



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 60-5 MAY 2023**

**DATE:** May 18, 2023

**TO:** Members, Board of Trustees  
Sitting as the Regulation and Discipline Committee

**FROM:** Catherine Ongiri, Managing Attorney, Office of Professional Competence  
Arayeh Rahimitabar, Program Manager, Office of Professional Competence  
Erika Doherty, Program Director, Office of Professional Competence

**SUBJECT:** Proposed Amendments to Rules Governing Minimum Continuing Legal Education – Attorney Required Activities and Rules for Providers: Return from Public Comment and Request to Circulate Select Rules for an Additional Public Comment Period

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### **EXECUTIVE SUMMARY**

This item requests approval of the proposed amendments to rules governing Minimum Continuing Legal Education (MCLE).

At its meeting on November 17, 2022, the Board of Trustees authorized a 60-day public comment period for the proposed amendments to the State Bar rules governing Minimum Continuing Legal Education, including those applicable to licensees and those applicable to MCLE providers. In response to public requests, the Board authorized an extension of the public comment period by 30 days, for a total of 90 days.

The State Bar received 185 public comments. After considering the comments, staff recommends revisions to some of the proposed rules to clarify the requirements, and requests Board approval to circulate the revised proposed amendments of these select rules for an additional 30-day public comment period.<sup>1</sup> Because all of the MCLE rules concerning attorney compliance and MCLE providers addressed in this agenda item are interrelated and include

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<sup>1</sup> A clean version of the revised proposed amendments is provided in Attachment A, a redline version is provided in Attachment B, and a redline comparison of the revised proposed amendments and the proposed amendments that were issue for public comment is provided in Attachment C.

cross-references, staff will present the complete package of all MCLE-related rule changes following the second public comment period.

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## **BACKGROUND**

The State Bar establishes and administers the MCLE program for attorneys licensed in California. (Bus. & Prof. Code, § 6070; Cal. Rules of Court, rule 9.31.) This includes regulating licensee compliance with the MCLE requirements and administering a system for approving the activities of MCLE providers under Title 2, Division 4 and Title 3, Division 5, Chapter 1 of the State Bar Rules, respectively.

At its meeting on November 17, 2022, the Board of Trustees authorized for public comment proposed amendments to these rules that would add three topic requirements to the required courses that licensees must complete as part of their existing 25 credit hours per 36-month compliance period. Specifically, the changes would add one hour on civility in the legal profession, one hour on technology in the practice of law, and change the competence requirement from one to two hours to allow for a second hour on attorney wellness. Additionally, as proposed, coaching, scoring, and serving as a presiding judge in mock trial and moot court programs were added to the activities eligible for MCLE credit.

The Board also authorized for public comment proposed changes to the existing MCLE compliance and provider rules that would improve the administration of the MCLE program, increase efficiency, reduce duplicative language in the rules, and facilitate compliance by licensees and MCLE providers, including Legal Specialization MCLE (LSMCLE) providers.

## **DISCUSSION**

### **OVERVIEW OF PUBLIC COMMENTS RECEIVED**

The proposed amendments to the rules governing MCLE were circulated for a 90-day public comment period. During that period, 185 individuals and organizations submitted public comments, of whom 89.6 percent were attorneys, 10.4 percent were nonattorneys, 30.7 percent were organizations,<sup>2</sup> and 69.3 percent were individuals.<sup>3</sup> The full text of the comments is provided in Attachment D.

The majority of the commenters agreed with the proposed amendments as submitted:

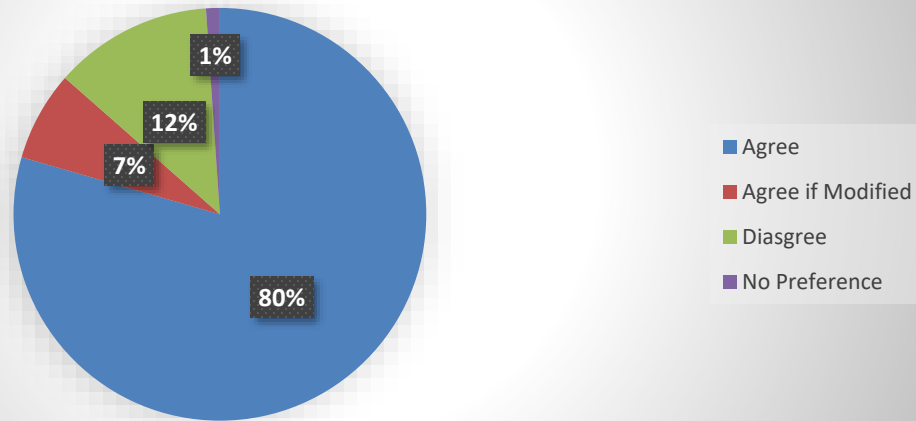
- Agree with the proposed amendments – 147
- Agree if modified – 13
- Disagree – 23
- No preference – 2

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<sup>2</sup> 47 organizations submitted public comment, 16 of the organizations are bar associations, 21 are MCLE providers, and 10 are schools.

<sup>3</sup> Commenters, including organizations, self-identified whether they were attorneys, nonattorneys, or not applicable.

## Positions in Responses Received



### PROPOSED AMENDMENTS TO THE MCLE RULES REGARDING CREDIT REQUIREMENTS

#### Competence Credit

Of the 185 comments,<sup>4</sup> eight specifically address the proposed changes to the MCLE competence requirement, which would require an additional hour of competence MCLE and expand the types of issues that would qualify for competence credit.

Three commenters agree with the proposal, one agrees if modified, and four disagree. Commenters in support of the change believe that it is important to give attorneys tools to maintain their competence under stress and career challenges. The commenters who agreed if modified or disagreed still recognize the value of MCLE on attorney wellness, but suggested that the State Bar consider expanding the competency topic area without expanding the number of hours required. After considering the public comment, staff recommends that the Board adopt the initial proposal without further changes. The current competency education is closely tied to the Attorney Diversion and Assistance Program, more commonly known as the Lawyer Assistance Program (LAP). (Bus. & Prof. Code §§ 6230 et seq.) A main goal of LAP is to assist attorneys impaired due to substance abuse or mental health disorders, so that the attorneys may be “returned to the practice of law in a manner that will not endanger the public health and safety.” (Bus. & Prof. Code, § 6230.) Business and Professions Code section 6236 specifies the outreach activities the State Bar must engage in including development and certification of MCLE courses relating to behavioral health issues and the prevention, detection, and treatment of substance abuse.

These topics are of significant relevance to many attorneys. In February 2023, The California Lawyers Association (CLA) and the D.C. Bar shared findings from a groundbreaking research project offering insight into the personal and workplace risk factors for mental health problems

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<sup>4</sup> Most commenters provided input on multiple concepts within the proposed rule. As such, the numbers reflected in the common themes is larger than the number of individual comments received.

among practicing attorneys.<sup>5</sup> Among the key findings, the project found that attorneys are twice as likely as the general population to experience suicidal ideations and these ideations are directly impacted by levels of stress. Another study found that depression, anxiety, and stress are higher in attorneys compared to the general population and other professional populations.<sup>6</sup> That study also found that over half of the attorneys screened positive for risky drinking and 30 percent screened for high-risk hazardous drinking (which is interpreted as alcohol abuse or possible dependence). The additional hour of competence would encourage and support a licensee's well-being and is in line with the State Bar's preventative efforts to ensure attorney competence.

Based on the public comment, as well as findings and reports indicating the high levels of mental health and substance use issues amongst attorneys, staff maintains its original recommendation. Staff recommends that the number of required competency hours should be increased from one to two. Staff also recommends that the Board adopt the proposal to authorize wellness-related MCLE courses as an additional topic for meeting the competency requirement. A licensee can elect to take one hour of wellness MCLE and one hour regarding identification, prevention, and reduction of mental illness and substance use within the profession to fulfill the two-hour requirement, or two hours on the latter topic.

### **Technology in the Practice of Law Credit**

Of the 185 comments, five comments specifically reference the proposal for a new required hour of MCLE on technology in the practice of law with two agreeing and three disagreeing with the proposal. In their comment, the Bar Association of San Francisco (BASF) indicated that they surveyed its membership and nearly 70 percent of the attorneys that responded to the survey support the proposed technology requirement. Additionally, BASF conveyed a general sentiment that adding a technology requirement is sensible given the ever-evolving nature of technology. CLA also supports the proposed technology requirement and accompanying definition of courses that would qualify under this credit. Commenters that disagreed with the proposed new technology requirement acknowledged that it is important to the practice of the law, but argued it was unnecessary or would have a limited overall benefit to the profession. However, they were not against allowing for general MCLE credit for courses on the subject.

After review of the comments, staff recommends that the Board adopt the proposed amendments as written. Technology plays an integral role in today's legal world and is an essential component of maintaining competency. (See Rules Prof. Conduct, rule 1.1 Comment [1].) This requirement is necessary to ensure that lawyers are aware of the potential issues that come with the use of technology. This requirement also furthers the public protection mission of the State Bar by ensuring attorneys are aware of how to protect client information and how technology can impact an attorney's duties.

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<sup>5</sup> *Lawyers with High Stress are 22 Times More Likely to Contemplate Suicide than those with Low Stress.* <https://calawyers.org/california-lawyers-association/lawyers-high-stress-contemplate-suicide/>, last accessed 4/13/23.

<sup>6</sup> *Stress, Drink, Leave, An Examination of Gender-Specific Risk Factors for Mental Health Problems & Attrition Among Licensed Attorneys.* Anker, J. & Krill, P.R. (2021), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0250563>, last accessed 4/26/23.



