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APPENDIX A

Meeting Minutes for the Workgroup to Study Continuing Legal Education (MCLE) In Maryland

APPENDIX A.1

Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ. (Md. Nov. 14, 2022) [hereinafter *MCLE Workgroup Nov. 14, 2022 Meeting Minutes*].

Workgroup to Study Mandatory Continuing Legal Education ("CLE") in Maryland

Meeting Minutes from November 14, 2022

Introduction

Judge Berger, charged with chairing the Judiciary's Continuing Legal Education Work Group, opened the November 14, 2022 meeting with introductory remarks, welcoming all the committee members and explaining the group's ultimate goal. Judge Berger commented on the thoughtful diversity of the group in terms of practice – with members representing large and small firms, solo practitioners, government lawyers, civil and criminal attorneys, judges at the trial and appellate levels, professors and law school deans, etc. -- and in terms of geography – with members hailing from throughout Maryland, from the populace Baltimore and Washington, D.C. corridors, to the further reaches of the Eastern Shore and Western Maryland, and with some members being licensed in multiple states.

Judge Berger explained that the group's mandate is to assess the potential creation of a Continuing Legal Education ("CLE") requirement for active members of the Maryland Bar. This entails discussions and analysis of the utility or urgency of implementing a CLE requirement, concerns and criticisms of such a requirement, past efforts to implement mandatory CLE in Maryland, current voluntary CLE initiatives by local bar associations and employers, and the experiences of attorneys already tasked with meeting such CLE requirements per the rules of other states in which they are licensed. Independent of any recommendation the group makes as to recommending a CLE requirement, the group will also discuss what an optimal CLE requirement might look like, from basic elements like

the number of hours needed to be dedicated to CLE and what activities may suffice such a quota, to logistical issues like how and when attorneys would report such hours, if and how an administrative body would assess CLE programming and the accreditation of CLE providers, and how CLE compliance from other states would align with such potential compliance in Maryland.

Judge Berger stressed that the goal, at least in early meetings, is to foster robust discussion of these issues. He emphasized that, much like his time on the bench at both the circuit court and the Court of Special Appeals, he aims to "keep an open mind" as to mandatory CLE and stressed that all workgroup members do the same. Judge Berger encouraged all participants to share their views and experiences regarding CLE, with the hope that any recommendation shared later with the Court of Appeals reflects the collective insights of this esteemed and well-rounded group.

From this introduction, Judge Berger had all attendees introduce themselves, with a brief note about their current area of practice, background, and/or geographic region, to help other group members match names and faces in the hopes of fostering more conversation and interaction. Many members also shared the jurisdictions in which they have been accepted to the respective state bars and are licensed to practice.

Attendees (in order of introduction)

Hon. Stuart R. Berger (Court of Special Appeals); MaryEllen Willman (Whiteford Taylor Preston); Christopher W. Nicholson (Turnbull, Nicholson & Sanders); Jamie Alvarado-Taylor (Stein Sperling); Sharon VanEmburgh (Ewing, Dietz, Fountain & Kaludis); Ryan Perlin (Bekman, Marder, Hopper, Malarkey &Perlin); Mary V. Murphy (Howard County

State's Attorney's Office); Zebulan Snyder (Law Office of Zeb Snyder); Patrice Fulcher (Office of the Public Defender); Hon. Jeffrey M. Geller (Circuit Court for Baltimore City); Dean Ronald Weich (University of Baltimore School of Law); Hon. Dana Moylan Wright (Circuit Court for Washington County); V. Peter Markuski, Jr. (Goozman, Bernstein & Markuski); Kelly Hughes Iverson (Goodell, DeVries, Leech & Damm); Angus Derbyshire (Maryland Legal Aid); Mag. Stenise L. Rolle (Circuit Court for Prince George's County); Hon. Terrence M.R. Zic (Court of Special Appeals); Ryan R. Dietrich (Office of the U.S. Attorney for the District of Maryland/Maryland Office of the Attorney General); Zachary Babo (Clerk, Court of Special Appeals); Dennis Whitley, III (Shipley & Horne, P.A.); Steven W. Rakow (Law Office of Steven W. Rakow, LLC); Prof. Leigh S. Goodmark (University of Maryland Carey School of Law); Beatrice C. Thomas (Office of the U.S. Attorney for the District of Maryland); Hon. Julie R. Stevenson Solt (Circuit Court for Frederick County); Hon. Michael S. Barranco (Circuit Court for Baltimore County).

