

## RESOLUTION 4-03-2002

### DIGEST

#### Minimum Continuing Legal Education: Restoration of 36-Hour Requirement

Amends State Bar Minimum Continuing Legal Education Rule 2.1 to require that active members of the State Bar complete 36 hours of continuing legal education courses every 36 months.

### RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

#### Reasons:

This resolution amends State Bar Minimum Continuing Legal Education Rule 2.1 to require that active members of the State Bar complete 36 hours of continuing legal education courses every 36 months. This resolution should be disapproved because an increase in the minimum number of hours is not clearly necessary.

As originally enacted in 1989, Business and Professions Code section 6070 directed the State Bar to ask the Supreme Court to adopt an MCLE program requiring active members to complete 36 hours of continuing education every 3 years. The Supreme Court granted that request by adopting California Rules of Court, rule 958, in 1990. That rule was unpopular with a significant segment of the bar. In 1999, those dissatisfied members succeeded in convincing the Legislature to amend Business and Professions Code section 6070 to require the State Bar to ask the Supreme Court to reduce the minimum number of hours to 25 every 3 years. The State Bar did as the Legislature had ordered, and the Judicial Council amended rule 958 accordingly in 2000.

In short, the 25-hour requirement is the result of widespread member dissatisfaction as amplified through legislative directive. We should not ask the Board of Governors to disregard either the Legislature or our own members unless there is a compelling reason to do so. There is not.

Although attorneys are capable of meeting an expanded requirement of 36 hours, there is a substantial question as to whether enough qualified providers can be found to offer additional qualified programs that are economical, convenient, and of significant practical value to the majority of our members. Moreover, an increase in hours without other changes, such as requiring hours in the attorney's area of practice and having adequate oversight of the programs, does not serve attorneys or their clients. Until these concerns are met, the minimum requirement should not be increased.

### SECTION/COMMITTEE REPORT

THE STATE BAR OF CALIFORNIA (MCLE)

Recommendation: DISAPPROVE

#### Reasons:

The MCLE program is designed to assure that, throughout their careers, California attorneys

remain current regarding the law, the obligations and standards of the profession, and the management of their practices. However, due to legislative concerns over the type and quality of programs being certified for MCLE, Senate Bill 144 (SB 144) of 1999, which became effective on January 1, 2000, amended Business and Professions Code section 6070 to reduce the original MCLE requirement of 36 hours every 36 months, to 25 hours every 36 months. SB 144 also reduced the requirement of 8 hours in legal ethics or law practice management (at least 4 hours of which had to be in legal ethics) to a total of 4 hours in legal ethics only, mandated that the State Bar make available to its members low- or no-cost MCLE courses (including over the internet), and eliminated the categorical exemption for retired judges from the MCLE requirement.

When the MCLE Evaluation Commission addressed the hour requirement in its May 2001 report, it noted that the amended MCLE requirement was both among the lowest in the nation, and among other licensed California professions, and recommended (as a gesture of compromise to the Legislature) that the MCLE requirement be increased to 30 hours (rather than the previous 36) over three years, beginning February 1, 2005. However, the Board of Governors rejected this recommendation of the MCLE Commission, noting that the Legislature's concerns over course quality – which had inspired the reduction in the hourly requirement – had only begun to be addressed.

State Bar staff agrees in principle with the proponent of this resolution that members should engage in more continuing education than is currently mandated, but also agrees with the Board of Governors that no effort should be made to increase that requirement unless and until the Legislature's concerns about program quality and oversight have been addressed and those concerns assuaged.

## **TEXT OF RESOLUTION**

RESOLVED that the Conference of Delegates recommends that the Board of Governors of the State Bar of California amend the MCLE Rules and Regulations, Section 2.1, to read as follows:

1 §2.1 REQUIREMENT

2 All members of the State Bar of California on active status shall demonstrate their  
3 compliance with the continuing legal education requirement at the end of each compliance  
4 period and, except as otherwise provided, shall complete at least ~~25~~36 hours of approved  
5 continuing legal education activities every 36 months. Of the ~~25~~36 hours:

6 2.1.1 At least four shall be in the area of legal ethics;

7 2.1.2 At least one shall relate to prevention, detection, and treatment of substance  
8 abuse and emotional distress, but no more than six shall relate to emotional distress; and

9 2.1.3 At least one shall relate to elimination of bias in the legal profession based on  
10 any of, but not limited to the following characteristics: sex, color, race, religion, ancestry,  
11 national origin, blindness or other physical disability, age, and sexual orientation.

12 Instruction in legal ethics, prevention, detection, and treatment of substance abuse  
13 (and emotional distress), and elimination of bias may be a portion of a substantive law  
14 education activity.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

#### STATEMENT OF REASONS

Existing Law: Current Section 2.0 of the MCLE Rules and Regulations requires active members of the State Bar to complete at least 25 hours of continuing legal education each three years.

This Resolution: Would raise the continuing legal education requirement from 25 to 36 hours each three years.

The Problem: The current requirement of 25 hours every three years is the lowest of the 41 jurisdictions that require continuing legal education (the MCLE States). Of the other 40 MCLE States, 15 require 15 hours per year (45 in three years). Three MCLE States require less than 15 and more than 12 hours per year (less than 45 and more than 36 in three years). Another 17 MCLE States require 12 hours per year (36 in three years). One MCLE State requires 11 per year (33 in three years), and 4 require 10 per year (30 in three years). Thus 36 of the 41 MCLE States required at least 36 hours in three years.

The California MCLE Evaluation Commission Report (July 2001) recommended the retention of the original 36 hours in 36 months. They argued that any lesser requirement would put California lawyers significantly behind the vast majority of lawyers in other MCLE jurisdictions. The American Bar Association Model Rule for Minimum Continuing Legal Education has, since its adoption in 1986 by the ABA House of Delegates, recommended that MCLE jurisdictions establish a minimum requirement of 15 hours of continuing legal education per year. The sophistication, complexity, and diversity of California practice strongly suggests the need for all California attorneys actively to pursue continuing legal education in order to remain current and competent as required by Rule 3-110 of the California Rules of Professional Conduct. A restored California MCLE requirement of 36 hour in 36 months is an appropriate base for such professional educational activities.

#### IMPACT STATEMENT

The proposed resolution affects California Rule of Court 958 in that the Rule's minimum continuing legal education requirement would also have to be raised from the current 25 hours to 36 hours in 36 months.

AUTHOR AND/OR PERMANENT CONTACT: Richard D. Lee, 2001 Sacramento Street, Suite 4, San Francisco, CA 94109-3342, telephone (415) 673-9929, fax (415) 673-9998, email: richarddlee@earthlink.net.

RESPONSIBLE FLOOR DELEGATE: Richard D. Lee