

NOTICE TO THE BAR

ADMINISTRATIVE DETERMINATIONS BY THE SUPREME COURT ON THE REPORT AND RECOMMENDATIONS OF THE AD HOC COMMITTEE ON CONTINUING LEGAL EDUCATION

The Supreme Court has reviewed the Final Report and Recommendations of the Ad Hoc Committee on Continuing Legal Education submitted on November 10, 2008, and has made determinations as set forth below. The Court has approved the majority of the recommendations for substantially the reasons expressed by the Ad Hoc Committee. The Court has, however, modified several recommendations and rejected four others, the most important of which is Recommendation #13 concerning the compliance reporting methodology. To effectuate the Administrative Determinations, the Court simultaneously is publishing, in a separate notice, proposed new Rule 1:42 ("Continuing Legal Education") and the proposed deletion of Rule 1:26 ("Skills and Methods Course").

Mark Neary, Esq.
Clerk of the Supreme Court

Dated: October 8, 2009

Supreme Court Administrative Determinations

Recommendation # 1. Credit Hour/Mandatory Core Requirements.

The Committee recommends the following credit hour parameters:

- A. Basis for 1.0 Credit Hour should be 50 minutes of instruction;
- B. Twenty-four credits should be required every two years (biennial cycle);
- C. Four hours of ethics/professionalism credits should be required during each biennial cycle; there should be no additional core requirements.
- D. Except for ethics/professionalism credits, which should be completed each biennial cycle, and subject to limits on credits earned by full time and adjunct law professors, the Court should allow up to 6 credit hours to be carried over to the next cycle;
- E. There should be no blanket rule regarding whether credits can be earned for courses conducted during a meal -- this matter should be left to the discretion of accredited providers; and,
- F. All alternative verifiable learning formats should be permitted and encouraged, including but not limited to: writing, audiotape, videotape, teleconference, video conference, satellite simulcast, and the Internet. The

use of alternative learning formats should be limited to 12 credit hours per cycle for formats that are not “live” or “interactive” as defined by the MCLE regulator.

Determination: Approved subject to the following modifications:

A total of twelve credit hours can be carried over to the next reporting cycle. The six-credit carryover recommended by the Committee is insufficient to meet the unique demands on an attorney’s practice and home life. Although the two-year compliance cycle will begin January 1, 2010, continuing education credit will be awarded for approved courses taken after January 1, 2009, in accordance with the Court’s notice to the bar dated August 13, 2009.

Recommendation # 2. Credit for Teaching and Writing.

The Committee recommends that MCLE credits be awarded for teaching on a 2:1 basis per two-year cycle and for writing on a 1:1 basis. Teaching credit should be earned only once for the same course during a cycle. The exact parameters of what would qualify for teaching and writing credits should be detailed in the Court’s MCLE regulations and guidelines. As for writing, hours earned for writing should be counted toward, and limited by, the 12-credit limit provided under Recommendation 1F. Teaching should not be so limited. As noted later in this Report, the Committee recommends that the existing Board on Attorney Certification be designated as the MCLE regulator.

Determination: Approved subject to the following modification:

Writing shall not qualify as an approved educational activity for which continuing legal education credits will be awarded. In view of the varied methods of legal education that an attorney will be able to draw on to obtain continuing education credits and the difficulty in monitoring time and quality of participation in writing activities, the Court excludes writing as an option for legal education credit.

Recommendation # 3. Reciprocity.

Subject to approval regulations set forth in Recommendation 9 and the other requirements offered in this Report, all attorneys should receive 1:1 credit for courses taken in accordance with the requirements of any other jurisdiction. As part of reciprocity, the Committee recommends that certified attorneys also receive 1:1 credit for their attendance at their approved courses.

Determination: Approved.

Recommendations # 4 and # 5. Other CLE Credit Opportunities.

