a new member begins on the first day of the month in which the member was admitted. It ends when the period ends for the compliance group. If the initial period is less than the period for the compliance group, the required credit hours may be reduced as provided in these rules.[1]

[1] Rule 2.72 (C).

(C) A new member may not claim credit for education taken before the initial compliance period.

(D) A new member is required to complete a State Bar New Attorney Training program during the first year of admission which can also be applied to the regular MCLE requirement.

Rule 2.53 adopted effective January 1, 2008; amended effective February 1, 2018.

Rule 2.54 Exemptions

(A) The following active members are exempt from MCLE requirements, provided they claim the exemption in their assigned compliance periods using My State Bar Profile online or an MCLE Compliance Form:

(1) officers and elected officials of the State of California;

(2) full-time professors at law schools accredited by the State Bar of California or the American Bar Association;

(3) those employed full-time by the State of California on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law; and

(4) those employed full-time by the United States government on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law.

(B) Members whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro bono legal services through a California qualified legal services project or a qualified support center[2], or through a legal services project or support center that primarily provides legal services without charge to indigent persons in another jurisdiction and is funded by the Legal Services Corporation or the Older Americans Act or receives funding administered by the jurisdiction's interest on lawyers trust accounts program.

Rule 2.54 adopted effective January 1, 2008; amended effective February 23, 2017.

Rule 2.55 Modifications

A member prevented from fulfilling the MCLE requirement for a substantial part of a compliance period because of a physical or mental condition, natural disaster, family emergency, financial hardship, or other good cause may apply for modification of MCLE compliance requirements. The State Bar must approve any modification.

Rule 2.55 adopted effective January 1, 2008.

[2] Business & Professions Code § 6213.

Chapter 2. Compliance

Rule 2.70 Compliance groups

A member is permanently assigned to one of three compliance groups on the basis of the first letter of the member's last name at the date of admission.[3] The three groups are A-G, H-M, and N-Z. The member remains in the compliance group despite any subsequent change of last name.

Rule 2.70 adopted effective January 1, 2008.

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 member 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 member. Fees for noncompliance are set forth in a Schedule of Charges and Deadlines.

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

Rule 2.72 Requirements

(A) Unless these rules indicate otherwise, a member 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.[4] Total hours must include no less than 6 hours as follows:

(1) at least four hours of legal ethics;

(2) 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

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[3] A historical exception exists. When the MCLE program was established in 1992, members were permanently assigned to compliance groups on the basis of their last names at the time, regardless of any different last names they might have used previously.

[4] Rule 2.83.

(3) at least one hour of education addressing substance abuse or other mental or physical issues that impair a member'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.

(C) A member may reduce the required twenty-five hours in proportion to the number of full months the member was inactive or exempt in the thirty-six-month compliance period. Up to half the reduced hours may be self-study.[5] 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.[6]

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

Rule 2.73 Record of MCLE

For a year after reporting MCLE compliance, a member must retain and provide upon demand and to the satisfaction of the State Bar

(A) a provider's certificate of attendance;

(B) a record of self-study that includes the title, provider, credit hours, and date of each MCLE activity; or

(C) proof of exempt status.

Rule 2.73 adopted effective January 1, 2008; amended effective July 1, 2014.

Chapter 3. MCLE Activities approved for MCLE credit

Rule 2.80 Attending programs and classes

A member may claim MCLE credit for attending a MCLE activity, such as a lecture, panel discussion, or law school class, in person or by technological means.

Rule 2.80 adopted effective January 1, 2008.

Rule 2.81 Speaking

A member may claim participatory MCLE credit for speaking at an approved MCLE activity.

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[5] Rule 2.83.

[6] But see Rule 2.93.

(A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim

(1) actual speaking time multiplied by four for the first presentation; or

(2) actual speaking time only for each time a presentation is repeated without significant change.

(B) A panelist may claim

(1) either of the following for the first panel presentation:

(a) scheduled individual speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or

(b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus the actual time spent in attendance at the remainder of the presentation.

(2) actual speaking time only for each time a presentation is repeated without significant change.

(C) A member who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.

Rule 2.81 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.82 Teaching

A member may claim participatory MCLE credit for teaching a law school course.

(A) A member assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by twelve or actual speaking time for required MCLE in legal ethics, elimination of bias, or competence issues.

(B) A guest lecturer or substitute teacher may claim

(1) actual speaking time multiplied by four for the first presentation; or

(2) actual speaking time only for each time a presentation is repeated without significant change.

Rule 2.82 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.83 Self-study

A member may claim up to half the credit hours required in a compliance period for

(A) completing MCLE activities for which attendance is not verified by a provider and the MCLE activities were prepared within the preceding five years;

(B) taking an open- or closed-book self-test and submitting it to a provider who returns it with a grade and explanations of correct answers; or

(C) authoring or co-authoring written materials that

(1) have contributed to the member's legal education;

(2) have been published or accepted for publication; and

(3) were not prepared in the ordinary course of employment or in connection with an oral presentation at an approved MCLE activity.

Rule 2.83 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.84 Legal specialization

A member may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.

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(A) A member may claim MCLE credit for an MCLE activity authorized by an approved jurisdiction if it meets the requirements of these rules and if the member attends or does the MCLE activity outside California. A member may not claim credit for such an activity, including self-study, when physically present in California unless the State Bar has specifically approved it.

(B) A member who qualifies for an MCLE activity authorized by an approved jurisdiction may claim the amount of credit authorized by the jurisdiction. No special procedure is required to claim the credit.

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Rule 2.86 Member credit request

A member may apply for MCLE credit for an educational activity directly relevant to the member's practice but not otherwise approved if the activity substantially meets State Bar standards. The application must be submitted with the appropriate fee.

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A member may not claim MCLE credit for preparing for or taking a bar examination or the Multistate Professional Responsibility Examination (MPRE).

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Chapter 4. Noncompliance

Rule 2.90 Definition

Noncompliance is failure to

(A) complete the required education during the compliance period or an extension of it;

(B) report compliance or claim exemption from MCLE requirements;

(C) keep a record of MCLE compliance[7]; or

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(A) A member who is sent a notice of noncompliance must comply with its terms or be involuntarily enrolled as inactive. An inactive member is not eligible to practice law.

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A member who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative and no hearing is required.

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Rule 2.93 Reinstatement following MCLE noncompliance

Enrollment as inactive for MCLE noncompliance terminates when a member submits proof of compliance and pays noncompliance fees. Credit hours that exceed those required for compliance may be counted toward the current period.

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TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007
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DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES

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(C) A "Single Activity Provider" is approved to grant credit for a single MCLE activity after submitting an application for approval of the activity in accordance with State Bar procedures and paying the appropriate processing fee.

(D) A "Multiple Activity Provider" is approved to grant credit for any MCLE activity that complies with the terms of the Multiple Activity Provider Agreement.[1]

(E) "MCLE credit" is the number of credit hours that a member may claim to meet the requirements of these rules.

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(H) A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means. ~~Participatory activity credit may only be awarded if the provider verifies the attendee has taken the course on the date of completion of the course.~~ Methods for verification include sign-in in writing or electronically at the start of the course.

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(J) "State Bar MCLE Activity Auditors" are individuals designated by the State Bar to conduct audits of MCLE activities on behalf of the State Bar for the purpose of evaluating compliance by providers with these rules.

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(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.

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[2] 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 member 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.

(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, and whether the activity is participatory or self-study;

(C) provide the State Bar of California with electronic attendance records in a form acceptable to the State Bar of California within ~~30~~60 days of completion of the activity;

(D) furnish an MCLE Certificate of Attendance upon completion of the program 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 the course was completed, 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;

(E) 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

(F) notify the State Bar in writing of any change in the name, address, or other contact information required by the State Bar.

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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 Legal Specialization Board or Commission 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.

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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, after notice and hearing, and for good cause shown.

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The State Bar does not intervene in disputes between a provider and an attendee or potential attendee, but complaints the State Bar receives regarding a provider are considered in assessing the provider's compliance with these rules.

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Rule 3.620 Applying for Multiple Activity Provider status

To be considered for Multiple Activity Provider status, a provider must

(A) within a two-year period receive State Bar approval for four different MCLE activities and hold them on four different dates; and

(B) submit an application and processing fee for Multiple Activity Provider status within that same period.

Rule 3.620 adopted as Rule 3.520 effective January 1, 2008; renumbered as Rule 3.620 effective November 4, 2011.

Rule 3.621 Renewing Multiple Activity Provider status

To be eligible for renewal of up to three years, a Multiple Activity Provider must

(A) apply for renewal using the State Bar form for Multiple Activity Provider Renewal;

(B) submit evidence that it has offered four different MCLE activities that meet the requirements of these rules within the two years preceding its application for renewal;

(C) submit the completed form and any required documentation by the deadline set by the State Bar;

(D) submit any complaints it may have received regarding compliance with these rules; and

(E) pay the appropriate fees.

Rule 3.621 adopted as Rule 3.521 effective January 1, 2008; renumbered as Rule 3.621 effective November 4, 2011; amended effective July 1, 2014.

TITLE 2. RIGHTS AND RESPONSIBILITIES OF MEMBERS

Adopted July 2007
Amended effective February 1, 2018

DIVISION 4. MINIMUM CONTINUING LEGAL EDUCATION

Chapter 1 Purpose and scope

Rule 2.50 Purpose of MCLE

Rules for Minimum Continuing Legal Education (MCLE) 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. A member's involuntary enrollment as inactive for failing to comply with these rules is public information available on the State Bar Web site.

Rule 2.50 adopted effective January 1, 2008.

Rule 2.51 Definitions

(A) An "MCLE activity" is continuing legal education that the State Bar approves as meeting standards for MCLE credit.

(B) A "provider" is an individual or entity approved by the State Bar to grant MCLE credit for an MCLE activity.

(C) "MCLE credit" is the number of credit hours that a member may claim to meet the requirements of these rules.

(D) A "credit hour" is sixty minutes actually spent in an MCLE activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals.

(E) An "approved jurisdiction" is recognized by the State Bar as having MCLE requirements that substantially meet State Bar standards for MCLE activities and computing MCLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.

(F) A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means. ~~Participatory activity credit may only be awarded if the provider verifies the attendee has taken the course on the date of completion of the course.~~ Methods for verification include sign-in in writing or electronically at the start of the course.

(G) A "self-study activity" is any MCLE activity identified in Rule 2.83. Self-study activities may be presented in person or delivered by electronic means.

(H) State Bar New Attorney Training is MCLE that is developed and made available directly from the State Bar and is focused on law practice competency for newly admitted members.

Rule 2.51 adopted effective January 1, 2008; amended effective July 1, 2014; amended effective February 1, 2018.

Rule 2.52 MCLE Activities

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

(A) The MCLE activity must relate to legal subjects directly relevant to members 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.

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

Rule 2.53 New members

(A) A new member is permanently assigned to a compliance group on the date of admission.

(B) The initial compliance period for a new member begins on the first day of the month in which the member was admitted. It ends when the period ends for the compliance group. If the initial period is less than the period for the compliance group, the required credit hours may be reduced as provided in these rules.[1]

[1] Rule 2.72 (C).

(C) A new member may not claim credit for education taken before the initial compliance period.

(D) A new member is required to complete a State Bar New Attorney Training program during the first year of admission which can also be applied to the regular MCLE requirement.

Rule 2.53 adopted effective January 1, 2008; amended effective February 1, 2018.

Rule 2.54 Exemptions

(A) The following active members are exempt from MCLE requirements, provided they claim the exemption in their assigned compliance periods using My State Bar Profile online or an MCLE Compliance Form:

(1) officers and elected officials of the State of California;

(2) full-time professors at law schools accredited by the State Bar of California or the American Bar Association;

(3) those employed full-time by the State of California on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law; and

(4) those employed full-time by the United States government on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law.

(B) Members whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro bono legal services through a California qualified legal services project or a qualified support center[2], or through a legal services project or support center that primarily provides legal services without charge to indigent persons in another jurisdiction and is funded by the Legal Services Corporation or the Older Americans Act or receives funding administered by the jurisdiction's interest on lawyers trust accounts program.

Rule 2.54 adopted effective January 1, 2008; amended effective February 23, 2017.

Rule 2.55 Modifications

A member prevented from fulfilling the MCLE requirement for a substantial part of a compliance period because of a physical or mental condition, natural disaster, family emergency, financial hardship, or other good cause may apply for modification of MCLE compliance requirements. The State Bar must approve any modification.

Rule 2.55 adopted effective January 1, 2008.

[2] Business & Professions Code § 6213.

Chapter 2. Compliance

Rule 2.70 Compliance groups

A member is permanently assigned to one of three compliance groups on the basis of the first letter of the member's last name at the date of admission.[3] The three groups are A-G, H-M, and N-Z. The member remains in the compliance group despite any subsequent change of last name.

Rule 2.70 adopted effective January 1, 2008.

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 member 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 member. Fees for noncompliance are set forth in a Schedule of Charges and Deadlines.

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

Rule 2.72 Requirements

(A) Unless these rules indicate otherwise, a member 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.[4] Total hours must include no less than 6 hours as follows:

(1) at least four hours of legal ethics;

(2) 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

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[3] A historical exception exists. When the MCLE program was established in 1992, members were permanently assigned to compliance groups on the basis of their last names at the time, regardless of any different last names they might have used previously.

[4] Rule 2.83.

(3) at least one hour of education addressing substance abuse or other mental or physical issues that impair a member'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.

(C) A member may reduce the required twenty-five hours in proportion to the number of full months the member was inactive or exempt in the thirty-six-month compliance period. Up to half the reduced hours may be self-study.[5] 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.[6]

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

Rule 2.73 Record of MCLE

For a year after reporting MCLE compliance, a member must retain and provide upon demand and to the satisfaction of the State Bar

(A) a provider's certificate of attendance;

(B) a record of self-study that includes the title, provider, credit hours, and date of each MCLE activity; or

(C) proof of exempt status.

Rule 2.73 adopted effective January 1, 2008; amended effective July 1, 2014.

Chapter 3. MCLE Activities approved for MCLE credit

Rule 2.80 Attending programs and classes

A member may claim MCLE credit for attending a MCLE activity, such as a lecture, panel discussion, or law school class, in person or by technological means.

Rule 2.80 adopted effective January 1, 2008.

Rule 2.81 Speaking

A member may claim participatory MCLE credit for speaking at an approved MCLE activity.

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[5] Rule 2.83.

[6] But see Rule 2.93.

(A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim

(1) actual speaking time multiplied by four for the first presentation; or

(2) actual speaking time only for each time a presentation is repeated without significant change.

(B) A panelist may claim

(1) either of the following for the first panel presentation:

(a) scheduled individual speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or

(b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus the actual time spent in attendance at the remainder of the presentation.

(2) actual speaking time only for each time a presentation is repeated without significant change.

(C) A member who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.

Rule 2.81 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.82 Teaching

A member may claim participatory MCLE credit for teaching a law school course.

(A) A member assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by twelve or actual speaking time for required MCLE in legal ethics, elimination of bias, or competence issues.

(B) A guest lecturer or substitute teacher may claim

(1) actual speaking time multiplied by four for the first presentation; or

(2) actual speaking time only for each time a presentation is repeated without significant change.

Rule 2.82 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.83 Self-study

A member may claim up to half the credit hours required in a compliance period for

(A) completing MCLE activities for which attendance is not verified by a provider and the MCLE activities were prepared within the preceding five years;

(B) taking an open- or closed-book self-test and submitting it to a provider who returns it with a grade and explanations of correct answers; or

(C) authoring or co-authoring written materials that

(1) have contributed to the member's legal education;

(2) have been published or accepted for publication; and

(3) were not prepared in the ordinary course of employment or in connection with an oral presentation at an approved MCLE activity.

Rule 2.83 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.84 Legal specialization

A member may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.

Rule 2.84 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.85 Education taken while physically out of state

(A) A member may claim MCLE credit for an MCLE activity authorized by an approved jurisdiction if it meets the requirements of these rules and if the member attends or does the MCLE activity outside California. A member may not claim credit for such an activity, including self-study, when physically present in California unless the State Bar has specifically approved it.

(B) A member who qualifies for an MCLE activity authorized by an approved jurisdiction may claim the amount of credit authorized by the jurisdiction. No special procedure is required to claim the credit.

Rule 2.85 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.86 Member credit request

A member may apply for MCLE credit for an educational activity directly relevant to the member's practice but not otherwise approved if the activity substantially meets State Bar standards. The application must be submitted with the appropriate fee.

Rule 2.86 adopted effective January 1, 2008; amended effective July 1, 2014.

Rule 2.87 Bar examinations and MPRE

A member may not claim MCLE credit for preparing for or taking a bar examination or the Multistate Professional Responsibility Examination (MPRE).

Rule 2.87 adopted effective January 1, 2008.

Chapter 4. Noncompliance

Rule 2.90 Definition Noncompliance is

failure to

(A) complete the required education during the compliance period or an extension of it;

(B) report compliance or claim exemption from MCLE requirements;

(C) keep a record of MCLE compliance[7]; or

(D) pay fees for noncompliance.

Rule 2.90 adopted effective January 1, 2008.

Rule 2.91 Notice of noncompliance

(A) A member who is sent a notice of noncompliance must comply with its terms or be involuntarily enrolled as inactive. An inactive member is not eligible to practice law.

(B) If the notice requires the member to complete credit hours for the previous compliance period, any excess credit hours may be counted toward the current compliance period.

Rule 2.91 adopted effective January 1, 2008.

Rule 2.92 Enrollment as inactive for MCLE noncompliance

A member who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative and no hearing is required.

Rule 2.92 adopted effective January 1, 2008.

[7] Rule 2.73.

Rule 2.93 Reinstatement following MCLE noncompliance

Enrollment as inactive for MCLE noncompliance terminates when a member submits proof of compliance and pays noncompliance fees. Credit hours that exceed those required for compliance may be counted toward the current period.

Rule 2.93 adopted effective January 1, 2008.

MCLE PUBLIC COMMENT								
Date of Comment	Name of Organization	Signatory	Oppposed	Supports	Supports w/ changes	Changes suggested	Need More Info	Issues
14-Jan-19	Legal Aid Foundation of Los Angeles	Phong Wong	X				X	LAFLA does not have the resources to support this change.
14-Jan-19	Santa Cruz County Bar Association	James C. Eschen	X				X	SCCBA does not have the resources to support this change and it is not administratively feasible.
14-Jan-19	Long Beach Bar Association	Erin Peterson	X			X	X	LBBA feels that the proposal is too vague and is concerned about resources required. They feel that the rule change also requires them to maintain paper records. They feel that the burden shifts from the member to the provider. They did suggest a possible technical solution to help protect the providers from issues around updating individual attendance records.
14-Jan-19	Executives of California Lawyers Association	Theresa Hurley	X				X	1) ECLA feels the proposal is too vague. 2) They are concerned that it shifts enforcement responsibility to the providers.
14-Jan-19	Los Angeles County Bar Association	Brian S. Kabateck	X			X		LACBA is concerned about the resources that will be required and feels that the reporting window should be 90 days. They are also concerned about their liability for record keeping.
14-Jan-19	Legal Serivces of Northern Califonria	Julie Rogado	X			X		1) They feel that the 30 day window is insufficient. 2) They feel that a corrections tool is necessary. 3) The feel the Bar should provide non-profits with a record keeping system. 4) They feel that the Bar should either delay implementation for non-profits or fund their technology development.
14-Jan-19	Lawyers Club of San Diego	Danna J. Cortman	X					They do not have the resources to support this change and they feel tht the burden should not be shifted to them.
14-Jan-19	San Luis Obispo County Bar Association	Jeffrey Radding	X			X		Writes in support of SLOCBA and is concerned about the impact on small bar associations. Requests that they be exempt.
14-Jan-19	OneJustice	Julie R. Wilson	X					They do not have the resources to support this change and they feel tht the burden should not be shifted to them.
14-Jan-19	Bet Tzedek Legal Services	Diego Cartagena	X					They do not feel that this is a cost-efficient use of their resources. They feel that we are unfarily advantaging large providers.
11-Jan-19	Asian American Advancing Justice	Christina Yang	X					1) They feel that this is cost prohibitive and benefits larger providers only. 2) They are also concerned about the use of State Bar resources.

MCLE PUBLIC COMMENT								
Date of Comment	Name of Organization	Signatory	Oppposed	Supports	Supports w/ changes	Changes suggested	Need More Info	Issues
11-Jan-19	Alameda County Bar Association and Volunteer Legal Services Corporation	Tiela Chlamers	X					1) ACBA feels the proposal is too vague. 2) They are concerned that it shifts enforcement responsibility to the providers.
11-Jan-19	Community Legal Services in East Palo Alto	Maria V. Mata	X					The do not have the resources and this unfairly advantages big providers and it shift the burden of proof to providers.
10-Jan-19	Immigrant Legal Resource Center	Linda Mogannam	X					ILRC raises a number of specific concerns about their ability to provide the necessary resources.
9-Jan-19	Lawline	Beth Bersson	X				X	They support but have a number of procedural questions.
8-Jan-19	Legal Aid Association of California	Salena Copeland	X					LAAC does not have the resources to do this and its not practical. They also raised the issue of disability access.
7-Jan-19	Marin County Bar Association	Mee Mee Wong	X				X	MCBA does not have ther resources this process.
4-Jan-19	Law Office of Kimberly Cole	Kimberly Cole	X					Writing in support of Placer County Bar Association, she opposes the proposal. Small Bars do not have the resources. She feels the burden should be on attorneys.
31-Dec-18	Law Office of James K. Moore	James K. Moore	X			X		He wrote in support of Placer County Bar Association. Small bars do not have the resources to do this and should be exempt.
19-Dec-18	Weil, Gotshal & Manges LLP	Jill Michels	X					She supports the proposal.
10-Dec-18	Baker Manock & Jensen, PC	Lori E. Sanders	X					They are concerned about resource usage.
4-Dec-18	Humanist Learning Systems	Jennifer Hancock	X					She has general technical concerns and is concerned that the onus is on the provider.
3-Dec-18	Walter A. Haynes IV, Esq.	Walter Haynes	X					He feels the proposal is vague and has concerns about putting the burden on the provider.
3-Dec-18	SWArchitects	Bruce Krell	X				X	He proposed different method of maintaining attendance records.
14-Jan-19	Central California Appellate Program	Joanne Kirchner		?				The provider has implementation questions but seems to support. They do state that they do not have the resources to pay to upload courses.
4-Dec-18		Susan Bassi		?				This comment does not address rule change. The commenter has a complaint about a provider.
14-Jan-19	Jones Day	Betsy W. Hults		X		X		Jones Day suppprts but provided some specific recommendations for the tool.
14-Jan-19	Dentons US LLP	Daniel Gold		X		X		Dentons supports the proposal. They had some suggestions for technical solutions.

