

OPEN SESSION AGENDA ITEM

NOVEMBER 2018 Programs III.B

DATE: November 15, 2018

TO: **Members, Programs Committee**

FROM: Robert McPhail, Program Manager II
Attorney Regulation and Consumer Resources

SUBJECT: Proposed Changes to State Bar Rules to Accommodate Minimum Continuing Legal Education (MCLE) Provider Course Upload Program – Request to Circulate for Public Comment.

EXECUTIVE SUMMARY

Goal 2(e) of the 2017-2022 Strategic Plan calls for the State Bar of California to “[b]egin auditing attorney compliance with MCLE requirements in the most cost effective and efficient manner no later than December 31, 2020.” To accomplish this goal, staff is developing a system that requires MCLE providers to transmit attendance information electronically in lieu of simply having attorneys self-report compliance with their triennial requirements. The State Bar can use these electronic records to effectively, efficiently and comprehensively audit attorney compliance with MCLE requirements using automated methods. The attendance information supplied by the providers could also be used to provide licensees with access to ongoing progress reports to assist them in tracking their own compliance. Requiring providers to supply attendance data requires changes to the current MCLE rules for providers and the MCLE rules for attorneys. This item requests that the proposed rule changes, included as Attachments A and B, be circulated for public comment.

BACKGROUND

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

The State Bar has conducted random audits of attorneys since the beginning of the MCLE program and has conducted an MCLE audit each year since 2011. A sample as large as 10% of those reporting compliance has been audited each year. Unfortunately, the results of these audits have not been encouraging. Staff found that about 20% of licensees audited are not in compliance with their MCLE requirement (or do not have documentation to support compliance) and approximately 5% of those audited have not completed any MCLE courses at all when they

declare that they are in compliance. This compliance problem persists despite publicity about the audits, disciplining attorneys who fail audits, and auditing increasingly larger sample sizes.

The deficiency rate indicates that serious compliance problems exist. Unfortunately, it is not cost effective to conduct an MCLE audit of every licensee using the current processes. In 2016, the State Bar conducted its largest audit to date; 6,600 attorneys, or 10% of the 2016 MCLE reporting group. That audit required 6 full-time temporary workers for 4 months at a cost of approximately \$200,000, as well as 2 staff members dedicated full time to the project for several months. Individual audits are extremely labor intensive and, since we are necessarily relying on the records provided by the attorney, there is no verification that the courses were actually taken.

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

DISCUSSION

Current Process

The current MCLE audit process involves the selection of a random sample of those in the compliance group. Notices are sent to those selected for audit, and they are requested to provide copies of their attendance certificates and input information online listing the courses they completed. The electronic submission is used to store compliance information. To complete an audit staff manually review the certificates of attendance, calculate the total hours of MCLE completed, verify that each course is eligible for MCLE credit and was taken during the compliance period. Staff also analyze the certificates to ensure they have not been altered or are not otherwise fake. From the time the random sample is generated, to the final staff determinations of compliance/noncompliance are made, the audit takes approximately 5 months to complete.

This manual review relies on licensee-provided information, and because of the nature of the review process, is necessarily limited in size. An alternative method used by at least 18 states requires MCLE providers to supply the attendance records. In contrast to the current process, electronic submission of attendance records would require limited staff review, would allow the State Bar to audit every licensee and would take considerably less time each year.

Best Processes Review

Staff has been evaluating MCLE best practices and the feasibility of implementing a change for the State Bar. The Bar convened a meeting with providers two years ago to seek initial input and begin our research process. In addition, the practices of other states were reviewed and Staff found that many states that have MCLE programs require MCLE providers to electronically upload course attendance information. Staff reviewed these systems to identify the various alternatives and determine what meets the Bar's needs and best serves the needs of providers. Staff developed preliminary specifications for an MCLE provider reporting system that will allow the State Bar to collect attendance data while not placing an undue burden on providers.

Specifically, the Bar identified three methods for providers to submit electronic attendance records. The first method would allow providers to do mass uploads of large numbers of course attendance records through an FTP site or similar method. This method may be best suited to large online providers with sophisticated record keeping databases. The second method would allow providers to upload excel spreadsheets through an online portal. This method is simpler

but still can be used to transfer large quantities of data. The final method is an internet interface which allows providers to input one attendee at a time. This could be used onsite at courses as a sign-in sheet or input by provider staff.. Staff is envisioning having all three options available so providers can use the method that best meets their needs and technological and staffing capabilities. Providers can also select different options for different situations.