The Committee recommends that attorneys participating in approved Inns of Court programs receive full credit towards MCLE requirements for hours of instruction up to 24 credit hours each biennial cycle. (Recommendation 4)

The Committee recommends that the Supreme Court consider, after initial implementation of MCLE, whether it should grant credit to attorneys for *pro bono* work supervised by an accredited provider or for any other educational activity. These areas can be incorporated into the MCLE rules and regulations after implementation of the initial program. (Recommendation 5)

Determination: Approved.

Recommendation # 6. Who Should Comply With the MCLE Rule; Exemptions From Mandatory CLE Compliance

All licensed New Jersey attorneys, both plenary and limited license in-house, should comply with the CLE requirements, including judges, law school professors, and in-house corporate counsel. Law school professors should receive two hours of CLE credit for every hour of law school instruction that they give to students, and one hour of credit for every hour of published writing, up to a combined total of 12 credits per cycle. Credit for this type of activity should not be banked or carried forward to a successive cycle. Consistent with Rule 1:28-2(b) (Payment to the New Jersey Lawyers' Fund for Client Protection Exemptions), only attorneys who have been admitted to practice in New Jersey for fifty years or more, those on full-time active duty in the military, VISTA, or Peace Corps, and those retired completely from the practice of law should be exempted from the MCLE requirement. Hardship waivers should be available on a case-by-case basis by application to the Court's MCLE regulator.

Determination: Approved subject to the following modifications:

Law school professors shall not be awarded any continuing legal education credit for their teaching of full and part-time law students. Attorneys cannot obtain education credit for the work and research they undertake in their everyday professional endeavors. The same should be true for law professors.

Recommendation 7. Newly Licensed Attorneys – Bridge the Gap.

The Skills and Methods Program should be discontinued. Newly admitted attorneys should be subject to the same MCLE requirements as all other attorneys, including a core ethics/professionalism requirement. Beyond such a program, the Committee sees no need for additional bridge-the-gap requirements.

Determination: Approved subject to the following modification:

The Board on Continuing Legal Education shall provide newly licensed attorneys with a list of subject areas as approved by the Court from which the attorneys must choose courses to satisfy their continuing legal education requirement during the attorneys' first compliance period.

Recommendation 8. Approved Service Providers.

CLE providers in New Jersey should seek prior approval from the MCLE regulator in order for their course offerings to qualify for MCLE credit. A provider should be entitled to seek either "approved service provider" status or seek credit for individual courses. It is recommended that the following be eligible to seek "approved service provider" status from the MCLE regulator: local, state, and specialty bar associations; for profit and non-profit legal education providers; Inns of Court; educational institutions, including but not limited to accredited law schools; and in-house providers, including law firms, profit and non-profit corporations, and governmental entities. Providers seeking approved service provider status or individual course accreditation should meet the course approval requirements as defined in Recommendations 9 and 10.

Determination: Approved.

Recommendation 9. Provider Approval Process.

a) To obtain approved service provider status, the CLE provider-applicant should demonstrate that in the two years prior to applying for such status, the provider has offered at least five separate courses that comply with all requirements for course approval. The provider should be able to demonstrate a history of quality programming through a list of previously accredited courses. An approved provider's courses should be consistent with the standards created by the regulator for course content.

b) Approved provider status should carry with it presumptive approval of courses offered by the provider for a two-year period.

c) Providers should seek renewal of approved provider status every two years. Regulations should provide for the revocation of approved provider status for failure to comply with MCLE rules and regulations. In addition, the MCLE regulator should have discretion to decline approval of a specific course offered by the approved provider, regardless of any general presumptive approval of courses, such disapproval to apply prospectively and not to affect courses already given.

d) Approved providers should notify the MCLE regulator regarding all courses offered no later than 30 days after course date and include information on course content and method of presentation, date and location, faculty, a calculation of the credit hours, and any necessary contact information. Any advertising of credits should be in a manner recommended by the MCLE regulator.

e) Within 30 days of the course offering, approved providers should pay all required fees and report attendance to the MCLE entity. The provider should keep records of course approval and attorney attendance for three years. The provider should obtain attorney signatures on certificates of attendance for each course and keep these records for three years.