MCLE PUBLIC COMMENT								
Date of Comment	Name of Organization	Signatory	Oppposed	Supports	Supports w/ changes	Changes suggested	Need More Info	Issues
14-Jan-19	Pincus Pro Ed	Faith Pincus		X				Supports but wants usable solution and does not want to have to be responsible for attorney records.
11-Jan-19	Spidell Publishing, Inc.	Ashley Counts		X			X	They support but requested specific user functionality.
9-Jan-19	Jenner & Block LLP	Devon L. Wojciechowski		X			X	They support and provided a number of technical comments.
24-Dec-18	Sacramento County Public Defender's Office	David Lynch		X				He supports but proposes issuing bar cards with a UPC code that could be scanned.
4-Dec-18	Habeas Corpus Resource Center	Marisa Davis		X				She supports. They are a small provider and see no problem with this.
4-Dec-18	Ulmer & Berne LLP	Abigail Luempert		X			X	She supports has technical questions.
4-Dec-18	Unclaimed Property Professionals Organization	Shannon Wild		X				She supports the proposal.
17-Jan-19	California Lawyers Association	Heather Linn Rosing			X			1) CLA feels that the new rule puts a higher burden of proof on the providers than previously required and proposes removal of some words in rule 3.600h while not removing the reporting requirement. 2) they propose a 60 day reporting window and want the rule to memorialize that providers will be consulted about process.
14-Jan-19	San Luis Obispo County Bar Association	Michael R. Pick			X		X	SLOCBA believes that the proposal is too costly and that small bars should be exempt.
14-Jan-19	California Legal Services Trust Fund Support Center Program	Linda Kilb			X			This letter is signed by a number of Disability rights groups. They ask that we ensure that the new program not create access issues and express concern that this may be an issue.
14-Jan-19	Anderson Tax LLC	Lori Morgan			X			They propose a 45 day reporting window.
11-Jan-19	People With Disabilities Foundation	April Banerjee			X		X	They are concerned with how to handle late arrivals and with the technical aspects of the uploads.
11-Jan-19	Contra Costa County Bar Association	Theresa Hurley			X		X	CCCBA proposes a 90 day reporting window and raised a number of technical questions.
11-Jan-19	League of California Cities	Patrick Whitnell			X		X	They support but have many technical concerns, especially about multidays. They provided a suggestion for MAP renewals.
2-Jan-19	Hogan Lovells US LLP	Lisa Sheehan			X		X	She feels that we should coordinate with CLE software providers to ensure the systems work.
20-Dec-18	Kilpatrick Townsend & Stockton LLP	Leslie Terry			X			They support but feel the rule should be changed to have sign in and sign out.

MCLE PUBLIC COMMENT								
Date of Comment	Name of Organization	Signatory	Oppposed	Supports	Supports w/ changes	Changes suggested	Need More Info	Issues
20-Dec-18	The Bar Association of San Francisco	Yolanda Jackson			X			BASF supports but requests reporting deadline of 30 days from end of the month, that there be no charge to providers and provides various technical and administrative suggestions.
10-Dec-18	Metropolitan Water District of Southern California	Robert C. Horton			X			He supports but raises technical language concerns.
5-Dec-18	Nair and Associates	Jose W. Morschauser			X		X	He supports but wants to make sure that we provide tracking for providers and would like a providers report.
26-Dec-18	Attorney Assist	Jean Brusavich		?		X	X	Attorney assist is concerned with how we will handle post-event approvals.
6-Dec-18	Garrett & Jensen	Betty Fracisco				X		She feels the resource demand is to0 high and proposes use of a smart card system.
4-Dec-18	Seyfarth Shaw LLP	Sara Thorne		?			X	Enquired about self-study. Made no comment.

Canas, Derek

From: Saul Bercovitch <saul.bercovitch@calawyers.org>
Sent: Thursday, January 17, 2019 11:04 AM
To: McPhail, Robert
Cc: DiLoreto, Dina
Subject: CLA - comments on proposed amendments to MCLE rules
Attachments: CLA_proposed_State_Bar_MCLE_rule_amendments_1_15_19.pdf

Bob –

I've attached CLA's comments on the proposed amendments to the MCLE rules. As I mentioned before, there was a slight delay beyond the posted deadline for comments because the Board needed to approve the comments, and the Board meeting did not take place until January 15. We appreciate the extra time. Please let me know if you have any questions or would like to discuss. Hope all is well with you and with Dina (copied here). Thanks.

- Saul

Saul Bercovitch | Director of Governmental Affairs
California Lawyers Association
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Sacramento, CA 95814
415-795-7326 | saul.bercovitch@calawyers.org

CALIFORNIA LAWYERS ASSOCIATION

CAlawyers.org

January 15, 2019

Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105

Via email: Robert.McPhail@calbar.ca.gov

Re: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Mr. McPhail:

The California Lawyers Association ("CLA") submits these comments in response to the State Bar's request for public comment on the proposed amendments to the MCLE rules. We have reviewed the proposed amendments and have comments on two parts of the proposal.

Comments on proposed revisions to Rule 3.600 (H) and Rule 2.51 (F)

Our first set of comments relates to the proposed addition of the following, underlined language to Rule 3.600 (H) and Rule 2.51 (F):

> A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means. Participatory activity credit may only be awarded if the provider verifies the attendee has taken the course on the date of completion of the course. Methods for verification include sign-in in writing or electronically at the start of the course.

We recognize that provider verification is currently part of the MCLE rules and would continue to be part of the amended rules. The proposed amendments would, however, result in a significant departure from the current rules. Specifically, if participatory activity credit "may only be awarded" upon provider verification, MCLE credit would become *contingent* on that verification. Although the rules state that the provider "must verify attendance" there are numerous circumstances under which a provider may fail to comply with this requirement. As examples, providers may neglect to supply or lose sign-in sheets; have clerical or record-keeping

errors that result in inaccurate or incomplete verification; encounter technical issues that prevent electronic verification; or even go out of business entirely, resulting in an inability to verify any records at all. Issues such as these can be greater with the smaller MCLE providers, who may have more difficulty complying with the verification requirements.

Under this proposal, an attorney will not be able to receive MCLE participatory activity credit if a provider does not comply with the verification requirements – for whatever reason – even if the attorney *actually attended* the MCLE course and has *independent verification* of attendance. It is not clear whether this would allow the same course to qualify for "self-study" credit under Rule 2.83, or no credit at all, but self-study credit is limited, and the proposed amendments do not appear to be intended to "convert" participatory credit into self-study credit as a result of provider noncompliance with the verification requirements. Ultimately, provider noncompliance would cause attorneys to be penalized as a result of something they cannot control, through no fault of their own.

This proposal states that attorneys will gain benefits from the proposed changes because, in the current auditing process, some instances of noncompliance may simply be attributable to an attorney not being able to locate the certificate for MCLE courses they in fact completed, and having providers upload attendance records will eliminate findings of noncompliance attributable to such record-keeping errors. We agree that the ability to have access to provider uploads would result in a benefit to attorneys in the circumstances identified. But this proposal would not simply create a back-up mechanism to account for attorney record-keeping errors. Instead, it would *limit* participatory activity credit to circumstances in which the provider verifies that the attorney has taken the course. In the absence of complete and accurate provider verification of *all* participatory MCLE courses attended, the proposal would result in a disadvantage, to the extent attorneys would not be able to receive credit for courses they actually attended.

The proposed amendments would not alter the current rule providing that attorneys must self-report compliance with their MCLE requirements. As noted: "Attorneys are expected to maintain their own records and then file a declaration under penalty of perjury that they are in compliance at the end of each three-year reporting cycle." What will happen when an attorney files a declaration stating that he or she has complied with the required number of hours, but participatory activity credit cannot be awarded for some of those hours because the provider has failed to verify attendance? Will the attorney potentially be at risk for filing the declaration stating that he or she has complied with the required number of hours?

To avoid the issues discussed above, CLA recommends that the proposal remove the sentence stating that participatory activity credit "may only be awarded" if the provider verifies the attendee has taken the course. With CLA's recommended change, Rule 3.600 (H) and Rule 2.51 (F) would read as follows:

> A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means. ~~**Participatory activity credit may only be awarded if the provider verifies the attendee has taken the course on the date of completion**~~

> ~~of the course.~~ Methods for verification include sign-in in writing or electronically at the start of the course.

Comments on proposed revisions to Rule 3.602 (D)

Our second set of comments relates to CLA's position as an MCLE provider, and the proposed new requirement in Rule 3.602 (D) that every provider must "provide the State Bar of California with electronic attendance records in a form acceptable to the State Bar of California within 30 days of completion of the activity." The proposed language raises two concerns. First, although CLA could certainly attempt to provide the attendance records within 30 days, we recommend 60 days instead, which would be much more realistic and workable, particularly during busy times such as the end of the MCLE compliance periods. Second, the provision that the records be provided "in a form acceptable to the State Bar of California" is potentially problematic, unless the rules also provide that the acceptable form be developed in consultation with the MCLE providers. Without this additional language, there is a possibility that the State Bar will require that records be provided in a form that is not feasible for CLA or some of the other MCLE providers, or that the State Bar will change from one acceptable form to a different acceptable form, imposing an additional burden and cost on MCLE providers as a result of the change. With CLA's recommended changes, Rule 3.602 (D) would read as follows, requiring every provider to:

> provide the State Bar of California with electronic attendance records in a form acceptable to the State Bar of California **and developed in consultation with the providers** within ~~30~~ **60** days of completion of the activity;

We appreciate your consideration of these comments. If you have any questions or would like to discuss this matter further, please feel free to contact me at (619) 239-8131 or HRosing@Klinedinstlaw.com.

Sincerely,

/s/

Heather Linn Rosing, President
California Lawyers Association

Canas, Derek

From: Phong Wong <PWong@lafla.org>
Sent: Monday, January 14, 2019 5:55 PM
To: McPhail, Robert
Cc: Silvia Argueta
Subject: LAFLA Comments to Proposed Changes to MCLE
Attachments: LAFLA Comments State Bar CLE Changes 011419.pdf

Dear Mr. McPhail,

Attached, please find LAFLA's comments to the Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program.
Please let me know if you have additional questions regarding these comments.

Warm Regards,

Phong

Phong Wong | Pro Bono Director
Legal Aid Foundation of Los Angeles
Ron Olson Justice Center
1550 W. 8th St. | Los Angeles, CA 90017
213.640.3859 **direct** | 323.801.7945 **facsimile**
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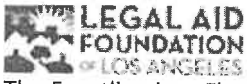

The Frontline Law Firm for Poor and Low-Income People in Los Angeles

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January 14, 2019

Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105
Phone: 415-538-2237
Email: Robert.McPhail@calbar.ca.gov

Re: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Mr. McPhail,

I am writing on behalf of the Legal Aid foundation of Los Angeles (LAFLA) to address serious concerns that we have with the State Bar's *Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program*. Though LAFLA understands the State Bar's goal of auditing MCLE compliance in a cost effective and efficient manner, we would like to highlight the burden that this proposal will have on LAFLA's pro bono training program and on the Pro Bono Training Institute (PBTI).

LAFLA is the frontline law firm for low-income people in Los Angeles and our goal is to achieve equal justice for poor and low-income people in greater Los Angeles. We change lives through direct representation, systems change, and community education. LAFLA, along with OneJustice and Neighborhood Legal Services of Los Angeles County, operate PBTI. The goal of PBTI is to expand pro bono in the state by collaborating with legal services attorney experts statewide to develop free and easily accessible on-demand pro bono MCLE trainings on the pbtraining.org forum. The project essentially endeavors to leverage the existing training resources of partners throughout California to improve and universalize the pro bono training landscape on poverty law topics for all programs that represents clients who are low-income.

Each year, LAFLA offers numerous free in-person MCLE trainings to its partners to conduct outreach and encourage pro bono collaboration and services. As a registered MCLE provider, LAFLA issues hundreds of MCLE certificates to these trainees. LAFLA also issues MCLE certificates to trainees through the PBTI online pro bono training program. PBTI sees between 300-400 trainees each month and since the launch of pbtraining.org in 2016, the program has seen its membership grow to over five thousand registered users.

The State Bar's proposed requirement for programs to upload each individual attorney trainee's information to the State Bar portal will require LAFLA to reallocate additional staff time to satisfy these additional requirements. LAFLA must likely hire a full time staff member to coordinate data entry, tracking, and respond to countless inquiries from trainees on MCLE records. Currently, LAFLA already receives numerous inquiries each month from trainees on a variety of issues related to trainings. LAFLA does not have the capacity to do more without additional funding to provide more staffing or to incorporate expanded technology to automate the in-person and online training process.

The State Bar's proposed changes will essentially divert LAFLA's limited resources away from developing collaborative state-wide trainings for the public to focus on reporting MCLE records to the State Bar. This is not an efficient use of LAFLA resources when (1) the State Bar is already mandated to perform this MCLE monitoring as part of its public protection function and (2) the State Bar receives funding from attorney member dues and from fees charged to organizations to enable them to serve as MCLE providers. The proposed changes unfairly shifts the additional MCLE monitoring and reporting burden to organizations like LAFLA, when we don't have the capacity or the resources to absorb these additional duties.

Furthermore, the current MCLE reporting system requires all attorneys to self-report and track their MCLE under penalty of perjury, which puts the onus on individual attorneys to ensure that their records are correct. This makes sense. The proposed requirements would put an additional burden on both Legal services organizations and the State Bar to ensure that the information submitted by the individual attorneys and the providers is accurate.

LAFLA is very concerned that the proposed changes will in effect divert LAFLA's resources and limit our ability to promote pro bono services to the community through the development of poverty law trainings.

Thank you for considering these comments.

Phong Wong

Phong Wong
Pro Bono Director

Ron Olson Justice Center
1550 W. 8th Street | Los Angeles, CA 90017-4316
323-801-7924 | 323-801-7945 fax

Canas, Derek

From: James Eschen <eschenlaw@cruzio.com>
Sent: Monday, January 14, 2019 4:59 PM
To: McPhail, Robert
Subject: Proposed Changes to State Bar Rules regarding MCLE providers
Attachments: 2019-1-14 McPhail.pdf

Mr. McPhail,

On behalf of the Santa Cruz County Bar Association, I have attached comments regarding the proposed changes.

James C. Eschen
Attorney at Law
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www.Eschenlaw.net

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January 14, 2019

Robert McPhail
Office of Attorney Regulation and Consumer Resources
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Revisions to State Bar Rules, Title 3

Via Fax/email only: Robert.McPhail@calbar.ca.gov

Dear

The Board of Directors of the Santa Cruz County Bar Association has concerns about the proposed changes to rules for Mandatory Continuing Legal Education providers. The SCCBA is a small bar; in 2018 we had just 328 members. We have two full-time employees; they and a single part-time employee manage our Lawyer Referral Service as well as the bar. One of our primary activities is a monthly lunch and MCLE. We are therefore very sensitive to changes that may make providing MCLE more difficult.

Each of the State Bar's three proposals for electronic reporting of MCLE attendees requires more work for our understaffed organization. As the State Bar's executive summary points out, uploading the course attendance records through file-transfer protocol is "best suited to large online providers with sophisticated record-keeping databases," none of which describes the SCCBA.

Uploading Excel spreadsheets through an online portal would be more practicable for the SCCBA but still imposes costs on it. Implementing this method would require staff time to compile the spreadsheet and to move information from our database to the spreadsheet. Doing so manually increases the chance of human error. Submitting a spreadsheet with registration information on it still requires staff to delete registrants who failed to show and to add walk-ins who had not registered. Requiring online preregistration would reduce attendance at our MCLE events. In addition, the State Bar's proposal does not say who would develop this online portal.

Nor does the State Bar's proposal say who would develop the internet interface that would allow providers to enter each attendee individually. Additionally, we have concerns about the amount of time that attendees would have to spend registering at the event. Any backlog at the registration table would cause congestion and frustration, increasing the chance of human error and potentially decreasing attendance at our events.

Implementing the State Bar's proposals will impose further costs upon providers like the SCCBA. Individual attorneys' inevitable requests for a record of MCLE attendance will impose additional work on SCCBA staff. In addition, the SCCBA will have to police attendance, straining the relations between the bar and its members. The bar's mission includes acting for its members, not ensuring compliance.

We understand the State Bar's concerns regarding the high incidence of attorney noncompliance with MCLE requirements and the auditing expense. We are concerned, however, about the SCCBA's absorption of that cost. We therefore have two suggestions should the State Bar adopt any of these methods. First, it should not leave to providers the expense of developing compliance technology. Instead, it should have a single system for uploading Excel spreadsheets or for entering attendees' names onto the internet. Second, it should waive the provider fee if providers rather than the State Bar bear the cost of ensuring MCLE compliance.

Sincerely,

James C. Eschen
President
Santa Cruz County Bar Association

Canas, Derek

From:	Erin Peterson <director@longbeachbar.com>
Sent:	Monday, January 14, 2019 4:57 PM
To:	McPhail, Robert
Subject:	Comments for Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program
Attachments:	MCLE Provider Changes Comments.pdf

Attached below please find a letter containing my comments regarding the Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program which I believe is Programs item number III.B.

If you have any difficulty reading the letter or would like clarification on the points contained within, please let me know.

Thank you,

Erin

Erin Peterson

Executive Director

Long Beach Bar Association

562-988-6444

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January 10, 2019

Robert McPhail
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Mr. McPhail,

I am writing as the Executive Director and sole full-time employee of the Long Beach Bar Association concerning the proposed changes to the State Bar Rules regarding Provider Course upload. We are a small Bar Association with less than 500 members and the majority of our events are CLE oriented. Surrounded as we are by larger Bar Associations which can offer a greater variety of programming and splashier social events, our Bar focusses on meeting the education and practice needs of our members with small tailored MCLE programs that address their specific practice concerns. And because of this the proposed changes coming to the responsibilities of MCLE providers are of particular concern to us.

One major concern of course is the vagueness of this proposal, which will mean an unknown quantity of administrative time involved in the unknown amount of extra record keeping and data uploading. Because we have been provided with no specifics regarding this proposal except that it will provide "multiple upload methods" it is very difficult to say how much additional time this will take us. Will this simply be a matter of uploading our current excel files? This seems unlikely as, at the very least, I expect that we will be provided a template that they must conform to. Perhaps this template will be so close to what we currently use that we will not need to keep two separate systems of records, but then again perhaps it will be completely unusable to keep tabs on the items that we must track within our own records. You have asked for comment on a proposed system which is so vague as to make it impossible to assess its impact on our Bar's staffing costs.

One of the few concrete proposals included in these materials indicates that members will be able to sign in directly at the event with an online sign-in. While this sounds like a great way to avoid extra staffing costs in principle, it requires a fairly significant technology investment in order to provide a swift and smooth sign-in experience for attendees. And as minor quibble, the proposed changes as written would appear to require that we still provide and maintain the old manual sign-in

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sheets, and certificates of attendance, something that seems like a waste of resources if we are investing in an online sign in system as described above or are taking upon ourselves the upload of whatever digital records end up being required. Having these physical back-ups seems unnecessary, and while paper and ink is a relatively minor cost comparatively, what is the purpose in keeping cabinets full of paper documents that will never be used?

Aside from our major concerns about how the additional costs of this process will affect our overall budget, I am also concerned about the way in which it transfers the responsibility for accountability to the Provider. Under the current system, we provide attendees with a certificate of attendance which lists the maximum amount of credit we are offering, and if they must leave early, arrive late, or spend a portion of the talk in the hallway taking a call, it is the responsibility of the attendee to amend that credit. It appears that although the proposed rule changes state "the proposal would not require providers to verify attendance in ways or to an extent not currently required" the only way in which this amended credit would be able to be made is through the provider. This then puts us in the position of being responsible for not only providing the credit but policing the attendance of our members, something which is difficult if not impossible to do, and which if possible, would still be repugnant. We have not previously been in the position of treating our members as misbehaving children who must be closely supervised through their learning, trusting, as the State Bar has done, that these are upright and honorable adults who can be relied upon to honestly report their attendance. While we understand that some individuals have failed this test of honesty, to scrap the entire system and replace it with one where the local Bar adopts a supervisory role seems like a sure-fire way to breed ill-will between our members and the staff that they work so closely with. One possible solution to this might be to build into the system an attorney review - where providers upload the confirmation of attendance at the event and then attorneys are required to review and, where appropriate, confirm or adjust the amount of credit received. If attorney review of the data was required within a fixed time frame, say 90 days of the event, this would also mean that any errors in reporting would be caught relatively early - rather than at the end of a compliance period years later.

