

## RESOLUTION 02-12-03

### DIGEST

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

Amends Minimum Continuing Legal Education Rules and Regulations, section 2.0, to require that active members of the State Bar take 36 hours of continuing education over a period of 36 months.

### RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

#### History:

Similar to resolution 4-03-02, which was disapproved.

#### Reasons:

This resolution amends Minimum Continuing Legal Education Rules and Regulations, section 2.0, to require that active members of the State Bar take 36 hours of continuing education over a period of 36 months. This resolution should be disapproved because an increase in the minimum number of hours is contrary to the intent of the Legislature and the members of the State Bar.

As originally enacted in 1989, Business and Professions Code section 6070 directed the State Bar to ask the Supreme Court to adopt a Minimum Continuing Legal Education (“MCLE”) program requiring active members to complete 36 hours of continuing education every three years. The Supreme Court granted that request by adopting Rules of Court, rule 958, in 1990. That rule was unpopular with a significant segment of the Bar. In 1999, the Legislature amended 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 three years. The State bar did as the Legislature had ordered, and the Judicial Council amended rule 958 accordingly in 2000. 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. The proponent does not set forth any such compelling reasons.

Although attorneys are capable of meeting an expanded requirement of 36 MCLE hours, one of the concerns of the Legislature, and a continuing substantial question, is whether enough qualified providers can be found to offer additional MCLE programs that are economical, convenient, and of significant practical value to our members. Such was noted by the State Bar of California MCLE Committee in its opposition to resolution 4-03-02, specifically referring to Senate Bill No. 144 of 1999. 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

#### OFFICE OF CERTIFICATION OF THE STATE BAR OF CALIFORNIA

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.

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.

This position is solely that of the State Bar's Office of Certification and has not been adopted or endorsed by the State Bar's Board of Governors.

## **TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that the Board of Governors of the State Bar of California amend the Minimum Continuing Legal Education Rules and Regulations, section 2.0, to read as follows:

- 1 §2.0
- 2 2.1 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 period
- 4 and, except as otherwise provided, shall complete at least ~~25~~36 hours of approved continuing legal
- 5 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 the prevention, detection, and treatment of substance abuse
- 8 and emotional distress, but no more than six shall relate to emotional distress; and
- 9 2.1.3 At least one shall relate to the elimination of bias in the legal profession based on any
- 10 of, but not limited to, the following characteristics: sex, color, race, religion, ancestry, national
- 11 origin, blindness or other physical disability, age, and sexual orientation.
- 12 Instruction in legal ethics, prevention, detection, and treatment of substance abuse and
- 13 emotional distress, and elimination of bias may be a portion of a substantive law education activity.
- 14 2.2 New admittees, members who are on inactive status for a portion of a compliance period,
- 15 and members who are exempt pursuant to section 6.0 for a portion of a compliance period, must
- 16 comply with a proportional continuing legal education requirement.
- 17 2.2.1 Where the member is on active status and not exempt for four months or less in a
- 18 compliance period, the member is not required to comply with the education requirement for that
- 19 compliance period.
- 20 2.2.2 Where the member is on active status and not exempt for more than four months in a
- 21 compliance period, the member shall be required to complete a total number of hours of approved
- 22 continuing education activities and, within those total hours, a number of hours of education in legal
- 23 ethics in proportion to the number of months in the compliance period that the member was on active
- 24 status and not exempt from the requirement. Fractions of hours shall be rounded up to the next whole
- 25 number.

26 Formula for calculating total hours required: [(Number of months on active status and not  
27 exempt) x 25] ÷ 36 = Total Hours Required

28 Example: 15 months on active status and not exempt x 25 = 375 ÷ 36 = 11 total hours  
29 required (10.42 rounded up to the next whole number).

30 Formula for calculating required hours of legal ethics, within the total hours required:  
31 [(Number of months on active status and not exempt) x 4] ÷ 36 = Total Hours Required in Legal  
32 Ethics

33 Example: 15 months on active status and not exempt x 4 = 60 ÷ 36 = 2 hours of legal ethics  
34 required (1.67 rounded up to the next whole number).