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

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

The Bar is sympathetic to concerns of these providers about the time and staff required to upload attendance information from conferences that may have many different course offerings over a single day or multiple days. The Bar has attempted to accommodate this issue in the proposed rule change by building in a 30 day submission period and creating multiple submission methods. Staff will be developing an FAQ to clarify providers' responsibilities at multi-session events, and to address how multi-session conferences may be handled. However, staff have concluded that it is not practical to create a different set of rules for this type of delivery method.

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

Conclusions

Staff believes that the processes described above requiring providers to electronically submit attendance records using any one of the three methods described above will meet the strategic goal of efficiently auditing attorney MCLE compliance and will, generally, impose little additional burden on providers. The State Bar will gain additional benefits from this change, as will

licensees. In the current auditing process, some instances of noncompliance may simply be attributable to an attorney not being able to locate the certificate for MCLE courses they in fact completed. Having providers upload attendance records will eliminate findings of noncompliance attributable to such record-keeping errors. Furthermore, the State Bar will be able to provide licensees with accurate reporting on their progress towards meeting their MCLE requirements in advance of them having to report compliance. Finally, while this process change does not directly impact the quality of MCLE being provided, it does afford the State Bar more visibility into what activities are being conducted by the MCLE providers.

Proposed Rule Change

Currently, MCLE providers register with the State Bar as a Single Activity Provider (SAP, which allows them to offer a specific course for a two year period) or as a Multiple Activity Provider (MAP, which allows them to offer any MCLE activity for a period of 3 years without State Bar course approval). While SAP's and MAP's are required to maintain course records, they have no requirement to provide those records to the State Bar. Therefore, rule changes are necessary.

The rule proposal would require MCLE providers to report course attendance within 30 days of the completion of the course. Other small wording changes are proposed to preserve the internal consistency of the rules. In addition, a minor change was made to reflect that the California Young Lawyers Association, now part of the California Lawyers Association, does not participate in State Bar audits of MCLE providers.

Staff also proposes minor edits to the rule that affects attorney reporting of MCLE for consistency with the provider rule and internal consistency.

The Legal Specialization Program offers education which is also eligible for MCLE credit. If the Board approves the proposed rule change outlined in this agenda item, minor changes will need to be made to the Legal Specialization rules to make them consistent with these rules.

FISCAL/PERSONNEL IMPACT

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

RULE AMENDMENTS

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

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

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

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

RECOMMENDATION

It is recommended that the Programs Committee approve the following resolution:

RESOLVED, that Programs Committee authorizes staff to make available for a 60-day public comment period proposed State Bar Rule Title 2, Division 4- MCLE Rules- Attorney, Chapter 1 Title 3, Division 5- MCLE Rules- Provider, and Chapter 1 Title 2, Division 2, Legal Specialization, attached hereto as Attachments A, and B; and it is.

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as a recommendation or approval by the Board of Trustees of the proposal.

ATTACHMENT(S) LIST

- A. MCLE Provider Rule - Redline
- B. MCLE Attorney Rule - Redline

TITLE 3. PROGRAMS AND SERVICES

Adopted July 2007
Amended effective March 10, 2017

DIVISION 5. PROVIDERS OF PROGRAMS AND SERVICES

Chapter 1. Providers of Continuing Legal Education

Article 1. Global provisions

Rule 3.600 Definitions

- (A) An “MCLE activity” is minimum continuing legal education that the State Bar approves as meeting standards for MCLE credit.
- (B) A “provider” is an individual or entity approved by the State Bar to grant MCLE credit for an MCLE activity.
- (C) A “Single Activity Provider” is approved to grant credit for a single MCLE activity after submitting an application for approval of the activity in accordance with State Bar procedures and paying the appropriate processing fee.
- (D) A “Multiple Activity Provider” is approved to grant credit for any MCLE activity that complies with the terms of the Multiple Activity Provider Agreement.¹
- (E) “MCLE credit” is the number of credit hours that a member may claim to meet the requirements of these rules.
- (F) A “credit hour” is sixty minutes actually spent in an MCLE activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals. MCLE credit includes time for introductory and concluding remarks and for questions and answers.
- (G) An “approved jurisdiction” is recognized by the State Bar as having MCLE requirements that substantially meet State Bar standards for MCLE activities and computing MCLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.
- (H) A “participatory activity” is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means. Participatory activity credit may only be awarded if the provider verifies the attendee has taken the course on the date of completion of the course. Methods for verification include sign-in in writing or electronically at the start of the course.