While I certainly understand the desire to replace the current inefficient and sometimes abused system with something which encourages greater accountability, this proposal as written does not allow the providers which will be shouldering so much extra work to fairly assess the degree to which this will impact us financially. Additionally, adopting these changes without further thought to concerns about how credit will be issued or confirmed seems overly hasty - and a good way to create a system which is a burden to the providers which are being asked to shoulder the tasks which the State Bar is outsourcing.

Thank you for your time and consideration,

Erin Peterson
Executive Director

3515 Linden Avenue, Suite 22, Long Beach California 90807
Phone - (562) 988-6444 www.longbeachbar.org Fax - (562) 988-1155

Canas, Derek

From: Theresa Hurley <thurley@cccba.org>
Sent: Monday, January 14, 2019 4:38 PM
To: McPhail, Robert
Subject: Executives of California Lawyers Associations Comments on Proposed State Bar Rule changes for MCLE Provider Upload Program
Attachments: ECLA Comments on Proposed Changes to State Bar Rules to Accomodate MCLE Provider Upload Program.pdf

Good afternoon Mr. McPhail,
Attached is a letter from the Executives of California Lawyers Associations (ECLA) regarding the proposed changes to the State Bar Rules to Accommodate an MCLE Provider Upload Program. Please confirm receipt of this letter.

Thank you.

Best regards,

Theresa Hurley

Executive Director
Contra Costa County Bar Association
2300 Clayton Rd, Suite 520
Concord, CA 94520
Ph (925) 370-2548, Fax (925) 686-9867
Visit our website at www.cccba.org
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January 14, 2019

Executives of California Lawyers Associations
c/- Contra Costa County Bar Association
2300 Clayton Rd, Suite 520
Concord, CA 94520

Robert McPhail
Office of Attorney Regulation & Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105

RE: State Bar Proposed Rules changes regarding MCLE Provider course upload program

Dear Mr. McPhail,

I am writing to you as President of the Executives of California Lawyers' Associations (ECLA), an organization made up of Executive Directors and Chief Executive Officers of California Bar Associations.

Many of our members have expressed concern about the proposed requirement for MCLE Providers to submit MCLE attendance records electronically. The concerns fall into two main categories 1) the lack of details about the proposed system which gives providers absolutely no idea how much staff time it would take to comply with this requirement and 2) the apparent shifting of responsibility of enforcement of MCLE compliance from the State Bar to MCLE providers.

No information has been provided about who will develop the online portal and how it will interface with the various CMS systems. For many of the smaller Bar Associations that have only 1-2 staff members and do not have an online MCLE recording system, the proposed program would likely mean a large amount of staff time would be spent inputting attendance information. Additionally, most Bar Associations use a great number of volunteers in order to maximize their ability to put on their member education programs. The more MCLE programs that an association puts on the more staff time that will need to be spent uploading or inputting MCLE attendance information as this is not something a volunteer can do.

We are also concerned about the fact that requiring providers to submit MCLE attendance information makes providers a party to enforcement, when our role is to provide attorneys education and support, not enforce State Bar rules. Voluntary Bar Association missions are to act on behalf of their members, not to ensure MCLE compliance with a regulatory Bar. While we understand the State Bar's concern about the incidence of licensee non-compliance with MCLE requirements, we do not feel that it is the role of the MCLE Provider to enforce that requirement and could result in negative feelings from our members towards our Bar Associations.

We ask that before a decision is made, the State Bar provide more details about the proposed upload program, particularly how this program may affect the many smaller Bar Associations who provide much of licensees MCLE programming.

Yours sincerely

Theresa Hurley
2018-19 President
Executives of California Lawyers Associations

Canas, Derek

From: SLO County Bar Association <slobar@slobar.org>
Sent: Monday, January 14, 2019 3:50 PM
To: McPhail, Robert
Subject: MCLE reporting

Dear Mr. McPhail,

I currently serve as the President of the San Luis Obispo County Bar Association ("SLOBAR").

The proposed update regarding expanded record keeping and reporting requirements could create more cost and expense than the SLOBAR can manage.

If any new rules are to be applied regarding tracking attendance, etc. I believe there should be an exception to small counties such as San Luis Obispo as it is truly cost prohibitive.

If specifics were shared as to what the State Bar is looking at as far as a system, it would be helpful for review before any implementation. Maybe some creative solutions could accommodate what the State Bar is trying to achieve without being too burdensome on small providers.

Best,

Michael R. Pick Jr., Esq.

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slobar@slobar.org

Canas, Derek

From: Brian S. Kabateck <president18-19@lacba.org>
Sent: Monday, January 14, 2019 2:53 PM
To: McPhail, Robert
Cc: Stanley Bissey
Subject: LACBA Letter re Proposed CLE Reporting
Attachments: LACBA Letter re Proposed CLE Reporting Changes 1-14-19 FINAL.pdf

Dear Mr. McPhail:

The Los Angeles County Bar Association (LACBA) wishes to respectfully express concern regarding the proposed changes to the State Bar of California Rules, which would require MCLE providers to electronically report MCLE course attendance.

Attached for your consideration is LACBA's public comment letter for proposed rule change.

Respectfully submitted,
Brian

Brian S. Kabateck
President
Los Angeles County Bar Association

p. 213.217.5000
bsk@kbklawyers.com | LACBA.org

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Los Angeles, CA 90017

LACBA

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January 10, 2019

Via Email and U.S. Mail

Mr. Robert McPhail
The State Bar of California
180 Howard St.
San Francisco, CA 94105
Email: Robert.McPhail@calbar.ca.gov

Dear Mr. McPhail:

The Los Angeles County Bar Association ("LACBA") wishes to respectfully express concern regarding the proposed changes to State Bar of California ("State Bar") Rules, which would require MCLE providers to electronically report MCLE course attendance. After reviewing the proposed changes, it is LACBA's position that these changes would have significant fiscal/personnel impact on providers, would present operational challenges as currently configured, and could expose providers to litigation risk.

If the State Bar adopts the proposed rules, LACBA anticipates that significant additional resources would be required in order to comply. LACBA produces hundreds of CLE programs each year, serving many thousands of attorneys. Under the new rules, the association would assume reporting responsibility for all those attorneys, and be required to offset the many hours those practitioners currently expend in managing their own reporting. Not only would many staff hours be required just to finalize and upload CLE data, but additional infrastructure and staff hours would be needed in order to verify and cross-check the accuracy of that substantial data flow in a limited time frame.

With regard to that time frame, the 30-day reporting window will present a real challenge for LACBA and other providers of similar size and structure, given the volume of guests who participate in the association's CLE programming and the need to resolve any outstanding payment issues prior to applying CLE credit (which can take longer than a single payment cycle). Thus, LACBA proposes that any such reporting window be expanded to 90 days.

Further, the transfer of reporting responsibility from individual practitioners to providers will present risk management challenges for the latter, exposing them to potential litigation risk should good-faith data entry or other reporting errors occur. While LACBA takes its reporting responsibilities very seriously, and will continue to do so in the future, the assumption of that additional risk seems problematic.

LACBA continues to support the State Bar's current MCLE mission of effectively and efficiently ensuring compliance, and appreciates the opportunity to offer input on the proposed changes to State Bar Rules.

Respectfully submitted,

Brian S. Kabateck, President
Los Angeles County Bar Association

cc: Stanley Bissey, Executive Director

Canas, Derek

From: Hults, Betsy W. <bhults@JonesDay.com>
Sent: Monday, January 14, 2019 2:43 PM
To: McPhail, Robert
Cc: Miska, Laura L.
Subject: Proposed Changes to MCLE Provider Rules

Mr. McPhail, members of our CLE Department have reviewed the proposed changes to the California MCLE Provide rules, and we would like to provide the following comments:

- We support the idea of having CLE credit providers transmit information electronically to California in lieu of having attorneys self-report compliance with their triennial requirements.
- We think it would be helpful, to us, for California to have the ability to provide licensees with accurate progress reporting.
- As a large law firm that currently operates in a number of states with similar requirements, we appreciate that you will be providing three methods for providers to submit electronic attendance records. We believe that, for our firm (2500+ lawyers), method #3 would work best. Even though we are a large law firm, we feel that entering the information into a direct internet interface, one attendee at a time, would be the most straightforward and accurate approach for us.
- Our Firm is an accredited provider in 5 states and we are most happy with the Pennsylvania and Texas systems, where we are able to enter information directly into their portal. The only issues with the systems of these states that would be helpful to avoid are:
    - In Texas an attorney can also report, so we sometimes get an error message if the credit has already been reported, which can cause confusion for both providers and individual attorneys. If California wants to allow the attorneys the ability to report, it might be helpful to give the sponsors a time frame (30 days, as you suggest) to report, have a gap of a few days (5 days, for instance) and then allow the attorneys to report after 35 days.
    - In Texas, once credits have been reported, we can no longer see them. If we have any errors, we can't go back into their system and fix the problem. It would be most helpful to be able to see the credits as they were reported, after they are in the system.

We hope these comments are helpful as California works through the process of implementing a MCLE Provider Course Upload program. Let us know if you have questions or need additional information.

Betsy W. Hults
CLE & Lawyer Training Manager
Practice Services Department
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Canas, Derek

From: Gold, Daniel <daniel.gold@dentons.com>
Sent: Monday, January 14, 2019 2:41 PM
To: McPhail, Robert
Subject: public comment on course upload

Good afternoon,

I wanted to bring up a couple points that come to mind when it comes to issues I deal with regularly in various state uploading platforms.

I am the National CLE Coordinator at Dentons, and we're accredited providers in many states, and I deal with several course uploading platforms. I see the positives and negatives to each state's system, and have formed my opinions on what is productive and helpful, and where there are pain points.

I used to work at the Illinois MCLE Board from 2007-2012, and worked there while we were designing the PCAM platform. Now having worked on the CLE Provider end for the last 6+ years, I've seen both sides of this.

Some thoughts:
- Overall, the biggest suggestion goes to the schedule of when upload is due. I'd suggest something like having the courses due on a quarterly or bi-annual basis. For example, Q1 and Q2 courses should be uploaded by 7/31, and Q3 and Q4 should be due by 1/31. This would allow providers the ability to do this in a bulk "upload" session, rather than one by one where it's inevitable that we leave something off. The former lets us take care of it all at one time, rather than having it be one more undercurrent of our workload. Illinois' PCAM system requires that we UPLOAD courses by the actual day of the program. If we submit any time after the day of the course, we are charged $25.00. This is oftentimes a difficult hurdle, as courses come up at the last minute, or attendees request Illinois after the fact. In Illinois, course attendance numbers and their respective fees are due by the end of the following month.

- While the course upload deadline can be a pain, Illinois PCAM is a relatively user-friendly system. However, the system makes it hard to change info after you've already hit submit. An easier system would allow providers to make small changes to the program after it's been submitted.

- The New Jersey course announcement method is not a user-friendly method. It's slow, asks for way too much repetitive info, and is hard to search for courses. What would make this easy is to just pull the relevant info: Course title, date, number of credits, types of credits, format. We should be able to search for courses based on date of the course (Illinois does this, but not NJ).

-Do understand that if providers will be in charge of uploading actual license numbers of the specific attendees that attend, this will be a very, very large influx of work for CLE providers. An example of this is in Georgia and Texas where we have to manually upload license numbers. This takes a very long time and can add a significant amount of strain on CLE providers (especially in a state like CA where there are so many CA attorneys seeking credits). A model like Illinois would work easier, where we upload the *number* of attendees in each course, but not the actual license numbers of those Illinois attendees that came.

-An ideal system will speak with CE Manager to make it easier and have less actual manual upload.

I'm happy to discuss these points and other suggestions on the phone, if it helps to have a "provider side" of input.

Dan Gold

Daniel Gold
National CLE Coordinator

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Canas, Derek

From: Julie Aguilar Rogado <jaguilar@lsnc.net>
Sent: Monday, January 14, 2019 1:57 PM
To: McPhail, Robert
Cc: Gary Smith
Subject: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program
Attachments: Comments.Rules.Course Upload. Jan.2019.pdf

Dear Mr. McPhail,

Please find attached comments from Legal Services of Northern California. Thank you.

Julie Aguilar Rogado

Julie Aguilar Rogado
(Pronouns: she/her/hers)
Deputy Director
Legal Services of Northern California
517 12th Street
Sacramento, CA 95814
phone: (916) 551-2179

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LEGAL SERVICES
of
NORTHERN CALIFORNIA

VIA ELECTRONIC MAIL

January 14, 2019

Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105
Robert.McPhail@calbar.ca.gov

Re: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Mr. McPhail:

I am writing on behalf of Legal Services of Northern California (LSNC), an IOLTA-funded non-profit legal aid organization serving 23 northern California counties, and a State Bar certified MCLE provider. We employ more than 50 California attorneys and those attorneys satisfy their MCLE requirements almost exclusively from trainings offered by our organization. We offer between 30 and 60 hours of MCLE-qualified training each year on topics specific to our areas of practice. While most participants in our training events are our own staff members and volunteers, we occasionally open our training events to others and routinely welcome highly-qualified attorney trainers from other firms and organizations to train participants. We do not charge fees to attend our events, but generally limit them to staff, pro bono attorneys and attorneys from other non-profit legal aid and public interest firms.

LSNC is supportive of the State Bar's proposal to move away from the attorney audit enforcement approach for MCLE compliance. While we encourage our attorneys to keep careful records of their attendance at events, we have found that some are poor record-keepers and audits have prompted some to return to us asking for copies of our records on their attendance at events. The process of searching MCLE attendance records and providing duplicate forms is time-consuming and wasteful. However, we have some concerns about the proposed process and offer the following comments to help inform the State Bar's adoption of a new rule.

The 30-day Submission Window is Insufficient

Requiring submission of electronic attendance records within 30 days of completion of the activity does not allow sufficient time for non-profit providers. Even if a provider is able to create an

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electronic sign-in system onsite, technical issues will almost certainly require using paper sign-in sheets from time to time. Even when participants are instructed to write legibly, there can be difficulties verifying names and numbers. The process of verifying information input on paper forms or making similar corrections to erroneous entries in an electronic system will require significant staff time. Non-profit providers like LSNC use attorneys and field office clerical staff to complete this work. Often, such tasks are necessarily delayed due to case work and other urgent demands. A 45 to 60-day window for non-profit providers is necessary to ensure data submitted is accurate.

Corrections to Attendance Records

Absent a 45 to 60-day window for submission, a mechanism for submitting corrections to attendance records is necessary.

As a provider that frequently offers several MCLE qualified trainings during day-long training events, we find that attendees often forget to sign-in for each training or attempt to sign-in, but cannot do so efficiently without missing some portion of the training. Permitting long periods of time for signing-in to each individual event would cost our program significant time and would reduce the number of training sessions we could provide in a day. We have all-day training events in order to achieve travel expense savings for our program, so we try to maximize the training time, offering limited break times that can be almost totally eliminated if a speaker exceeds his or her time due to audience questions or technology delays. Inevitably, we are contacted by participants who we know were present and participated in trainings, but who inadvertently did not sign-in on that day. Similarly, we have participants via videoconference and when they alert us that they were present at an event, we take steps to verify their participation, including confirming with their on-site supervisors that they were participating and asking them to complete a sign-in sheet to verify their participation. This process can take several weeks as our trainings are planned and coordinated by full-time attorneys who may not immediately have time to reconcile training attendance records. We do not have sufficient clerical staff to do this work. The 30-day window to submit the event data is too narrow. Absent a longer submission period, there should be a mechanism for making corrections to event attendance data.

The Bar Should Provide an Online Form and Record-Keeping System for Non-Profits

In the Executive Summary of the notice of rule change (under Best Processes Review), the Bar describes three proposed methods for submitting electronic attendance records. These include a mass upload option using a File Transfer Protocol site, an option to upload excel spreadsheets through an online portal, and an internet interface to allow input for one attendee at a time.

The efficiency of Bar staff navigating multiple methods of upload and the variety of technical issues that could arise with each is questionable, but in each instance the burden for compliance monitoring is shifted to the provider. While a for-profit provider can adjust its business model and program pricing to adapt to these new responsibilities, non-profit providers like LSNC will have to absorb the extra staff time cost, which will mean less staff time for training and client services. Taking that into account, it seems the Bar could provide, for non-profit providers at least, a more streamlined system for developing compliant MCLE forms and for record keeping. The Bar could provide fillable, rule-compliant forms within an internet-based system that would then save a record of the event and the

forms for that provider. The forms, including attendance sheets could be printed in the event of a technical issue with logging attendance data on site. At each training, the provider would log-in to the same Bar system to collect attendance data for the event that was already created on the system. This would require providers only to secure an internet connection at the training location, rather than to also create a system for collecting information the Bar seeks for each attendee. The Bar could also ensure that its system would be compliant with applicable law regarding disability access, and would otherwise be as accessible as possible for people with disabilities. While LSNC applauds the flexibility of three potential methods of submitting data, it believes that the Bar is missing an opportunity to increase compliance with MCLE rules for both providers and attorneys as it does not propose to create a uniform online system for providers to effectively comply with the rules.

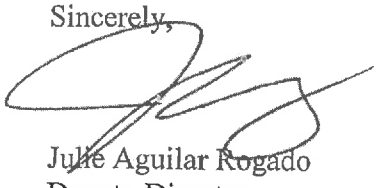
The Bar Should Delay Rule for Non-Profits or Fund Technology to Aid Compliance

Given the constraints on staff time described above, non-profits who frequently provide MCLE training will need to invest in technology to collect attendance data at the site of training events. LSNC holds trainings at its own offices when possible, but due to the size of our attorney staff, we often have to hold training events off-site at local community centers, libraries and other public buildings with sufficient capacity. LSNC will need to purchase mobile hot spots in order to secure an internet connection and a computer or tablet for attendees to sign-in for each event. It is unreasonable to delay the time between training sessions in order for 30 to 50 attorneys to sign-in electronically on one device, so more than one computer or tablet will need to be made available for this purpose at each event. Again, non-profits cannot pass along these extra expenses to participants in our training events because we cannot, and would not, charge our staff for participating in our training events. The expenses involved with compliance will have to be deducted from the organization's general funds.

In fairness to non-profits like LSNC, the Bar should delay implementation of this requirement for non-profits until such time that funding can be secured to support the technology investment that will be required for compliance. LSNC echoes the Legal Aid Association of California in its comments asking that the Bar consider the practical financial impact of the proposed rule changes on legal non-profits serving California's most vulnerable residents.

Thank you for your consideration of LSNC's comments.

Sincerely,



Julie Aguilar Rogado
Deputy Director

Canas, Derek

From: Elaine <elaine@lawyersclubsandiego.com>
Sent: Monday, January 14, 2019 1:28 PM
To: McPhail, Robert; danna@arciplaw.com
Subject: Lawyers Club of San Diego (Provider #1401): Public Comment to CA Bar re: MCLE attendance upload - proposed changes
Attachments: Lawyers.Club.SD.Ltr.CA.Bar.MCLE.changes.Public.Comment.20190114.pdf

Dear Mr. McPhail

Please accept the attached as our public comment (due today) on the proposal to require that MCLE providers upload attendance data.

Let me know if you have questions.
Best,
Elaine

Elaine S. Lawrence
Executive Director
Lawyers Club of San Diego
402 West Broadway, Suite 1260 | San Diego, CA 92101 | Ph: 619-595-0650

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Via Email to Robert.mcphail@calbar.ca.gov

January 14, 2019

Robert McPhail, Program Manager II
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: State Bar of California - Call for Public Comment re: Electronic Submission of MCLE Attendance
Provider: Lawyers Club of San Diego, Inc., Provider #1401

Dear Mr. McPhail,

The State Bar of California ("State Bar") has proposed changes to the MCLE Provider rules that would have Providers electronically report attorney attendance at MCLE events.

Lawyers Club of San Diego, Inc., Provider #1401, ("Lawyers Club") is a specialty bar association and has been a MCLE provider since the 1990s. Our mission is to advance women in the law and society, and we provide 10-20 MCLE programs annually to 1,300 members with 3 staff members.

The State Bar proposal seeks to reduce or eliminate State Bar staff time in conducting individual audits of its members' MCLE. The State Bar also seeks to establish an audit method for Attorneys given the dismal audit results in recent years, at significant cost to the State Bar.

The changes proposed by the State Bar requiring Providers to electronically report MCLE for Attorneys will create an unreasonable burden on our already overburdened Lawyers Club staff and on our operating budget to manually enter information via any one of the State Bar's proposed solutions.

The State Bar proposal places the burden for Attorney compliance on Providers. We do not believe that the burden of the proposed audit system should be placed on Providers. We do not believe that we as a Provider should bear the cost of non-compliance but rather that cost should be on the Attorneys and/or the State Bar for those who are in non-compliance. Further, requiring Providers to electronically report Attorney attendance at MCLE events will not solve the problem of Attorney compliance with the MCLE requirements for certification. Rather it will transfer the problem to Providers. We do not wish to, nor are we able to, take on the work of the State Bar in recordkeeping for its Attorneys.

Currently, Attorneys must submit their Certificates of Attendance for California MCLE including their sworn declarations of participation in all or some of the MCLE activity. Providers should not be asked by the State Bar to certify an Attorney's participation in some or all of the MCLE activity. We are already required to maintain an Official Attendance sheet on which each Attorney has signed in with their respective Bar No. This should be sufficient.

