

February 22, 2023

Board of Trustees
The State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Proposed Amendments to Rules Governing Minimum Continuing Legal Education

Dear Trustees of the State Bar of California:

The California Lawyers Association (CLA) submits these comments in response to the proposed amendments to the rules governing minimum continuing legal education (MCLE).

1. Competence credit

In CLA's November 30, 2021 letter to the Board of Trustees, we commented on the proposal from the San Diego County Bar Association requesting that the State Bar consider (1) increasing the number of required hours for competence MCLE credit, and (2) expanding the topics recognized for accreditation under the competence credit. As we stated at the time, we fully support expanding the types of issues that would qualify for competence credit but do not favor increasing the number of required hours for competence MCLE credit beyond one hour per compliance period.

Adding one hour to the special MCLE requirements takes one hour away from the general MCLE requirements. Attorneys often attend courses that qualify for general MCLE credit only (and not one of the special MCLE requirements) in order to be updated on legal developments or improve skills in their specific practice areas. CLA supports an increase to special MCLE requirements in some cases, as discussed below, but we do so on a case-by-case basis, balancing the need for special MCLE requirements against the ability to maximize opportunities for general MCLE credits. Attorneys can always *choose* to attend additional courses that qualify for special MCLE credits because those courses also count toward general MCLE credits, but we believe the competence MCLE *requirement* should not be increased to two hours.

We also support the proposed expansion of the types of issues that would qualify for competence credit but believe an expanded definition should apply to all MCLE courses that fall under the competence requirement. We therefore recommend combining the

proposed definition of a “prevention and detection competence MCLE activity” with the proposed definition of a “wellness competence MCLE activity” and applying that definition to the existing one-hour requirement instead of creating a bifurcated competence requirement that would require at least one hour of “prevention and detection” credit and permit a second hour of “wellness” credit.

2. Technology in the practice of law credit

CLA supports the addition of a new one-hour special MCLE requirement focusing on technology in the practice of law as well as the proposed definition that would include the following examples of courses that would qualify for this credit:

- (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) E-discovery.

These topics broadly encompass issues that lawyers may encounter on a regular basis in their practice of law, in one form or another.

3. Civility in the legal profession credit

CLA supported a new requirement for one hour of MCLE devoted to civility training (to be included as part of the 25 MCLE hours currently required) when the recommendation was contained in the Initial Report of the California Civility Task Force and supports the current proposal.

4. MCLE credit for mock trial and moot court activity

CLA supports the proposal to broaden the activities eligible for MCLE credit and permit an attorney to claim up to two hours of participatory credit per compliance period for serving as an attorney coach or scorer or presiding judge for mock trials and moot court arguments involving substantive and procedural law at the high school, college, and law school levels.

We also recommend that the rule be expanded to cover negotiation competitions and mediation competitions, which are akin to mock trials and moot court arguments, and

explicitly cover the permissible activities at the graduate school level. As amended, proposed Rule 2.84(A) would provide:

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, and mediation competitions** involving substantive and procedural law at the high school, college, **graduate**, and law school levels.

5. Proposed changes to the MCLE provider rules

CLA is opposed to proposed MCLE Rule 3.602(E), which would provide:

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.

The proposed Rule would make two significant changes. The first would require that certificates be “signed” by the provider or an agent of the provider and preclude issuance of “blank” certificates. The background material does not explain the basis of this proposed change or the problem it is attempting to solve. In CLA’s experience, Certificates of Attendance and Certificates of Completion that are delivered to an attorney after attending an on-line participatory MCLE program contain the attorney’s name as part of the certificate. Why is this not sufficient? In addition, the proposal does not contain a definition of “signed.” If a certificate is provided in electronic form, would some form of electronic signature be acceptable? And if a “signature” is added to each electronic certificate as a matter of course, why would that be needed beyond what is currently provided? For in-person programs where physical certificates are provided, CLA’s certificates are printed on special colored paper that includes the CLA logo and other features. These certificates include a line for the attorney to insert their bar number and a line for the attorney to insert their signature. Would a pre-printed “signature” on each certificate suffice, and why would that be needed beyond what is currently provided? Or does this proposal envision a physical, wet signature added to each certificate as it is handed out? If so, we believe that is neither feasible nor necessary.