f) A service provider, such as a county bar association, in-house provider, etc., that has not previously offered a CLE course or the requisite number of courses indicated in subsection (a) should be eligible to become an approved service provider in accordance with regulations to be created. It is expected that the provider's courses will be able to be accredited on an individual basis until such time as the provider is granted approved provider status. Service providers that do not wish to seek approved provider status should be permitted to seek accreditation for individual courses; approval should be obtained not less than 30 days prior to the course offering.

g) Individual attorneys should be permitted to seek accreditation for teaching, writing, distance learning, web, audio, video and DVD courses and out-of-state courses. If certificates of attendance are available, the attorney should keep them for his or her records for three years following the completion of the cycle.

h) Retroactive credit or late submission for course accreditation should be considered on a case-by-case basis, subject to late fees.

Determination: Approved.

Recommendation 10. Course Accreditation, Approval, Appeal, and Monitoring.

The Committee recommends that the Court adopt the language and approach utilized by many MCLE states requiring providers to offer courses of intellectual

content that are at least broadly related to the legal profession, provided in a suitable setting, conducted by adequate and competent faculty. Providers also should offer, as appropriate, quality written materials on or before the course offering. As already noted, the approved service provider should provide, no later than 30 days after the course offering, information on the offered course, including faculty, name and purpose of the course, time-specific agenda, date, time and location, and the calculation of credits. Industry-wide forms should be accepted. A service provider seeking course accreditation should apply for credit for MCLE purposes as well as for accreditation of the course toward specialty certification: civil, criminal, workers compensation and matrimonial law. In accordance with regulations to be established, a provider denied course accreditation or approved service provider status should have the opportunity to appeal the regulator's decision. Course approval obtained by providers who are not pre-approved providers should be valid for one full year. Courses should be a minimum of one hour in length as defined by approved regulations to receive CLE credit.

Determination: Approved.

Recommendation 11. Fees, Costs, and Scholarships.

The Supreme Court should establish a fee schedule for MCLE. The Committee recommends the following fees: service providers applying for approved service provider status should pay a \$100 application fee. Approved service provider status should be valid for two years. Approved service provider status should be renewed every two years at the same \$100 fee. In addition, all providers, including approved service providers, should pay \$1 to \$2 per credit, per course, for each New Jersey attorney attending the course. Attorneys seeking individual accreditation for courses or other educational activities not connected with a New Jersey approved provider should pay \$1 or \$2 per credit hour obtained. The income generated should attempt to fully fund the MCLE program. Unless good cause is shown, failure by a provider to submit attendance information on a course offering within thirty days of the date of the course should result in the assessment of a \$50 late fee. A provider submitting a late request for course accreditation should be subject to the assessment of a \$50 late fee. To address concerns regarding costs of CLE courses, approved service providers should be required to offer scholarships when practical, based on need. CLE providers are also encouraged to follow the model in Florida, where free video courses are offered each year and are able to be viewed in centralized locations.

Determination: Approved subject to the following modifications:

The fees provided in the report are to be used as guidelines only. All fees are to be established by Regulation of the Board on Continuing Legal Education subject to Court approval.

Recommendation 12. Technology.

A comprehensive and user friendly, on-line database system should be offered, similar to those offered in Pennsylvania, Tennessee, Florida and Texas, which enables an attorney to view courses being offered, to report CLE attendance, and to verify CLE compliance. The system also should enable the providers to report course offerings and CLE attendance, and seek course accreditation on-line. The on-line system should also facilitate the on-line payment of fees.

Determination: Approved subject to the following modification:

The Board on Continuing Legal Education is hereby directed to make reasonable efforts to develop such an on-line database system if and when sufficient funds are available for such a system.

Recommendation 13. Compliance Reporting Method.

It is recommended that New Jersey adopt the method of reporting compliance that requires attorneys and service providers to report course attendance to the MCLE regulator. The service provider should report attendance for any attorney taking its approved course. The attorney should self-report educational activities taken through any other approved format.