If an Attorney is deemed to be non-compliant with the State Bar, the attorney should be the one who bears to burden to remedy their non-compliance. Any involvement by us as Provider to address an attorney's noncompliance will be burdensome to the Provider's staff and could pose a liability to the organization. If a mistake is made who bears the liability for that mistake?

We do not charge Attorneys for MCLEs. If we were required as a provider to maintain the record keeping suggested by the proposals, we would have to charge for MCLEs because of the extra burden it would place on the staff.

An alternative method would be for the State Bar to have a portal for each Attorney and through that portal the State Bar would require the Attorneys to upload or provide their MCLEs obtained.

Since we already have and maintain for a period of four years the Official Records of Attendance, we would agree to send an electronic copy of the Official Attendance Sheet as a PDF. The State Bar could utilize character recognition technology to record program attendees and or verify attorney reporting of their attendance.

Thank you for considering our input on this issue.

Sincerely,

Danna J. Cotman, President

Canas, Derek

From:	Linda Kilb <lkilb@dredf.org>
Sent:	Monday, January 14, 2019 1:17 PM
To:	McPhail, Robert
Cc:	Catherine Blakemore; Linda Kilb; Jordan Kough; Rachael Langston; Deborah Thrope
Subject:	Comments re MCLE Provider Requirements Submitted by Organizations with Disability Rights Expertise
Attachments:	Disability Rights Submission - MCLE Provider Requirements - FINAL - Jan 2019.pdf

Dear Mr. McPhail:

Attached please find comments on the State Bar's proposed changes to MCLE provider requirements, submitted by IOLTA-funded California legal services offices with expertise in disability civil rights issues.

Thank you for this opportunity to comment.

Best,

Linda D. Kilb, Esq.
Director, California Legal Services Trust Fund Support Center Program
Disability Rights Education and Defense Fund, Inc. (DREDF)
3075 Adeline Street, Suite 210
Berkeley, CA 94703
www.dredf.org
(510) 644-2555 (voice number for front desk)
(510) 644-2555 ext. 5243 (direct)
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lkilb@dredf.org
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January 14, 2019

Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Submitted via Electronic Mail to: Robert.McPhail@calbar.ca.gov

Dear Mr. McPhail:

On behalf of the undersigned California-based, IOLTA-funded non-profit disability rights advocacy organizations, we appreciate the opportunity to comment on proposed changes to MCLE provider requirements. We understand that the State Bar is considering a system that would require MCLE providers to transmit attendance information electronically, in lieu of simply having attorneys self-report compliance with their triennial requirements.

Signatories here are either solely or significantly devoted to advancing and protecting the civil rights of people with disabilities. All signatories have an extensive presence in California, and are nationally recognized for their decades-long experience with and expertise in both federal and California disability civil rights law analysis.

We are aware of the simultaneously submitted public comments being offered by the Legal Aid Association of California (LAAC). We urge close attention to the analysis and concerns offered in that submission. We write

separately here to highlight the related disability access issues within the scope of our specific expertise.

We know that the State Bar is aware of its long-standing obligations to ensure that its activities and systems are accessible to and useable by people with disabilities.[1] We thus do not offer detail or analysis of those basic requirements here, focusing instead on the ramifications of the rulemaking at issue.

We want to ensure that the proposed change will not have an adverse impact on people with disabilities who are increasingly present (and should be anticipated) in a variety of roles relevant to MCLE provider recordkeeping. We are particularly concerned about access implications for individuals with visual impairments and manual dexterity disabilities, though other disability implications are also possible.[2]

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[1] The California State Bar is a public agency in the judicial branch of government, serving as an administrative arm of the California Supreme Court. As such it is subject to a range of federal and state disability rights laws. Relevant federal laws include 29 U.S.C. § 794 (Section 504 of the Rehabilitation Act of 1973), and 42 U.S.C. §§ 12131-12143 (Title II of the Americans with Disabilities Act (ADA) of 1990). Relevant state laws include Cal. Gov. Code § 11135.

[2] We do not fully endorse the existing protocols, as reliance on hard-copy records also creates access barriers. However, the present system lends itself relatively easily to reasonable accommodations. Attorneys with disabilities (and their employers) can develop systems or technology interfaces to track individual MCLE hours in accessible ways, while also creating an audit-ready documentary record. MCLE providers can accommodate employees who provide support for MCLE trainings, via technology interfaces to memorialize attendance at on-site trainings, or reassignment of clerical duties requiring interaction with hard-copy forms. The State Bar can similarly accommodate its own employees involved in audits, as such reviews are focused on the limited documentation attendant to auditing specific individual attorneys in serial fashion.

While in general a move to technology can create universal access, that is only possible if the planned technology and its protocols have been carefully vetted for disability-related access. In this instance, the recommended rules and accompanying materials do not include information indicating that the proposed changes have been analyzed from a disability access perspective. Some use of the three new data-transfer methods may facilitate universal access, potentially including the FTP and Excel spreadsheet uploads. Uploads of scanned documents can also potentially be accessible, if proactively scanned in or transformed to an accessible form before upload.

However, it is highly unlikely that numerous small MCLE providers will transmit uniformly accessible documents to the State Bar if the current proposal is adopted. A more likely result is that the existing access challenges of the current system will be greatly amplified when high numbers of small MCLE providers are mandated to engage in electronic data transfer and uploads without any clear direction from the State Bar on this issue. Moreover, to the extent that the new protocols invite or require individual attorneys to review or upload data electronically on the State Bar website, key features must be prominently placed, so that they are easily findable.

If the State Bar is to proceed with this significant change in protocols, it should defer action on these changes pending a more proactive and detailed investigation of disability access implications. The State Bar must be able to identify feasible method(s) of data transfer that will preserve—at a minimum—the level of accessibility and feasibility of accommodation that is present in the existing system and protocols. Such review must also take into account the speed with which technology is now advancing. The system must build in resources for continual review of access implications, and robust ongoing guidance to MCLE providers and individual attorneys, as ever newer options for data transfer become possible.

Attention to these issues will help ensure that California remains at the forefront of efforts to preserve and advance diversity in the legal profession, enhancing public trust in our shared mission of justice and fairness for all.

Again, thank you for the opportunity to comment on these important issues. We appreciate your time and consideration.

Respectfully submitted,

Catherine J. Blakemore, catherine.blakemore@disabilityrightsca.org
For **Disability Rights California (DRC)**

Linda D. Kilb, lkilb@dredf.org
For **Disability Rights Education & Defense Fund (DREDF)**

Jordan Kough, jordan.kough@drlcenter.org
For **Disability Rights Legal Center (DRLC)**

Rachel M. Langston, rlangston@legalaidatwork.org
For **Legal Aid at Work**

Deborah L. Thrope, dthrope@nhlp.org
For **National Housing Law Project (NHLP)**

Canas, Derek

From: Jeffry Radding <Radding@msn.com>
Sent: Monday, January 14, 2019 1:01 PM
To: McPhail, Robert
Cc: Michael Pick; SLO County Bar Association
Subject: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Mr. McPhail,

Attorney Jeff Radding here (sbn 91835). I have been the person responsible for overseeing education programs for the San Luis Obispo County Bar Association since *before* the inception of the California State Bar Minimum Continuing Legal Education (MCLE) requirement, and ever since.

The San Luis Obispo County Bar Association has a membership of approximately 150 attorneys. There may be in excess of 500 attorneys residing in the county, undoubtedly the majority of which -- and the majority of the Association membership -- are sole practitioners or partnerships of two. The Bar Association has (1) a volunteer Board of five directors, (2) a limited-time (*i.e.,* very-part-time) "Executive Director," and (3) one attorney who serves as volunteer editor for its journal -- the SLO County Bar Bulletin -- published once every two months. In sum, the SLO County Bar Association is almost purely a volunteer organization in its operations, with those involved being responsible for demands of small-firm law practices.

The Association has a general membership meeting anywhere from 10 to 12 times per year, with attendance ranging anywhere from approximately 30 persons to maybe 90+ persons. (Even then, not all program attendees are Association members.) The Association also has several sections, probably three of which have any regular activities/meetings: the Criminal Section, the Family Law Section, and the Trusts/Estate Section, each of which meet probably 10 to 12 times per year. A primary reason -- probably the primary reason -- that accounts for Association membership and, certainly, the production of and attendance at meetings is the prospect of earning MCLE credits.

Until now, the process for qualifying meetings and programs for MCLE credit has been sufficiently manageable for the Association's operations. Reviewing proposed Association and Section programs for content and promotion compliance, preparing the forms, and storing the forms for verification purposes has been workable.

It is evident, however, that the processes which the proposed rules contemplate will tax the resources of the SLO County Bar Association beyond the breaking point for continuing to offer MCLE programs with the frequency it has to date. Because of that, Association and Section membership and participation will suffer. Local attorneys will also have to incur greater program costs and also travel costs to fulfill MCLE requirements.

At the very least, then, small local Bar Associations require exemptions from the State Bar's proposed program.

Thank you for your consideration.

Jeffry C. Radding
Attorney at Law
1035 Walnut Street
San Luis Obispo, CA 93401
tel: 805-546-8541
fax: 805-541-4269

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Canas, Derek

From: Christopher McConkey <cmcconkey@one-justice.org>
Sent: Monday, January 14, 2019 12:21 PM
To: McPhail, Robert
Cc: Julia Wilson; Kim Irish
Subject: OneJustice: Letter opposing the proposal re MCLE provider reporting
Attachments: OneJustice Letter Opposing the Proposal re MCLE Provider Reporting.pdf

Dear Mr. McPhail,

I hope that you are doing well! I attached here OneJustice's public comment opposing the State Bar's proposal re MCLE provider reporting. Please just let me know if you have any questions or would like additional information.

Sincerely,
Chris

Christopher McConkey (pronouns he/him)
Senior Staff Attorney
Healthy Nonprofits Program and Californians for Legal Aid
OneJustice
433 California Street, Suite 815
San Francisco, CA 94104
415-834-0100 ext 320
cmcconkey@one-justice.org

OneJustice

January 14, 2019

Robert McPhail
Program Manager II
The State Bar of California
180 Howard Street, San Francisco, CA 94105

Submitted via email to Robert.McPhail@calbar.ca.gov

Re: Opposing a requirement on MCLE providers to report attendance at MCLE events

Dear Mr. McPhail:

OneJustice writes to oppose the State Bar's proposal to require all MCLE providers, including nonprofit legal aid organizations, electronically to report attendance at MCLE events. This rule change would burden our statewide network of legal aid nonprofits, straining the actual availability of legal aid to very low-income Californians in high-stakes cases. By extension, this directly undermines the State Bar's purpose of protecting the public, specifically those who are low-income and most vulnerable.

OneJustice is a statewide IOLTA grantee with the mission of bringing life-changing legal help to those in need by transforming the civil legal aid system. We support the statewide legal aid delivery system by expanding the services available. We do this by increasing the use of *pro bono* in the delivery system, strengthening the internal management practices at direct services nonprofits, and representing federally funded legal aid nonprofits on issues relating to federal funding and regulation. Therefore, we write from the unique perspective of a support center for other legal aid providers in California that also administers a set of *pro bono,* limited-scope clinics in rural and isolated parts of the state.

As a support center, OneJustice relies on its status as a multiple activity provider both to increase *pro bono* involvement in the statewide network and to strengthen the capacity of direct services nonprofits across California. Through trainings, as well as consultations and convenings, we expand *pro bono* legal services programs, particularly focusing on rural and immigrant Californians. We also expand the services, sustainability, and nonprofit management capacity of our state's legal aid providers. This helps our legal aid system stretch to serve as many low-income people as possible. Our role as an MCLE provider, with the ability to provide free and low-cost MCLE trainings to *pro bono* volunteers and legal aid nonprofit staff, is essential to our role as a support center and ability to achieve our mission and our strategic objectives.

The State Bar's proposal would shift a significant portion of our limited resources (i.e. unrestricted funding and staff time) away from creating, promoting, delivering, and providing follow-up technical help for our original trainings. We would instead have to spend those resources to take over the work

currently–an appropriately–done by individual attorneys, that is, the role of maintaining and reporting CLE records. It will certainly take considerable time for our staff to supervise and execute the deciphering of handwriting, uploading of data, and resolving of questions that will inevitably arise at the end of every reporting period. We estimate that it could take a staff member whose job it is to expand legal aid one or more business days per week just to evaluate and respond to questions as MCLE records become due every February 1st.

The State Bar collects revenue in membership dues from attorneys to execute its monitoring functions. Additionally, OneJustice pays a fee to the State Bar to maintain its status as a provider of free trainings that expand access to civil justice. This rule change would require us to allocate more resources towards staff time and/or technology to absorb a burden that more appropriately lies with the State Bar, as the licensing entity, or with its individual members, whose behavior is the focus of the mandated MCLE activities in the first place.

The *status quo*, requiring all attorneys to track and report their own CLE under the powerful penalty of perjury, distributes the burden far more evenly and equitably. It is more reasonable for one individual who is motivated to comply with his, her, or their own licensing requirements to report their own training hours. Requiring legal aid organizations to absorb the workload of interpreting and uploading the records of hundreds–if not thousands–of trainees every year, as well as to problem solve issues dating back 2-3 years, has the unintended but highly negative consequence of prioritizing inefficient records maintenance over providing life-changing legal aid services to low-income Californians.

Thank you very much for your consideration of these comments,

Julia R. Wilson
Chief Executive Officer

Canas, Derek

From: Diego Cartagena <DCartagena@bettzedek.org>
Sent: Monday, January 14, 2019 9:00 AM
To: McPhail, Robert
Subject: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program
Attachments: Bet Tzedek Comment MCLE Provider Course Upload Program,4818-6756-8261.pdf

Good morning Mr. McPhail,

Please find attached to this email Bet Tzedek Legal Service's comments to the proposed changes to State Bar rules to accommodate MCLE provider Course upload program. Please feel free to contact me with any questions.

Best,
Diego
(Pronouns: He/Him)

Diego Cartagena, Esq.
Vice President, Legal Programs

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JUSTICE FOR ALL

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Bet Tzedek is a nonprofit organization funded in part by the City and County of Los Angeles, the State Bar of California, the Equal Access Fund, and the City of West Hollywood

January 7, 2019

Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105
Phone: 415-538-2237
Email: Robert.McPhail@calbar.ca.gov

Re: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Mr. McPhail,

I write to you today on behalf of the Bet Tzedek Legal Services ("Bet Tzedek") regarding the Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program. While our agency understands the need for the State Bar to increase efficiency and efficacy when it comes to MCLE regulation, we request that the Bar also consider the deleterious impact the current proposal would have on nonprofit MCLE providers who serve attorneys working with low-income Californians.

Bet Tzedek, the House of Justice, was founded in 1974 by a small group of lawyers, rabbis, and community activists who came together to assist aging Holocaust survivors and other low-income community members who were being displaced from their homes as the Fairfax neighborhood underwent gentrification. More than 40 years later, Bet Tzedek has grown from a small, volunteer-run operation to one of the nation's premier poverty law organizations. Core programs and areas of expertise include: elder law, public/disability benefits, family caregiver legal needs, real estate fraud and foreclosure prevention, employment law, tax, housing and homelessness prevention, small business development, child guardianships, counsel for unaccompanied minors, transgender rights, and Holocaust reparations. Bet Tzedek's services are provided at our offices in the area of Los Angeles County known as "Koreatown" and at more than 30 community-based locations, including courthouses, senior centers, food pantries, and health care facilities. Our staff (including 42 attorneys and 6 paralegals) and over a thousand pro bono volunteers provide a full spectrum of free legal services to 40,000 people per year.

Bet Tzedek's status as a provider of free MCLE is a critical aspect of our agency's delivery of quality services to low income members of our communities. First, Bet Tzedek frequently invites experts to provide our staff with substantive, MCLE eligible trainings in various areas of the law as a means of ensuring our staff is up-to-date in their respective fields of practice. When it does so, Bet Tzedek serves as the MCLE provider, and our individual staff assume responsibility for the preparation of all necessary paperwork and the completion of any administrative steps, such as having attendees sign-in and the collection and review of evaluations post-training. In addition to providing these sessions for its own staff, Bet Tzedek frequently invites attorneys from other, local legal aid organizations to these trainings. Finally, each of the volunteer attorneys who join us in our mission to provide free legal services to those most in need are trained by our staff through the free MCLE sessions regularly held at our offices and at law firms across Southern California. As with trainings held for staff, in each of these instances, the staff attorney conducting the training assumes responsibility for the preparation of all paperwork and the completion of any administrative steps. Altogether, Bet Tzedek provides dozens and dozens of free MCLE sessions each year. Bet Tzedek offers and conducts each of these free MCLE sessions in much the same fashion as other legal aid programs. Bet Tzedek has participating attorneys sign in on a paper form, and the agency keeps the sign-in form and any relevant samples and exemplars related to the individual training for four years after the event.

For legal aid programs, the proposed changes to the State Bar rules would make the provision of MCLE sessions such as those conducted by Bet Tzedek cost-prohibitive. The proposed changes would require agencies like Bet Tzedek to either manually enter each individual attendee's information, upload a spreadsheet that must be completed by our staff, or use newly purchased technology. To comply with the proposal, Bet Tzedek would therefore potentially have to purchase expensive technology to allow electronic sign-ins for in-person conferences. In the alternative, the staff member responsible for the MCLE would be required to enter each attorney's name and State Bar number from the paper sheet. This, after spending time preparing the relevant paperwork, administering the sign-in, monitoring the attendees, and then administering and collecting the evaluations. These additional administrative burdens and the time associated with them may reach the point of requiring the hiring of additional staff. Even after this, there is the potential for additional burdens on the staff and agency. Under the proposed changes, attendees, aware of the amount of data the agency would be required to submit, would not only rely and call on Bet Tzedek to verify their MCLEs, as sometimes happens now with individuals who misplace their certificates, in the future attendees will likely file concerns or complaints with agencies for any errors in the entry of data that result in lost MCLE credit. Agencies like Bet Tzedek would be required to spend even more staff time on top of that already spent entering the data addressing such complaints. In each of these instances, the increased requirements translate into the expenditure of additional resources, whether that be staff time or money, that would be diverted away from the delivery of legal services to the poor and instead allocated toward completing administrative tasks. At a time when there are approximately 8,000 eligible clients

for every legal aid attorney in California, and when budgets are already stretched thin, this increased burden would be unconscionable and untenable.

Moreover, the current proposal presumes the MCLE events reach a certain capacity where these proposed changes make economic sense. Annually, some legal aid programs might convene 80 to 100 trainings, with around 20 to 30 attendees, while others, like Bet Tzedek, organize fewer. In addition, while some of our trainings may be attended by as many as 60 individuals, others are attended by 5 to 10 attorneys. For programs like Bet Tzedek that hold fewer and smaller MCLE events than large, for-profit entities in the business of providing MCLEs, the technology associated with the current Bar proposal is extremely cost-ineffective. Indeed, the proposal, as currently written, appears to benefit only the larger, profit-oriented MCLE providers with economies of scale that make compliance possible.

The proposed rule would impose additional, significant burdens on agencies such as Bet Tzedek. For example, trainings may be held in a location with unreliable internet. Bet Tzedek would therefore potentially have to invest in mobile hot spots to ensure internet access. Our agency would very likely be required spend extra staff time in advance of any training to ensure the technology is working and to test internet connectivity. In the alternative, our agency would be required to expend additional money to have an IT vendor address such issues. In addition, in order to avoid issues, our agency would likely continue to use paper sign-ins as a back-up, resulting in the additional allocation of resources to these administrative tasks. Ultimately, therefore, the proposed one-size-fits-all rule creates a cost burden on non-profit programs like Bet Tzedek.

Last, the State Bar must consider the disability access implications of the proposed changes. The assumption must be that people with various disabilities will be present in all of the various roles that interact with MCLE records. This includes not only attorneys with disabilities taking classes, but also employees of MCLE providers as well as employees of the State Bar. At a minimum, the Bar should explicitly consider the accessibility of any electronic formats they agree to accept in the present as well as in the future, and consider the various disability implications – such as interface requirements – if the Bar proceeds with this proposal.

In Bet Tzedek's opinion, many of the issues the proposed rule changes intend to address should be addressed by continuing to place the onus on the attending attorneys, not the MCLE providers. Attorneys submit their hours under penalty of perjury, and this should be sufficient. Indeed, the proposed changes will not actually help prevent attorneys from dishonestly manipulating the system. Instead, this proposal places the onus on nonprofit MCLE providers, and could result in situations where individuals believe – rightfully or not – that they attended a given training but for one reason or another, the information was not submitted to the Bar, or was submitted incorrectly due to a typo during data entry or because the individual forgot to sign in but was actually there. The proposal puts agencies like Bet Tzedek in a position where

attorneys could blame Bet Tzedek for not properly making sure their information reaches the Bar.

In sum, Bet Tzedek is concerned the current proposal will not reduce the cost of monitoring compliance, but rather will simply shift it from the Bar to MCLE providers, including nonprofits that cannot afford the additional costs and burdens. This, when the goals related to compliance can be met by continuing to place the onus on the attorneys who attend and sign paperwork under penalty of perjury.

Thank you for considering our comments. Please do not hesitate to contact me with any questions or requests for clarification regarding our comment.

