

RESOLUTION 2-13-03

DIGEST

Minimum Continuing Legal Education: Credit for Pro Bono Activities

Amends State Bar Minimum Continuing Legal Education Rules and Regulations, sections 4 and 5, to allow credit for providing certain pro bono legal, arbitrator or temporary judge services.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

Similar to resolution 4-05-02, which was disapproved.

Reasons:

This resolution amends Minimum Continuing Legal Education Rules and Regulations, sections 4 and 5, to allow credit for providing certain pro bono legal, arbitrator or temporary judge services. This resolution should be disapproved because providing such services does not further the purpose of Minimum Continuing Legal Education (“MCLE”).

The primary purpose of MCLE is to enhance the legal knowledge of practicing attorneys in their area of practice. Section 4 allows credit only for attending or teaching educational activities, including law school classes, or listening to instructional tapes. In participating in such activities, an attorney is specifically engaged in education and nothing else. Pro bono legal services, in contrast, are not specifically oriented to educating the attorney. Indeed, the attorney may not acquire any new knowledge while providing such services. Similar concerns lie with service as an arbitrator or temporary judge. As a result, the lawyer who acts as a pro bono attorney, arbitrator or temporary judge may receive less education than the lawyer who completes the full 25 hours of educational MCLE currently required.

MCLE credits are already available for approved educational activities offered by pro bono legal services or program seeking pro bono arbitrators or judges. These meet the stricter MCLE rules definition of education, and therefore the MCLE goal of education. Further MCLE credits for providing the service would probably not increase pro bono hours, as the proponent appears to envision. Generally (although certainly not always), people who do pro bono work do so to give back to the community, not to help themselves.

Even if providing pro bono legal services could be considered educational, this resolution awards one credit hour, up to a total of four, for every six hours of “service or educational activity. It is not clear how “educational activity” is defined in this context since the inference is the activity is not an otherwise approved educational activity for which the attorney would be entitled to full credit. Such ambiguity might swallow the entire MCLE rule.

SECTION/COMMITTEE REPORT

OFFICE OF CERTIFICATION OF THE STATE BAR OF CALIFORNIA

Recommendation: **DISAPPROVE**

Reasons:

The State Bar supports the intention to encourage members to provide pro bono services and is sensitive to the desire to offer some incentive for lawyers to participate in pro bono services. Particularly for pro bono service programs that provide close mentoring, supervision and training, the wish to reward good work makes it tempting to look to the MCLE program. Many members find it appealing to equate

supervision, training and mentoring, or research and learning, with “education” in the general sense.

Notwithstanding this, however, the effort made in this conference resolution to encourage participation in pro bono services through the MCLE program is problematic. As a general observation, it is in the nature of most legal work that continued learning follows from course work, whether it be on one’s own, or in service or employment situations where there is supervision, training and mentoring, or in conducting further research.

As a participatory credit activity, the proposal falls short. MCLE Rule 4.1 gives the criteria that must be met to qualify for participatory credit: “Participatory credit refers to participation in an *education activity* (emphasis added) that can be verified by the education provider ...”. The standards that all “education activities” must meet are given in MCLE rule 7.1: 1) education activities must have significant current intellectual or practical content; 2) the education activity must be an organized program of learning; 3) the education activity must be conducted by an individual or group qualified by practical or academic experience; and 4) education activities more than one hour in length must have substantive written materials. Supervision, training and mentoring do not meet these criterion.

With due regard for the proponent and other Bar groups that support giving MCLE credit for pro bono service, the proposal reflected in this conference resolution is misguided. This is an attempt to create, for the narrow category of members who would be given MCLE credit for the specified types of pro bono services, an exemption of up to 4 hours from the 25 hours required every 36 months. The better process is for State Bar staff and volunteer committees to further study and assess the most appropriate ways to provide incentives to encourage pro bono services by members.