## **Civility in the Legal Profession Credit**

Of the 185 comments, 21 addressed the civility proposal that would require one hour of civility training as part of the existing MCLE requirements; 17 agreed with the proposal and four disagreed with the proposal. The comments overwhelmingly support this recommendation. The California Civility Task Force (CCTF) submitted a letter fully supporting the Board's proposed amendments to the MCLE rules. The State Bar received letters from a number of organizations, including CLA and the California Judges Association, that signed on to the CCTF's letter and recommendations. Five additional organizations submitted support of the proposed MCLE changes related to civility including The Association of Southern California Defense Counsel, BASF, Consumer Attorneys Association of Los Angeles and California Employment Lawyers Association in a joint comment, and the Japanese Bar Association. These organizations generally supported the proposed requirement that attorneys complete one hour of MCLE on civility, commenting that it would expose practitioners to professionalism practices and can only enhance civility and professionalism.

Some commenters stated that civility should be a topic that attorneys can get credit for, but as part of the general MCLE category. Other commenters who disagreed with the proposed amendments stated it is ridiculous to "codify" civility, raised concerns about civility being weaponized, and expressed concern about clarifying the gray area between "incivility" on the one hand and constitutionally protected free speech and legitimate advocacy on the other hand. Because of this gray area, the commenters stated that the educational requirement will have a chilling effect on attorneys.

Staff reviewed and considered the issues raised in the comments, and recommends maintaining the original proposal without additional revisions. While the commenters raise important concerns, they do not outweigh the need to ensure that attorneys are aware of the need for civility in the profession, particularly if there are new civility requirements under the Rules of Professional Conduct as also recommended by CCTF and being explored by this Board. Requiring this course will reach those licensees who typically opt out of civility courses that are offered as general or ethics credit.

## **Proposed New Activity Eligible for Participatory MCLE Credit - Mock Trial and Moot Court**

Of the 185 comments received, 113 address the proposal to add MCLE credit for attorneys that participate in mock trial activities, with 110 commenters agreeing, two commenters agreeing if modified, and one commenter disagreeing. Of the commenters agreeing with the proposal, some recommend that the rule be expanded to cover negotiation, arbitration, and mediation, which are akin to mock trials and moot court programs, and also expand the opportunity for MCLE credit to such programs at the middle school and graduate school levels. Staff agrees with this recommendation, revised the proposed amendments accordingly, and seeks a second public comment period regarding these revised proposed amendments. Similarly, other commenters all agree that MCLE credit should be allowed but also recommend allowing a similar number of MCLE credits (2) for participating in a certain number of pro bono service hours (8+). As issued for public comment, proposed rule 3.601(A)(11) would clarify that opportunities to participate in pro bono, including learning about a new subject area of the law would qualify for MCLE credit. However, the pro bono activity itself does not. Staff does not

recommend adding pro bono work as eligible for MCLE credit at this time, but plans to work with the Office of Access and Inclusion to explore allowing for MCLE credit for pro bono activities in the future.

BASF provided support of this proposal if modified to limit MCLE credit to mock trial coaches, as they did not see the educational value for scorers and presiding judges. However, many of the other comments noted how serving as a scorer requires them to study the Evidence Code and Rules of Professional Conduct, and review witness preparation and trial procedures to adequately evaluate, guide, and prepare the students. Another commenter noted that as a supervisor, “attorneys who participated in mock trial have stronger foundational courtroom, evidentiary and legal skills.” The commenter that disagreed with the proposal raised concerns about opening the door to other types of civic activities in the community and stated that MCLE requirements are not overbearing compared to the requirements in other professions. While the commenter thinks attorneys should volunteer to participate in mock trial, he believes MCLE credit should not be an incentive.

Based on consideration of the comments, staff recommends that the proposed rule 2.84(A), providing for MCLE credit for mock trial and moot court activities, be modified to include the middle school and graduate level competitions as well as adding negotiations and mediation competitions. Based on these revisions, staff seeks a second public comment period for the proposed amendments.

#### **PROPOSED AMENDMENTS TO THE MCLE COMPLIANCE AND PROVIDER RULES**

Of the 185 public comments received, 25 specifically address proposed amendments to the State Bar rules concerning MCLE providers, all of which were submitted by organizations that provide MCLE in California. 17 comments disagree with the proposed amendments; eight comments agree if modified.

The commenters<sup>7</sup> were generally concerned that several of the proposed amendments are impractical, difficult to enforce, and would impose unnecessary administrative and financial burdens on providers, particularly nonprofit organizations. In addition to these general comments, providers also commented on specific proposed amendments, and, in response, staff is withdrawing several proposed amendments and has drafted alternative proposed amendments. The additional, proposed amendments to select rules are provided in clean version as Attachment A and redline version as Attachment B.

**Self-study: Amendments to Existing Rule 2.83 – Staff Recommends be Withdrawn**

**Definitions: New Paragraph (K) in Rule 3.600 – Staff Recommends be Withdrawn**

**Standards for MCLE activity approval: Rule 3.601**

*Proposed New Paragraph (O) (Activities are Free from Interruptions) – Staff Recommends be Withdrawn*

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<sup>7</sup> Full text of comments is provided here: <http://bit.ly/mclepc-may2023>.

**Responsibilities of every provider: Rule 3.602**

*Proposed Amendments to Paragraph (C) (Attendance Records) – Staff Recommends be Withdrawn*

Additional information regarding amendments staff recommends withdrawing at this time for rules 2.83, 3.600(K), 3.601(O) & (P), and 3.601(C) can be found in Attachment E.

*Proposed Amendments to Paragraph (D) and New Paragraph (E) (Certificates of Attendance and Completion) – Staff Recommends Revised Proposed Amendments*

Current rule 3.602(D) requires providers to furnish a Certificate of Attendance upon completion of a participatory activity if the licensee meets the requirements of that activity. Current rule 2.83 (self-study) requires providers to furnish a Certificate of Completion to a licensee who meets the requirements of that activity. The proposed amendments to rules 3.602(D) and (E), as issued for public comment, were intended to clarify the distinction between Certificates of Attendance, for participatory activities, and Certificates of Completion, for self-study activities, and the required information that must be included on a certificate. The proposed amendments also would clarify that a certificate should be issued at the end of an MCLE activity and require that the certificate be signed by a provider or its agent.

Commenters stated that the proposed amendments are impractical, logistically challenging, and impose unnecessary administrative burdens on providers, particularly nonprofit MCLE providers with fewer resources. They indicated that to avoid delays in distributing Certificates of Attendance at in-person activities would require hiring additional staff. They were also confused by the rule structure of the proposed requirements.

Staff agrees with some of the comments and recommends that paragraphs (D) and (E) be further revised for clarity by combining the paragraphs and removing duplicative language.<sup>8</sup> Also, in response to the comments, and because attorneys are responsible for accurately reporting their MCLE attendance, staff recommends that the proposed amendments are modified to remove the proposed requirement that providers issue certificates at the end of an activity. Finally, staff recommends removing the proposed signature requirement since the existing rules already require that the provider's name is included on certificates. Based on these revised proposed amendments, staff seeks a second public comment period on rule 3.602.

**Applying for Multiple Activity Provider status: Rule 3.608 – Staff Recommends Revised Proposed Amendments as Issued for Public Comment**

Current rule 3.608 requires that a provider receive State Bar approval for four separate MCLE activities held on four different dates within the preceding two years prior to applying for MAP

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<sup>8</sup> Based on staff's recommendation to combine paragraphs (D) and (E), this section will be renumbered to (D), and the other proposed paragraphs will be shifted up.

status. The proposed amendment to rule 3.608 as issued for public comment would increase the number of required approved activities to six.

Three comments disagreed with the proposed recommendation because it would require more staff time on submission of MCLE activities offered prior to becoming a MAP. Despite these concerns, staff still recommends that the Board adopt the proposed amendment as written. The State Bar lists approved MAPs on its website, indicating that MCLE activities presented by those providers are presumptively approved by the State Bar. MAPs who have received approval of six different activities demonstrate that they have a comprehensive understanding of the standards of approval for MCLE activities as well as the responsibilities of each provider, as outlined in the MCLE provider rules. Additionally, this proposed amendment would bring California in line with the average number of pre-approved activities required to achieve MAP status in other jurisdictions.

### **Renewing Multiple Activity Provider status: Rule 3.609 – Staff Recommends Revised Proposed Amendments**

Current rule 3.609 requires providers to renew their MAP status every three years. The proposed amendments to rule 3.609 as issued for public comment would decrease that renewal period from three years to two. Most of the commenters opposed the proposed amendments to rule 3.609, stating that there is no rationale for reducing the renewal period. Commenters generally raised concerns that the increased frequency of renewal applications will result in administrative and financial burdens on the providers as the change will impact the fees charged to providers, which would be assessed every two years instead of every three.

Although the commenters raise important concerns, staff maintains its original recommendation to adopt the proposal. As mentioned above, the State Bar presumptively approves all MCLE activities offered by a provider while an approved MAP. A two-year renewal requirement for MAPs gives the State Bar more oversight over providers to confirm compliance with the rules. This change is also consistent with the renewal periods for other jurisdictions. While not all jurisdictions approve providers for MAP status, the majority that do require providers to renew their status annually and submit proof and documentation for many more activities. Only three other jurisdictions have the same three-year renewal requirement as California's current rule. To account for the administrative impact of changing the renewal period, the State Bar has revised and consolidated its general MCLE provider and legal specialist MCLE provider applications. Additionally, the State Bar is streamlining the process to submit applications, which includes a transition to online applications and paperless materials submission.