Determination: Rejected. The Board on Continuing Legal Education is directed to establish and implement a system of self-reporting in which attorneys will certify at the end of the two-year reporting period that they have complied with all continuing legal education requirements. The Board also shall establish by regulation a system for random auditing by Board staff to ensure attorney compliance. The continuing education program shall require attorneys to maintain all records and documentation for a specified number of years to assist staff in conducting their audits. If the results of the Board's random audit program should demonstrate significant non-compliance, the Court shall take all steps necessary to ensure compliance, including adoption of the transcript model recommended by the Committee.

Recommendation 14. Timing of Compliance Reporting and Other Requirements.

The two-year compliance period should be divided into four “compliance groups,” with two groups reporting each year. For example, if the first compliance group were required to report compliance in 2011, those born in January through March would report by June 30, 2011; those born in April through June would report by December 31, 2011; those born July through September would report by June 30, 2012; and those born October through December would report by December 31, 2012. New admittees’ compliance reporting period would not begin to run until January 1 of the year following admission to the New Jersey Bar. It is further recommended that any MCLE program not start before 2010 to allow for adequate transition.

Determination: Approved.

Recommendation 15. Other Requirements – Compliance Report.

It is recommended that a compliance report be sent to an attorney 90 days prior to the expiration of his or her compliance period. It is further recommended that an attorney receive a notice of non-compliance within 30 days after the original compliance deadline and be assessed a \$75 late fee and be given an additional 60 days to come into compliance. At the end of that 60 days, the attorney should be assessed an additional \$100 late fee and be given a final 60 days to comply. Should the attorney fail to comply, procedures for administrative suspension should be started after notice to the lawyer. If the attorney is administratively suspended by the Court, a reinstatement fee should also be assessed of no more than \$250.

Determination: Rejected. However, any system of self-reporting should include appropriate penalties and late fees for an attorney’s failure to timely submit the certification of compliance or failure to comply with the education requirement. The fees provided in the report are to be used as guidelines only. All fees are to be established by Regulation of the Board on Continuing Legal Education subject to Court approval.

Recommendation 16. Extensions of time.

For good cause shown, including illness or other special circumstances, attorneys should be given reasonable extensions of time to comply. Such applications should be reviewed on a case-by-case basis.

Determination: Approved.

Recommendation 17. Hearing and Petition process.

Rule 1:39 and regulations of the Board on Attorney Certification (BAC) provide for a hearing and petition process that should be amended to include and address the due process needs of any MCLE program.

Determination: Approved subject to the following modification:

A hearing and petition process should be afforded. However, all regulations in respect of a hearing and petition process are to be promulgated by the Board on Continuing Legal Education in Rule 1:42 and the Board's Regulations.

Recommendation 18. Committee to Oversee MCLE Program.

Rule 1:39 and regulations of the Board on Attorney Certification (Board of BAC) should be amended to include any MCLE program. The Board should be designated as the combined regulator that oversees the Court's MCLE and attorney certification programs.

Determination: Rejected. The Court has determined that a separate Board on Continuing Legal Education should be established to administer this substantial new program. There shall, however, be some overlap between the Board on Continuing Legal Education and the Board on Attorney Certification in that three members of the Board on Attorney Certification shall be designated as members of the Board on Continuing Legal Education.

Recommendation 19. Costs and Staffing.

The Committee estimates that New Jersey's MCLE and specialization program would need a combined staff of between 6 to 8 people. As recommended earlier, in regard to funding the program, the Committee recommends a fee structure that is straightforward and user-friendly, assessing a fee for approved service provider status as well as the \$1 or \$2 per credit, per course, per attorney paid by the service provider or the attorney depending on who is seeking the course credit and the funding requirements of the regulator. In addition, late fees and non-compliance fees should be assessed as suggested in Recommendation 15.

Determination: Rejected. Staffing needs are to be determined by the Clerk of the Court under new Rule 1:42. The recommendation regarding fees is modified to be consistent with the response to Recommendation 15 on fees.

Recommendation 20. Implementation Issues, Program Evaluation, and Impact on the Bar.

The Supreme Court should evaluate the MCLE program midway through the second biennial cycle; i.e., three years from program inception to determine whether it is achieving its goals and operating as intended.

Determination: Approved.