

Vermont's New MCLE Rules

Background

In February 2017, the American Bar Association House of Delegates adopted the Model Rule for Minimum Continuing Legal Education and Comments. Beginning in October of 2017, the MCLE Board reviewed this Model Rule in depth and engaged in discussions concerning the ABA's recommendations and current issues with Vermont's MCLE rules. Based on these discussions, the Board produced a draft of a revised set of MCLE rules in November of 2018. Before putting this draft out for comment, the Board presented the major changes to several groups of attorneys around the state and solicited feedback. The draft was subsequently revised and then put out for comment in mid-2019. Based on the comments received, and the prior feedback from attorneys around the state, the Board finalized the draft in January of 2020 and presented it to the Supreme Court. The Court approved the new rules on February 10, with an effective date of July 1, 2020.

Major Changes

Here is a summary of the five major changes from the prior MCLE rules:

1. The current reporting process—having attorneys report completion of the requirements, rather than provide a list of the courses taken—is memorialized in the new rules, with additional provisions giving the MCLE Board the authority and discretion to do audits.
2. Excess credit earned in the second year of a reporting period can now be carried over to the next reporting period.
3. The total hour requirement per two-year reporting period is increased from 20 to 24 hours.
4. The new rules require that at least 12 of the 24 required hours be either Moderated Programming or Non-Moderated Programming with Interactivity as a Key Component and limit the total number of hours of Non-Moderated Programming Without Interactivity to 6 of the 24 required hours. Those terms are defined as follows:
 - a. "Moderated Programming" means programming delivered via a format that provides attendees an opportunity to interact in real time with program faculty members or a qualified commentator who are available to offer comments and answer oral or written questions before, during, or after the program.
 - b. "Non-Moderated Programming with Interactivity as a Key Component" means programming delivered via a recorded format that provides attendees a significant level of interaction with the program, faculty, or other attendees. Types of qualifying interactivity for non-moderated formats include, but are not limited to, the ability of participants to: submit questions to faculty members or a qualified commentator; participate in discussion groups or bulletin boards related to the program; or use quizzes, tests, or other learning assessment tools.
 - c. "Non-Moderated Programming Without Interactivity" means programming delivered via a recorded format that does not have interactivity built into the program recording or delivery method.

Note that credit for certain non-programming activities (scholarly writing, serving as an acting or moot court judge, volunteer committee work, mentoring) is still available, with the total credit allowed for all such activities now capped at 12 hours instead of 10.

5. The new rules require at least one credit hour per reporting period in Diversity and Inclusion Programming and at least one credit hour per reporting period in Attorney Wellness Programming. Those terms are defined as follows:
- a. "Attorney Wellness Programming" means CLE programming designed to help lawyers detect, prevent, or respond to substance use, mental health, and/or stress-related issues that can affect professional competence and the ability to fulfill a lawyer's ethical and professional duties. Such programming must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public. Examples:
 - Depression, Competence and Substance Abuse in the Legal Profession
 - Stress Management: The Power of Change
 - Substance Abuse and Stress for Lawyers: Mindfulness as a Competence Tool
 - Lawyers and Mental Disorders
 - Recognizing, Understanding and Referring a Colleague in Need
 - Vicarious Trauma and Self-Care
 - b. "Diversity and Inclusion Programming" means CLE Programming that addresses diversity and inclusion in the legal system of all persons regardless of race, ethnicity, religion, national origin, gender, sexual orientation, gender identity, or disabilities, and programs regarding the elimination of bias. Examples:
 - Five Principles for Creating Diversity in Law Firms
 - The Leader's Role in Diversity and Inclusion: Transformational Leadership
 - How to Recognize and Manage Unconscious Bias in Your Legal Practice
 - An Enlightened Approach to the Elimination of Bias in the Legal Profession
 - Culturally Competent Lawyering
 - Communication Techniques to Improve Gender Diversity in the Legal Profession