As described above regarding rule 2.83 (self-study), staff also proposes additional changes to rule 3.609 to require that providers certify that they have reviewed all self-study activities within the 12 months prior to the MAP's application for renewal to ensure the accuracy, relevance, and quality of the activity's content. Based on these revised proposed amendments, staff seeks a second public comment period on rule 3.609.

## **Applying for Legal Specialty Provider Status: Rule 3.610 – Staff Recommends Proposed Amendments**

Rule 3.610 outlines the current application process and eligibility requirements for becoming a legal specialty SAP or MAP. Staff recommends that the existing rule be amended to further clarify the requirements in relation to providers who would like to become MAPs in multiple legal specialties. This proposed amendment was not issued during the first public comment period; however, staff requests the Board's approval to circulate the proposed change during the second round of public comment because this already an expectation for applications for legal specialty provider status although it is not codified in the rules.

## **MCLE Provider Fees: Rule 3.611 – Staff Recommends Revised Proposed Amendments**

In a separate agenda item, staff is recommending that the Board adopt proposed increases to currently charged fees and new late fees and reinstatement fees as described. In order to implement the fee-related changes, amendments to rule 3.611 are necessary. As such, staff requests the Board's approval to circulate proposed amendments to 3.611 reflecting the new fee structure during the second public comment period, assuming that the Board adopts the recommended fee increases.

### **SUMMARY OF STAFF RECOMMENDATIONS FOLLOWING FIRST PUBLIC COMMENT PERIOD**

As a result of public comments received, staff requests approval to circulate the following revised proposed amendments for an additional 30-day public comment period:

- Rule 2.84 (Mock Trial, Moot Court, and Other Competition Activity);
- Rule 3.601 (Standards for MCLE activity approval);
- Rule 3.602 (Responsibilities of every provider);
- Rule 3.609(Renewing Multiple Activity Provider status);
- Rule 3.610 (Applying for legal specialty provider status); and
- Rule 3.611 (MCLE provider fees).

Because all of the MCLE rules concerning attorney compliance and governing providers are interrelated and include cross-references, staff will present a comprehensive package of all MCLE-related rule changes for adoption following the second public comment period on the rules listed above.

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA**

Title 2, Division 4 and Title 3, Division 5, Chapter 1 of the rules of the State Bar

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

### Goal 3. Protect the Public by Regulating the Legal Profession

- b. 2. Position the State Bar as a trusted resource and increase interactions with licensees beyond admitting attorneys into the profession, collecting fees, and monitoring MCLE compliance.

## RECOMMENDATIONS

**Should the Board of Trustees, sitting as the Regulation and Discipline Committee, concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 30 days, proposed amendments to State Bar rules 2.84 (Mock Trial, Moot Court, and Other Competition Activity); 3.601 (Standards for MCLE activity approval); 3.602 (Responsibilities of every provider); 3.609 (Renewing Multiple Activity Provider status); and 3.610 (Applying for legal specialty provider status) as set forth in Attachment A; and it is

**FURTHER RESOLVED**, that, if the Board of Trustees authorizes the recommended fee increases and fee structure changes set forth in Agenda Item 709 then the Board of Trustees, sitting as the Regulation and Discipline Committee, authorizes staff to make available for public comment, for a period of 30 days, proposed amendments to State Bar rule 3.611 (MCLE provider fees) as set forth in Attachment A;

**FURTHER RESOLVED**, that this authorization for release of public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed amended State Bar Rules.

## ATTACHMENTS LIST

- A. Proposed Rules of the State Bar, Title 2, Division 4 and Title 3, Division 5 (clean)
- B. Proposed Rules of the State Bar, Title 2, Division 4 and Title 3, Division 5 (redline)
- C. Proposed Rules of the State Bar, Title 2, Division 4 and Title 3, Division 5 (redline comparison of revised proposed amendments and proposed amendments issue for first public comment period)
- D. Full Text of Public Comments, accessible [here](#)
- E. Withdrawn Amendments to Rules of the State Bar

**TITLE 2. RIGHTS AND RESPONSIBILITIES OF  
LICENSEES**

**DIVISION 4. MINIMUM CONTINUING LEGAL  
EDUCATION**

**Chapter 3. MCLE Activities approved for MCLE Credit**

**Rule 2.84 Mock Trial, Moot Court, and Other Competition Activity**

- (A) A licensee may claim up to two hours of participatory MCLE credit for serving as an attorney coach or scorer or presiding judge for mock trials, moot court arguments, negotiation competitions, arbitration competitions, and mediation competitions involving substantive and procedural law at the middle, high school, college, graduate, and law school levels.
- (B) MCLE credit hours are not available for grading written briefs or other written papers in connection with this type of MCLE activity.
- (C) Additional hours cannot be claimed for preparation time.
- (D) A licensee may not claim MCLE credit for legal ethics, elimination of bias, competence, technology in the practice of law, or civility in the legal profession as required by rule 2.72 for participation in this type of activity.

**TITLE 3. PROGRAMS AND SERVICES**

**DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES**

**Chapter 1. Providers of Continuing Legal Education**

**Article 1. Global provisions**

**Rule 3.601 Standards for MCLE activity approval**

To be eligible for MCLE accreditation, an MCLE activity must meet State Bar standards.

- (A) General MCLE activity must relate to legal subjects directly relevant to licensees of the State Bar and have current significant educational, professional, or practical content, with an objective to increase each participant's professional competency as an attorney. Activities designed for non-attorney participants will not be approved for general MCLE credit. MCLE activities that may be eligible for general MCLE credit include those that

provide education or practical instruction in:

- (1) The practice of law;
  - (2) Litigation;
  - (3) Management of a solo law practice;
  - (4) Management of a law firm or corporate legal department;
  - (5) The management of client trust accounts;
  - (6) Law firm finances;
  - (7) Attorney-client communications;
  - (8) Case management;
  - (9) Effective calendaring;
  - (10) The avoidance of malpractice; or
  - (11) Opportunities to participate in pro bono legal services.
- (B) Legal ethics MCLE activity must focus on attorneys' professional responsibility, including education on and citation to the California Rules of Professional Conduct and the State Bar Act, and related authorities such as the professional conduct rules of a tribunal. Activities that focus on the ethics of business, corporate or government affairs, or society, in general, do not qualify for MCLE credit.
- (C) Recognition and elimination of bias MCLE activity must focus on education in the recognition and elimination of impermissible bias in the courtroom and law offices; attorney-client relationships and relationships with other attorneys; legal and nonlegal employment and workplaces, including hiring, managing, and terminating employees; and in housing, including accommodations and services. Courses required by Government Code section 12950.1 also qualify for recognition and elimination of bias credit.
- (D) Implicit bias and the promotion of bias-reducing strategies MCLE activity must meet the requirements of Business and Professions Code section 6070.5 and must focus on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system.
- (E) Prevention and detection competence MCLE activity must consist of education that relates to the prevention and detection of substances use disorders, mental illness, and other mental or physical issues that impair an attorney's ability to perform legal services with competence.
- (F) Wellness competence MCLE activity may include physical and mental wellness and well-being or stress management so long as the activity addresses these topics in the context of the practice of law and the impact these issues can have on an attorney's ability to perform legal services with competence.



- (G) Technology MCLE activity must consist of education that addresses technology in the practice of law. This includes education on technology tools, programs, or applications to assist attorneys in their law practice. Credit will not be awarded for course content consisting of marketing of a technology product or service. Examples of courses that would qualify for this credit include:
- (1) Cybersecurity, privacy, and data protection;
  - (2) Use of technology to create, receive, transmit, store, analyze, or delete client documents or client information;
  - (3) Law practice management technology tools, including technology for virtual appearances before a tribunal;
  - (4) Use of applications to assist attorneys in advising clients, including artificial intelligence technology; and
  - (5) Electronic discovery.
- (H) Civility MCLE activity must consist of education that addresses civility in the legal profession. This includes education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary.
- (I) Legal Specialist MCLE activity must provide high-quality legal education in one or more of the areas of the law eligible for LSMCLE credit as set forth in Title 3, Division 2, Chapter 2 of the State Bar Rules.
- (J) A presenter or presenters of an MCLE activity must have significant professional or academic experience related to its content.
- (K) Any information regarding an approved MCLE activity, including all promotional materials, must state that the activity is approved for California MCLE credit, specify the amount credit hours offered, and indicate whether any of the credit may be claimed for required MCLE in legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, civility in the legal profession, or a legal specialization.
- (L) If an MCLE activity is submitted for accreditation, but the provider has not received a determination on approval of the activity, any information regarding the proposed MCLE activity, including all promotional materials, must state that an application for California MCLE credit is pending approval.
- (M) If an MCLE activity is not approved, the provider must promptly provide written notice of the State Bar's denial to any registrant seeking California MCLE credit for the course or program.
- (N) If an MCLE activity lasts one hour or more, the provider must provide participants with

substantive written materials relevant to the MCLE activity either before or during the activity. Any materials provided online must remain online for at least thirty (30) calendar days following the MCLE activity.

### **Rule 3.602 Responsibilities of every provider**

Every provider must:

- (A) Comply with any State Bar rules, standards, and terms applicable to an approved MCLE activity.
- (B) Take attendance using the State Bar's Record of Attendance form or its equivalent, retain the form for four years from the date of the MCLE activity, and submit it to the State Bar upon request. The form must include the following:
  - (1) title of the MCLE activity;
  - (2) date of the MCLE activity;
  - (3) total hours awarded, including any credit hours or partial credit hours awarded for legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, civility in the legal profession, or legal specialization as a component of the activity;
  - (4) whether the activity is participatory or self-study; and
  - (5) the name and State Bar number of each California licensee.
- (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) Provide participants who have met the requirements of a participatory activity with a Certificate of Attendance or provide participants who have met the requirements of a self-study activity with a Certificate of Completion. Certificates may be issued in written or electronic form. Each certificate must include the following:
  - (1) provider name;
  - (2) title of the MCLE activity;
  - (3) date of the MCLE activity;
  - (4) total hours awarded, including any credit hours awarded for legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, civility in the legal profession, or legal specialization as a component of the topic of the activity;
  - (5) whether the activity is participatory or self-study; and
  - (6) name and license number of the California licensee, if available. This section may

be left blank by the provider for completion by the licensee.