Review and Summary of the Shared Documents

The agenda next pivoted to a discussion of the materials shared with the group members prior to the meeting. Judge Berger's clerk, Zachary Babo, reviewed the "Summary provided from data provided by the American Bar Association involving the CLE requirements of all 50 states and the District of Columbia." Mr. Babo explained that the document was compiled from information provided by the American Bar Association's brief summary of every United States jurisdiction's CLE requirement, as well as such requirements for a few neighboring jurisdictions and territories. He described the broad variance of such CLE requirements: reporting periods for CLE quota completion lasting

between one and three years; differing program or hours requirements for newly admitted attorneys compared to more senior members of each state's bar; whether 50 or 60 minutes of CLE programming suffices for an "hour;" etc. In summary, it appears the average CLE mandate requires roughly 12.5 hours of CLE programming per practitioner, per year. Maryland is currently one of only four states (Maryland, Massachusetts, Michigan, and South Dakota) and the District of Columbia that do not have a CLE requirement. Additional research showed the varying ways different states permit practitioners to meet their requirements, from traditional in-person seminars and classes, to online programming, on-demand materials, teaching CLE or law school classes, publishing scholarly work, pro bono training, in house training, self-study, etc.

Dean Weich noted that the trend of CLE requirements has grown in recent years, with 47 jurisdictions now having such a mandate, up from 40 when last assessed. Jamie Alvarado-Taylor commented that if the underlying goal of a CLE requirement is to ensure attorneys stay up to date on training and keep skills fresh, a single-year reporting period servers this goal better than a multi-year reporting period. In the former, attorneys are forced to stay current through more regular and frequent training, whereas in the latter, attorneys may forego such training for an extended period and then rush to complete it all before the close of the reporting period. Judge Dana Geller expressed similar concern, stating a three-year reporting period "seemed strange," as attorneys would likely panic at the end of the reporting period, then scramble to complete their hours, making it less meaningful. As such, a one-year reporting period seemed better. Magistrate Stenise Rolle shared her insights from her experience as a member of the Florida Bar, where each

practitioner must complete 33 hours in a three-year window. She said she had never had an occasion where she waited until the last minute to meet her requirement. Instead, over a three-year window, the ability to meet the requirement "may have ebbed and flowed, but generally it averages out." She also noted that those who did wait until the end of the reporting period regretted it. "Once you try to cram in those 30 hours with work and other life requirements, it's really, really difficult to get it."

Next, Judge Berger began discussions of the "Report of the Continuing Legal Education Committee of the MSBA regarding Minimum Continuing Legal Education (March 21, 1995)." In particular, Judge Berger discussed the 1995 committee's unanimous recommendation to the Court of Appeals to impose a 30-hour CLE requirement, with a reporting period of two years. The study determined that roughly one-third to one-half of Maryland lawyers did not participate in CLE at the time, though Judge Berger asserted he believes that number is likely smaller now considering voluntary CLE initiatives and many bar members being licensed in other states that require CLE.

Peter Markuski, Jr. liked how the 1995 proposed rule permitted at least half of the CLE hours to be completed through some form of remote learning, as well as the rule's four hours of ethics training and four hours of professionalism training. He also highlighted the administrative notice mechanism, in which attorneys who did not complete their requirements would be sent a letter, upon receipt of which they would have 90 days to comply or prove they met the hours needed. Kelly Hughes Iverson also stated the rule seemed thorough, and she expressed curiosity as to references to a 1986 CLE committee that did not recommend such a requirement and to polling data considered by the 1995

committee. Prof. Leigh Goodmark said that it seemed an extreme jump to go from no CLE requirement to one averaging 15 hours of such training in a year, noting that in the face of such a drastic swing, it was unsurprising people opposed the suggested rule.