¹ Business & Professions Code § 6070 (b) provides that programs offered by the California District Attorneys Association and the California Public Defenders Association are deemed to be approved MCLE.

- (I) A “self-study activity” is any MCLE activity identified in Rule 2.83. Self-study activities may be presented in person or delivered by electronic means.
- (J) “State Bar MCLE Activity Auditors” are individuals designated by the State Bar to conduct audits of MCLE activities on behalf of the State Bar for the purpose of evaluating compliance by providers with these rules.

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

Rule 3.601 MCLE Activities

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

- (A) The MCLE activity must relate to legal subjects directly relevant to members of the State Bar or have significant current professional and practical content.
- (B) The presenter of the MCLE activity must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the MCLE activity is approved for MCLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required MCLE in legal ethics, elimination of bias, or competence issues.²
- (D) If the activity lasts one hour or more, the provider must make substantive written materials relevant to the MCLE activity available either before or during the activity. Any materials provided online must remain online for at least thirty calendar days following the MCLE activity.
- (E) Programs and classes must be scheduled so that participants are free of interruptions.

Rule 3.601 adopted as Rule 3.501 effective January 1, 2008; renumbered as Rule 3.601 effective November 4, 2011; amended effective January 1, 2013; amended effective July 1, 2014.

Rule 3.602 Responsibilities of every provider

Every provider must

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

² Business & Professions Code § 6070 (b) provides that programs offered by the California District Attorneys Association and the California Public Defenders Association are deemed to be approved MCLE. State Bar Rule 2.84 provides that “A member may claim MCLE credit for educational activities that the California Board of Legal Specialization approves for certification or recertification.” See State Bar Rule 2.72 for a description of competence issues and elimination of bias.

- (B) comply with any State Bar rules and terms applicable to an approved MCLE activity;
- (C) retain the Record of Attendance for an MCLE activity for four years from the date of the activity and submit it to the State Bar upon request. The record must include the title of the MCLE activity, date, total hours awarded, any credits awarded for legal ethics, elimination of bias, or competence issues as a component of the topic of the activity, and whether the activity is participatory or self-study;
- (D) provide the State Bar of California with electronic attendance records in a form acceptable to the State Bar of California within 30 days of completion of the activity;
- ~~(D)~~(E) furnish an MCLE Certificate of Attendance upon completion of the program to each attendee who has met the requirements for the MCLE activity. The certificate must include the provider name, title of the MCLE activity, date the course was completed, total hours awarded, any credits awarded for legal ethics, elimination of bias, or competence issues as a component of the topic of the activity, and whether the activity is participatory or self-study;
- ~~(E)~~(F) give each attendee who completes an MCLE activity a State Bar MCLE Activity Evaluation Form or its equivalent; retain the completed form for at least one year; and submit it to the State Bar upon request; and
- ~~(F)~~(G) notify the State Bar in writing of any change in the name, address, or other contact information required by the State Bar.

Rule 3.602 adopted as Rule 3.502 effective January 1, 2008; renumbered as Rule 3.602 effective November 4, 2011; amended effective July 1, 2014.

3.603 State Bar MCLE Activity Auditors

A State Bar MCLE Activity Auditor may be a State Bar staff member, Board of Trustees member, California Legal Specialization Board or Commission member, ~~California Young Lawyers Association member~~ or other person designated by the State Bar to conduct an audit of a particular MCLE program or class on behalf of the State Bar. A State Bar MCLE Activity Auditor may not have a business, financial or personal relationship with or oversight responsibility for the provider of the program or class being audited. A State Bar MCLE Activity Auditor may audit the particular MCLE program or class at no cost.

Rule 3.603 adopted effective July 1, 2014.

Rule 3.604 Suspension or revocation of provider approval

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

Rule 3.604 adopted as Rule 3.503 effective January 1, 2008; renumbered as Rule 3.603 effective November 4, 2011; renumbered as Rule 3.604 effective July 1, 2014; amended effective March 10, 2017.

Rule 3.605 Complaints about Providers

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

Rule 3.605 adopted effective July 1, 2014

Article 2. Multiple Activity Providers

Rule 3.620 Applying for Multiple Activity Provider status

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

- (A) within a two-year period receive State Bar approval for four different MCLE activities and hold them on four different dates; and
- (B) submit an application and processing fee for Multiple Activity Provider status within that same period.