- (E) Provide each participant 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.
- (F) Notify the State Bar in writing of any change to the provider's name, address, contact person, or other contact information required by the State Bar including those of its affiliates, within thirty (30) days of the effective date of the change.

### **Rule 3.609 Renewing Multiple Activity Provider status**

- (A) To be eligible for renewal of up to two years, a Multiple Activity Provider must:
  - (1) apply for renewal using the State Bar's Multiple Activity Provider renewal application;
  - (2) submit evidence that it has offered six different MCLE activities that meet the requirements of these rules within the two years preceding its application for renewal;
  - (3) submit the completed application in the manner prescribed by the State Bar, the required supporting materials for the six activities, and the appropriate processing fee on or before the deadline set by the State Bar;
  - (4) certify that all self-study activities offered have been reviewed within the 12 months preceding an application for renewal, and that all self-study activities continue to meet the requirements of rule 3.601; and
  - (5) submit any complaints it may have received regarding compliance with these rules.

Incomplete applications or applications that do not include the required supporting materials or the appropriate processing fee will not be considered for approval.

- (B) A Multiple Activity Provider renewal application that is received after the renewal deadline set by the State Bar is subject to late fees as set forth in the State Bar's Schedule of Fees. A Multiple Activity Provider renewal application that is received two years or more after the renewal deadline set by the State Bar is ineligible for renewal under this rule. A Multiple Activity Provider who fails to renew their status within the two-year timeframe must submit any MCLE or LSMCLE activity offered during that timeframe for retroactive approval under rule 3.607.

### **Rule 3.610 Applying for Legal Specialty Provider Status**

- (A) The State Bar certifies attorneys as specialists in certain areas of law. Certified specialists must take and report LSMCLE specific to the area(s) of their specialty, in addition to MCLE credit to maintain their certification. The State Bar may accredit specialty education as

meeting the standards for LSMCLE activity. LSMCLE activity may also qualify as approved MCLE activity for legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, or civility in the profession.

- (B) A provider intending to offer LSMCLE must be approved by the State Bar as a Multiple Activity Provider in a specialty area of law in the manner set forth in rule 3.608 or must file an application for Single Activity Provider status for a single education activity designed to attain or maintain proficiency in a specialty area of law in the manner set forth in rule 3.607. A separate Multiple Activity Provider Application is required for each specialty area.
- (C) Any requirements for an MCLE activity as set forth in these rules apply to an LSMCLE activity.<sup>1</sup>

### **Rule 3.611 MCLE Provider Fees**

- (A) Providers are subject to application processing fees when seeking approval to grant credit for a single MCLE activity as a Single Activity Provider or applying for or seeking to renew their Multiple Activity Provider Status. Providers are also subject to applicable late fees and reinstatement fees as set forth in these rules and the State Bar's Schedule of Fees.
- (B) Government Agency and Nonprofit Fees: Providers that are courts, government agencies, or granted tax-exempt 501(c)(3) status from the United States Internal Revenue Service (IRS) qualify for lower application processing and renewal fees. Proof of a provider's nonprofit status is required and must be submitted with the provider's application. A provider that is unable to provide proof of their registered nonprofit status with the IRS does not qualify for the lower application processing or renewal fee.

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<sup>1</sup> See State Bar Rule 3.114.

**TITLE 2. RIGHTS AND RESPONSIBILITIES OF  
LICENSEES**

**DIVISION 4. MINIMUM CONTINUING LEGAL  
EDUCATION**

**Chapter 3. MCLE Activities approved for MCLE Credit**

**Rule 2.84 ~~Legal specialization~~ Mock Trial, Moot Court, and Other Competition Activity**

- (A) A licensee may claim up to two hours of participatory MCLE credit for serving as an attorney coach or scorer or presiding judge for mock trials, moot court arguments, negotiation competitions, arbitration competitions, and mediation competitions involving substantive and procedural law at the middle, high school, college, graduate, and law school levels.
- (B) MCLE credit hours are not available for grading written briefs or other written papers in connection with this type of MCLE activity.
- (C) Additional hours cannot be claimed for preparation time.
- ~~(A)~~(D) A licensee may not claim MCLE credit for legal ethics, elimination of bias, competence, technology in the practice of law, or civility in the legal profession as required by rule 2.72 for participation in this type of activity for educational activities that the California Board of Legal Specialization approves for certification or recertification.

**TITLE 3. PROGRAMS AND SERVICES**

**DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES**

**Chapter 1. Providers of Continuing Legal Education**

**Article 1. Global provisions**

**Rule 3.601 Standards for MCLE Activities ~~activity approval~~**

To be eligible for approved for MCLE accreditation ~~credit~~, an MCLE activity must meet State Bar standards.<sup>‡</sup>

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<sup>‡</sup> ~~Business & Professions Code 5-6070(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-~~

(A) ~~The General~~ MCLE activity must relate to legal subjects directly relevant to licensees of the State Bar ~~or and~~ have current significant educational, current professional, or and practical content, with an objective to increase each participant's professional competency as an attorney. Activities designed for non-attorney participants will not be approved for general MCLE credit. MCLE activities that may be eligible for general MCLE credit include those that provide education or practical instruction in:

- (1) The practice of law;
- (2) Litigation;
- (3) Management of a solo law practice;
- (4) Management of a law firm or corporate legal department;
- (5) The management of client trust accounts;
- (6) Law firm finances;
- (7) Attorney-client communications;
- (8) Case management;
- (9) Effective calendaring;
- (10) The avoidance of malpractice; or
- (11) Opportunities to participate in pro bono legal services.

(B) Legal ethics MCLE activity must focus on attorneys' professional responsibility, including education on and citation to the California Rules of Professional Conduct and the State Bar Act, and related authorities such as the professional conduct rules of a tribunal. Activities that focus on the ethics of business, corporate or government affairs, or society, in general, do not qualify for MCLE credit.

(C) Recognition and elimination of bias MCLE activity must focus on education in the recognition and elimination of impermissible bias in the courtroom and law offices; attorney-client relationships and relationships with other attorneys; legal and nonlegal employment and workplaces, including hiring, managing, and terminating employees; and in housing, including accommodations and services. Courses required by Government Code section 12950.1 also qualify for recognition and elimination of bias credit.

(D) Implicit bias and the promotion of bias-reducing strategies MCLE activity must meet the requirements of Business and Professions Code section 6070.5 and must focus on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system.

(E) Prevention and detection competence MCLE activity must consist of education that

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

relates to the prevention and detection of substances use disorders, mental illness, and other mental or physical issues that impair an attorney's ability to perform legal services with competence.

(F) Wellness competence MCLE activity may include physical and mental wellness and well-being or stress management so long as the activity addresses these topics in the context of the practice of law and the impact these issues can have on an attorney's ability to perform legal services with competence.

(G) Technology MCLE activity must consist of education that addresses technology in the practice of law. This includes education on technology tools, programs, or applications to assist attorneys in their law practice. Credit will not be awarded for course content consisting of marketing of a technology product or service. Examples of courses that would qualify for this credit include:

- (1) Cybersecurity, privacy, and data protection;
- (2) Use of technology to create, receive, transmit, store, analyze, or delete client documents or client information;
- (3) Law practice management technology tools, including technology for virtual appearances before a tribunal;
- (4) Use of applications to assist attorneys in advising clients, including artificial intelligence technology; and
- (5) Electronic discovery.

(H) Civility MCLE activity must consist of education that addresses civility in the legal profession. This includes education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary.

(I) Legal Specialist MCLE activity must provide high-quality legal education in one or more of the areas of the law eligible for LSMCLE credit as set forth in Title 3, Division 2, Chapter 2 of the State Bar Rules.

~~(A)~~(J) ~~The A~~ presenter or presenters of ~~the an~~ MCLE activity must have significant professional or academic experience related to its content.

~~(B)~~(K) Any information regarding an approved MCLE activity, including all Ppromotional materials, must state that the MCLE activity is approved for California MCLE credit, or that a request for approval is pending; specify the amount ~~of~~ credit hours offered; and indicate whether any of the credit may be claimed for required MCLE in legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, civility in the legal profession,

or a legal specialization or competence issues.<sup>2</sup>

- (L) If an MCLE activity is submitted for accreditation, but the provider has not received a determination on approval of the activity, any information regarding the proposed MCLE activity, including all promotional materials, must state that an application for California MCLE credit is pending approval.
- (M) If an MCLE activity is not approved, the provider must promptly provide written notice of the State Bar's denial to any registrant seeking California MCLE credit for the course or program.
- ~~(C)(N)~~ If ~~the~~ an MCLE activity lasts one hour or more, the provider must provide participants with 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 (30) calendar days following the MCLE activity.
- ~~(D)(O)~~ ~~Programs and classes must be scheduled so that participants are free of interruptions.~~
- ~~(E)(P)~~ ~~On and after January 1, 2022, for all training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies, an MCLE-provider must meet the requirements of Business and Professions Code section 6070.5.~~

### Rule 3.602 Responsibilities of every provider

Every provider must:

- (A) ~~comply~~ Comply with any State Bar rules, standards, and terms applicable to an approved MCLE activity.
- (B) ~~retain~~ Take attendance using the State Bar's Record of Attendance form or its equivalent, retain the form for an MCLE activity for four years from the date of the MCLE activity, and submit it to the State Bar upon request. The ~~form~~ record must include the following:
  - (1) title of the MCLE activity;
  - (2) date of the MCLE activity;
  - (3) total hours awarded, including any credit hours or partial credit hours any ~~credits~~ awarded for legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, civility in the legal profession, or legal specialization or ~~competence issues~~ as a component of the ~~topic of the~~ activity;

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<sup>2</sup> See State Bar Rule 2.72 for a description of competence issues and elimination of bias.