Ryan Perlin pointed out that the 1995 committee seemed unanimous in its feeling that such a CLE mandate should exist, and so it attempted to make as accommodating a rule as possible, including self-reporting, self-attesting, policing via random audits, little explanation required from attorneys in reporting their CLE-related activities, etc. Perlin wanted to learn more about what happened to this 1995 suggestion and if such a similar fate could befall any suggestion this current group makes. Judge Berger surmised that the 1995 report did not have sufficient votes to be approved by the Court of Appeals at the time. He explained that if the current group were to recommend CLE requirements, this recommendation would go to the Court of Appeals, either through the rules committee or another avenue, where that Court would review and either accept or reject the recommendation. That Court's investigation of potential CLE requirements aligns with its current initiative reviewing several past issues once considered by the state's highest court. He noted that the 1995 proposed CLE rule was comprehensive and provided a good starting point for any recommendation made by this committee.

One particular aspect Judge Berger wished to explore more was the transferability of CLE credits from one jurisdiction to another. Judge Terrence Zic explained that at many conferences he attends, if CLE sessions are held, the conference organizers amass forms from each jurisdiction so that practitioners in attendance can simple complete and submit a form to the respective jurisdictions in which they are barred. MaryEllen Willman stated

that attorneys barred in multiple jurisdictions with CLE requirements could attend one such training session and submit forms or similar documentation to all bars of which they are members, allowing one training session to suffice the CLE requirements for multiple jurisdictions.

Implicit in such systems is that such CLE programming has been pre-approved by each jurisdiction as meeting its accreditation standards. Kelly Hughes Iverson shared insight from her time presenting at such events. She said that when her presentations are considered for CLE training, she often must submit materials to each state's body overseeing CLE administration. Those governing bodies then determine if the presentation is CLE eligible. Magistrate Rolle explained that in Florida, attorneys can submit forms from pre-approved programming and training. For sessions that are not preapproved, attorneys can fill out a form online -- including the presentation's agenda, information on the presenters, and additional relevant information -- and submit that to the state's CLE commission for potential approval of those hours to count towards that state's CLE requirement. Patrice Fulcher, who runs CLE and training programing for the Office of the Public Defender, explained that in that role she must keep track of the CLE hours for each employee. For those employees barred in other states that have CLE requirements, the OPD can provide forms and aid attorneys in tracking their hours to submit to meet those jurisdictions' requirements.

Judge Berger next discussed the 2010 editorial from the Maryland Litigator, "The Pros and Cons of Mandatory CLE in Maryland." He noted that the "anti-mandatory CLE"

perspective shared by author Skip Cornbrooks did a good job expressing the opposition side of the argument. Little further discussion came from the group regarding this material.

Lastly, Judge Berger noted that the 1984 Supreme Court opinion *Strickland v. Washington*, in which SCOTUS articulated the "reasonable attorney" standard used in evaluating ineffective assistance of counsel claims, was shared at the behest of Dean Renee McDonald Hutchins of the University of Maryland Carey School of Law. As she was not in attendance, he deferred further discussion of the opinion until a later date.

Closing the Meeting

Looking to next steps, Judge Berger explained that his chambers would prepare minutes from the meeting so that both those in attendance and those unable to attend could get a sense of the discussion and relevant issues. He explained that the rough timetable he saw for the group's work would conclude with a written recommendation drafted and submitted to the Court of Appeals by March of 2023, though he stressed that we would not rush through this process, and that we would "take time as we feel it is needed." The plan is to continue to meet online, roughly every few weeks, to advance the group's work. He explained that members should look for an email in the coming days regarding scheduling options, with the hope to set the group's next meeting for the week after Thanksgiving.

Judge Wright, Ms. Fulcher, Ms. Alvarado-Taylor, and Ms. Willman all supported the idea of March as a reasonable deadline. Ryan Dietrich asked if there were specific benchmarks or metrics we expected to hit along the way. Judge Berger shared that he did not have such explicit signposts or tasks we needed to accomplish, and that we would make such assessments as the project progressed.