The second change under this proposal would preclude a provider from providing a certificate “until the end of an MCLE activity.” The basis of this proposed change is also not discussed in the State Bar background material but it appears to be premised on the

assumption that lawyers may be leaving before the end of an MCLE activity and claiming MCLE credit for that activity.

Since the inception of the MCLE program, lawyers have been required to certify completion of their own MCLE requirements at the end of each three-year reporting cycle. The proposed change would shift the burden to the providers to essentially police the lawyers and their claims of compliance. In addition to placing an unfair and unnecessary burden on the providers, the proposed change would not accomplish what appears to be the desired result. Providing a certificate *at the end* of an MCLE activity would not demonstrate that a lawyer attended the entire activity, and providers should not be placed in the position of providing what at least would suggest independent verification of such attendance. Although lawyers who leave before the end of an activity may not be able to obtain the certificate, this proposal would not account for lawyers who may arrive late or those who arrive at the start, leave at some point during the program, and return before the end. Providers simply do not and cannot realistically be required to monitor individual lawyer attendance, whether implicitly or explicitly. Ultimately only lawyers know the amount of time they spend in an MCLE program and they are required to certify completion of their own MCLE requirements at the end of each three-year reporting cycle.

6. General questions for public comment to assist in further development of the MCLE program

- Should the State Bar consider adding a requirement for education that prepares lawyers for providing legal services in the aftermath of a disaster?

CLA recommends against consideration of this requirement. As discussed above, adding one hour to the special MCLE requirements takes one hour away from the general MCLE requirements. CLA provides disaster-related resources for lawyers and MCLE programs addressing the provision of legal services after a disaster. Other resources are readily available, including those provided by the [Disaster Legal Assistance Collaborative](#). In addition, the ABA provides education and volunteer activities for lawyers wanting to help with disaster relief. We encourage provision of these services and education that prepares lawyers for providing these services. At the same time, we recognize that some lawyers may never provide legal services in the aftermath of a disaster and we do not favor a requirement that all lawyers receive this education.

- Should the State Bar consider adding a requirement for education regarding opportunities for attorneys to render pro bono legal services?

CLA recommends against consideration of this requirement. CLA is directly engaged with and encourages lawyers to render pro bono legal services. In our experience, various opportunities for attorneys to render pro bono services are relatively well-known and easily accessible. To the extent additional education may be needed about pro bono opportunities, increased publicity and outreach to attorneys would be appropriate and beneficial. CLA also supports proposed MCLE Rule 3.601(A)(11), which provides that activities that may be eligible for general MCLE credit include those that provide education or practical instruction in “[o]pportunities to participate in pro bono legal services.” However, we do not favor adding this topic as a special MCLE requirement for all active attorneys.

- Should the State Bar consider restricting eligible topics for general MCLE credits to only topics in the specific area of law that the individual licensee is practicing or exploring as a new area of law for expanding their practice?

CLA recommends against consideration of this restriction. The restriction would be a significant shift, inconsistent with existing MCLE Rules as well as currently proposed changes to the MCLE Rules, unnecessary, impractical to apply, and ultimately detrimental.

Existing State Bar MCLE Rule 2.50 provides as follows:

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.

The first stated purpose of MCLE is to require active attorneys to “remain current regarding the law.” CLA agrees with this purpose and believes it is beneficial for lawyers to “remain current regarding the law” without unduly restricting MCLE credit to the “specific area of law” that a lawyer is practicing or exploring as a new area of law for expanding their practice.