Diego Cartagena
Vice President, Legal Programs
Bet Tzedek Legal Services

Canas, Derek

From: Joanne Kirchner <jkirchner@capcentral.org>
Sent: Monday, January 14, 2019 8:11 AM
To: McPhail, Robert
Cc: Laurel Thorpe; Cheryl Anderson
Subject: Comments Re: Proposed MCLE Rule Changes to Require MCLE Providers to Electronically Report MCLE Attendance

Hello Mr. McPhail,

I am writing to provide comments to the proposed changes to the State Bar Rules to accommodate the MCLE provider course upload program. My nonprofit law firm, the Central California Appellate Program, is a multiple activity provider and will be required to submit electronic attendance records under the proposed rules. We mainly host three types of MCLE trainings: (1) live, in-house training for our attorney staff; (2) live trainings for the public; and (3) on-demand video training via our MCLE training website, https://www.capcentralmcle.org/. The most recent version of the website was built in 2015 in compliance with the California State Bar MCLE Technology Subcommittee Online Guidelines for Internet Training. A State Bar employee reviewed the original website while it was being developed and did not recommend any changes. Our comments regarding the proposed rules, which are below, mainly relate to how the rules will apply to our MCLE training website.

1. The proposed amendments to Rule 3.600(H) and Rule 2.51(A) (it looks like this is mis-lettered and should be (F) instead) provide "Participatory activity credit may only be awarded if the provider verifies the attendee has taken the course on the date of completion of the course. Methods for verification include sign-in in writing or electronically at the start of the course." Proposed Rule 3.602 (D) states that each provider must "provide the State Bar of California with electronic attendance records in a form acceptable to the State Bar of California within 30 days of completion of the activity."

   Our MCLE training website records the date and time that an attorney begins to watch a video. Sometimes an attorney will start the same video multiple times over the course of a few days. When this happens, we do not know which date the attorney actually completed the video because the system does not record the date the video was completed. In this situation, is the provider expected to report each date the attorney started watching the video?

2. The proposed amendment to Rule 3.602(E) provides that MCLE providers are responsible for furnishing an MCLE certificate of attendance "upon completion of the program" and that the certificate must include "the date the course was completed." As mentioned above, our MCLE training website only records the date and time that an attorney starts a video; it does not record the date and time the attorney completes the video. We currently post the MCLE certificates on the website with each video and the attorney is responsible for downloading the certificate for his or her records and filling in the date the video was viewed. Altering our website so the MCLE certificate was only provided when the attorney finished watching the video would require major changes to our MCLE training website that were not anticipated when the website was rebuilt in compliance with State Bar guidelines in 2015. We request that the rule be amended to provide that MCLE providers who provide on-demand MCLE training videos online and record the date and time the video is viewed may (1) post an MCLE certificate online with the video and (2) allow an attorney viewing the video to fill in the date on the MCLE certificate that he or she viewed the video.

3. The proposed rules do not discuss whether providers will be charged for uploading the electronic attendance records. We are a nonprofit law firm and would need to submit electronic attendance records approximately twice a month to ensure we are in compliance with the State Bar's proposed rules. A requirement that

Staff Attorney / Resources and Training Coordinator
Central California Appellate Program

providers pay each time electronic attendance records are uploaded would be a financial hardship for our nonprofit law firm.

Thank you for your time and for considering our comments.

Joanne Kirchner

providers pay each time electronic attendance records are uploaded would be a financial hardship for our nonprofit law firm.

Thank you for your time and for considering our comments.

Joanne Kirchner
Staff Attorney / Resources and Training Coordinator
Central California Appellate Program

Canas, Derek

From: Lori Morgan <lori.morgan@andersentax.com>
Sent: Saturday, January 12, 2019 6:36 AM
To: McPhail, Robert
Subject: CA MCLE Request for Public Comment
Attachments: CA MCLE Reporting Requirements - Andersen Tax Response.pdf

Mr. McPhail-
This email is in response to the request for public comment as it relates to the proposed rules changes for submission of CA MCLE. Attached please find our recommendation. We appreciate your consideration and welcome any questions.
Thank you,
Lori

Lori Morgan
Managing Director, National Learning & Development

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California MCLE Request for Public Comment

Lori Morgan, Managing Director of Learning & Development
Andersen Tax LLC
1861 International Drive, Suite 501
McLean, VA 22102
lori.morgan@AndersenTax.com
571-382-7642

Andersen Tax is a current Multiple Activity Provider of California MCLE. Andersen Tax grants MCLE credits to employees and external participants throughout the year for both single courses and multi-session programs. This response is directly related to the State Bar of California's proposed rule to require MCLE providers to submit attendance records within 30 days of the completion of a course.

Rule 3.602(D)

Per Rule 3.602(D), a California MCLE provider must "provide the State Bar of California with electronic attendance records in a form acceptable to the State Bar of California within 30 days of completion of the activity". The State Board has proposed the following as potential acceptable methods, (1) a mass upload of data through an FTP site for large quantities of data, (2) an upload of an Excel spreadsheet with attendance data, and/or (3) usage of an internet interface, which allows providers to input one attendee at a time.

Recommendation

While the different methods of uploading attendee data are welcomed, Andersen Tax **recommends changing the 30 day requirement to 45 days**. This would allow providers with numerous offices and smaller learning and development departments sufficient time to collect all data and compile it into the required reporting format. Andersen Tax has offices throughout the United States, so collection of data from numerous locations can cause a delay in reporting MCLE credits. The 30 day requirement could create an undue burden on smaller providers to collect and report all required information. This is particularly true for Andersen Tax, as our business can by cyclical, and training tends to be condensed within certain periods of time during the year.

Granting providers 45 days after course completion would ensure sufficient time to collect, compile, and properly report all attendance data to the State Bar of California. We respectfully request your consideration of this increased timeframe for reporting.

Canas, Derek

From: Faith Pincus <faith@pincuscommunications.com>
Sent: Monday, January 14, 2019 1:32 PM
To: McPhail, Robert
Cc: faith@pincusproed.com
Subject: Re: State Bar of California Call for Public Comment

Hi Robert,

I previously commented about this proposal when one of your hearings was held in LA a few years ago. I just wanted to reiterate two things:

1) Please make it easy for us to submit the attendance records. Not all of us are huge providers with huge budges like CEB and Westlaw. The WA State Bar Association is an example of something that is easy for a provider to use without creating an undue burden for providers.
2) *Please please* do not require us to manage attorney's CLE records for them. It is one thing for us to have to submit attendance records; it is quite another for us to have to maintain some type of software/system where attorneys could log into our website to track their prior units taken from us. I know that some providers have portals for their customers to do this, however, my company is not capable of doing that. If you were to require it, it would cost thousands to create some new type of software to do it and we would not be able to do it with our current website. That is not something my company can afford and it would be a disaster to manage as well.

Thank you.

Faith

Faith Pincus
CEO
Pincus Pro Ed | Finz Case Law Updates
626.298.6353 | Cell: 818.836.1292
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www.SpeechAdvice.com
Facebook

For anyone who would like to improve his or her presentation skills, take a look at my new book, *Being Heard: Presentation Skills for Attorneys*, recently published by the American Bar Association. It can be purchased at the ABA or at Amazon.

On Dec 3, 2018, at 5:28 PM, The State Bar of California <robert.mcphail@calbar.ca.gov> wrote:

Dear MCLE Provider:

The State Bar of California has proposed changes to the MCLE Provider rules to implement a change that would hav MCLE providers electronically report attorney attendance at MCLE events. You are encouraged to review the propos rule changes.

The materials and public comment item are available for review online.

Public comment is welcome. The public comment period closes on January 14, 2019. Public comment must be in wr and can be submitted by either mail or email. I am the point of contact for this item and my contact information is lis below. Please feel free to share this email with other members of your organization if they may be a more appropriat person to comment.

Sincerely,
Robert McPhail

Robert McPhail | Program Manager II
The State Bar of California | 180 Howard St. | San Francisco, CA 94105
Robert.McPhail@calbar.ca.gov

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www.calbar.ca.gov

Canas, Derek

From: Christina Yang <cyang@advancingjustice-la.org>
Sent: Friday, January 11, 2019 2:01 PM
To: McPhail, Robert
Subject: Comment re proposed changes to State Bar rules for MCLE providers
Attachments: Advancing Justice-LA. MCLE provider comment (01.11.19).pdf

Dear Mr. McPhail,

Please see attached comment on behalf of Asian Americans Advancing Justice-LA, regarding the Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program.

Thank you and please let me know if you have questions.

Have a good weekend!
Christina

Christina Yang
Pro Bono Director & Legal Counsel
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Building upon the legacy of the
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ASIAN AMERICANS
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January 11, 2019

Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105
Phone: 415-538-2237
Email: Robert.McPhail@calbar.ca.gov

Re: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Mr. McPhail:

I am writing on behalf of Asian Americans Advancing Justice-Los Angeles ("Advancing Justice-LA") regarding the Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program. While we understand the State Bar's desire to increase cost-effectiveness and efficiency when it comes to MCLE regulation, we request that the Bar also consider the significant negative impact the current proposal would have on nonprofit MCLE providers like Advancing Justice-LA who serve attorneys working with low-income and monolingual or limited English proficient Californians.

Founded in 1983 as the Asian Pacific American Legal Center, Advancing Justice-LA is the nation's largest legal and civil rights organization for Asian Americans and Native Hawaiian and Pacific Islanders ("NHPI") and is based in Los Angeles, with satellite offices in Orange County and Sacramento. Advancing Justice-LA is part of a national affiliation of five civil rights nonprofit organizations that joined under one name in 2013, to build a clear, more unified voice for Asian American and NHPI communities.

Advancing Justice-LA serves more than 15,000 individuals and organizations every year. Through direct services, impact litigation, policy advocacy, leadership development, and capacity building, Advancing Justice-LA focuses on the most vulnerable members of Asian American and NHPI communities, such as seniors, immigrants, low-wage workers, low-income individuals, and those who speak or understand little or no English.

Currently, Advancing Justice-LA is among the many legal aid programs in the state that offer free MCLE to pro bono attorneys and our own staff. Generally, we have attorneys sign in on a paper form, and we keep the sign-in form in our files for four years after the event. While for most MCLE events, we do have attendees register electronically, these electronic registration lists are not useful for the purposes of reporting MCLE compliance to the Bar under the new proposed rules. This is because individuals may register for the event but then not actually

attend it. At the end of the day, the attendee's live sign-in onsite is what counts for MCLE purposes.

Therefore, we are deeply concerned about the impact of the proposed changes to the State Bar rules that would require MCLE providers to transmit attendance information electronically, in lieu of simply having attorneys self-report their MCLE compliance. The proposed changes will essentially require us to upload each individual attorney attendee's information into the State Bar portal using one of the proposed methods (FTP, Excel spreadsheet to Bar portal, or Internet interface allowing for one attendee to be input at a time).

Because we currently do not employ any of these methods to manage MCLE event attendance, in order to comply with the proposal, we will have to either purchase new technology to allow electronic sign-ins for in-person MCLE sessions, or invest in additional staff time to decipher and type in every attorney's name and State Bar number from the paper sign-in sheet. No matter how you look at it, the proposal is detrimental to us because it will necessitate the allocation of funding to buying technology and expending already-limited staff time (either during the actual MCLE event, or thereafter).

More specifically, the current proposal overlooks the fact that implementing these new methods of reporting MCLE attendance will be extremely time-consuming for Advancing Justice-LA, which hosts dozens of MCLE events a year, but only with a relatively small number of attendees at each event. For programs like ours that usually hold these "smaller" MCLE events, the current Bar proposal is extremely cost-ineffective (from the standpoint of needing to invest in technology to use for these events), and could lead to our having to shutter these events altogether. Hence, the proposal, as it stands, appears to only benefit larger, profit-oriented MCLE providers that possess economies of scale and the financial resources that make compliance possible, pushing out smaller, nonprofit MCLE providers like us, that concentrate on providing content relevant to legal aid attorneys and pro bono attorneys.

The bottom line is that attorneys already must submit their hours under penalty of perjury, and this should be sufficient. While we understand the Bar's desire to ensure compliance through this new system, the proposed method will not actually help prevent attorneys from dishonestly manipulating the system. Instead, this proposal places the onus on nonprofit MCLE providers like Advancing Justice-LA, and could result in situations where individuals believe – rightfully or not – that they attended a given training, but for one reason or another it was not uploaded into the Bar's system, due to human error – for example, perhaps there was a typo during data entry, or the individual forgot to sign in but was actually there. The proposal puts us in a position where attorneys could blame Advancing Justice-LA for not properly making sure their MCLE attendance information reaches the Bar. We cannot take responsibility for their reporting (or lack thereof).

Even presuming we can afford to access the basic technology necessary for complying with this proposal, there are additional challenges that create a burden for programs. For example, the event may be held in a location with unreliable internet (this already often happens), and we will have to spend extra staff time during the event making sure the technology is working and connected to the internet. We will also need to have a back-up plan if the internet does not work, which would likely mean resorting back to paper sign-ins, which would then require staff to enter them electronically to report to the Bar afterwards. (We understand that unfortunately, a

prior LAAC proposal to allow OCR/uploads of scanned pdfs of sign-in sheets – in an attempt to reduce the data entry involved – was rejected as cost-prohibitive.) Ultimately, the proposed rule, as it is currently written, creates a cost burden on Advancing Justice-LA and other non-profit programs. It is a one-size-fits-all approach that will be hard for all of us in the nonprofit sector to implement.

In addition, apart from the requirements placed on nonprofits between staffing and purchasing technology, the proposal could also lead to much wasted State Bar staff time. In particular, Bar staff will very likely face a deluge of questions from MCLE providers as well as individual attendees about whether the appropriate information made it to the proper channel at the Bar to be counted, and that the attendee received credit. When a dispute happens, which is likely, the Bar will need to coordinate tracking down the MCLE provider and the individual, and determining whether the individual did indeed attend. Finally, this will also result in hours of technical advice that must be provided by Bar staff to MCLE providers who experience real – or imagined – "glitches" when logging in and out of the Bar's system. Thus, the proposal will also increase how much time and energy Bar staff must spend coordinating and communicating with MCLE providers and individuals in ensuring all components are properly uploaded and processed.

This all could have further consequences that no one originally intended: by making compliance with the new proposal too difficult for Advancing Justice-LA and other smaller MCLE providers, it will discourage individuals and organizations from becoming MCLE providers or offering as many MCLE events in our legal aid community. Attorneys should be responsible for ensuring their hours reach the State Bar, and the best failsafe is, again, the penalty of perjury.

In conclusion, we are concerned that the current proposal will not reduce the cost of monitoring compliance but will simply shift it from the Bar to MCLE providers, including nonprofits like Advancing Justice-LA. Thank you for considering our viewpoint and comments.

Sincerely,

Christina Yang
Pro Bono Director & Legal Counsel
Asian Americans Advancing Justice-LA
1145 Wilshire Blvd.
Los Angeles, CA 90017
(213) 241-8850
cyang@advancingjustice-la.org

Canas, Derek

From: Tiela Chalmers <tiela@acbanet.org>
Sent: Friday, January 11, 2019 5:03 PM
To: McPhail, Robert
Cc: Tiela Chalmers
Subject: Public Comment regarding MCLE Upload Requirement
Attachments: letter to State Bar Jan 11 2019.pdf

Hello Robert – Attached please find the Alameda County Bar Association Board's comment on the proposal to require MCLE providers to upload attendance data (comment due date January 14).
Please let me know if you need this in another format, or if you have any questions.
Thank you!
Tiela

Tiela Chalmers, Chief Executive Officer and General Counsel
Alameda County Bar Association and Volunteer Legal Services Corporation
1000 Broadway, Suite 290 | Oakland, CA 94607
510.302.2208 | 510.452.2224 fax | tiela@acbanet.org | www.acbanet.org

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January 9, 2019

Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105

Re: Public Comment on Proposal to Require Electronic Submission of MCLE Attendance Records

Dear Mr. McPhail:

I am writing on behalf of the Alameda County Bar Association to convey our feedback regarding the proposal to require MCLE providers to input or upload all MCLE attendance records into a centralized database. The ACBA has for many years been a Multiple Activity Provider certified through the State Bar of California. Two years ago, we transitioned to a system wherein we offer our members free admission to all of our MCLE programs, and have also hired a CLE Attorney to help coordinate the speakers and programs. In 2018 we hosted about 100 CLE programs.

Our concerns about this new proposal come on two fronts:

1. The proposal has no details, and so we are unable to comment on whether the proposal is a large burden or merely a small one.

2. The proposal shifts the burden of enforcement of rules and public protection from the State Bar, where they should be, to local voluntary bars, where they create problems.

First, it could be that the system the State Bar ultimately rolls out will actually make it easy for providers to upload attendance records. Your memo mentions the ability to do mass uploads and the ability to upload Excel spreadsheets, as well as the very time-consuming option of data entering every name (first into our system, and then into yours). The possibilities for upload may in fact make this not terribly painful. The problem is that we have no idea. While this proposal is out for comment, the devil is in the details, and we have no details. What database is the State Bar contemplating using? What are the technical parameters of uploading, either through an FTP site or an online portal? How much time will it take? If it would take us an extra 10 minutes for each program, we could probably live with that. If, however, it would require us to purchase new software, or spend an extra hour for every MCLE program – that

ALAMEDA COUNTY BAR ASSOCIATION
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begins to be prohibitive for us. It's not clear why this is going out for comment with so little information. We would very much appreciate the chance to comment once there is an actual concrete proposal. Since some other states already have such a system, perhaps the State Bar could point us to the software platform it intends to use? As I understand it, many of those states gave the software to MCLE providers. Is this what the State Bar is proposing?

Secondly, we understand the concerns set forth in your memo, in which you point out that the results of your audit demonstrate that some attorneys were not in compliance with State Bar requirements for CLE. We of course recognize the importance of the CLE requirement in ensuring that attorneys continue to be competent: the reason we host so many CLE programs, and have made them free to members, is because we are dedicated to promoting excellence in the profession. We also can imagine that auditing attorneys is costly.

Nonetheless, we are concerned that this proposal attempts to shift the responsibility and the cost for ensuring that attorneys comply with their ethical obligations from the State Bar and onto local bars. It is expensive for us to provide such a steady flow of MCLE programming (and we provide free lunch, too!) – but we pay for it, because that's a big part of our mission. As we understand it, public protection and regulation of attorney competence is part of the State Bar's mission. Shouldn't the cost of carrying out that mission fall on the shoulders of the State Bar, and not others? This does not seem to us to be what the Legislature had in mind when it directed the State Bar to focus on public protection and regulation.

Further, the proposal makes it our job to be part of the enforcement mechanism. Instead of being the friend of the attorney, encouraging competence, we are being asked to Report to the Authorities what the attorney is doing. Then, if the State Bar pursues the attorney, we can expect that the attorney will turn to us, angry that we played a role in their discipline or, most likely, accusing us of failing to accurately report attendance. This is not the dynamic that local or identity bars should have with their members, and it would lead to unintended consequences, including a reluctance of attorneys to engage in competence expanding activities.

We hope that the State Bar Board of Trustees will consider providing more details before implementing this proposal, and that you will consider whether it is appropriate to shift part of the core mission of the State Bar to voluntary entities.

Sincerely,

Tiela Chalmers, CEO and General Counsel

ALAMEDA COUNTY BAR ASSOCIATION
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Canas, Derek

From: Maria Mata <mmata@clsepa.org>
Sent: Friday, January 11, 2019 4:45 PM
To: McPhail, Robert
Subject: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105
Phone: 415-538-2237
Email: Robert.McPhail@calbar.ca.gov

Re: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Mr. McPhail,

I am writing on behalf of Community Legal Services in East Palo Alto (CLSEPA) regarding the Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program. CLSEPA is a non-profit agency whose mission is to provide transformative legal services that enable diverse communities in East Palo Alto and beyond to achieve a secure and thriving future. We partner with low-income communities and communities of color to break down systemic barriers to inclusion and equity by providing holistic, legal services in the areas of immigration, immigrants' rights, housing, employment, consumer and reentry law. Our pro bono program in 2017 had over 790 volunteers who donated over 32,000 hours.

As an MCLE provider, we find that the proposed changes will add an administrative burden to our pro bono program staff. As it currently stands, attorneys sign in on a paper form, and we keep the sign-in form for four years. The proposed changes to the State Bar rules will require us to upload each individual attorney's attendee information into the State Bar portal. This means we will likely have to purchase the technology to allow electronic sign-ins at trainings or invest in additional staffing to type and decipher every attendee's name and State Bar number from the sign in sheet. In both cases, this is a burden for our pro bono program at CLSEPA for two reasons. One, we will have to find or allocate funding to buy this technology. Two, our pro bono program staff are already limited in time and would have to find more time to do the proposed changes.

Furthermore, we find that the additional administrative challenge of adopting an online system to produce the appropriate information for the State Bar to be extremely cost-ineffective. We only hold 10-15 MCLE events each year and the new proposal could lead us to stopping these kinds of events altogether. This proposal seems to only benefit larger, profit-oriented companies that can withstand the changes while pushing out smaller, nonprofit MCLE providers (like CLSEPA) that only focus on providing relevant content to pro bono attorney volunteers.

Lastly, attorneys submit their hours under the penalty of perjury, and we should not be responsible for their reporting. We certainly see the desire for compliance through this new system but we believe this will not help prevent attorneys from manipulating the system. The proposed changes will place the responsibility on us, and could result in certain situations where an individual believes they attended an MCLE event but for one reason or another, it was not uploaded to the State Bar's system, such as through a typo or because the individual forgot to sign in but was at the training.

Overall, the current proposal places an additional administrative burden on our staff to make sure that the information entered into the system is accurate. Additionally, it could inhibit us from offering free MCLE events to pro bono attorneys. We are very concerned about the current proposal only shifts the cost of monitoring compliance from the State Bar to MCLE providers. Thank you for considering our comments.