Judge Berger told group members to expect to get another set of materials to review prior to our next meeting. He encouraged those group members directly tied to CLE training in their work or at organizations where they are members to share their insights as to how such training operates, how hours are tracked and vetted, the value such programming does or does not provide, etc. Looking ahead to the likely sharing of a more recent study undertaken by the Maryland State Bar Association regarding CLE, Steve Rakow, one of the authors of that MSBA report, presumed the report would be shared and asked his colleagues to read it carefully and consider how the report discusses both CLE and professional development through tools like training, pro bono involvement, scholarly writing, and other alternatives besides traditional classroom instruction.

Judge Berger then closed the meeting with a sincere thank you to all the members who attended, deeming this first session a success as to his primary goal, which was to begin fostering a learned conversation regarding CLE requirements in Maryland. He asked all attendees to take the time to review any materials shared prior to the next meeting, and again he encouraged all participants to continue to share their insights while keeping an open mind on this topic.

APPENDIX A.2

Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ. (Md. Dec. 5, 2022) [hereinafter *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*].

Workgroup to Study Mandatory Continuing Legal Education ("CLE") in Maryland - Meeting Minutes from December 5, 2022

ATTENDEES (via Zoom):

Jamie Alvarado-Taylor, Esq. (Stein Sperling); Zachary Babo (Law Clerk to Judge Stuart R. Berger, Court of Special Appeals); Hon. Michael S. Barranco (Circuit Court for Baltimore County); Hon. Stuart R. Berger (Court of Special Appeals); Angus Derbyshire, Esq. (Maryland Legal Aid); Ryan Dietrich, Esq. (Office of the Attorney General); Patrice Fulcher, Esq. (Office of the Public Defender); Hon. Jeffrey M. Geller (Circuit Court for Baltimore City); Professor Leigh S. Goodmark (University of Maryland Carey School of Law); Kelly Hughes Iverson, Esq. (Goodell, DeVries, Leech & Dann); Dean Renée McDonald Hutchins (University of Maryland Carey School of Law); Mary V. Murphy, Esq. (Office of the State's Attorney for Howard County); Christopher W. Nicholson, Esq. (Turnbull, Nicholson & Sanders); Ryan S. Perlin, Esq. (Bekman, Marder, Hopper, Malarkey & Perlin); Steven W. Rakow, Esq. (Law Office of Steven W. Rakow, LLC); Magistrate Stenise L. Rolle (Circuit Court for Prince George's County); Hon. Julie R. Stevenson Solt (Circuit Court for Frederick County); Beatrice C. Thomas, Esq. (Office of the U.S. Attorney for the District of Maryland); Dean Ronald Weich (University of Baltimore School of Law, John and Frances Angelos Law Center); Dennis Whitley, III, Esq. (Shipley & Horne, P.A); MaryEllen Willman, Esq. (Whiteford Taylor Preston); Hon. Terrence M. R. Zic (Court of Special Appeals).

MATERIALS REVIEWED:

- *Strickland v. Washington*, 466 U.S. 668 (1984).
- *ABA Resolution Adopting the Model Rule for Minimum Continuing Legal Education (MCLE),* AM. BAR ASS'N (February 6, 2017).
- *MSBA Report and Recommendation — Professional Development and the Maryland Legal Profession*, MD. STATE BAR ASS'N.
- Cheri A. Harris, *MCLE: The Perils, Pitfalls, and Promise of Regulation,* 40 Val. U. L. Rev. 359, 366¬72 (2006).
- Rocio T. Aliaga, *Framing the Debate on Mandatory Continuing Legal Education (MCLE): The District of Columbia Bar's Consideration of MCLE,* 8 GEO. J. LEGAL ETHICS 1145 (1995).

Any workgroup member wishing to review additional materials, such as law review articles read but not circulated amongst all members, may contact Zachary Babo, at zachary.babo@mdcourts.gov.

NOTES FROM WORKGROUP DISCUSSION

Introductory Comments

Judge Stuart Berger, the leader of the Workgroup, set the tone from the outset, stating the goal of this meeting was to have a less-structured, more open dialogue about mandatory CLE, using the documents shared with the group as a basis to facilitate such open discourse. In so doing, group members holding particular insight as to certain materials circulated amongst the entire body led the discussion regarding those documents.