Other existing and proposed rules are consistent with this first stated purpose. Existing MCLE Rule 2.52(A) provides that an “MCLE activity must relate to legal subjects directly

relevant to licensees of the State Bar or have significant current professional and practical content.” The current proposal would amend the MCLE Rules by setting forth the required standards in Rule 3.601, with a cross-reference to Rule 3.601 in Rule 2.52.

Proposed Rule 3.601(A) provides in part:

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.

CLA supports this language and believes it provides the appropriate parameters. Proposed Rule 3.601(A) also provides:

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.

We support this proposed list but note that aside from “litigation” these significant topics would not appear to provide permissible MCLE credit if that credit is limited to a “specific area of law.” Moreover, although some MCLE courses can easily be pigeonholed (e.g., recent updates in criminal law) many are not readily susceptible to being defined or categorized by a “specific area of law” that an attorney is practicing. We think attorneys should be encouraged to take MCLE courses covering essential topics such as those in the proposed list and other similar topics that are beneficial to attorneys and their representation of clients in general.

The second stated purpose of MCLE in existing Rule 2.50 is to require active attorneys to remain current regarding “obligations and standards of the legal profession.” As with the first stated purpose, this requirement is beneficial and any benefit would be undermined by restricting credit to the “specific area of law that the individual licensee is

practicing or exploring.” Among other things, the restriction could have a significant impact on MCLE courses that fall into the categories of the special MCLE requirements, which are not tied to a “specific area of law” as such. As a result, absent the situation where a lawyer’s “specific area of law” happens to be the same as one of the special MCLE topics, a lawyer’s ability to obtain MCLE credit under existing rules would be *limited* to:

- four hours of legal ethics
- one hour on competence issues, and
- two hours dealing with elimination of bias

The restriction would appear to preclude a lawyer from receiving MCLE credit for anything beyond the bare minimum required in these special areas because general MCLE credit would not be allowed. The same would apply to the proposed new special MCLE requirements that CLA supports: technology in the practice of law and civility in the legal profession. These and other MCLE courses covering the “obligations and standards of the legal profession” should be encouraged, not discouraged, without unduly restricting general MCLE credits to the “specific area of law” that a lawyer is practicing or exploring as a new area of law for expanding their practice.

The third stated purpose of MCLE in Rule 2.50 is to require active attorneys to remain current regarding “the management of their practices.” As with the two purposes discussed above, this purpose would be undermined by restricting MCLE credit to the “specific area of law” that a lawyer is practicing or exploring as a new area of law for expanding their practice.

There are countless MCLE courses providing significant and meaningful content that is beneficial for lawyers, clients, and protection of the public in general that may fall outside the category of a specific area of law a lawyer is practicing. Some examples, drawn from actual MCLE courses, include courses addressing:

- labor and employment issues (generally applicable to a lawyer or law firm as an employer)
- harassment and discrimination in the workplace
- disability access
- use of intellectual property in social media

- insurance law (for lawyers who do not practice in this area of the law but benefit from the education to best protect their clients' interests)
- privacy laws and regulations, including but not limited to employee privacy issues, lawyer and law firm data management policies, client data security, and cybersecurity
- managing the stress and pressures of client communications, including wellness techniques to become a more competent and effective lawyer
- effective negotiation strategies
- writing skills, whether writing for a judge, an attorney, a client, or another reader
- fundamental considerations in opening and operating a law practice including managing client expectations; dealing with difficult clients; fee agreements; malpractice insurance; client intake; spotting, addressing and avoiding conflicts of interest; the use of interpreters; diversity, inclusion and understanding cultural differences
- annual U.S. Supreme Court update

For all of the reasons discussed above, CLA would oppose restricting eligible topics for general MCLE credits to only topics in the specific area of law that the individual attorney is practicing or exploring as a new area of law for expanding their practice.

We appreciate your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy M. Evans'. The signature is fluid and cursive, with a large initial 'J' and 'E'.

Jeremy M. Evans
President