Maria Mata

--

MARIA V. MATA, ESQ. | DEPUTY DIRECTOR
Community Legal Services in East Palo Alto
www.clsepa.org
Phone: (650) 391-0343 | Fax: (866) 688-5204
Office Address: 1861 Bay Road | East Palo Alto, CA 94303

Canas, Derek

From: abanerjee@pwdf.org
Sent: Friday, January 11, 2019 4:34 PM
To: McPhail, Robert
Subject: Re: State Bar of California Call for Public Comment
Attachments: PWDF ltr re MCLE Provider Rules 1-11-19.pdf

Dear Mr. McPhail:

Please see attached comments on the Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program.

Thank you.

Sincerely,

April Banerjee
Executive Director
People With Disabilities Foundation
507 Polk St., Ste. 430
San Francisco, CA 94102
Tel (415) 931-3070
Fax (415) 931-2828
abanerjee@pwdf.org
www.pwdf.org

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From: The State Bar of California
Sent: Monday, December 3, 2018 5:28 PM
To: abanerjee@pwdf.org
Subject: State Bar of California Call for Public Comment

Dear MCLE Provider:

The State Bar of California has proposed changes to the MCLE Provider rules to implement a change that would hav MCLE providers electronically report attorney attendance at MCLE events. You are encouraged to review the propos rule changes.

The materials and public comment item are available for review online.

Public comment is welcome. The public comment period closes on January 14, 2019. Public comment must be in wı and can be submitted by either mail or email. I am the point of contact for this item and my contact information is lis

below. Please feel free to share this email with other members of your organization if they may be a more appropriat person to comment.

Sincerely,
Robert McPhail

Robert McPhail | Program Manager II
The State Bar of California | 180 Howard St. | San Francisco, CA 94105
Robert.McPhail@calbar.ca.gov

Robert McPhail | Program Manager II
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Tel: 415-931-3070 Fax: 415-931-2828 Oakland: 510-522-7933
www.PWDF.org

January 11, 2019

Submitted by email

Mr. Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105

Re: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Mr. McPhail:

Thank you for the opportunity to comment on the Proposed Changes to State Bar of California (State Bar) Rules to Accommodate MCLE Provider Course Upload Program. People With Disabilities Foundation (PWDF) is a small § 501(c)(3) nonprofit agency that provides continuing legal education and is currently a State Bar registered multiple activity provider (MAP).

We appreciate that the State Bar intends to provide several methods for providers to submit electronic attendance records, including by spreadsheets. We recommend that the spreadsheet method not be limited to only one software application, e.g., MS Excel.

Our primary concern is the level of detail that will be required in the electronic attendance records, specifically whether the reported data for participatory credit will require the number of hours a given individual actually attended. This is important because licensees may arrive late or leave early and may claim pro-rated credit for the portion of the event they attend. The State Bar's current sample Certificate of Attendance puts the responsibility for claiming the correct amount of pro-rated credit on the attorney, not the provider (see attached). (We note that this issue also applies to

speakers, who are allowed to claim more continuing education hours than that of the event itself per Rule 2.81; the responsibility for the calculation of claimed hours lies with the speaker, not the provider.) The State Bar's current sample Official Record of Attendance does not include sign in and out times and, as noted above, licensees are allowed to claim pro-rated hours. Requiring MCLE providers to record in and out times, then calculate each person's individual attendance hours based on those in and out times would be a burden. Per the Programs Committee Agenda Item re Programs III.B, dated November 15, 2018, "the proposal would not require providers to verify attendance in ways or to an extent not currently required."

Additionally, the proposed definition of a "participatory activity" in Rules 3.600 and 2.51 states that methods of verification for participatory credit include "sign-in .... at the start of the course." This language would preclude a licensee from being eligible for pro-rated participatory credit (when arriving late), as is currently allowed.

PWDF requests the State Bar to clarify whether licensees will continue to be allowed to claim pro-rated participatory credit for attending part of an event and to make the rules and forms conform accordingly. If pro-rated participatory credit continues to be allowed, we request that providers be held responsible for reporting the event information and the list of participants, not the individual attended hours calculated from in and out times.

Sincerely,

April Banerjee
Executive Director
People With Disabilities Foundation

Attachment: Certificate of Attendance for California MCLE

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

Top portion of form to be completed by the Provider

It is preferred that the form is pre-printed with the attendees name and bar number.

Provider Name: _____

Provider Number: _____

Title of Activity: _____

Date(s) of Activity: _____

Time of Activity: _____

Location of Activity (City/State): _____

This Activity qualifies for: Participatory ☐ Self-Study ☐

Total California MCLE Credit Hours for the above activity: _____, including the following sub-field credits:

- Legal Ethics: _____
- Recognition and Elimination of Bias: _____
- Competence Issues: _____

Bottom portion of form to be completed by the Attorney after participation in the above-referenced activity

By signing below, I certify that I participated in all, or some*, of the activity described above and am therefore entitled to claim the following California MCLE credit hours:

Total California MCLE Credit Hours: _____, including the following sub-field credits:

- Legal Ethics: _____
- Recognition and Elimination of Bias: _____
- Competence Issues: _____

(You may not claim credit for the subfields above unless the provider is granting credit in those areas above.)

Print Your Name (clearly): _____

Your California State Bar Number: _____

Signature: _____

* partial participation hours must be pro-rated

Canas, Derek

From: Ashley Counts <AshleyC@spidell.com>
Sent: Friday, January 11, 2019 4:01 PM
To: McPhail, Robert
Subject: Comments on MCLE Provider Course Upload Program

Good afternoon,

We are a provider of MCLE and wanted to submit our comments on the proposed changes to State Bar rules to accommodate the MCLE provider course upload program.

We are happy with the proposed 30 day reporting deadline. We would like to have the ability to do a mass upload of MCLE records via a spreadsheet template as well as the ability to add MCLE records individually to each course, similar to the way the IRS reporting works. We would also like to receive a confirmation that the MCLE records were properly uploaded to their respective courses and to have a detailed error list (first name, last name, license number, course name and completion date) to be provided immediately for any records that are rejected by the system so that we can look into correcting the issue.

We would like there to be functionality to be able to search for attorneys and view the courses that they have completed (and we have reported for them), the amount of MCLE credit for the course and the date of course completion.

It would also be nice to be able to add authorized users to our account so that each of our employees who are responsible for reporting the MCLE hours can have individual logins to access the database and upload records.

Thank you for your time, please let me know if there are any questions.

Ashley Counts — Product Manager (Self-Studies and Webinars)

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Canas, Derek

From: Theresa Hurley <thurley@cccba.org>
Sent: Friday, January 11, 2019 3:22 PM
To: McPhail, Robert
Subject: Contra Costa County Bar Association Comments on MCLE Provider Upload Program proposed SB Rules changes
Attachments: CCCBA Comments on Proposed Changes to State Bar Rules to Accomodate MCLE Provider Upload Program.pdf

Good afternoon Mr. McPhail,
Attached is a letter regarding the proposed changes to the State Bar Rules to Accommodate an MCLE Provider Upload Program. Please confirm receipt of this letter.

Thank you.

Best regards,

Theresa Hurley

Executive Director
Contra Costa County Bar Association
2300 Clayton Rd, Suite 520
Concord, CA 94520
Ph (925) 370-2548, Fax (925) 686-9867
Visit our website at www.cccba.org
Facebook | Twitter | LinkedIn

Contra Costa County
BAR ASSOCIATION
2300 Clayton Road, Suite 520 / Concord, CA 94520
925-686-6900 / FAX 925-686-9867 / www.cccba.org

Theresa Hurley
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Qiana Washington
Rachael Zeiph

January 11, 2019

Robert McPhail
Office of Attorney Regulation & Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105

Dear Mr. McPhail,

We have many questions and concerns about the proposed MCLE Provider Course Upload Program. As a mid-sized voluntary bar association with a small staff that puts on approximately 100 MCLE programs a year we are concerned about the overall lack of information about this proposed program that has been provided. We have no idea how to calculate the amount of time that may have to be spent providing this information to the State Bar, no information about the checks and balances that will be put into place to ensure data integrity and many questions about what information will need to be reported.

Our questions and concerns are as follows:

What kind of checks and balances will be put into place to ensure accuracy in data transfer? Will providers attendance information be kept separate from licensees MCLE information once it is downloaded? E.g. if there is problem with data corruption will there be a way to check to see if the problem is with the State Bar download or the providers information? Who will handle attendance disputes from licensees?

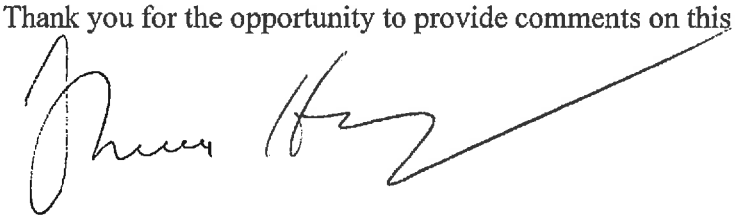
We suggest changing upload requirement from 30 days to over 90 days to give provider staff adequate time to upload information. No information was provided regarding what happens if providers do not upload information within the specified time frame. Does the provider get penalized? If so, what is the penalty? Do the attorneys still receive their MCLE credit if the upload is done outside of the time period?

Will providers need to report if an attendee arrives late or leaves early (e.g. does not attend the entire program)? If so, this will require an enormous amount of manual work for providers.

Will providers also need to transmit self-study MCLE attendance? If so, how will this be handled since licensees take self-study tests/view videos/etc. at different dates over the course of their triennial MCLE requirement.
Will the fees for provider renewals be reduced given the extra time providers will need to spend uploading attendance information?

I encourage the State Bar to provide more information about the specifics of how the MCLE Provider Course Upload program will work to allow providers the opportunity to review and give relevant feedback.

Thank you for the opportunity to provide comments on this issue.



Theresa Hurley
Executive Director

Canas, Derek

From:	Patrick Whitnell <pwhitnell@cacities.org>
Sent:	Friday, January 11, 2019 9:48 AM
To:	McPhail, Robert
Cc:	Janet Leonard
Subject:	Comment Letter from League of California Cities
Attachments:	Comment letter on MCLE proposal_011019.dotx

Mr. McPhail, attached is the League's comment letter on the proposed MCLE rules changes.

Best, Patrick

Patrick Whitnell
General Counsel
League of California Cities
p. 916-658-8281 | c. 916-359-9170
pwhitnell@cacities.org | www.cacities.org

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January 11, 2019

Robert McPhail
Office of Attorney Regulation and Consumer Resources
By email: Robert.mcphail@calbar.ca.gov

Re: Comments of League of California Cities® (MCLE Provider #1985) on Proposed Changes to State Bar Rules on MCLE

Dear Mr. McPhail,

The League of California Cities appreciates the opportunity to submit the following comments on the proposed changes to the State Bar's MCLE rules. The League is a Multiple Activity Provider(MAP) and hosts two multi-day education events each year in areas of the law relevant to attorneys representing municipalities.

In general, the League supports the goals of these proposed rules changes. The League further supports the proposal that the State Bar provide multiple methods by which providers can electronically submit attendance records. But in reviewing the agenda report and the proposed changes, we have identified several areas of uncertainty that would benefit from additional clarification. Further, we provide several suggestions that the State Bar may wish to consider. We understand that the State Bar intends to issue an FAQ to address issues that arise in the context of multi-day education events and the League requests that the following comments be considered when drafting that document.

Terminology: Both the agenda report and the existing and proposed rules use various terms when referring to MCLE including:

- Activity
- Event
- Session
- Class
- Course

Rule 2.51(a) defines "MCLE Activity" but it is not clear whether the other terms used are intended to by synonymous with MCLE Activity or whether they are terms for subunits within an MCLE Activity. For example, the League hosts a three-day conference each year. Each day of the conference is divided into 1-1 ½ hour sessions. Each session consists of 2-4 stand-alone presentations. While it appears that the conference would constitute the MCLE Activity, it is not clear how the subunits within the conference would be classified. Clarifying the terminology would assist with the questions we have in our next comment.

Tracking Attendance: The League's tracking of attendance at its multi-day conferences has evolved over the years based on responses from State Bar staff to our inquiries. But the discussion in the agenda report and the language of the proposed changes raise questions whether the League will need to change how it tracks attendance. On page 3 of the agenda report, it states that "For example, the State Bar requires that individual course attendance be verified as opposed to registration or sign-in at the start of an event." The same paragraph indicates that the State Bar does not expect providers to track attendance "for each session". But this raises the question as to what the distinction is between "session", "course", and "event". And this question also arises in the proposed change that the provider verify "the attendee has taken the course on the date of completion of the course."

In the context of the three-day conference discussed above, the "course" is the "event". Merriam-Webster defines "course" as "a number of lectures or other matter dealing with a subject". The subject of this conference can only be defined as "municipal law" in the broadest sense of that term. Individual presentations in the same session may have no thematic connection with each other except for being areas of the law of interest to a municipal law practitioner. Therefore, the entire three-day conference could be characterized as being the "course". But the agenda report and the proposed changes seem to imply that "course" is a subunit of the "event".

Further clarification on this issue will help the League to understand its obligations to verify attendance.

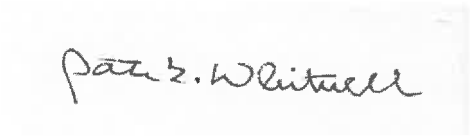
Logistical and Financial Burden: The League further requests that the State Bar remain cognizant of the logistical and financial burden any rule changes may have on providers. The above-referenced three-day conference has averaged more than 450 attendees over the past several years. Given that a significant number of these attendees are employed directly by cities (rather than providing attorney services through a contract), their costs are funded by the taxpayers. The League works diligently to keep registration costs for attendees as low as possible. Any additional costs to the League related to attendance verification will need to be reflected in higher registration fees for attendees.

Renewal of MAP status: Rule 3.621 provides that a MAP must renew its provider status every three years. As part of the renewal application, a provider is required to submit evidence that it has offered four different MCLE activities that meet the requirements of the rules in the preceding two years. The State Bar may want to consider whether it would be beneficial to allow MAPs to submit additional materials along with the attendance records that can later be used in support of the renewal application. Providing this information to the State Bar in real time may be more convenient and time effective for a provider rather than having to compile and submit this information at the time of renewal.

Effective Date: The State Bar should consider delaying the effective date of the adopted rules to allow providers an opportunity to analyze their verification obligations and to develop and implement any new practices and procedures necessary to ensure compliance.

The League hopes the State Bar finds these comments helpful. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Patrick Whitnell
General Counsel

Canas, Derek

From: Linda Mogannam <lmogannam@ilrc.org>
Sent: Thursday, January 10, 2019 3:12 PM
To: McPhail, Robert
Cc: Linda Mogannam
Subject: ILRC Comments: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Robert,

Thank you for the opportunity to provide our comments regarding the proposed changes to the State Bar rules to accommodate MCLE provider course upload program.

The Immigrant Legal Resource Center (ILRC) has many concerns regarding these proposed changes, and they are outlined below.

If you have any questions regarding these comments or require further clarification, please feel free to contact me.

Thank you for your attention.

Best,
Linda

The following areas pose the greatest potential for issues:

Human error and accuracy while entering data. If MCLE providers are required to manually enter participant data into a system, the potential for making mistakes is high. This will result in inaccurate data provided to the State Bar, reporting delays to attorneys trying to confirm if their credits have been submitted, and increased customer service on the part of the providers. The Immigrant Legal Resource Center requests that the State Bar create a system that allows providers to upload participant provided data, such as a scanned/PDF version of a sign-in sheet or a webinar report.

Lack of resources available to nonprofit organizations to administer the amount of work required to adhere to these changes. The Immigrant Legal Resource Center currently hosts approximately 40 - 50 webinars and 30 in-person training events per year. If we are required to manually enter participant data for each attendee, we would be forced to hire additional staff. This poses a financial hardship on our organization and would likely force us to offer fewer trainings to direct service providers and other community-based organizations that need to serve their clients.

Smaller nonprofits and other organizations offer specialized training that larger providers don't. By requiring all providers to report via an online system, smaller organizations could potentially offer fewer trainings and these specialized, more focused subject areas would not be available. Direct service providers and community-based organizations rely on these trainings in order to better serve their client base.

Nonprofit organizations are awarded grants from foundations to train staff of direct service providers and CBOs. As a nonprofit organization, the cost of hosting a training event would exponentially increase if we have to manually administer the MCLE credits for each participant. Free training events yield hundreds of participants, which would result in an administratively burdensome process for nonprofit MCLE providers. It

would direct funds and support away from the production and execution of training to the administration of processing participant data to comply with the State Bar's requirements.

Increased customer service issues and calls. Inaccurate or illegible entry of names and state bar numbers at in-person trainings could cause our staff to inaccurately enter data into the State Bar's system. When participants do not receive credit for training, they would contact our organization.

Increased technological costs to capture attendee details electronically to avoid errors in data entry.

Increased staffing costs. The time it takes for our staff to be trained on how to use the State Bar's system.

Linda Mogannam
Marketing Manager
Immigrant Legal Resource Center
As of December 2018, the ILRC's mailing address has changed:
1458 Howard Street | San Francisco, CA 94103
Tel: 415-321-8555
Email: lmogannam@ilrc.org
Website: www.ilrc.org
Washington, DC Office: 1015 15th Street, NW, Suite 600 | Washington, DC 20005
San Antonio, TX Office: 3615 Broadway Suite #2 | San Antonio, TX 78209

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Canas, Derek

From: Wojciechowski, Devon L. <DWojciechowski@jenner.com>
Sent: Wednesday, January 09, 2019 12:59 PM
To: McPhail, Robert
Cc: CLETraining
Subject: Public Comment - MCLE Provider Rules

Good afternoon Mr. McPhail,

Thank you for the opportunity to provide feedback regarding the upcoming rule changes and new processes for CLE attendance entry.

If it's not already been considered, it would be beneficial to include Micron Systems (CE Manager) and VI Global (VI Desktop) in the development process for the excel document attendance upload feature proposed. Many law firms use one of those software groups to process and track CLE information. An early partnership would hopefully give the software developers a chance to add features in their respective systems to allow for the attendance data to be pulled and uploaded to the State Bar's system efficiently.

At Jenner & Block, we monitor our attorney's CLE compliance. Once the new changes roll-out, it would be very helpful if a firm administrator could view the State Bar CLE record of attorneys within the firm to account for all programs that an attorney has taken. This would be especially useful to assist attorneys that earn credit outside of California, take self-study programs, and to check that providers did post credits for an attendee. I would hope that this capability may reduce the call volume to the State Bar. The Virginia State Bar has a feature that allows you to review an attorney record (can be viewed here).

Listed below are additional questions.

- If an attorney has a legal specialization (e.g. Bankruptcy Law Specialty Area), how will CLE credits be entered? Will it be up to the provider to do an additional submission, or will the attorney be able to indicate that the course was applicable to the specialty?
- During the roll-out of the tracking, is it expected that;
    1) providers will need to historically enter course data to have updated attorney records,
    2) compliance tracking through the State Bar website will begin with the Group 2 Feb. 1, 2021 – Jan. 31, 2024 cycle, or
    3) attorneys will have the ability to enter in data from courses prior to the roll-out of providers submitting attendance data?
- Will there be a penalty for providers that don't enter attendance data within 30 days?
- Will courses be given a specific ID in order for attorneys to submit their own attendance records? This feature from other states (e.g. State Bar of Texas) has been useful for when a provider doesn't submit the attendance data or doesn't submit attendance in a timely fashion.

Please don't hesitate to contact me with questions. I'm also happy to volunteer for any system testing or provider focus groups.

Sincerely,

Devon Wojciechowski

Devon L. Wojciechowski
CLE Specialist

Jenner & Block LLP
353 North Clark Street, Chicago, IL 60654-3456 | jenner.com
+1 312 840 7357 | TEL
DWojciechowski@jenner.com
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Canas, Derek

From: Beth Bersson <beth.bersson@lawline.com>
Sent: Wednesday, January 09, 2019 7:35 AM
To: McPhail, Robert
Cc: Meredith Cohen
Subject: Proposed Changes to State Bar Rules

Hi Robert,

I hope all is well! I wanted to submit a comment on the proposed rule change, which will require MCLE providers to electronically report MCLE course attendance to the State Bar of California.

I think it is wonderful for California to start requiring attendance reporting. Attendance reporting keeps everyone accountable, both providers and attorneys, and takes some of the MCLE burden off of attorneys. Providers reporting also allows attorneys to focus on their continued education and growth and to worry less about compliance and reporting.

Also, I have a few questions on the proposed changes.

1. Is there a timeline for when providers will start reporting attendance to CA?
2. Have you determined the format for how reporting will be handled? E.g. uploading files to a website, emailing excel sheet(s) to the CA bar, etc.
3. Will there be any reporting fees imposed on providers?
4. How frequently will reporting take place? Currently, we submit the majority of our attendance to states in the first few weeks of the following month.
5. Is there anything I or Lawline can do to make this process easier for you?

Best,
Beth Bersson
Accreditation Coordinator
Lawline
61 Broadway Suite 1105
New York, NY, 10006
beth.bersson@lawline.com
(646) 448-3296
Download our new app for iPhone or Android!

Canas, Derek

From: Zach Newman <znewman@laaconline.org>
Sent: Tuesday, January 08, 2019 2:15 PM
To: McPhail, Robert
Cc: Salena Copeland
Subject: LAAC Public Comment on "Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program"
Attachments: LAAC Comment on MCLE Proposal_January 2019.doc

Dear Mr. McPhail,

Please find attached LAAC's public comment regarding "Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program."