Dean Renee Hutchins began the meeting by highlighting key passages from *Strickland v. Washington*, the 1984 United States Supreme Court case that established the precedent governing ineffective assistance of counsel. Dean Hutchins pointed out how the court specifically declined to articulate a guideline as to how the profession can ensure attorneys are sufficiently competent and learned in their practice:

> More specific guidelines are not appropriate. The Sixth Amendment refers simply to "counsel," not specifying particular requirements of effective assistance. It relies instead on the legal profession's maintenance of standards sufficient to justify the law's presumption that counsel will fulfill the role in the adversary process that the Amendment envisions.

Strickland v. Washington, 466 U.S. 668, 688 (1984). Dean Hutchins asserted that this case clearly shows "improving the profession is the burden of the profession. *Strickland* suggests this is our job." Dean Ronald Weich agreed with this framing, saying the court put the duty on the profession to ensure competency and effective representation, and "we should adhere to that charge." He added that "*Strickland* remains relevant all these years later." It is up to us to fill the gaps, Weich said, and CLE is one way to fill such gaps.

ABA & MSBA Reports on MCLE

Judge Berger next addressed the American Bar Association's Model Rule for Minimum Continuing Legal Education, adopted in 2017. The rule replaced a previous model MCLE rule put forth by the ABA in 1984. The ABA's purpose in updating and adopting the new rule was to "maintain confidence in the legal profession," and provide a template for states seeking to implement or amend their CLE provisions, as the comments incorporated in the Model Rule and in the report attached to it make clear the ABA believes CLE will make the profession more accountable, competent, forward-thinking, and able to meet clients' needs as society and the law change. The ABA Model Rule recommends a 15-hour-a-year requirement for CLE, with programming relating to mental health, substance abuse, and ethics, each warranting at least one hour of dedicated study.

Judge Berger turned the floor over to Steve Rakow and Judge Michael Barranco, who both had a hand in drafting the Maryland State Bar Association's *MSBA Report and Recommendation—Professional Development and the Maryland Legal Profession*. Steve Rakow shared some background on the report's origins, explaining that in the spring of 2020, the MSBA put together a strategic planning committee, and within this group it assembled subgroups to discuss specific issues. One such subgroup focused on mandatory CLE. The group couched CLE within the sphere of professional development. In so doing, the group focused on specific areas viewed as key to professional development, such as competency to serve clients, ability to use and navigate new technology, professional skills such as managing stress and retaining civility within the profession and amongst practitioners, and how best current and future attorneys can show their value and distinguish themselves in the legal marketplace, especially in the face of growing consumerist law products like LegalZoom. Speaking of such changing trends in the law, Steve Rakow mentioned

how MCLE programs can help deal with new attorneys coming to Maryland after taking the Uniform Bar Exam or lateralling for other jurisdictions. In such cases, programming specific to Maryland rules, law, and procedure could be beneficial. Additionally, CLE serves as a means to regulate the industry.

Steve Rakow highlighted how Maryland's Rule 19-301.1 of the Maryland Attorneys' Rules for Professional Conduct addresses "Competence." The rule recommends that attorneys seeking to stay "abreast of changes in the law and its practice [should] engage in continuing study and education and comply with all continuing legal education requirements to which the attorney is subject." Md. Rule 19-301.1 cmt. 6. Forty-six states have such CLE requirements, most mandating roughly 12 hours a year.

In terms of the specific focus of such CLE, the MSBA workgroup highlighted programming addressing issues of health, wellness, and substance abuse. Additionally, that workgroup looked at similar CLE requirements in other professions as diverse as personal trainers, certified public accountants, and doctors, noting that MCLE would likely aid public confidence in the law as it showed we sought to regulate ourselves and demand the same depth and recency of knowledge as other professionals. Discussed by Steve Rakow and within the MSBA, and a point leading to other conversation amongst the group, was the reality that few law school courses teach future practitioners some of the practical skills needed to operate as an attorney. These skills relate to technical legal processes like online filing, e-discovery, and civil and professional comportment, as well as general business concerns like how to deal with clients, how to establish an LLC or similar business entity for your solo practice, how to brand or advertise, and how to arrange and efficiently manage your "back office."