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, sections 4 and 5, to read as follows:

- 1 §4.0
2 4.1 Participatory credit refers to participation in an education activity that can be verified by
3 the education provider and may be claimed for:
4 4.1.1 Attending approved education activities, including lectures, panel discussions,
5 question-and-answer periods, or in-house education;
6 4.1.2 Viewing videotapes or film instruction, listening to audiotapes, or viewing or
7 participating in other audiovisual activities including interactive video instruction and activities
8 electronically transmitted from another location, such as online education. The viewing, listening, or
9 participating must be approved, and must be verified by the provider (for purposes of this section,
10 sponsorship requires the approved provider to ensure compliance with sections 7.1 and 7.2);
11 4.1.3 Speaking in approved education activities;
12 4.1.4 Attending a law school class after the member's admission to practice in California,
13 provided the member officially registers for the class and satisfactorily completes the class (by audit
14 or grade), as required by the law school; or
15 4.1.5 Teaching a class at a law school.
16 4.1.6 Providing pro bono legal service through a qualified legal service project or support
17 center as defined in Business and Professions Code sections 6210 et seq., court appointed arbitrator
18 service pursuant to Code of Civil Procedure section 1281.6, or temporary judge service pursuant to

19 Code of Civil Procedure section 116.240.

20 4.2 Self-study credit refers to self-verified participation in an education activity. Up to but
21 not more than 12.5 hours of self-study credit, or in the case of a proportional requirement, up to but
22 not more than one-half of the required hours, may be claimed per compliance period for:

23 4.2.1 Viewing approved videotapes or videotapes of approved activities or viewing or
24 participating in other approved audiovisual activities, including interactive video instruction and
25 activities electronically transmitted from another location, such as online education;

26 4.2.2 Listening to approved audiotapes or audiotapes of approved activities;

27 4.2.3 Preparing, as an author or co-author, written materials published or accepted for
28 publication, e.g., in the form of an article, chapter, or book, which contribute to the legal education
29 of the author member (which were not prepared in the ordinary course of the member's practice or
30 employment or to accompany speaking in an approved education activity); or

31 4.2.4 Participating in self-assessment testing (open-book tests that are completed by the
32 member, submitted to the provider, graded, and returned to the member with the correct answers and
33 an explanation of why the answer chosen by the provider is the correct answer).

34 4.3 No credit shall be given for activities directed primarily to preparation for an
35 examination for admission to practice law in any state, the District of Columbia, any territory of the
36 United States or any foreign jurisdiction, including the Multi-state Professional Responsibility
37 Examination. No credit shall be given for the time spent actually taking such an examination.

38
39 §5.0

40 5.1 Credit hours are computed based on actual time spent in an activity (actual instruction or
41 speaking time, actual time spent viewing videotapes or listening to audiotapes, actual time spent
42 preparing materials for publication, actual time spent attending a law school class) in hours to the
43 nearest one-quarter hour reported in decimals. For example, an activity that lasts three hours and has
44 one 10-minute break would be calculated as follows:

45 $3 \text{ hrs} \times 60 \text{ mins/hr} = 180 \text{ mins}$ minus the 10-min break = 170 mins divided by 60 = 2.833
46 hrs, which would round down to 2.75.

47 Providers are expected to compute credit hours for approved activities based on this formula
48 and to announce the approved number of hours.

49 For self-assessment tests, providers must specify the maximum credit allowable. Credit may
50 be offered only for the time actually spent answering the self-assessment test questions and
51 reviewing the results from the provider.

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53 may be offered only for the time actually spent answering the self-assessment test questions and
54 reviewing the results from the provider.

55 5.3

56 5.3.1 Credit hours for speaking in an approved education activity are computed by
57 multiplying actual speaking time by four. For repeat presentations, speakers may claim only actual
58 speaking time. Each presentation of a workshop or skills training activity (an education activity that
59 includes the active participation of attendees in the form of interactive exercises, simulations, and
60 demonstrations and therefore must be modified for the attendees at each presentation) will count as a
61 separate education activity.