If you have any questions, please contact myself or LAAC's Executive Director, Salena Copeland. Thank you for considering our comment.

All the best,

Zach Newman | Research Attorney
Legal Aid Association of California (LAAC)
Pronouns: he/him/his

"The Unified Voice of Legal Services"

January 8, 2019

Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105
Phone: 415-538-2237
Email: Robert.McPhail@calbar.ca.gov

Re: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Mr. McPhail,

I am writing on behalf of the Legal Aid Association of California (LAAC) regarding the proposed changes to the State Bar Rules to Accommodate MCLE Provider Course Upload Program. While we understand the need for the State Bar to increase efficiency and efficacy when it comes to MCLE regulation, we request that the Bar also consider the deleterious impact the current proposal would have on nonprofit MCLE providers who serve attorneys working with low-income Californians.

LAAC is a non-profit organization created for the purpose of ensuring the effective delivery of legal services to low-income and underserved people throughout California. LAAC is the statewide membership organization for almost 100 legal services nonprofits, and, in this capacity, we frequently partner with the State Bar, the Judicial Council, and other stakeholders committed to preserving access to justice in California. We serve as California's unified voice for legal services and we advance the needs of the clients of legal services on a statewide level regarding funding and access to justice issues.

Currently, legal aid programs offer free MCLE to pro bono attorneys and staff. Generally, programs have attorneys sign in on a paper form, and the program keeps the sign-in form for four years after the event. For legal aid programs, the proposed changes to the State Bar rules will require them to upload each individual attorney attendee's information into the State Bar portal. In order to comply with the proposal, programs will have to either purchase technology to allow electronic sign-ins for in-person conferences or invest in additional staffing to type – and decipher – every attorney's name and State Bar number from the paper sheet. Either way, the

proposal is detrimental to nonprofit legal aid programs because it will necessitate the allocation of funding to buying technology and/or expending already-limited staff time.

More specifically, the current proposal presumes the MCLE events reach a certain capacity where this technology makes sense. Annually, some legal aid programs might convene 80 to 100 trainings, with around 20 to 30 attendees, and others might put on just 10 to 20 trainings, with perhaps only a couple of attendees. Should the current proposal go forward, these organizations will face the additional administrative challenge of adopting an online system that produces the appropriate information for the Bar. For programs that hold few – and smaller – MCLE events, the current Bar proposal is extremely cost-ineffective, and could lead to shutting down these events altogether. Hence, the proposal, as it stands, appears to only benefit larger, profit-oriented MCLE providers that possess economies of scale that make compliance possible, pushing out smaller, nonprofit MCLE providers that concentrate on providing content relevant to legal aid attorneys serving low-income Californians.

For LAAC specifically, there are a number of factors that make the proposed rule largely unworkable. First, even if LAAC were to purchase the technology necessary to allow for electronic sign-ins, this would only be useful for trainings where there are one or two sessions. For our conferences with 40 sessions, it will be difficult for staff to ensure that attendees electronically sign in for every single session. This will necessitate that we place a staff member at every door of multi-door auditoriums, whereas now, staff instead circulate the sign-in sheet quietly as the session begins and then stand near the sign-in sheets to remind attendees as they exit at the end of the session. Second, for our larger conferences, we have suggested "tracks" of sessions to attendees, but there is no requirement – or means to control – that attendees go to the sessions they initially signed up for. Consequently, every single attendee's participation in every single session will need to be tracked independently under this proposal.

Moreover, attorneys submit their hours under penalty of perjury, and this should be sufficient. While we understand the Bar's desire to ensure compliance through this new system, the proposed method will not actually help prevent attorneys from dishonestly manipulating the system. Instead, this proposal places the onus on nonprofit MCLE providers, and could result in situations where individuals believe – rightfully or not – that they attended a given training but for one reason or another it was not uploaded into the Bar's system, such as through a typo during data entry or because the individual forgot to sign in but was actually there. The proposal puts us in a position where attorneys could blame our providers for not properly making sure their information reaches the Bar. We cannot be responsible for ensuring their reporting.

Even presuming nonprofit MCLE providers can access the basic technology necessary for complying with this proposal, there are additional challenges that could come with that system that create a burden for programs. The event may be held in a location with unreliable internet, and a program will have to spend extra staff time making sure the technology is working and connected to the internet before the program starts, which adds up at bigger conferences. Staff will need to further have a back-up plan if the internet does not work, which would likely mean resorting back to paper sign-ins. Further, prior to this stage of the rule-making process, we proposed OCR, but the response was that this is too cost-prohibitive. Ultimately, the proposed rule, as it currently is written, creates a cost burden on non-profit programs as a one-size-fits-all

approach that will be hard for many in our legal aid community to implement between the added technological and administrative burdens.

In addition, apart from the requirements placed on nonprofits between staffing and purchasing technology, the proposal would also lead to a large amount of wasted State Bar staff time. In particular, Bar staff will face a never-ending stream of questions from MCLE providers as well as individual attendees about whether the appropriate information made it to the proper channel at the Bar to be counted, and that the attendee received credit. As the Bar knows, attorneys can be compulsive when it comes to MCLE, and this proposal only increases the stress of all parties concerned. When a dispute happens, which is likely, the Bar will need to coordinate tracking down the MCLE provider and the individual, and determining whether the individual did indeed attend. Finally, this will also result in hours of technical advice by Bar staff to MCLE providers who experience real – or imagined – "glitches" when logging in and out of the Bar's system. Thus, the proposal will also increase how much time and energy Bar staff will need to spend coordinating and communicating with MCLE providers and individuals in ensuring all components are properly uploaded and processed, from fielding technical systems questions to dealing with compulsive attorneys.

Ultimately, this all could have further unintended consequences: By making compliance with the new proposal too difficult for smaller MCLE providers, it will discourage individuals and organizations from becoming MCLE providers or offering as many MCLE events in our legal aid community. Attorneys should be responsible for ensuring their hours reach the State Bar, and the best failsafe is, again, the penalty of perjury. Altogether, the current proposal places insurmountable logistical, administrative, and technological burdens on programs to make sure that the information they will be uploading is actually accurate. As a result, this proposed rule could inhibit programs from offering free MCLE to pro bono attorneys and staff members.

Last, the State Bar must consider the disability access implications of the proposed changes. The assumption must be that people with various disabilities will be present in all of the various roles that interact with MCLE records. This includes not only attorneys with disabilities taking classes, but also employees of MCLE providers as well as employees of the State Bar. At a minimum, the Bar should explicitly consider the accessibility of any electronic formats they agree to accept in the present as well as in the future, and consider the various disability implications – such as regarding interface requirements – if the Bar proceeds with this proposal.

In sum, we are concerned that the current proposal will not reduce the cost of monitoring compliance but will simply shift it from the Bar to MCLE providers, including nonprofits. Thank you for considering our comments. If you need any clarification regarding our comment, please let me know.

Salena Copeland
Executive Director

350 Frank H. Ogawa Plaza Suite 701 | Oakland, CA 94612 | (510) 893-3000

LAAConline.org LawHelpCA.org

Canas, Derek

From: Mee Mee Wong <mwong@marinbar.org>
Sent: Monday, January 07, 2019 5:35 PM
To: McPhail, Robert
Subject: Comments: Proposed Changes to implement MCLE Provider Course Upload Program

Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear State Bar MCLE Committee
We are writing in response to comments regarding the proposed State Bar rule to implement a State Bar MCLE Provider Upload program. We are a small bar with 700 members and a staff of 1.5 FTE. We are a local bar established 84 years ago and we are the liaison to the Marin County Superior Court. In addition to MCLE, our small staff also oversees Modest Means Mediation, Fee Arbitrations and coordinates pro bono legal services for our community. Though we see the State Bar's need to streamline expenses, our local bar funded by dues does not have the financial resources to add another staff member to oversee the CLE process without increasing dues substantially and potentially erode a predominately small and solo membership that we use for our community legal services. Would there be a financial remedy or support from the State Bar for small organizations such as ours to meet the new requirements? If the State Bar is using a Bar Code technology, will the hardware to support such software be provided to us?

Thank you for your consideration

Sincerely,
Mee Mee Wong
Executive Director

2018 President, Marin County Bar
Thomas Brown

2019 President, Marin County Bar
Charles Dresow

Mee Mee Wong | Executive Director
MARIN COUNTY BAR ASSOCIATION
101 Lucas Valley Road, Suite 326 | San Rafael, CA 94903
415-499-1314

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Canas, Derek

From: Kimberly Cole <kcole@internet49.com>
Sent: Friday, January 04, 2019 11:09 AM
To: McPhail, Robert
Subject: Comments Re: MCLE reporting

Hello Mr. McPhail:
I recently learned, via my local bar's newsletter, of the proposed changes in MCLE reporting.

Although I understand the man-hours and ineffectiveness of the audit process in the past, I would like to comment regarding the proposed shift to having the vendors verify attendance.

My local bar, the Placer County Bar, is concerned that this requirement will force out the small providers, such as the bar association, which puts on a two day MCLE event each spring at a very affordable price. Additionally, Nevada County court also puts on a one day event each spring, also very affordable.

If these small providers do not have the capability, or funds, to comply with the proposed change, then they will likely either cease MCLE providing, or raise prices considerably.

I think that having the smaller providers is a vital component of the MCLE industry, as the larger providers often provide more "main stream" subject matter, rather than smaller "niche" subjects. Not across the board, but just generally speaking.

And as with many things, a few "bad apples" spoil it for everyone. Possibly make each attorney provide evidence of compliance? I know that would be easy for me, as I have a file for each reporting period and keep all the certificates so I can track hours. Just an idea.

Thank you,
Kim

--
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Fax: 916.652.6715

www.kimberlycole.com
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this communication or otherwise. If you have received this communication in error, please contact Kimberly Cole at kcole@internet49.com or at 916/652-6506. Thank you.

Canas, Derek

From: Sheehan, Lisa B. <lisa.sheehan@hoganlovells.com>
Sent: Wednesday, January 02, 2019 8:19 AM
To: McPhail, Robert
Subject: Comments in Response to Proposed Changes to MCLE Provider Rules

Mr. McPhail,

I would like to comment on the proposed changes to the California MCLE Provider rules to implement a change that would have MCLE providers electronically report attorney attendance at MCLE events.

In reading through the materials regarding the proposed change, I saw no information about the State Bar working with CLE software providers, such as CE Manager, on making adjustments to help providers meet the new requirements. It is essential that software providers be given enough notice to create tools that allow easy export of California MCLE attendance records in a format compatible with the automatic upload methods laid out in the proposal. Large and mid-size providers – most of whom use software to manage CLE programs, issue certificates and track attendance – need this to happen so we can avoid manual entry of program attendees and the increased costs that accompany that in terms of manpower.

I feel this would go a long way to showing that your intention is not to simply pass on the work from your staff to providers. As you know, New York is also a state in which many, many lawyers are barred and that State only requires an annual report, as opposed to year-long attendance verification submittals. I would urge you to work with CLE software providers to make sure that easy export capacity is in place prior to the new regulations becoming effective.

Thank you,
Lisa Sheehan

Lisa Sheehan
Professional Development Manager

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Canas, Derek

From: James Moore <jamesmoorelawfirm@gmail.com>
Sent: Monday, December 31, 2018 1:59 PM
To: McPhail, Robert
Subject: COMMENT on Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Dear Mr. McPhail,

I am writing to comment on the proposed rule to require MCLE providers to upload attorney information for attending MCLE programs. My concern is that this imposes a financial burden on small non-profit organizations, such as local bar associations.

While I write in my own capacity on my own behalf, I am on the board of directors of the Placer County Bar Association and I witness first hand the challenges of a small bar association. Considering our size, we provide tremendous value to our members. It is a balancing act of reasonable dues and fees, maintaining a budget, and providing the most services/benefits for our members that we can. One of the biggest draws for membership in the PCBA is the MCLE programs we put on, including a retreat every April where participants can get 12+ hours of MCLE credit. It is certainly a big draw for local attorneys, but we also have attorneys from from the Bay Area and as far away as New York City. Last April, we were fortunate and honored to have Chief Justice Cantil-Sakauye as a keynote speaker.

As you are aware, the current rules already require MCLE providers to have attorneys sign in and then after the program complete their own certificates of attendance. Creating a data entry type requirement will only serve to increase an organization's expenses. That will affect non-profit organizations and small bar associations in two big ways: they either absorb that cost with their bottom line suffering, or they raise the cost to participants (either higher dues or higher cost of obtaining MCLE credit).

This proposed change seems to be an unfair financial burden to small non-profit MCLE providers. While I can understand there are a few bad apple attorneys out there, that should not ruin it for everyone else.

I offer two suggestions. First, provide an exemption to the rule for non-profits. Or, second, a more cost effective rule change would be to upload or send a copy of the attorney sign in sheets and a blank copy of what the certificate looks like. Then if there is a question about a particular person audited who claims they attend a program there is a way for the bar to substantiate that claim.

Thank you for your consideration of my comment,

James Moore, SBN 279454

James K. Moore, Esq.
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1147 High Street
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Canas, Derek

From: Jean Brusavich <jean@attorneyassistyou.com>
Sent: Wednesday, December 26, 2018 1:59 PM
To: McPhail, Robert
Subject: Re: State Bar of California Call for Public Comment

Mr. McPhail,

My issue with reporting compliance within 30 days after program is the following:

I work as a contract employee, handing MCLE application filings, usually after a program has been held and I do not always receive approvals within that time frame.

/jean

Jean Brusavich
MCLE Specialist
ATTORNEY ASSIST
www.AttorneyAssistYou.com
Jean@AttorneyAssistYou.com
310-938-8418

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On Mon, Dec 3, 2018 at 5:29 PM The State Bar of California <robert.mcphail@calbar.ca.gov> wrote:

Dear MCLE Provider:

The State Bar of California has proposed changes to the MCLE Provider rules to implement a change that would ha MCLE providers electronically report attorney attendance at MCLE events. You are encouraged to review the propc rule changes.

The materials and public comment item are available for review online.

Public comment is welcome. The public comment period closes on January 14, 2019. Public comment must be in w and can be submitted by either mail or email. I am the point of contact for this item and my contact information is li below. Please feel free to share this email with other members of your organization if they may be a more appropria person to comment.

Sincerely,
Robert McPhail

Robert McPhail | Program Manager II

The State Bar of California | 180 Howard St. | San Francisco, CA 94105
Robert.McPhail@calbar.ca.gov

Robert McPhail | Program Manager II
The State Bar of California | 180 Howard St. | San Francisco, CA 94105
Robert.McPhail@calbar.ca.gov

www.calbar.ca.gov

Canas, Derek

From: Lynch. David <LynchD@saccounty.net>
Sent: Monday, December 24, 2018 12:43 PM
To: McPhail, Robert
Cc: Tauman. Leonard; Garrett. Steven; Zielenski. Torr; Benson. Amanda; Wheeler. James
Subject: PUBLIC COMMENT on new rules for MCLE providers

Mr. McPhail:

I am currently in charge of the Sacramento County Public Defender MCLE program. We provide training to our own attorneys, and often open the training up to the local Conflict Criminal Defender attorneys and neighboring county Public Defender offices. We put on approximately 20 MCLE training sessions per year.

We are concerned that the new reporting system might create additional burdens on us and similar providers. However, we also believe we have a relatively simple solution. If the state bar could embed the attorney's bar number into a UPC code that is printed on every bar card (whether plastic or paper), then attendees could scan their bar card as they enter. This would be a quick, reliable, and cost effective way to create the electronic attendance records required by the new rules. Scanners are not expensive and the set-up to have the bar number entered into a spreadsheet or similar electronic format would be simple. The other information (Provider Name, Date, Title, Location, Duration, Specialty Topics, Participatory/Self-Study, etc.) would then easily be associated with the attendee's bar number.

We appreciate your help in this regard. It seems to us that manual methods of creating electronic attendance records are labor intensive and more susceptible to errors. With the assistance of the State Bar in putting UPC codes on the bar cards, the result would be a win-win for the Bar and for MCLE providers.

Thank you,

David

David Lynch
Sacramento County Public Defender's Office
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Sacramento, CA 95814

ph: (916) 874 6958
fax: (916) 874 5970

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Canas, Derek

From: Terry, Leslie <LTerry@kilpatricktownsend.com>
Sent: Thursday, December 20, 2018 3:21 PM
To: McPhail, Robert
Subject: RULE 3.600: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload

Hello Robert,

As we look forward to submitting attendance data to The State Bar of CA, I'm concerned the proposed change to Rule 3.600 Definitions (H) including "Methods or verification include sign-in writing..." may be interpreted as attendees only needing to sign-in.

The sign-in in writing process is still most commonly used and one challenge in using this method is documenting everyone who stays until the end. I believe a minor adjustment to Rule 3.600 Definitions (H) with language about including *time* in and out would greatly support sponsor efforts to (1) confirm full attendance, (2) obtain data required to accurately calculate and confirm participatory credit, and (3) make documents uploaded to the State Bar of CA easier to review.

CLE providers which comply with sponsor requirements in multiple states are already required or strongly encouraged to include time (see NY sample form here). Please consider updating Rule 3.600 Definitions (H) to methods or verification include sign-in writing with time-in, time-out and signature.

Providing a detailed explanation of sponsor verification by sign-in would be extremely helpful. Thank you for your time.

Leslie

KILPATRICK TOWNSEND
ATTORNEYS AT LAW

Leslie Terry
Professional Development CLE/Bar Administrator
Kilpatrick Townsend & Stockton LLP
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Canas, Derek

From: Jack Hannan <jhannan@sfbar.org>
Sent: Thursday, December 20, 2018 3:13 PM
To: McPhail, Robert
Subject: BASF comment regarding proposed electronic reporting requirements
Attachments: 18-1220 BASF Comments on Proposed State Bar CLE Reporting Requirements.pdf

Robert,

Attached is BASF's public comment regarding the proposed rules requiring electronic reporting of MCLE data.
Please confirm receipt.

Best wishes for the holidays and a happy 2019.
J.

Jack Hannan|Deputy Executive Director
The Bar Association of San Francisco
301 Battery Street, Third Floor|San Francisco, CA 94111-3203
Direct (415) 782-8919|Main (415) 982-1600
Fax (415) 477-2388|www.sfbar.org

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THE BAR ASSOCIATION OF
SAN FRANCISCO

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Yolanda M. Jackson

December 21, 2018

Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard St.
San Francisco, CA 94105

Via Email

Dear Robert:

The Bar Association of San Francisco (BASF) would like to submit the comments below in response to the State Bar of California's request for public comment regarding proposed changes to the MCLE reporting requirements.

BASF supports the electronic reporting of MCLE attendance data to the State Bar as described in the November 15, 2018 *Proposed Changes to State Bar Rules to Accommodate Minimum Continuing Legal Education Provider Course Upload Program* (Proposal).

In addition, we have some comments that we would like the State Bar to consider.

1. The State Bar has proposed that CLE records be submitted electronically within 30 days **from the date of the program**. BASF would prefer a deadline of **30 days from the last day of the month in which the program occurred**. We will nearly always submit records in advance of the deadline, but for a variety of reasons, we may need extra time at certain periods of the year.

2. We believe that the State Bar should incur the full cost of developing and operating the system and that MCLE providers should not pay a fee for the development, maintenance or usage of the system.

3. We support the multiple reporting methods described in the Proposal (e.g. Microsoft Excel spreadsheet upload, FTP or API upload, and web interface for individual record upload) and think it is important that MCLE providers have the option of using all of these methods as needed and not be limited to selecting only one method.

4. Once the data is submitted to the State Bar, we would like an affirmative electronic receipt that (1) the data file has been received and (2) a second receipt indicating that the data either has been successfully imported or the data has failed to be imported. If the data fails to imported, we would like some indication of why the import failed.

THE BAR ASSOCIATION OF
SAN FRANCISCO

5. We would like the system to allow any number of data file uploads so that we have flexibility to upload a single file for a single event, or a single file for multiple events. In other words, we would like the flexibility to upload as frequently as we want.

6. Prior to the go-live date, the State Bar should publish the specifications of the various import mechanisms including the required record layouts for the data files. Once these specifications are published, we would like at least 60 days to modify our database systems to produce the required data files and we would like to have a testing environment available so that we can test our upload process and train our staff.

Lastly, though not part of the Proposal, we would encourage the State Bar to amend its records retentions policies to permit the electronic storage of MCLE rosters. This would permit us to keep scanned sign-in sheets and electronic MCLE materials in our electronic systems rather than filing cabinets containing hardcopy files.

If you have questions concerning our comments, please let me know.

Sincerely,

Yolanda Jackson
Executive Director

Canas, Derek

From: Michels, Jill <Jill.Michels@weil.com>
Sent: Wednesday, December 19, 2018 8:59 AM
To: McPhail, Robert
Cc: Michels, Jill
Subject: Public Comment for Proposed Rule Change
Attachments: PDF Letter to State Bar re 2019 Public Comment.PDF

Good morning Robert,

Attached you will find our public comment regarding the Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program. Let me know if you have any questions, or need any additional information.

Happy holidays,
Jill Michels

Weil
Jill Michels
Receptionist

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December 18, 2018

Robert McPhail
Office of Attorney Regulation and Consumer Resources
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: 2019 Public Comment on Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

Season's Greetings,

The proposed change to require MCLE providers to report MCLE courses attendance would be a welcome change. This would be a more efficient process for reporting and auditing attorney compliance. Since we already use PDF versions of our attendance records for internal record keeping, this would not be an issue to forward the same to the State Bar's compliance department. We would look forward to the proposed change.

