

MCLE Rule and Regulation Amendments

In preparation for an Oregon State Bar software update, which will be implemented in 2017, and to improve the efficiency of the MCLE program, the Oregon Supreme Court and Board of Governors recently approved several amendments to the MCLE Rules and Regulations.

The MCLE Rules and Regulations amendments are summarized below. Unless otherwise indicated, all rule and regulation numbers reference the CURRENT MCLE Rules and Regulations. [Click here](#) for a redline version of the MCLE Rules and Regulations reflecting the changes (deletions are crossed out; new text is underlined; moved text is double-underlined.) [Click here](#) for a clean copy of the Rules and Regulations. The rule changes will eliminate the “retired” MCLE status (in light of a newly created retired bar membership status), make changes to MCLE accreditation standards, and provide greater flexibility to members who seek MCLE credit for pro bono and other volunteer activities. All rules are effective September 1, 2016.

Programs accredited under the old rules (prior to September 1, 2016) may still be used to meet a member’s MCLE requirement. Also, the types of programs that have been approved for CLE credit in the past will continue to be accredited.

Please direct any questions about these changes to MCLE Program Manager Denise Cline at 503-431-6315.

Summary

The following rule amendments were approved by the Oregon Supreme Court and will be effective September 1, 2016.

- 1) Throughout the document, any reference to MCLE Administrator is changed to MCLE Program Manager.
- 2) Rules 1.12, 3.4, 3.5, 3.6 and 3.7(c) & (d). Retired Member status is being removed from the MCLE Rules. The Board of Governors has approved the creation of a separate retired membership status outside of the MCLE Rules. To reflect the new membership status, MCLE Rules 1.12, 3.4, 3.5, 3.6, 3.7(c) and (d) were amended.
- 3) Rule 3.2(b). Amended Rule 3.2(b) regarding the number of legal ethics credits required (five legal ethics required instead of six including one child abuse reporting or elder abuse reporting). Moved text regarding child abuse reporting or elder abuse reporting credit requirement to new Rule 3.2(c).
- 4) Rule 5 – Major changes are being recommended for Rule 5’s Accreditation Standards (see detailed description of changes to Rule 5 in section below).
- 5) Accreditation standards are set forth for each category (I, II and III). Content standards are listed separately from the accreditation standards. Current Rules 5.1 (a) and (b) have been moved to Activity Content Standards.

- 6) Category I activities include attending CLE programs, law school classes or other classes that meet the criteria set forth in the rules, legislative service, completing New Lawyer Mentoring Program (for both mentor and new admittee) and attending classes designed for other professionals (depending on program content).
- 7) Category II activities include teaching CLE programs, Legal Research and Writing Activities, service as a Bar Examiner, service on certain OSB committees and boards.
- 8) New Rules 5.6, 5.7, 5.8, 5.9, 5.10 – Reference to how many credits may be claimed for these activities is removed from the rules and placed in the regulations. Currently, some credit limitations are in the rules and some are in the regulations. This change was made for consistency purposes.
- 9) Because Category II and Category III activities will not require an accreditation application, language was changed from “may be accredited” or something similar to “credit may be claimed” or something similar throughout the Accreditation Standards for Category II and Category III Activities.
- 10) Category III activities include personal management assistance credits, credit for other volunteer activities and attending courses devoted to business development and marketing.
- 11) New Rule 5.11(b) – The MCLE Committee has received several requests recently for rule amendments that will allow members to receive CLE credit for various volunteer activities including pro bono representation, teaching to paralegals, coaching and judging high school mock trial and *We the People* competitions. Rather than amending the rules to allow credit for specific activities, new Rule 5.11(b) was approved. This allows members to claim credit for various volunteer activities but caps the number of credits members may claim for these activities. Credits earned for these activities are included in Category III, which is capped at 6.0 in a three-year reporting period and 3.0 in shorter reporting periods.

The text of new Rule 5.11(b) is set forth below.

Rule 5.11(b) Other Volunteer Activities. Credit for volunteer activities for which accreditation is not available pursuant to MCLE Rules 5.3, 5.4, 5.6, 5.7, 5.8, 5.9 or 5.10 may be claimed provided the MCLE Program Manager determines the primary purpose of such activities is the provision of legal services or legal expertise.

- 12) New Rule 5.11(c) – Several Board members have expressed concerns about the number of new lawyers entering the profession who have no idea how to establish themselves. To assist these lawyers, the new Rule 5.11(c) was added, which allows members to claim

credit for certain business development and marketing courses specifically tailored to the delivery or marketing of legal services.

The text of new Rule 5.11(c) is set forth below:

~~**5.400 Rule 5.11(c) Business Development and Marketing Courses.** Credit may be claimed for Activities courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practices. enhancing profits or generating revenue through advertising and solicitation of legal business, whether denominated business development, client development, practice development, or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal ethics rather than on business development or marketing.~~

Credits earned for these activities are included in Category III, which is capped at six credits in a three-year reporting period and three credits in a shorter reporting period.

- 13) Activity Content Standards – New Rule 5.12 sets forth content standards for group and teaching activities. New Rule 5.13 sets forth criteria for ethics, child abuse reporting or elder abuse reporting, and access to justice.
- 14) New Rule 5.14 sets forth standards for claiming credit for teaching to other professionals.
- 15) Rules 6.1(a)(b) and (c) – Explains the credit limits in each category.
- 16) Rule 7.3(c) – Explains that late fees will be assessed in certain situations. (Members who claim credits in categories II and III, and end up being in noncompliance due to a reduction or disallowance of the credits after an audit, will be required to make up the credit shortage but will not be assessed a late fee.)