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

Rule 3.621 Renewing Multiple Activity Provider status

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

- (A) apply for renewal using the State Bar form for Multiple Activity Provider Renewal;
- (B) submit evidence that it has offered four different MCLE activities that meet the requirements of these rules within the two years preceding its application for renewal;
- (C) submit the completed form and any required documentation by the deadline set by the State Bar;
- (D) submit any complaints it may have received regarding compliance with these rules; and
- (E) pay the appropriate fees.

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

TITLE 2. RIGHTS AND RESPONSIBILITIES OF MEMBERS

Adopted July 2007
Amended effective February 1, 2018

DIVISION 4. MINIMUM CONTINUING LEGAL EDUCATION

Chapter 1 Purpose and scope

Rule 2.50 Purpose of MCLE

Rules for Minimum Continuing Legal Education (MCLE) require active members of the State Bar of California to remain current regarding the law, the obligations and standards of the legal profession, and the management of their practices. A member's involuntary enrollment as inactive for failing to comply with these rules is public information available on the State Bar Web site.

Rule 2.50 adopted effective January 1, 2008.

Rule 2.51 Definitions

- (A) An "MCLE activity" is continuing legal education that the State Bar approves as meeting standards for MCLE credit.
- (B) A "provider" is an individual or entity approved by the State Bar to grant MCLE credit for an MCLE activity.
- (C) "MCLE credit" is the number of credit hours that a member may claim to meet the requirements of these rules.
- (D) A "credit hour" is sixty minutes actually spent in an MCLE activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals.
- (E) An "approved jurisdiction" is recognized by the State Bar as having MCLE requirements that substantially meet State Bar standards for MCLE activities and computing MCLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.
- (A) A "participatory activity" is an MCLE activity for which the provider must verify attendance. Participatory activities may be presented in person or delivered by electronic means. Participatory activity credit may only be awarded if the provider verifies the attendee has taken the course on the date of completion of the course. Methods for verification include sign-in in writing or electronically at the start of the course.
- (F) 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.

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

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

Rule 2.52 MCLE Activities

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

- (A) The MCLE activity must relate to legal subjects directly relevant to members of the State Bar or have significant current professional and practical content.
- (B) The presenter of the MCLE activity must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the MCLE activity is approved for MCLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required MCLE in legal ethics, elimination of bias, or competence issues.
- (D) If the activity lasts one hour or more, the provider must make substantive written materials relevant to the MCLE activity available either before or during every MCLE activity. Any materials provided online must remain online for at least thirty calendar days following the MCLE activity.
- (E) Programs and classes must be scheduled so that participants are free of interruptions.

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

Rule 2.53 New members

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

¹ Rule 2.72 (C).

- (C) A new member may not claim credit for education taken before the initial compliance period.
- (D) A new member is required to complete a State Bar New Attorney Training program during the first year of admission which can also be applied to the regular MCLE requirement.

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

Rule 2.54 Exemptions

- (A) The following active members are exempt from MCLE requirements, provided they claim the exemption in their assigned compliance periods using My State Bar Profile online or an MCLE Compliance Form:
 - (1) officers and elected officials of the State of California;
 - (2) full-time professors at law schools accredited by the State Bar of California or the American Bar Association;
 - (3) those employed full-time by the State of California on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law; and
 - (4) those employed full-time by the United States government on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law.
- (B) Members whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro bono legal services through a California qualified legal services project or a qualified support center², or through a legal services project or support center that primarily provides legal services without charge to indigent persons in another jurisdiction and is funded by the Legal Services Corporation or the Older Americans Act or receives funding administered by the jurisdiction's interest on lawyers trust accounts program.

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

Rule 2.55 Modifications

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

Rule 2.55 adopted effective January 1, 2008.

² Business & Professions Code § 6213.

Chapter 2. Compliance

Rule 2.70 Compliance groups

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

Rule 2.70 adopted effective January 1, 2008.

Rule 2.71 Compliance periods

- (A) A compliance period consists of thirty-six months. It begins on the first day of February and ends three years later on the last day of January. The three compliance groups begin and end their compliance periods in different years. A member must report MCLE compliance no later than the day following the end of the compliance period. The report must be made online using My State Bar Profile or with an MCLE Compliance Form. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.
- (B) Compliance with State Bar New Attorney Training must be effectuated and reported completed, in a manner established by the State Bar, by the last day of the month of an attorney's one-year anniversary as a State Bar member. Fees for noncompliance are set forth in a Schedule of Charges and Deadlines.