The MSBA report also incorporated insights learned over the past few years, as more CLE programs provided by the MSBA and others moved online, and how the MSBA saw a significant jump in attorneys availing themselves to such online offerings during the pandemic. Steve Rakow stressed how such online options provide tremendous flexibility to a solo-practitioner like him, and they help to lessen the financial blow of CLE, as solos can find time in their own schedule to complete their classes, thereby not sacrificing time otherwise spent on client-related work, as well as not having to pay for travel, and lodging resulting from in-person events.

Judge Barranco, who also worked on the report with Steve Rakow, added that the MSBA entered the review process regarding CLE without an agenda and did not take a position on mandatory CLE, feeling it was more appropriate for a larger body of attorneys to weigh in on such a sea change. As such, the MSBA took a "holistic approach' to reviewing issues of professionalism, and CLE's utility to that effort.

MCLE Participation, Current Offerings, and Potential Impacts on Bar Associations

From there, this workgroup's dialogue began to open as general issues within the realm of CLE were discussed. Judge Barranco shared his experience taking CLE from the MSBA -- incorporating the experiences of others attempting to fulfill MCLE requirements in other jurisdictions -- to point out issues some attorneys have in getting their MCLE participation "counted" towards their requirements. Some states are fairly flexible regarding the technical format of classes and do not distinguish between online, on-demand offerings compared to live, in-person classes, whereas others are stricter and require at least some time spent on in-person programs. He highlighted how individual legal organizations, law schools, and Bar Associations often provide compelling and useful programming in the form of traditional CLE offerings, as well as workshops and seminars.

In terms of a potential Maryland MCLE rule, Judge Barranco said, speaking as a member of the MSBA workgroup, that "our view is that it really should be a much broader thinking than what other states require . . . We believe many more types of activities should be given credit than some states allow to admit." He acknowledged that the MSBA did not attempt to think of their MCLE rule in the context of the technical, regulatory, or bureaucratic viewpoint, but instead addressed the issue "more wholistically."

This shifted the conversation to the role of Bar Associations in offering CLE programming, and how that programming is often integral to growing bar association membership. Judge Barranco flatly stated "participation in Bar Associations is good." Bar associations provide valuable experience, connection, and information. The prospect of mandatory CLE creates both challenges and opportunities for such associations. Steve Rakow concurred as to MSBA's experience providing MCLE programming and the utility of such programming for Bar Associations. He acknowledged that the MSBA gets a lot of income through CLE programs, and that "they already know how to do it, and they know how to do it well."

As dialogue opened to the rest of the group, Jamie Alvarado-Taylor added her appreciation for the emphasis on nontraditional resources for fulfilling CLE requirements. She discussed hearing sentiments from colleagues about their conundrums when seeking to potentially change their career tracks, such as moving into solo practice but feeling constrained by a lack of knowledge regarding running a business or pursuing alternative career paths. Focusing CLE on "things that help people better understand the marketplace, the business, and how to move and change careers" would be valuable to many. Additionally, programming concerned with mental health, wellness, and substance abuse is needed in a profession where such issues often exist in the shadows.

Kelly Hughes Iverson shared her insights from her own participation in many Bar Associations, noting how CLE programming is part of the "raison d'etre" of many Bar Associations and a key to growing membership. Because such groups often offer CLE for free to dues-paying members, nonmembers who take such classes quickly realize that the membership fees often pay for themselves after just a few sessions, thus growing the associations' rolls and coffers.

Dean Weich added that law schools offer many law practice management classes that may help address the concerns from those seeking to learn the "business side of law." This was needed as the marketplace for law was changing and schools attempted to adapt. He expressed skepticism as to some of the broader activities that may count for CLE credit, such as "mentoring" and "experiential learning," acknowledging they are valuable endeavors, but potentially too fungible to support the growth of competency sought by MCLE. He advised not to let CLE requirements become too loose. "There should be guardrails" to make sure it is meaningful professional development, however broadly that term is defined.