62 5.3.2 Credit hours for panelists at an approved education activity are computed by
63 multiplying the length of time the panelist is assigned to speak by four. If specific speaking times
64 are not assigned to the panelists, "the length of time the panelist is assigned to speak" means the
65 actual length of the education activity divided by the number of panelists. For the remainder of the
66 panel and for repeat presentations, panelists may claim only actual attendance time.

67 For example, a two-hour panel with four panelists who are not assigned specific speaking
68 times would be calculated as follows:

69 1. To determine each panelist's speaking time, divide the length of the panel by the number

70 of panelists (in this case, 2 hrs x 60 min/hr = 120 mins divided by 4 panelists = 30 mins or .5 hrs of
71 speaking time).

72 2. Multiply the panelist's speaking time x 4 (.5x4 = 2 hrs).

73 3. For the remainder of the panel (1.5 hrs), credit the panelist with actual attendance time
74 only.

75 Do NOT count the panelist's speaking time twice, i.e., as part of the attendance time.

76 4. Each panelist should receive 3.5 hrs (2 hrs of speaking credit plus 1.5 hrs of attendance).

77 5.3.3 A moderator who either introduces other speakers or performs in an administrative
78 capacity and does not present material having significant current intellectual or practical content
79 members may claim the same credit hours as attendees.

80 5.4

81 5.4.1 Credit hours for teaching a law school class are computed by multiplying the number
82 of credit hours/units granted by the law school by 12. If a portion of a law school class is devoted to
83 a subject set forth in section 2.1, credit hours for teaching that subject are computed by multiplying
84 actual speaking time by one. In no case may the credit hours claimed for teaching a law school class
85 exceed credit hours/units multiplied by 12.

86 5.4.2 Credit hours for a guest lecturer or substitute teacher in a law school class are
87 computed by multiplying actual speaking time by four. For repeat presentations, credit may be
88 claimed only for actual speaking time.

89 5.5 A member who performs pro bono qualified legal service, as defined in section 4.1.6,
90 may earn one MCLE credit hour for every six hours of service or educational activity. Participatory
91 credit for pro bono qualified legal service shall be limited to four units of credit per compliance
92 period.

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

STATEMENT OF REASONS

Existing Law: Members of the bar are required to complete 25 hours of approved continuing education during each compliance period including four hours of legal ethics, one hour of prevention, detection, and treatment of substance abuse and emotional distress, and one hour of elimination of bias. Members of the bar may receive continuing education credit for teaching, speaking, attending classes, or listening to tapes or videos. Members do not receive MCLE credit for qualified pro bono service to the courts or community.

This Resolution: Confers a limited number of MCLE participatory credit hours for members who participate in pro bono legal services projects.

The Problem: There is an urgent need for legal services to help those without the means to pay for a private lawyer. Lawyers are needed to help domestic violence and crime victims, persons with disabilities, minorities, children, and unrepresented litigants gain simple access to the justice system. We can not mandate that lawyers provide pro bono services, yet every legal organization encourages lawyers to do so. This resolution provides some incentive for lawyers to provide pro bono service by giving limited MCLE credit for time spent on pro bono matters. It is consistent, therefore, with the broader aims of the State Bar and the Judicial Council.

This resolution specifically applies to lawyers who get training in anticipation of pro bono services. It allows lawyers up to three hours of credit for pro bono services for every one hour of education in preparation for that service. While it does not address every pro bono service provider, it gives more incentive than currently exists. In addition, it links MCLE credit to education, thereby fulfilling the mission of the MCLE program. Lawyers who get the training for pro bono services will expand on that

training, and understand how their knowledge works in practice, by putting it to work in the pro bono setting.

Pro bono service often involves learning to apply one's legal skills in new and different ways, or in fields outside one's main area of practice. It often entails research into that new area. Moreover, it affords attorneys, regardless of the area of practice, a broader range of experience. Therefore, this resolution further the goals of the MCLE program by continuing the lawyer's education.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

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