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

Rule 2.72 Requirements

- (A) Unless these rules indicate otherwise, a member who has been active throughout a thirty-six-month compliance period must complete twenty-five credit hours of MCLE activities. No more than twelve and a half credit hours may be self-study.⁴ Total hours must include no less than 6 hours as follows:
 - (1) at least four hours of legal ethics;
 - (2) at least one hour dealing with the recognition and elimination of bias in the legal profession and society by reason of, but not limited to, sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation; and

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

⁴ Rule 2.83.

- (3) at least one hour of education addressing substance abuse or other mental or physical issues that impair a member's ability to perform legal services with competence.
- (B) Required education in legal ethics, elimination of bias, or competence issues may be a component of an approved MCLE activity that deals with another topic.
- (C) A member may reduce the required twenty-five hours in proportion to the number of full months the member was inactive or exempt in the thirty-six-month compliance period. Up to half the reduced hours may be self-study.⁵ A tool for applying this formula is available at the State Bar Web site.
- (D) Excess credit hours may not be applied to the next compliance period.⁶

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

Rule 2.73 Record of MCLE

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

- (A) a provider's certificate of attendance;
- (B) a record of self-study that includes the title, provider, credit hours, and date of each MCLE activity; or
- (C) proof of exempt status.

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

Chapter 3. MCLE Activities approved for MCLE credit

Rule 2.80 Attending programs and classes

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

Rule 2.80 adopted effective January 1, 2008.

Rule 2.81 Speaking

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

⁵ Rule 2.83.

⁶ But see Rule 2.93.

- (A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim
 - (1) actual speaking time multiplied by four for the first presentation; or
 - (2) actual speaking time only for each time a presentation is repeated without significant change.
- (B) A panelist may claim
 - (1) either of the following for the first panel presentation:
 - (a) scheduled individual speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or
 - (b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus the actual time spent in attendance at the remainder of the presentation.
 - (2) actual speaking time only for each time a presentation is repeated without significant change.
- (C) A member who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.

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

Rule 2.82 Teaching

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

- (A) A member assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by twelve or actual speaking time for required MCLE in legal ethics, elimination of bias, or competence issues.
- (B) A guest lecturer or substitute teacher may claim
 - (1) actual speaking time multiplied by four for the first presentation; or
 - (2) actual speaking time only for each time a presentation is repeated without significant change.

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

Rule 2.83 Self-study

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

- (A) completing MCLE activities for which attendance is not verified by a provider and the MCLE activities were prepared within the preceding five years;
- (B) taking an open- or closed-book self-test and submitting it to a provider who returns it with a grade and explanations of correct answers; or
- (C) authoring or co-authoring written materials that
 - (1) have contributed to the member's legal education;
 - (2) have been published or accepted for publication; and
 - (3) were not prepared in the ordinary course of employment or in connection with an oral presentation at an approved MCLE activity.

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

Rule 2.84 Legal specialization

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

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

Rule 2.85 Education taken while physically out of state

- (A) A member may claim MCLE credit for an MCLE activity authorized by an approved jurisdiction if it meets the requirements of these rules and if the member attends or does the MCLE activity outside California. A member may not claim credit for such an activity, including self-study, when physically present in California unless the State Bar has specifically approved it.
- (B) A member who qualifies for an MCLE activity authorized by an approved jurisdiction may claim the amount of credit authorized by the jurisdiction. No special procedure is required to claim the credit.

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

Rule 2.86 Member credit request

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

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

Rule 2.87 Bar examinations and MPRE

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

Rule 2.87 adopted effective January 1, 2008.

Chapter 4. Noncompliance

Rule 2.90 Definition

Noncompliance is failure to

- (A) complete the required education during the compliance period or an extension of it;
- (B) report compliance or claim exemption from MCLE requirements;
- (C) keep a record of MCLE compliance⁷; or
- (D) pay fees for noncompliance.

Rule 2.90 adopted effective January 1, 2008.

Rule 2.91 Notice of noncompliance

- (A) A member who is sent a notice of noncompliance must comply with its terms or be involuntarily enrolled as inactive. An inactive member is not eligible to practice law.
- (B) If the notice requires the member to complete credit hours for the previous compliance period, any excess credit hours may be counted toward the current compliance period.

Rule 2.91 adopted effective January 1, 2008.

Rule 2.92 Enrollment as inactive for MCLE noncompliance

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

Rule 2.92 adopted effective January 1, 2008.

⁷ Rule 2.73.

Rule 2.93 Reinstatement following MCLE noncompliance

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

Rule 2.93 adopted effective January 1, 2008.