Providing the perspective of an organization that often works with attorneys doing pro bono activities, Angus Derbyshire expressed concern that any MCLE would not be structured in a way that has a "chilling effect" on such pro bono participation, because attorneys may feel burdened with new mandates or use flimsy "pro bono" activity to cover such requirements. Zachary Babo shared insight from other CLE-related periodical material he had reviewed proposing the option of allowing pro bono work to count for CLE credits, thereby providing another option for attorneys to accomplish either or both of a pro bono and a CLE mandate, while potentially creating more needed pro bono participation as attorneys could be more inclined to use this avenue to cover their MCLE requirements.

Addressing the issues of professionalism and civility, Judge Terrence Zic thought it wise to impress upon attorneys that being a "zealous advocate" does not mean having to be a "jerk," and encouraged any opportunity that could expose people to others within the Maryland legal community "in terms of how you should behave so we have a well-respected profession." He also noted the educational gap that has long existed, where students in law school are told by professors they will learn certain skills when they get to their future firms, thus those skills are not taught in law school. Nevertheless, once students enter the profession at those firms, they are at a disadvantage if they do not have such alluded to skills already. This problem becomes more pronounced in smaller firms with fewer resources to "train up" new attorneys.

Discussion of Law Review Articles

Having helped choose the pieces circulated, Zachary Babo led the discussion on the two law review articles. The Cheri Harris piece, *MCLE: The Perils, Pitfalls, and Promise of Regulation*, provided a condensed "For vs. Against" summation of many frequent issues in the MCLE debate. Noting that the piece bent towards the "in favor of MCLE" argument, it effectively categorized and highlighted key talking points on both sides regarding the most common MCLE concerns. Addressing MCLE's effect on attorneys, the "for" argument dismisses cost concerns as "the cost of doing business," and maintains that the professional benefit of networking and education, and the potential lessening of malpractice insurance, are effective trade-offs to the "against" side's complaints of exorbitant fees and ancillary travel cost outweighing ideas of MCLE's effectiveness.

Regarding mandating CLE, the "opposed" side argues that lawyers may not object to the goals of CLE but do object to adopting mandates to achieve those goals, as many already participate in CLE when and where it is the most applicable and feasible to them. The "in favor"

side argues that the purpose of a mandate is that it does not affect those who already utilize CLE and instead reaches attorneys who would not otherwise participate but should do so. In terms of regulating compliance, the "against" argument worries that a mandate makes bodies governing such a requirement even more powerful, resulting in the further cultivation of an expensive bureaucracy that entrenches interests served by the business of CLE instead of serving the goals of professional development. The "in favor" argument counters that of all the states to adopt MCLE, only one has rescinded. Further, technology, and the growing number of states adopting MCLE, has actually opened the doors of participation to more players and provided more options for lawyers. Further, states take efforts to minimize the burden by adopting flexible means to achieve MCLE credit and carving out expectations for groups.

Zachary Babo addressed a common theme touched on in the article and seen in many similar pieces, in which each side of the MCLE argument acknowledges the lack of compelling and comprehensive statistical data related to issues within the MCLE debate, such as numbers showing a growth in attorney discipline complaints or a lack of quantifiable professionalism, or trends demonstrating how once MCLE has been adopted it effects these numbers or comparing MCLE jurisdictions to optional CLE jurisdictions along such categories of data. The "against" side of the MCLE argument sees this absence of data as a glaring weakness in the other side's argument. Without such data, the "in favor of MCLE" argument cannot make a strong case that MCLE is needed or that it makes a positive impact where it is adopted. The "in favor" side looks at this lack of data and argues it means there is no statistical argument that MCLE does not work, or that it hurts the profession where it has been implemented. Further, they point to lowered rates for malpractice insurance in some MCLE jurisdictions as proof that at least the insurance industry believes mandates work.