- (4) ~~\_\_\_\_\_~~ and whether the activity is participatory or self-study; and  
 (4)(5) ~~\_\_\_\_\_~~ the name and State Bar number of each California licensee~~attendee~~;
- (B)(C) ~~provide~~ 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~~ Provide participants who have met the requirements of a participatory activity with an MCLE Certificate of Attendance or provide participants who have met the requirements of a self-study activity with a Certificate of Completion. Certificates upon completion of the program to each attendee who has met the requirements for the MCLE activity may be issued in written or electronic form. The Each certificate must include the following:
- (1) ~~\_\_\_\_\_~~ the provider name;
  - (2) ~~\_\_\_\_\_~~ title of the MCLE activity;
  - (3) ~~\_\_\_\_\_~~ date the course was completed;
  - (1)(4) ~~\_\_\_\_\_~~ total hours awarded, including any credits hours awarded for legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, civility in the legal profession, or legal specialization or competence issues as a component of the topic of the activity; ~~and~~
  - (2)(5) ~~\_\_\_\_\_~~ whether the activity is participatory or self-study; and
  - (6) ~~\_\_\_\_\_~~ name and license number of the California licensee, if available. This section may be left blank by the provider for completion by the licensee.
- (E) ~~Provide~~ give each ~~attendee participant~~ 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;
- (C)(F) ~~Notify~~ Notify the State Bar in writing of any change ~~in to~~ the provider's name, address, contact person, or other contact information required by the State Bar including those of its affiliates, within thirty (30) days of the effective date of the change; and
- (D) ~~beginning January 1, 2022, if providing training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system, attest to the following:~~
- (1) ~~The provider makes reasonable efforts to recruit and hire trainers who are representative of the diversity of persons that California's legal system serves.~~

- ~~(2) — The trainers have either academic training in implicit bias or experience educating legal professionals about implicit bias and its effects on people accessing and interacting with the legal system.~~
- ~~(3) — The training includes a component regarding the impact of implicit bias, explicit bias, and systemic bias on the legal system and the effect this can have on people accessing and interacting with the legal system.~~
- ~~(4) — The training includes actionable steps licensees can take to recognize and address their own implicit biases.~~

### **Rule 3.609621 Renewing Multiple Activity Provider status**

(A) To be eligible for renewal of up to ~~three~~two years, a Multiple Activity Provider must:

- (1) apply for renewal using the State Bar's ~~form for~~ Multiple Activity Provider ~~Renewal~~ application;
- ~~(2)~~ submit evidence that it has offered ~~six~~four different MCLE activities that meet the requirements of these rules within the two years preceding its application for renewal;
- ~~(2)~~(3) submit the completed form application in the manner prescribed by the State Bar, the and any required documentation by supporting materials for the six activities, and the appropriate processing fee on or before the deadline set by the State Bar;
- ~~(4)~~ certify that all self-study activities offered have been reviewed within the 12 months preceding an application for renewal, and that all self-study activities continue to meet the requirements of rule 3.601; and
- ~~(5)~~ submit any complaints it may have received regarding compliance with these rules; and

~~pay the appropriate fees~~Incomplete applications or applications that do not include the required supporting materials or the appropriate processing fee will not be considered for approval.

(B) A Multiple Activity Provider renewal application that is received after the renewal deadline set by the State Bar is subject to late fees as set forth in the State Bar's Schedule of Fees. A Multiple Activity Provider renewal application that is received two years or more after the renewal deadline set by the State Bar is ineligible for renewal under this rule. A Multiple Activity Provider who fails to renew their status within the two-year timeframe must submit any MCLE or LSMCLE activity offered during that timeframe for retroactive approval under rule 3.607.

### **Rule 3.610 Applying for Legal Specialty Provider Status**

(A) The State Bar certifies attorneys as specialists in certain areas of law. Certified specialists must take and report LSMCLE specific to the area(s) of their specialty, in addition to MCLE credit to maintain their certification. The State Bar may accredit specialty education as meeting the standards for LSMCLE activity. LSMCLE activity may also qualify as approved MCLE activity for legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, or civility in the profession.

(B) A provider intending to offer LSMCLE must be approved by the State Bar as a Multiple Activity Provider in a specialty area of law in the manner set forth in rule 3.608 or must file an application for Single Activity Provider status for a single education activity designed to attain or maintain proficiency in a specialty area of law in the manner set forth in rule 3.607. A separate Multiple Activity Provider Application is required for each specialty area.

(C) Any requirements for an MCLE activity as set forth in these rules apply to an LSMCLE activity.<sup>3</sup>

#### **Rule 3.611 MCLE Provider Fees**

(A) Providers are subject to application processing fees when seeking approval to grant credit for a single MCLE activity as a Single Activity Provider or applying for or seeking to renew their Multiple Activity Provider Status. Providers are also subject to applicable late fees and reinstatement fees as set forth in these rules and the State Bar's Schedule of Fees.

(B) Government Agency and Nonprofit Fees: Providers that are courts, government agencies, or granted tax-exempt 501(c)(3) status from the United States Internal Revenue Service (IRS) qualify for lower application processing and renewal fees. Proof of a provider's nonprofit status is required and must be submitted with the provider's application. A provider that is unable to provide proof of their registered nonprofit status with the IRS does not qualify for the lower application processing or renewal fee.

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<sup>3</sup> See State Bar Rule 3.114.

## TITLE 2. RIGHTS AND RESPONSIBILITIES OF LICENSEES

## 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 licensees 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 licensee's involuntary enrollment as inactive for failing to comply with these rules is public information available on the State Bar Web site.

## Rule 2.51 Definitions

- (A) An "MCLE activity" is minimum continuing legal education that is accredited by the State Bar ~~approves~~ as meeting the standards for MCLE credit.
- ~~(B)~~ An "LSMCLE" activity is legal specialty minimum continuing legal education that is accredited by the State Bar as meeting the standards for LSMCLE and MCLE credit as set forth in rule 3.114. Any requirements for an MCLE activity as set forth in these rules apply to an LSMCLE activity.
- ~~(B)(C)~~ A "provider" is an individual or entity approved by the State Bar to grant MCLE or LSMCLE credit for ~~an~~ MCLE or LSMCLE activity.
- ~~(C)(D)~~ "MCLE credit" is the number of credit hours that a licensee may claim to meet the requirements of these rules.
- ~~(D)(E)~~ A "credit hour" is sixty minutes actually spent in an MCLE activity. A credit hour is reported to the nearest quarter hour in decimals, and includes time for introductory and concluding remarks and for questions and answers. Time spent in breaks or lunch periods, and participating in any nonlegal education functions, including but not limited to networking, business meetings, tours, or demonstrations is not activity that may be applied to a credit hour or receive MCLE credit, 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)(F)~~ 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)~~(G) A “participatory activity” is an MCLE or LSMCLE 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 writing or electronically at the start of the course.~~

~~(G)~~(H) 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)~~(I) 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 licensees.

## **Rule 2.52 MCLE Activities**

To receive MCLE credit, a licensee must complete an MCLE activity that meets State Bar standards set forth in rule 3.601.

~~(A) — The MCLE activity must relate to legal subjects directly relevant to licensees 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.~~

~~(F)~~(A) ~~On and after January 1, 2022, for all training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies, the MCLE provider must meet the requirements of Business and Professions Code section 6070.5.~~

## **Rule 2.53 New licensees**

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

- (B) The initial compliance period for a new licensee begins on the first day of the month in which the licensee 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.<sup>1</sup>
- (C) A new licensee may not claim credit for education taken before the initial compliance period.
- (D) A new licensee is required to complete a State Bar New Attorney Training program during the first year of admission. New licensees who have completed any portion of the New Attorney Training program while enrolled in the State Bar's Provisional Licensure Program<sup>2</sup> are deemed to have satisfied that portion of the requirement and, therefore, do not have to retake that portion of the New Attorney Training program.
- (E) New licensees can also apply New Attorney Training hours to their regular MCLE requirement, provided that the hours are completed within the licensee's MCLE compliance period.

#### **Rule 2.54 Exemptions**

- (A) The following active licensees 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) Licensees 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<sup>3</sup>, 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

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<sup>1</sup> Rule 2.72 (C).

<sup>2</sup> California Rule of Court, Rule 9.49

<sup>3</sup> Business & Professions Code § 6213.

the Older Americans Act or receives funding administered by the jurisdiction's interest on lawyers trust accounts program.

## **Rule 2.55 Modifications**

A licensee 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.

## **Chapter 2. Compliance**

### **Rule 2.70 Compliance groups**

A licensee is permanently assigned to one of three compliance groups on the basis of the first letter of the licensee's last name at the date of admission.<sup>4</sup> The three groups are A-G, H-M, and N-Z. The licensee remains in the compliance group despite any subsequent change of last name.

### **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 licensee 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 licensee. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.