Best,

Jill Michels

Jill Michels

Receptionist/SVO MCLE Coordinator
Weil, Gotshal & Manges LLP
201 Redwood Shores Pkwy
Redwood Shores, CA 94065
Jill.Michels@weil.com

Canas, Derek

From: Horton,Robert C <RHorton@mwdh2o.com>
Sent: Monday, December 10, 2018 3:34 PM
To: McPhail, Robert
Subject: Comment on proposed rule changes for MCLE (Comment Deadline Jan. 14, 2019)

Dear Mr. McPhail,

The current proposal to require MCLE providers to report attendance certainly has merit, but I am concerned about the current draft language that appears in two places in the proposed rule:

> Participatory activity credit may only be awarded if the provider verifies the attendee has taken the course on the date of completion of the course. Methods for verification include sign-in in writing or electronically at the start of the course.

As phrased, this language could be interpreted to mean that if a member of the bar takes a course offered by an authorized provider, but the provider subsequently fails to report the member's attendance, then the member will not be awarded credit. The current Rule 2.52 provides: "To receive MCLE credit, a member must complete an MCLE activity that meets State Bar standards." If the provider fails to provide the record of completion, the MCLE it offered (and in many cases charged for) would not meet State Bar standards.

In other words, if I take a course from a provider that the State Bar has certified for participatory credit, but the provider fails to report my attendance and completion, I will not get credit, even though I completed the course, and even if I have the provider's certificate of attendance.

If that is the case, it puts the onus on attendees to track every provider's compliance with the reporting requirement. I doubt many attorneys have the time or resources to track compliance for providers, and I suspect if they are required to do so, it will result in a tremendous amount of work for the State Bar to respond to member inquiries, complaints about non-compliant providers. Also, the proposed rule offers no recourse through the State Bar for those of us who have completed authorized MCLE only to learn months, if not years, after the fact that we're short on credits because a provider failed to submit the record of completion. I suspect that would result in litigation against the provider, and even if the State Bar is not a party, it would likely receive subpoenas to determine whether the provider slipped up, or whether the State Bar failed to keep the proper records of attendance.

This would be an unfortunate turn for the worse.

I hope the State Bar will amend the rules such that if a provider fails to submit the attendance information, it will lose its right to offer MCLE classes. In other words, any penalties for failing to comply should be borne by the provider, not members of the State Bar who may be unwitting victims. That will place the onus for compliance on the MCLE provider, not each and every member of the State Bar, and it would avoid a tremendous amount of administrative and legal work for the State Bar that would otherwise result when providers fail to comply and members of the bar have to lodge complaints and record requests with the State Bar.

Thank you for the opportunity to comment.

Best regards,

--Robert

Robert C. Horton
Chief Deputy General Counsel
Metropolitan Water District of Southern California
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rhorton@mwdh2o.com

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Canas, Derek

From: Lori E. Sanders <LSanders@bakermanock.com>
Sent: Monday, December 10, 2018 7:51 AM
To: McPhail, Robert
Subject: MCLE Reporting

Good morning Robert,

I want to respond to the proposed rule changes in MCLE reporting. Our firm is a Multiple Activity Provider and this requirement, while appealing to the State Bar, could likely become a burden for a firm such as ours. We provide CLE for many local/state events throughout the year, and reporting in this proposed fashion will be very time consuming for me. I provide CLE to events that have dozens of attendees, with multiple events, and I can honestly see this taking me hours to report. I also don't find it fair that our firm will have to be paying me to report information to the State Bar, to hasten the Bar's auditing time commitment, unless there are plans to substantially lower our renewal cost.

Please note this email opposing this proposal.

Thank you,

Lori

Lori E. Sanders
Law Library Manager, Paralegal

BAKER MANOCK & JENSEN, PC
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Tel: (559) 432-5400 ext. 286
Fax: (559) 432-5620
bakermanock.com

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Canas, Derek

From: Betty Fracisco <betty.fracisco@gmail.com>
Sent: Thursday, December 06, 2018 11:46 AM
To: McPhail, Robert
Subject: Cs State Bar MCLE Provider Rules

For the MCLE providers to provide attendance to the State Bar is going to require a lot more work/expense on their parts, all for the convenience of the State Bar. Why doesn't the State Bar provide its members with a smart card which they can input at an event, so the provider can electronically transmit attendance numbers. In other words, make the process easy on everyone.

--

Betty Fracisco
Garrett & Jensen

Canas, Derek

From: Joey Morschauser <scndc.joey@gmail.com>
Sent: Wednesday, December 05, 2018 1:18 PM
To: McPhail, Robert
Subject: Re: State Bar of California Call for Public Comment

Mr. McPhail,

Hello, I hope this email finds you well.

I wanted to ask about the new changes for MCLE Providers. With the electronic submission for attorney attendance, will there be a tracking method for the Providers? What I mean by this is, just like attorneys need to keep track of their attendance, providers need to do the same by maintaining records of their agenda, official record of attendance, and course materials to comply with the State Bar renewal requirements. Providers, for example, need to submit an *MCLE Multiple Provider Activity Renewal Application* which which calls for the records mentioned above to be submitted. It would be nice if the State Bar built into the system a quarterly email to providers that tells them where they stand with respect to completing all renewal requirements (e.g. *"Dear Provider, This is your quarterly update and you have X months left to complete 2 MCLE talk(s) before the XX/XX/2019 deadline."*). Please advise if this will be an option in the near future. Thank you kindly.

----- Forwarded Message -----
From: The State Bar of California <robert.mcphail@calbar.ca.gov>
To: nairhouse@yahoo.com
Sent: Monday, December 3, 2018 5:29 PM
Subject: State Bar of California Call for Public Comment

Dear MCLE Provider:
The State Bar of California has proposed changes to the MCLE Provider rules to implement a change that would hav MCLE providers electronically report attorney attendance at MCLE events. You are encouraged to review the propos rule changes.
The materials and public comment item are available for review online.
Public comment is welcome. The public comment period closes on January 14, 2019. Public comment must be in wr and can be submitted by either mail or email. I am the point of contact for this item and my contact information is lis below. Please feel free to share this email with other members of your organization if they may be a more appropriat person to comment.

Sincerely,
Robert McPhail
Robert McPhail | Program Manager II
The State Bar of California | 180 Howard St. | San Francisco, CA 94105
Robert.McPhail@calbar.ca.gov
Robert McPhail | Program Manager II
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JOSE W. MORSCHAUSER
NAIR AND ASSOCIATES
562-495-3937
PO BOX 849
SEAL BEACH, CA 90740

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Canas, Derek

From: Marisa Davis <mdavis@hcrc.ca.gov>
Sent: Tuesday, December 04, 2018 11:01 AM
To: McPhail, Robert
Subject: RE: State Bar of California Call for Public Comment

Habeas Corpus Resource Center responding...
I did come to the meeting in SF earlier this year when these proposed changes were discussed. As a provider who does only 2-4 MCLE programs per year, these changes are not difficult for me. I will have to update our attendance sign in at conferences, but this is relatively simple.

Marisa Davis | Habeas Corpus Resource Center | 303 2nd Street - Suite 400 South Tower | San Francisco CA 94107
T: 415-348-3800 | F: 415-348-3873 | www.hcrc.ca.gov

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From: The State Bar of California [mailto:robert.mcphail@calbar.ca.gov]
Sent: Monday, December 3, 2018 5:29 PM
To: Marisa Davis <mdavis@hcrc.ca.gov>
Subject: State Bar of California Call for Public Comment

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Public comment is welcome. The public comment period closes on January 14, 2019. Public comment mu be in writing and can be submitted by either mail or email. I am the point of contact for this item and my contact information is listed below. Please feel free to share this email with other members of your organization if they may be a more appropriate person to comment.

Sincerely,
Robert McPhail

Robert McPhail | Program Manager II

The State Bar of California | 180 Howard St. | San Francisco, CA 94105
Robert.McPhail@calbar.ca.gov

Robert McPhail | Program Manager II
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Robert.McPhail@calbar.ca.gov

www.calbar.ca.gov

Canas, Derek

From: Ronald P Slates <RSlates2@RSlatesLaw.com>
Sent: Tuesday, December 04, 2018 9:04 AM
To: McPhail, Robert
Cc: Diedra Bruder (DB@diedrabruder.com); Sandy Cannavan
Subject: RE: State Bar of California Call for Public Comment

Thanks. Will review.

From: The State Bar of California [mailto:robert.mcphail@calbar.ca.gov]
Sent: Monday, December 3, 2018 5:29 PM
To: Ronald P Slates <RSlates2@RSlatesLaw.com>
Subject: State Bar of California Call for Public Comment

Dear MCLE Provider:

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The State Bar of California | 180 Howard St. | San Francisco, CA 94105
Robert.McPhail@calbar.ca.gov

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Canas, Derek

From: Thorne, Sara <SThorne@seyfarth.com>
Sent: Tuesday, December 04, 2018 7:13 AM
To: McPhail, Robert
Subject: Reporting Self-Study credits

Good morning Mr. McPhail,

I didn't see anything about reporting Self-Study credits. We have a library of DVDs from the San Fernando Valley Bar association that our attorneys utilize. How will this attendance be reported?

Regards,

Sara

Sara Thorne | Learning & CLE Specialist | Seyfarth Shaw LLP
233 S. Wacker Drive | Suite 8000 | Chicago, Illinois 60606-6448
Direct: +1-312-460-6289
sthorne@seyfarth.com | www.seyfarth.com

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Canas, Derek

From: Jennifer Hancock <jenhancock@humanistlearning.info>
Sent: Tuesday, December 04, 2018 6:57 AM
To: McPhail, Robert
Subject: Comments on: Proposed Changes to State Bar Rules to Accommodate MCLE Provider Course Upload Program

I have 1 online delivered program that is currently approved for MCLE in CA. I am also a FL Bar provider and an HRCI and SHRM provider.

I have no problem with an online system. It works well for both HRCI & SHRM.

However, putting the entire onus on the providers is I think misplaced. Both HRCI & SHRM have online systems that allow for providers to register their courses and when someone completes the course – we provide them with the course ID number which the participant can then use to claim credit in the system. I also provide a digital certificate of completion – which allows the participant to upload the certificate as proof of participation which can be linked to the approved course in the system. This seems like a realistic way to handle it given the fact bar members will have to log their non-pre-approved activities that qualify for MCLE as well. After all, it is the lawyers who have the most motivation to keep their records up to date.

My courses are online and automated. Having me report participation monthly – as opposed to having the attorneys log their participation in the system – is a bit onerous. It is doable, but onerous. Additionally – I can foresee problems in timing. It is not unusual for me to get customers taking a course who are on deadline – they need to get the credit done and filed before their renewal period expires. If I am doing a reconcile and upload of records monthly – and someone is on deadline and they are waiting for me – to reconcile at the end of the month – I could in advertently delay their logging of the course completion information if they need it during the first week of the month – but I don't upload it until the end of the month. This is not hypothetical. In the world of HR – I get people who can't even wait until the end of the week to get their certificate of completion, let alone 30 days! If a bar member is waiting on me – and they need it sooner than my normal scheduled reconcile – they will require me to reconcile on their schedule - to accommodate them – as opposed to mine – and this will create extra unnecessary work and stress on everyone involved. And again – it's something I am concerned about because it happens all the time with HR recertification deadlines.

It just seems it would be better to have bar members log their credits with documentation and then have an annual audit to reconcile what the providers provided against what the bar members are claiming. This would limit the number of times providers are required to upload their participation lists to once or twice a year and it would not delay bar members ability to claim credits in a timely manner.

I would just prefer that the onus to register participation be on the part of the lawyer, not on the provider because I am a sole proprietor and this requirement would add a few hours every month to my work load and again – probably more if I have to deal with cranky bar members who need me to do the work prior to the normally scheduled time. I currently reconcile all my records at the end of the month – so I don't foresee that as being a problem. I just think the system should be a hybrid where the onus for claiming the credit is on the bar member – and the reconcile and audit is against what the providers submit.

Jennifer Hancock
Humanist Learning Systems
727-231-4862
https://humanistlearning.com

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Canas, Derek

From: Luempert, Abigail <aluempert@ulmer.com>
Sent: Tuesday, December 04, 2018 6:15 AM
To: McPhail, Robert
Subject: RE: State Bar of California Call for Public Comment

Hi Robert,

I think this proposed rule change is excellent. Creating certificates of attendance/completion and emailing them is very time consuming... and having been at a law firm for 7+ years, all attorneys lose their certificates and then I am stuck spending even more time trying to find the email or the certificate in my online files again. I only hope whatever method you choose for uploading is efficient. I do not like the process in Ohio where it's an outdated Excel worksheet with more columns than there are types of CLE and when you upload the sheet, it only shows the attorney's bar # not their name unless you individually click on each attendee – so it's impossible to do a quick check against the sign in sheet with bar numbers to make sure the names match. Just as people lose their certificates, they forget their bar number, so then I have to contact the Supreme Court to correct the error (because sponsors can't even make edits, it's all read off of the uploaded spreadsheet). Also if one person signs in twice and you upload the spreadsheet, they receive 0 credit and you have to re-upload the spreadsheet but with only that one person's bar number a single time.... it's just not efficient at all. The California application is already a bear so I think this will go a long way. Illinois has a wonderful online sponsor portal for applying and it's loaded with in depth Q&A, too. IL still does self-reporting, but I wouldn't mind if they moved to sponsor reporting. It may seem like it makes more work for the sponsor, but having done both, I can fully maintain that it is much easier to report on behalf of attendees.

I wish the next step was a uniform CLE application for the U.S.! We don't have a legal education/CLE specialist here, so in my marketing role it's difficult spending so much time juggling CLE applications, reporting, certificates, following up with attorneys, etc.

This is a really smart move and I wish you and the state bar lots of success in moving it forward.

Thank you,
Abi

Abigail Luempert
Events Manager
Ulmer & Berne LLP
216.583.7302

From: The State Bar of California <robert.mcphail@calbar.ca.gov>
Sent: Monday, December 3, 2018 8:29 PM
To: Luempert, Abigail <aluempert@ulmer.com>
Subject: State Bar of California Call for Public Comment

Dear MCLE Provider:

The State Bar of California has proposed changes to the MCLE Provider rules to implement a change that would have MCLE providers electronically report attorney attendance at MCLE events. You are encourage

review the proposed rule changes.

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Robert McPhail

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Canas, Derek

From: Shannon Wild <shannon@uppo.org>
Sent: Tuesday, December 04, 2018 4:54 AM
To: McPhail, Robert
Subject: RE: State Bar of California Call for Public Comment

Good morning,

From a provider administrative standpoint, reporting electronically is great! I hope this moves forward.

Thank you and have a great day!

Shannon Wild
Deputy Director
Unclaimed Property Professionals Organization
P: (763) 253-4341
E: shannon@uppo.org
Twitter | Blog | Website | LinkedIn group

GDPR Consent Request
Beginning on Sept. 19, uppo.org visitors will be required to consent to UPPO's updated privacy policy, in compliance with recent GDPR requirements. Learn more.

2019 UPPO Annual Conference
March 24-27, in New Orleans

From: The State Bar of California <robert.mcphail@calbar.ca.gov>
Sent: Monday, December 3, 2018 7:29 PM
To: Shannon Wild <shannon@uppo.org>
Subject: State Bar of California Call for Public Comment

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Robert McPhail

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Canas, Derek

From: Susan Bassi <gilroybassi@gmail.com>
Sent: Tuesday, December 04, 2018 2:51 AM
To: McPhail, Robert
Subject: MCLE - Public Comment

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Sherrol L. Cassedy, JD, MA
Hon. Marjorie A. Slabach (Ret.)
Matthew J. Sullivan, Ph.D.

Photo to be included in public comment.....

The State Bar is considering electronic reporting of MCLE attendance and should be considering far more as a matter of public protection.

The public has a right to know not only what MCLE credits are offered, but who is taking them. For example, attorney Garrett Dailey through his publishing business "Attorney Briefcase" has a long history of offering published materials for MCLE courses. This is widely known to members of the Bar, but not the public. In offering his courses Mr. Dailey has discretion over guest speakers and contributors. This provides for potential antitrust activity where Mr. Dailey uses these assignments under the guise of " education" to elevate other lawyer and judge careers while creating conflicts of interest that are secreted from the public. These courses also serve as an indirect form of advertising through referrals and networking that should be highly scrutinized for potential antitrust activity.

By way of example, the photo above was taken from a 2015 course Mr. Dailey offered with attorney Sherrol Cassedy and controversial court appointed psychologist Matthew Sullivan. The retired judge is available for court appointments pursuant to CCP 638 and 639, which are the type of high conflict cases that result in appeals Mr. Dailey preforms outside his publishing activities.

In 2016 a former wife of a wealthy tech executive who was represented by attorney Bradford Baugh, first successfully disqualified Sherrol Cassedy as a privately compensated temporary judge,

but then did not successfully disqualify Garrett Dailey from her case that was before Judge Mary Ann Grilli. Had the wife's lawyer, Hector Moreno, been providing a zealous representation to the wife, he likely would have included this information in his request to disqualify Mr. Dailey. Had the wife had an opportunity to view this seminar, and who attended it, she could have used that to disqualify lawyers, and private judges, who were involved in her high asset divorce case based on documentary evidence of these social and professional relationships.

MCLE courses are a hot bed of potential antitrust activity. These courses provide connections, emoluments, a steady stream of income and relationships for family law attorneys that are secreted from the public. Not only should people offering these courses , for profit, be required to report attendance electronically, they should be charged a fee to post their course, and attendance, on the State Bar's website so that all lawyers, and members of the public, could review these courses, and who attended them for potential conflicts with experts, opposing lawyers and privately compensated temporary judges, consistent with the spirit of California Rules of Court 2.834.

Respectfully Submitted,

Susan Bassi
P.O. Box 2220
Los Gatos, CA 95031
(831)320-6421

Canas, Derek

From: Walter Haynes <walter@stoll-law.com>
Sent: Monday, December 03, 2018 6:04 PM
To: McPhail, Robert
Subject: San Francisco Laywers Network - Public Comment - Changes to MCLE Reporting

Hi Mr. McPhail,

I attended the provider meeting on this subject. I am curious, as I am certain all of the providers are, as to how much data entry is required in the proposed MCLE provider submission?

Is the plan that entries need to be made by admin for every attendee for every session? This was a concern raised at the provider meeting but I have not heard nor read what the proposal is?

The idea was raised that providers would merely provide a PDF of the attendance sheet vs. heavy, and perhaps burdensome, data entry.

Burden shifting from the lawyer to the provider regarding verification was raised, and a concern, by your's truly.

Is it the plan that providers will now be "verifying" attendance or are we merely reporting what we have on an attendance sheet and it remains the attorney's obligation to verify attendance? In the same vain, what if the providers make a clerical error and or how are errors corrected etc.

In our case, SFLN has zero revenue. The MCLE's are free to our attendees. I doubt that SFLN stands alone but I suspect we are in the greater minority. So it sounds like the MCLE providers will have to invest the resources to report. Sad and a head scratcher, if true, for those who have no budget, no purse, no checking account etc.

Cheers,

Walt

--

Walter A. Haynes IV, Esq.
Senior Partner
walter@stoll-law.com
Direct: 415.762.0040

stoll-law.com

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Canas, Derek

From: Bruce Krell <BKrell@SWArchitects.com>
Sent: Monday, December 03, 2018 5:57 PM
To: McPhail, Robert
Subject: Proposed MCLE Electronic Reporting

Excellent idea.
As a provider, I welcome the Bar to the modern world.

How about this?

Every student has an account in the system.
All is basic info and maintains a list of approved attendances.

Every provider has an account in the system.
When you approve a course, you add that course to the
list of courses linked to that provider.

When the provider wants to offer a course, he logs in and
registers the specific session. Pick from the approved list,
add the date, save.

The student logs in.
He selects the instructor, then selects the current scheduled class sessions,
both from drop down lists.

Have the students register for the class online through your system.
Send the provider emails of each registration.
The provider can then forward a payment link to the registrant.
Some course require that the attendee sign a release.
The provider e-mail can provide a link to the release.

The provider can also download a list of registered attendees in csv format.
Using the downloaded list, the provider prepares a sign in sheet.
Of course, the provider can take late registrants.

After the course, the provider logs in.
He simply checks a box for each attendee to confirm the attendees that actually came to the course.
Then, he adds late registrations and checks their box.
The approved course session attended then gets added to the list for the attendee.
The provider can save a report of acknowledged attendees in PDF for his digital records.

The approved attendee list stays on line for several years.
In case of any disputes.

This eliminates any paperwork at all.

I did large parts of this with my courses :)

Good luck.
Time to get out of the paper age.
And spread the work around in ways that the work does not become a burden by the provider.
The attendee gets himself on the list with all the required info.
The provider simply downloads the attendees, loads into a registration
list form, logs back into the system, and checks a box for each attendee.

The attendee data gets entered once by the attendee.
The provider data gets entered once by the provider.
The approved course gets entered once by the Bar.
The attendee registers for the session.
The attendee and the Bar get lists of sessions by course/date that he attended.
The provider gets attendee lists.
The provider records attendees by checking boxes.

Easy, simple to use, minimum of effort by everyone.
NO PAPERWORK.

Easy for you guys to audit.

Canas, Derek

From: Kosowski, Meg <Meg.Kosowski@compliancecertification.org>
Sent: Monday, December 03, 2018 5:30 PM
To: McPhail, Robert
Subject: Automatic reply: State Bar of California Call for Public Comment

Meg Kosowski is no longer with our association. For assistance please email CCB@ComplianceCertification.org or calll (952) 988-0141 or toll-free (888) 580-8373 to speak to a staff member.

Thank You