Proposed Changes to Rule 5

When the new software is implemented, all members will file their compliance reports electronically. Custom programming for all of the current types of credit and means of achieving those credits is very costly and complex. Therefore, we have combined the different types of CLE activities into three categories. Members will add these activities to their compliance report by using a drop-down menu. Many members will have credits in Category 1 only, while others may have credits in all three categories. The types of activities included in each category is set forth below.

Category I

Credits in this category are **unlimited**. Members may earn as many as they wish for attending/screening programs and up to the maximum limits for mentoring and legislative service.

- With the exception of personal management assistance credits (see Category 3), any credits earned at an accredited CLE program are included in Category 1 (E.g. general credits, access to justice credits, ethics credits, child abuse reporting and elder abuse reporting)
- Credits earned serving as a mentor in the New Lawyer Mentoring Program (NLMP) (Rule 5.2(f) and Reg. 5.100(c)).
- Completion of NLMP by new admittees. (Rule 5.2(f) and Reg. 5.100(d)).
- Legislative Service (Rule 5.2(e) and Reg 5.100(b)).
- Credit earned by attending law school or certain graduate level courses. Rule 5.4.

Category II

Credits in this category are limited to 20 in a three-year reporting period and 10 in a shorter reporting period. Members may claim credit for these activities simply by adding them to their compliance report. No accreditation application will be required. If, during the audit process, credit is not allowed for certain activities, the member may be required to complete additional credits to meet the minimum requirement but no late fee will be assessed.

- Teaching and legal research/writing credits. (Rules 5.2(a) and (c)). (Currently limited to 20 in three-year reporting period and 10 in shorter reporting period.)
- Service as a Bar Examiner. (Rule 5.2(b)). (Currently no limit; members may earn 3.0 credits for writing a question and 3.0 credits for grading a question.)
- Legal Ethics Service (Rule 5.2(d)). (Currently no limit; members may claim 2.0 ethics credits for each twelve months of service on committees and boards listed in current MCLE Rule 5.2(d))
- Service on UCJI or UCrJI Committees. (Rule 5.2(g) and Reg. 5.250). (Currently no limit.)

As members add these activities to the compliance report, when they reach the maximum of 20 (or 10 in a shorter reporting period), they will be unable to add additional activities in this category.

Category III

Credits in this category are limited to 6 in a three-year reporting period and 3 in a shorter reporting period. Members may claim credit for these activities simply by adding them to their compliance report. No accreditation application will be required. If, during the audit process, credit is not allowed for certain activities, the member may be required to complete additional credits to meet the minimum requirement but no late fee will be assessed.

- Personal Management Assistance Credits (Currently limited to 6 in three-year reporting period and 3 in shorter reporting period.)
- Other Volunteer Activities. See item 11 above.
- Business Development and Marketing Activities. See item 12 above.

As members add these activities to the compliance report, when they reach the maximum of 6 (or 3 in a shorter reporting period), they will be unable to add additional activities in this category.

Calculating Carryover Credits

Once staff has reviewed the member's compliance report, credits from all three categories will be totaled and the minimum credit requirement will be subtracted from that total. The remaining credits, up to 15 including 6 ethics, will be applied as carryover into the next reporting period. These carryover credits will be placed in category 1 (unlimited credits in this category).

Amendments to Regulations

The following amendments to the MCLE Regulations were approved by the Board of Governors and will be effective September 1, 2016.

- 1) Regulations 1.100, 1.140, 3.200, 3.500 – These regulations are amended to reflect the removal of the Retired Member status from the MCLE Rules and the creation of a new membership status.
- 2) Regulation 4.350(e) – This Regulation exempts local bar associations from payment of the MCLE program sponsor fees. This regulation will be eliminated effective January 2017 to allow bar associations time to prepare and budget for this change.
- 3) Regulation 4.400(b)(3) – No CLE credit for breaks.
- 4) New Regulation 5.100 – Sets forth the number and type of credits that may be earned for Category I activities other than attending CLE programs.
- 5) New Regulation 5.200 – Explains how teaching and legal research and writing credits will be calculated. This new regulation also sets forth number and type of credits that may be earned for other Category II activities.
- 6) New Regulation 5.300 – Explains what other types of programs/activities/courses may receive credit in Category III and sets forth how credit will be calculated. This regulation includes descriptions of the types of activities that may qualify for credit pursuant to New Rules 5.11(b) Other Volunteer Activities and 5.11(c) Business Development and Marketing Courses.

- 7) New Regulation 5.600 – The text was not changed. The heading “Child and Elder Abuse Reporting” has been added.
- 8) Regulations 7.100(a)(b) and (c) – Sets forth the types of documents members should keep in the event a compliance report is audited.
- 9) Regulation 7.200 – Members who file a late report and/or completed credits after the end of the reporting period will owe a \$200 late fee. Currently, there are various fee schedules in place depending upon if the member was late in completing the credits and/or late in filing the compliance report. Complex software programming would be required to maintain these late fee schedules. Therefore, this regulation is amended so that there is only one late fee amount (\$200), which will not increase.