35 The following table shows the results of applying these formulas:

36 25-HOUR PROPORTIONAL REQUIREMENT TABLE

| Months on active status and not exempt | Total Hours Required | Hours of Legal Ethics | Months on active status and not exempt | Total Hours Required | Hours of Legal Ethics |
|--|----------------------|-----------------------|--|----------------------|-----------------------|
| 1-4                                    | 0                    | 0                     | 19-20                                  | 14                   | 3                     |
|  |                      | 1                     | 21                                     | 15                   |                       |
| 5                                      | 4                    |                       | 22-23                                  | 16                   |                       |
| 6-7                                    | 5                    |                       | 24                                     | 17                   |                       |
| 8                                      | 6                    |                       | 25                                     | 18                   |                       |
| 9                                      | 7                    |                       | 26-27                                  | 19                   |                       |
| 10                                     | 7                    | 2                     |  |                      | 4                     |
| 11                                     | 8                    |                       | 28                                     | 20                   |                       |
| 12                                     | 9                    |                       | 29-30                                  | 21                   |                       |
| 13-14                                  | 10                   |                       | 31                                     | 22                   |                       |
| 15                                     | 11                   |                       | 32-33                                  | 23                   |                       |
| 16-17                                  | 12                   |                       | 34                                     | 24                   |                       |
| 18                                     | 13                   |                       | 35                                     | 25                   |                       |

37  
38 2.2.3 Members completing a proportional requirement shall not be required to complete one  
39 hour of approved continuing legal education relating to prevention, detection, and treatment of  
40 substance abuse and emotional distress or elimination of bias in the legal profession.

41 2.2.4 Members on inactive status or exempt for a portion of a compliance period may claim  
42 credit for education activities taken at any time during the compliance period for which the education  
43 is required.

44 2.3 Up to but not more than 12.5 hours credit may be claimed for self-study activities during  
45 any compliance period. In the case of a proportional requirement pursuant to section 2.2, up to but  
46 not more than one-half of the required hours may be claimed for self-study activities during any  
47 compliance period.

48 2.4 Credit for participating in an education activity may not be carried forward from one  
49 compliance period to another.

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

PROPONENT: Bar Association of San Francisco

#### STATEMENT OF REASONS

Existing law: Requires active members of the State Bar of complete at least 25 hours of continuing legal education each three years.

This Resolution: Restores the original continuing legal education requirement of 36 hours each three years.

The Problem: The current lowered requirement of 25 hours every three years was imposed on the State Bar by the Legislature in 1999 in response to dissatisfaction expressed by a number of attorneys toward the State Bar and its MCLE requirements. The legislation also reduced the number of ethics hours from 8 to 4, eliminated the specialty requirement for law practice management and deleted the categorical exemption for retired judges.

The current requirement of 25 hours every three years is the lowest of the 41 jurisdictions that require continuing legal education (the MCLE States). The vast majority of these MCLE States (36) require at least 36 hours in three years, one hour per month. And many (15) MCLE States follow the American Bar Association Model Rule for Minimum Continuing Legal Education, which has, since 1986, recommended a minimum requirement of 45 hours in three years. In none of these states is there a significant body of dissatisfied attorneys lobbying for reduction of the requirements.

The blue-ribbon California MCLE Evaluation Commission Report (July 2001) noted with great concern California's low rank among the MCLE States and among other licensed California professions. The Commission recommended, as a "gesture of compromise to the legislature," that the MCLE requirement be increased to 30 hours. The Board of Governors rejected this "compromise," and imposed the reduced 25-hour requirement.

If the 36-hour requirement is restored, the California MCLE providers can easily handle the increased demand. There are over 1,000 California-qualified MCLE providers, mostly non-profit organizations, from local bar associations to statewide groups (including the State Bar itself) to national specialty organizations. Together they provide a wide range of courses in virtually every practice field, at prices that are highly competitive and affordable.

The sophistication, complexity, and diversity of California practice strongly support the need for all California attorneys to work actively to remain current and competent. Rule 3-110 of the California Rules of Professional Conduct mandates that minimum level of competence. One hour every month is an appropriate minimum base for such professional education. A restored California MCLE requirement of 36 hours in 36 months provides that base. One hour each month of professional education is not too much to ask of California bar members.

#### IMPACT STATEMENT

This resolution affects California Rule of Court 958, which would also have to be amended to reflect the change in the minimum continuing legal education requirement 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, e-mail richarddlee@earthlink.net

RESPONSIBLE FLOOR DELEGATE: Scott McMillen