### **Rule 2.72 Requirements**

- (A) Until December 31, 2021, all licensees shall be subject to the following:
  - (1) Unless these rules indicate otherwise, a licensee 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

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<sup>4</sup> A historical exception exists. When the MCLE program was established in 1992, licensees 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.

be self-study.<sup>5</sup> Total hours must include no less than 6 hours as follows:

- (a) at least four hours of legal ethics;
  - (b) 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
  - (c) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee's ability to perform legal services with competence.
- (2) 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.
  - (3) A licensee may reduce the required twenty-five hours in proportion to the number of full months the licensee was inactive or exempt in the thirty-six-month compliance period. Up to half the reduced hours may be self-study.<sup>6</sup> A tool for applying this formula is available at the State Bar Web site.
  - (4) Excess credit hours may not be applied to the next compliance period.<sup>7</sup>
- (B) On and after January 1, 2022, all licensees shall be subject to the following:
- (1) Licensees reporting for the compliance periods ending January 31, 2022, shall be subject to the requirements set forth in paragraphs (A)(1), (A)(2), (A)(3), and (A)(4) for the compliance period ending January 31, 2022.
  - (2) Beginning with the compliance period ending January 31, 2023, all licensees shall comply with the following:
    - (a) Unless these rules indicate otherwise, a licensee 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.<sup>8</sup> Total hours must include no less than 7 hours as follows:
      - (i) at least four hours of legal ethics;

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<sup>5</sup> Rule 2.83.

<sup>6</sup> Rule 2.83.

<sup>7</sup> But see Rule 2.93.

<sup>8</sup> Rule 2.83.



- (ii) at least two hours 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;
    - 1. Of those two hours, at least one hour must focus on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system; and
  - (iii) at least one hour of education addressing substance abuse or other mental or physical issues that impair a licensee'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, consistent with the requirements of Rule 2.52(F).
  - (c) A licensee may reduce the required twenty-five hours in proportion to the number of full months the licensee was inactive or exempt in the thirty-six-month compliance period, except that the requirements of paragraphs (B)(2)(a)(ii) and (B)(2)(a)(iii) may not be reduced to less than one hour each. Up to half the reduced hours may be self-study.<sup>9</sup> A tool for applying this formula is available at the State Bar website.
  - (d) Excess credit hours may not be applied to the next compliance period.<sup>10</sup>

(C) On and after January 1, 2024, all licensees shall be subject to the following:

- (1) Licensees reporting for the compliance period ending January 31, 2024, shall be subject to the requirements set forth in paragraphs (B)(1), (B)(2), (B)(3), and (B)(4) for the compliance period ending January 31, 2024.
- (2) Beginning with the compliance period ending January 31, 2025, all licensees shall comply with the following:
  - (a) Unless these rules indicate otherwise, a licensee who has been active throughout a thirty-six-month compliance period must complete twenty-

<sup>9</sup> Rule 2.83.

<sup>10</sup> But see Rule 2.93.

five credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.<sup>11</sup> Total hours must include no less than 10 hours as follows:

- (i) at least four hours of legal ethics;
- (ii) at least two hours dealing with the recognition and elimination of bias, one hour of which must focus on implicit bias and the promotion of bias-reducing strategies;
- (iii) at least two hours of education addressing competence, one hour of which must focus on prevention and detection;
- (iv) at least one hour of education addressing technology in the practice of law; and
- (v) at least one hour of education addressing civility in the legal profession.<sup>12</sup>

(b) Required education in legal ethics, elimination of bias, or competence, technology in the practice of law, and civility in the legal profession may be a component of an approved MCLE activity that deals with another topic, consistent with the requirements of Rule 2.52(F).

(c) A licensee may reduce the required twenty-five hours in proportion to the number of full months the licensee was inactive or exempt in the thirty-six-month compliance period, except that the requirements of paragraphs (C)(2)(a)(ii) and (C)(2)(a)(iii) may not be reduced to less than one hour each. Up to half the reduced hours may be self-study.<sup>13</sup> A tool for applying this formula is available at the State Bar website.

(d) Excess credit hours may not be applied to the next compliance period.<sup>14</sup>

### **Rule 2.73 Record of MCLE**

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

- (A) a provider's certificate of attendance;

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<sup>11</sup> Rule 2.83.

<sup>12</sup> See rule 3.601 regarding the content requirements for these credit hours.

<sup>13</sup> Rule 2.83.

<sup>14</sup>

- (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.

### **Chapter 3. MCLE Activities approved for MCLE credit**

#### **Rule 2.80 Attending programs and classes**

A licensee 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 2.81 Speaking**

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

- (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 licensee who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.

#### **Rule 2.82 Teaching**

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

- (A) A licensee 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 2.83 Self-study**

A licensee 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~~twelve 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 licensee'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 2.84 ~~Legal specialization~~Mock Trial, and Moot Court, and Other Competition Activity**

- (A) A licensee may claim up to two hours of participatory MCLE credit for serving as an attorney coach or scorer or presiding judge for mock trials, ~~and~~ moot court arguments, negotiation competitions, arbitration competitions, and mediation competitions involving substantive and procedural law at the middle, high school, college, graduate, and law school levels.
- (B) MCLE credit hours are not available for grading written briefs or other written papers in connection with this type of MCLE activity.
- (C) Additional hours cannot be claimed for preparation time.

(D) A licensee may not claim MCLE credit for legal ethics, elimination of bias, competence, technology in the practice of law, or civility in the legal profession as required by rule 2.72 for participation in this type of activity.

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

#### **Rule 2.85 Education taken while physically out of state**

- (A) A licensee may claim MCLE credit for an MCLE activity authorized by an approved jurisdiction if it meets the requirements of these rules and if the licensee attends or does the MCLE activity outside California. A licensee 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 licensee 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 2.86 Licensee credit request**

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

#### **Rule 2.87 Bar examinations and MPRE**

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

### **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<sup>15</sup>; or

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<sup>15</sup> Rule 2.73.

- (D) pay fees for noncompliance.

#### **Rule 2.91 Notice of noncompliance**

- (A) A licensee who is sent a notice of noncompliance must comply with its terms or be involuntarily enrolled as inactive. An inactive licensee is not eligible to practice law.
- (B) If the notice requires the licensee 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; amended effective January 25, 2019.*

#### **Rule 2.92 Enrollment as inactive for MCLE noncompliance**

A licensee 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 2.93 Reinstatement following MCLE noncompliance**

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

## TITLE 3. PROGRAMS AND SERVICES

### 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 is accredited by the State Bar ~~approves~~ as meeting the standards for MCLE credit.<sup>1</sup>

~~(B)~~ (B) An “LSMCLE” activity is legal specialty minimum continuing legal education that is accredited by the State Bar as meeting the standards for LSMCLE and MCLE credit as set forth in rule 3.114.

~~(B)(C)~~ A “provider” is an individual or entity approved by the State Bar to grant MCLE or LSMCLE credit for ~~an~~ MCLE or LSMCLE activity.

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

~~(D)(E)~~ A “Multiple Activity Provider” is a provider approved to grant credit for any MCLE activity after applying for and receiving approval for Multiple Activity Provider status in accordance with State Bar procedures and paying the appropriate (fees) ~~that complies with the terms of the Multiple Activity Provider Agreement.~~<sup>2</sup>

(F) A “Legal Specialty Credit Provider” is approved to grant credit for a single LSMCLE activity designed to attain and maintain proficiency in a specialty area of law or is an approved Multiple Activity Provider in a specialty area of law as set forth in rule 3.114.

~~(E)(G)~~ “MCLE credit” is the number of credit hours that a licensee may claim to meet the requirements of these rules.

~~(F)(H)~~ A “credit hour” is sixty minutes actually spent in an MCLE activity, ~~less any time for~~

<sup>1</sup> 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.

<sup>2</sup> ~~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.~~

~~breaks or other activities that lack educational content.~~ A credit hour is reported to the nearest quarter hour in decimals, and, ~~MCLE credit~~ includes time for introductory and concluding remarks and for questions and answers. Time spent in breaks or lunch periods, and participating in any nonlegal education functions, including networking, business meetings, tours, or demonstrations is not activity that may be applied to a credit hour or receive MCLE credit.

~~(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)(I) — A “participatory activity” is an MCLE or LSMCLE activity that qualifies for participatory MCLE or LSMCLE credit and~~ 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 state of the course.~~

~~(H)(J) — 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)(K) — “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. A “nontraditional format activity” is an activity held in any format other than a traditional live classroom format. Nontraditional formats include various forms of audio and video recordings, live broadcasts, teleconferences, videoconferences, web conferences, and online courses.~~

### **Rule 3.601 Standards for MCLE Activities activity approval**

To be eligible for approved for MCLE accreditation credit, an MCLE activity must meet State Bar standards.<sup>3</sup>

(A) — The General MCLE activity must relate to legal subjects directly relevant to licensees of the State Bar ~~or and~~ have current significant educational, current professional, or and practical content, with an objective to increase each participant’s professional competency as an attorney. Activities designed for non-attorney participants will not be

<sup>3</sup> 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 licensee may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.”



approved for general MCLE credit. MCLE activities that may be eligible for general MCLE credit include those that provide education or practical instruction in:

- (1) The practice of law;
- (2) Litigation;
- (3) Management of a solo law practice;
- (4) Management of a law firm or corporate legal department;
- (5) The management of client trust accounts;
- (6) Law firm finances;
- (7) Attorney-client communications;
- (8) Case management;
- (9) Effective calendaring;
- (10) The avoidance of malpractice; or
- (11) Opportunities to participate in pro bono legal services.

(B) Legal ethics MCLE activity must focus on attorneys' professional responsibility, including education on and citation to the California Rules of Professional Conduct and the State Bar Act, and related authorities such as the professional conduct rules of a tribunal. Activities that focus on the ethics of business, corporate or government affairs, or society, in general, do not qualify for MCLE credit.

(C) Recognition and elimination of bias MCLE activity must focus on education in the recognition and elimination of impermissible bias in the courtroom and law offices; attorney-client relationships and relationships with other attorneys; legal and nonlegal employment and workplaces, including hiring, managing, and terminating employees; and in housing, including accommodations and services. Courses required by Government Code section 12950.1 also qualify for recognition and elimination of bias credit.

(D) Implicit bias and the promotion of bias-reducing strategies MCLE activity must meet the requirements of Business and Professions Code section 6070.5 and must focus on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system.

(E) Prevention and detection competence MCLE activity must consist of education that relates to the prevention and detection of substances use disorders, mental illness, and other mental or physical issues that impair an attorney's ability to perform legal services with competence.

(F) Wellness competence MCLE activity may include physical and mental wellness and well-being or stress management so long as the activity addresses these topics in the context of the practice of law and the impact these issues can have on an attorney's ability to perform legal services with competence.

(G) Technology MCLE activity must consist of education that addresses technology in the practice of law. This includes education on technology tools, programs, or applications to assist attorneys in their law practice. Credit will not be awarded for course content consisting of marketing of a technology product or service. Examples of courses that would qualify for this credit include:

- (1) Cybersecurity, privacy, and data protection;
- (2) Use of technology to create, receive, transmit, store, analyze, or delete client documents or client information;
- (3) Law practice management technology tools, including technology for virtual appearances before a tribunal;
- (4) Use of applications to assist attorneys in advising clients, including artificial intelligence technology; and
- (5) Electronic discovery.

(H) Civility MCLE activity must consist of education that addresses civility in the legal profession. This includes education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary.

(I) Legal Specialist MCLE activity must provide high-quality legal education in one or more of the areas of the law eligible for LSMCLE credit as set forth in Title 3, Division 2, Chapter 2 of the State Bar Rules.

~~(A)~~(J) The A presenter or presenters of the an MCLE activity must have significant professional or academic experience related to its content.

~~(B)~~(K) Any information regarding an approved MCLE activity, including all Ppromotional materials, must state that the MCLE activity is approved for California MCLE credit, ~~or that a request for approval is pending;~~ specify the amount of credit hours offered, and indicate whether any of the credit may be claimed for required MCLE in legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, civility in the legal profession, or a legal specialization ~~or competence issues.~~<sup>4</sup>

(L) If an MCLE activity is submitted for accreditation, but the provider has not received a determination on approval of the activity, any information regarding the proposed MCLE activity, including all promotional materials, must state that an application for California MCLE credit is pending approval.

(M) If an MCLE activity is not approved, the provider must promptly provide written notice

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<sup>4</sup> See State Bar Rule 2.72 for a description of competence issues and elimination of bias.

of the State Bar's denial to any registrant seeking California MCLE credit for the course or program.

~~(C)~~(N) If ~~the an~~ MCLE activity lasts one hour or more, the provider must provide participants with~~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 (30) calendar days following the MCLE activity.

~~(D)~~(O) ~~An MCLE activity must be conducted in a location or format conducive to learning and Programs and classes must be scheduled so that participants are free of interruptions from telephone calls, electronic communications, and other office or personal matters.~~

~~(E)~~(P) ~~A provider of an MCLE activity, including a nontraditional format activity, must verify whether an attorney completes the entire MCLE activity or an entire session of the activity. The provider's attendance verification procedure may not rely solely on verification by a participating attorney. Any application that does not set forth such verification procedures will not be approved. On and after January 1, 2022, for all training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies, an MCLE provider must meet the requirements of Business and Professions Code section 6070.5.~~

### Rule 3.602 Responsibilities of every provider

Every provider must:

(A) ~~comply~~Comply with any State Bar rules, standards, and terms applicable to an approved MCLE activity;

(B) ~~retain~~Take attendance using the State Bar's Record of Attendance form or its equivalent and retain the form for an MCLE activity for four years from the date of the MCLE activity, ~~and submit it to the State Bar upon request.~~ The form~~record~~ must include the following:

(1) title of the MCLE activity;

(2) date of the MCLE activity;

(3) total hours awarded, including any credit hours or partial credit hours~~any credits~~ awarded for legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, civility in the legal profession, or legal specialization or competence issues as a component of the ~~topic of the~~ activity;

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

~~(4)~~(5) the name and State Bar number of each California licensee attendee;

~~(B)~~(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. ~~Provide the record of attendance to the State Bar of California with electronically through the State Bar's Provider Information Management Systems (PIMS) online portal or in another manner as required by the State Bar within thirty (30) attendance records in a form acceptable to the State Bar of California within 60 days of completion of the activity. Failure to comply with this thirty (30) day reporting deadline may result in late fees as set forth in the State Bar's Schedule of Fees and loss of provider status.~~

(D) ~~For a participatory activity, provide participants with~~ Provide participants who have met the requirements of a participatory activity with ~~an MCLE Certificate of Attendance~~ or provide participants who have met the requirements of a self-study activity with a Certificate of Completion. Certificates may be issued in ~~either in written or electronic form, upon a participant's successful completion of the program to each attendee who has met the requirements for the MCLE activity. The~~ Each certificate must include the following:

- (1) ~~the~~ provider name;
- (2) title of the MCLE activity;
- (3) date of the MCLE activity~~the course was completed;~~
- (4) total hours awarded, ~~any including any credits~~ hours awarded for legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, civility in the legal profession, or legal specialization~~or competence issues~~ as a component of the topic of the activity; ~~and~~
- ~~(4)~~(5) whether the activity is participatory or self-study; ~~and;~~
- ~~(2)~~(6) name and license number of the California licensee, if available. This section may be left blank by the provider for completion by the licensee.

~~(E) Certificates of Attendance and Certificates of Completion must be completed and signed by the provider or an agent thereof. The provider may not issue blank certificates. A provider shall not provide participants with a Certificate of Attendance or a Certificate of Completion until the end of an MCLE activity.~~

(E) ~~Provide~~give each ~~attendee participant~~ 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.

(F) ~~Notify~~ the State Bar in writing of any change ~~in to~~ the provider's name, address, contact person, or other contact information required by the State Bar including those of its affiliates, within thirty (30) days of the effective date of the change; ~~and~~

~~(D) beginning January 1, 2022, if providing training dealing with, or including a component dealing with, implicit bias and the promotion of bias-reducing strategies to address how~~

~~unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system, attest to the following:~~

- ~~a. The provider makes reasonable efforts to recruit and hire trainers who are representative of the diversity of persons that California's legal system serves.~~
- ~~b. The trainers have either academic training in implicit bias or experience educating legal professionals about implicit bias and its effects on people accessing and interacting with the legal system.~~
- ~~c. The training includes a component regarding the impact of implicit bias, explicit bias, and systemic bias on the legal system and the effect this can have on people accessing and interacting with the legal system.~~

~~The training includes actionable steps licensees can take to recognize and address their own implicit biases.~~

### 3.603 State Bar MCLE ~~A~~activity ~~A~~auditors

A State Bar MCLE Activity Auditor ~~may be~~is a State Bar staff member, Board of Trustees member, California Board of Legal Specialization member, or other person designated by the State Bar to conduct an audit of ~~a particular~~ MCLE ~~activity program or class~~ on behalf of the State Bar for the purpose of evaluating compliance by providers with these rules and to inform determinations regarding suspension or revocation of provider approval or status under rule 3.604. 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~~ MCLE activity being audited. A State Bar MCLE Activity Auditor may audit the ~~particular~~ MCLE ~~program or class~~ activity at no cost. Such attendance shall not qualify for MCLE credit.

### Rule 3.604 Suspension or revocation of provider approval

The State Bar may suspend or revoke a provider's approval for failure to comply with these rules or a State Bar determination of the following:~~the terms of any applicable State Bar agreement only by majority vote of the Board of Trustees, after notice and hearing, and for good cause shown.~~

- (A) Failure of the content of the course, the program materials, the quality of the MCLE activity or activities, or the provider's performance to meet the standards set forth in these rules;
- (B) Misuse of a Record of Attendance, Certificate of Attendance, activity evaluation form, or any other form given to a provider by the State Bar;

(C) Failure to pay appropriate processing fees, late filing fees, or any other applicable fees; and

(D) Substantiated complaint(s) documented against the provider or against an activity offered by the provider.

### **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 3.606 MCLE providers**

(A) Providers of MCLE or LSMCLE are categorized as either Single Activity or Multiple Activity Providers. Single Activity Providers are approved providers permitted to hold and grant MCLE or LSMCLE credit for a single MCLE or LSMCLE activity for a period of two years from the date of the activity, provided that no substantive changes are made to the program.

(B) Multiple Activity Providers are approved providers authorized to hold and grant MCLE credit for any MCLE or LSMCLE activity that complies with these rules without having to submit separate applications to request approval for each program.

### **~~Article 2. Multiple Activity Providers~~**

### **Rule 3.607 Applying for Single Activity Provider status**

(A) To be considered for Single Activity Provider status, a provider must:

(1) Apply using the State Bar's Single Activity Provider application form for each activity the provider plans to provide;

(2) Submit the completed form in the manner prescribed by the State Bar, the appropriate processing fee, and the required supporting materials no less than sixty (60) days prior to the date for which the course or activity is scheduled;

(3) Submit a separate application for each activity that is offered as part of an on-demand, multiday or multitrack, subscription based, bundled activity, or multiple sessions within a bundled activity.

Incomplete applications or applications that do not include the required supporting materials or the appropriate processing fee will not be considered for approval.

(B) A Single Activity Provider application that requests retroactive approval of an activity is subject to late fees as set forth in the State Bar's Schedule of Fees. Retroactive approval may only be granted for an activity occurring within the past two years.

### Rule 3.~~608620~~ Applying for Multiple Activity Provider status

(A) To be considered for Multiple Activity Provider status, a provider must:

- (1) Within a two-year period prior to submitting an application for Multiple Activity Provider status, receive State Bar approval for ~~four~~six different MCLE activities that are different and not repeat presentations of the same activity and ~~hold them on four~~held on six different dates; and
- (2) Apply using the State Bar's Multiple Activity Provider application; and
- (3) Submit the completed application in the manner prescribed by the State Bar, and the appropriate processing fee, for Multiple Activity Provider status within that same period and the required supporting materials for the six activities described in subparagraph (A)(1).

Incomplete applications or applications that do not include the required supporting materials or the appropriate processing fee will not be considered for approval.

(B) Any activity that is held prior to approval of Multiple Activity Provider status must be submitted for Single Activity Provider approval under rule 3.607.

### Rule 3.~~609621~~ Renewing Multiple Activity Provider status

(A) To be eligible for renewal of up to ~~three~~two years, a Multiple Activity Provider must:

- (1) apply for renewal using the State Bar's ~~form for~~ Multiple Activity Provider ~~R~~renewal application;
- (2) submit evidence that it has offered ~~four~~six different MCLE activities that meet the requirements of these rules within the two years preceding its application for renewal;
- (3) submit the completed ~~form~~ application in the manner prescribed by the State Bar, the and any required documentation by supporting materials for the six activities, and the appropriate professing fee on or before the deadline set by the State Bar; and
- ~~(3)~~(4) certify that all self-study activities offered have been reviewed within the 12 months preceding an application for renewal, and that all self-study activities continue to meet the requirements of rule 3.601; and

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

~~pay the appropriate fees.~~Incomplete applications or applications that do not include the required supporting materials or the appropriate processing fee will not be considered for approval.

(B) A Multiple Activity Provider renewal application that is received after the renewal deadline set by the State Bar is subject to late fees as set forth in the State Bar's Schedule of Fees. A Multiple Activity Provider renewal application that is received two years or more after the renewal deadline set by the State Bar is ineligible for renewal under this rule. A Multiple Activity Provider who fails to renew their status within the two-year timeframe must submit any MCLE or LSMCLE activity offered during that timeframe for retroactive approval under rule 3.607.

### **Rule 3.610 Applying for Legal Specialty Provider Status**

(A) The State Bar certifies attorneys as specialists in certain areas of law. Certified specialists must take and report LSMCLE specific to the area(s) of their specialty, in addition to MCLE credit to maintain their certification. The State Bar may accredit specialty education as meeting the standards for LSMCLE activity. LSMCLE activity may also qualify as approved MCLE activity for legal ethics, recognition and elimination of bias, implicit bias, prevention and detection competence, wellness competence, technology in the practice of law, or civility in the profession.

(B) A provider intending to offer LSMCLE must be approved by the State Bar as a Multiple Activity Provider in a specialty area of law in the manner set forth in rule 3.608 or must file an application for Single Activity Provider status for a single education activity designed to attain or maintain proficiency in a specialty area of law in the manner set forth in rule 3.607. A separate Multiple Activity Provider Application is required for each specialty area.

(C) Any requirements for an MCLE activity as set forth in these rules apply to an LSMCLE activity.<sup>5</sup>

### **Rule 3.611 MCLE Provider Fees**

(A) Providers are subject to application processing fees when seeking approval to grant credit for a single MCLE activity as a Single Activity Provider or applying for or seeking to renew their Multiple Activity Provider Status. Providers are also subject to applicable late fees and reinstatement fees as set forth in these rules and the State Bar's Schedule of Fees.

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<sup>5</sup> See State Bar Rule 3.114.



- (B) Government Agency and Nonprofit Fees: Providers that are courts, government agencies, or granted tax-exempt 501(c)(3) status from the United States Internal Revenue Service (IRS) qualify for lower application processing and renewal fees. Proof of a provider's nonprofit status is required and must be submitted with the provider's application. A provider that is unable to provide proof of their registered nonprofit status with the IRS does not qualify for the lower application processing or renewal fee.

**WITHDRAWN PROPOSED AMENDMENTS TO THE MCLE COMPLIANCE AND PROVIDER RULES  
IN RESPONSE TO PUBLIC COMMENT**

As described in the agenda item, staff is withdrawing several proposed amendments to the State Bar rules governing MCLE. This attachment provides details regarding the existing rules, the proposed amendments as issued for public comment, and the reasons for withdrawing the proposed amendments in response to public comment. Because staff has withdrawn the proposed amendments, these rules are not required to be issued for a second public comment period.

**Self-study: Amendments to Existing Rule 2.83 – Staff Recommends be Withdrawn**

The current rule provides that Single Activity Provider (SAP) self-study activities are approved for two years, and Multiple Activity Provider (MAP) self-study activities are approved for five years. As issued for public comment, the proposed amendment to rule 2.83 would establish a uniform approval period of two years for all self-study activities to ensure the relevance and quality of an activity's content.

In response to the proposed amendments, many commenters stated that trainings often remain relevant and up-to-date even after two years. These commenters suggested that, instead of reducing the approved timeframe for MAP self-study activities from five to two years, MAPs be required to review self-study material on a periodic basis to ensure that the material is current and accurate.

Staff agrees with the commenters' recommendation and withdraws the proposed amendment to rule 2.83. Instead, staff recommends that proposed amendments to rule 3.609 be further revised to require that MAPs review all self-study activities to ensure they continue to meet the requirements for MCLE credit within 12 months prior to requesting MAP renewal.

**Definitions: New Paragraph (K) in Rule 3.600 – Staff Recommends be Withdrawn**

Proposed rule 3.600(K), as issued for public comment, is a new subparagraph defining the term "nontraditional format activity" as MCLE that is not in person, including various forms of audio and video recordings, live broadcasts, teleconferences, videoconferences, web conferences, and online courses. In response to a comment that the definition is unnecessary and that the designation between participatory and self-study credit is sufficient to regulate the different formats of MCLE, staff withdraws the proposed amendment.

**Standards for MCLE activity approval: Rule 3.601**

*Proposed New Paragraph (O) (Activities are Free from Interruptions) – Staff Recommends be Withdrawn*

Current rule 3.601(E) requires that all programs and classes be scheduled so that participants are “free from interruptions.” The proposed amendments would renumber the paragraph from (E) to (O) based on other proposed amendments. As issued for public comment, the proposed amendments would clarify the existing requirement to state that an MCLE activity “must be conducted in a location or format conducive to learning and free of interruptions from telephone calls, electronic communication, and other office or personal matters.”

Comments regarding the proposed amendments stated that compliance with proposed rule 3.601(O) would be difficult to implement and enforce. It also would be expensive and burdensome, requiring additional staffing to monitor attendees during in-person MCLE activities and the potential purchase of monitoring equipment for online MCLE activities. Moreover, the commenters were concerned that this would reduce attendance by attorneys at MCLE activities where the provider enforces the new requirement, and that a provider who does not strictly enforce the requirement would face revocation or suspension of their provider status.

Staff agrees with these concerns and withdraws the proposed amendments. Staff further recommends deleting the current requirement that “programs and classes must be scheduled so that participants are free of interruptions” for these same reasons, and requests a second public comment period on this rule based on this recommendation.

*Proposed New Paragraph (P) (Attendance Verification) – Staff Recommends be Withdrawn*

Current rule 3.600(H), defines participatory MCLE activities and requires providers to verify attorney attendance. The proposed amendments to rule 3.601(P) were intended to clarify that a provider must verify whether an attorney completes the entire MCLE activity or an entire session of the activity, and would have stated that a provider cannot solely rely on attorney attendance verification.

Comments stated that it was unclear what verification procedures would meet the requirements of the proposed amendments, and that verification procedures would be expensive and burdensome, requiring proctors and monitoring software. Comments also stated that the proposed amendments would shift the responsibility for attorney oversight to MCLE providers. One commenter commented that “The current rules appropriately place the burden on the participant to report to the State Bar under penalty of perjury that they participated in all or part of the MCLE activity.” Another commented that “not allowing the provider to ‘rely solely on verification by a participating attorney’ ignores each attorney’s ethical and legal obligation to comply with their MCLE requirements.”

Staff agrees with these concerns and withdraws the proposed amendments. Staff further recommends retaining the requirements already set forth in rule 3.600(H) that require MCLE providers to verify attendance, and plans to offer guidance in an FAQ regarding optional methods for such verification.

## **Responsibilities of every provider: Rule 3.602**

### *Proposed Amendments to Paragraph (C) (Attendance Records) – Staff Recommends be Withdrawn*

Current rule 3.602(C) requires providers to provide the State Bar with electronic attendance records in a form acceptable to the State Bar within 60 days of completion of the activity. As issued for public comment, proposed amendments to rule 3.602(C) would require providers to electronically submit copies of attendance records through the State Bar's Provider Information Management Systems (PIMS) within 30 days of the completion of the activity rather than 60 days as is currently required.

Commenters indicated that the proposed amendments to this rule would be burdensome and create significant administrative work for MCLE providers. Many of the commenters stated their concerns with PIMS more generally, including that the system frequently has glitches.

Following the review of the public comments and the identification improvements needed for PIMS, as well as the timeline required to implement those improvements, staff withdraws the proposed amendments to rule 3.602(C) and recommends retaining the current rule paragraph.