Zachary Babo next briefly summarized the Rocio Aliaga piece, *Framing the Debate on Mandatory Continuing Legal Education (MCLE): The District of Columbia Bar's Consideration of MCLE*. This article was circulated amongst the workgroup because it provided a case study of a similar effort in the District of Columbia, in which a task force for the D.C. Bar recommended the implementation of MCLE. Ultimately, the D.C. Bar Board of Governors did not pass along a recommendation in favor of MCLE to the D.C. Court of Appeals. The piece shows that the task force sought to parse many of the same issues of this workgroup. The article also provided useful historical background regarding the growth of CLE, originating largely after World War II when concerns about public perception of lawyers and professional competence began to spread and were made more urgent by a damning law review article and speech by United States Supreme Court Chief Justice Warren Burger. The article addressed the adoption of MCLE across many states, and the unsuccessful court challenges to these mandates. The article broke down the MCLE debate in D.C. into separate buckets, one focusing on the debate regarding MCLE and lawyer competence, and the other addressing issues of MCLE and professional responsibility. Within this context, the author highlighted how CLE has been used in some jurisdictions as a disciplinary measure, where attorneys are often required to participate in CLE as a condition for their return to practice.

MCLE's Impact on Small & Solo Practice; Managing Mandates in Attorneys' Schedules

Next, Judge Berger directed the conversation to concerns regarding managing CLE requirements for solo practitioners or small law firms, where such time spent away from legal work may be more onerous, and the costs may be more burdensome. Steve Rakow shared his insights as a solo practitioner, saying he has managed to find time to carve out for CLE programming he desired to take, noting that he "really appreciate[s] the virtual opportunities"

which provide considerably flexibility to his schedule as he can take them when other work is slow or outside of normal business hours. Answering questions regarding concerns that attorneys could just "put on their CLE video and tune out," he noted how many of the online sessions he has viewed flash a code at random intervals, and require this code be submitted so that a participant can get credit for attendance. As a result, someone cannot "tune out" and still get the needed code and thus credit. He noted that physical attendance at events like Bar conferences, which he also routinely attends, makes knocking out an entire CLE requirement easier, as an entire day or weekend's worth of programming easily suffices a 10, 12, or 15-hour mandate. Steve Rakow generally expressed support for CLE programming. "I learn something every time I go to a CLE that makes me a better attorney," he said. "To me, I don't think it's hurting the practice at all."

Magistrate Stenise Rolle shared her experience from 20 years of licensure in Florida, a state that requires CLE. She noted that often her station in life and current job dictated how easily she could accomplish her requirements. As a new attorney practicing at a large firm, CLE was often paid for by the firm, who would send her to conferences and classes, often focusing on subject matter most germane to her practice. As she went into solo practice, it was much more difficult to find the time and money to attend, resulting in sometimes attending whatever was most conducive to her schedule rather than what may provide the most educational value to her practice. She agreed that creating more options for how CLE could be accomplished and shifting more of the class/instruction element online and on demand, would make things much cheaper and easier. She noted that in-person CLE adds the additional expenses of travel, lodging, and meals that again disproportionately effect small firms, solo practitioners and public interest lawyers.

Further, Magistrate Rolle thought the focus on ethics, competency, and professionalism was wise, as attorneys were already inclined to take subject-specific CLE programs relevant to

their practice, but that they may be less inclined to seek out programming for these broader topics. Attorneys need to learn the "art of practicing law," and in so doing, it will aid public confidence, ethical lapses, substance abuse, and other quandaries for the profession. She later clarified that she believed the subject-matter specific instruction on legal topics was necessary and important, but she felt it may not need to be as regulated as some of the other subject matter like ethics and professional responsibility that attorneys may not feel the same urgency towards learning. "If I am in Family Law, I am going to want to go to a Family Law CLE," Rolle said, counterposed this to not wanting to participate in a professionalism or substance abuse class if an attorney does not feel that issue is as immediately relevant to his or her practice.

Judge Barranco clarified that though the MSBA work group felt competency "should be the No. 1 priority," they did not ignore a focus on subject-matter learning. "We'd like it to be viewed as an opportunity, not as a burden." Additionally, in being flexible with options, MSBA was not trying to exclude traditional CLE, but to create more inclusive offerings. He extolled the value of the programming offered by many current Bars, such as hour-long "brown bag lunches," often held virtually now, where dynamic discussions of specific topics in the law are debated amongst participants, and much learning and connection occurs. Such programming should not be sacrificed at the altar of CLE, but instead incorporated into such a mandate. "Almost anyone can make one of those programs, attend a lunch remotely, can make it work for their schedules and take advantage." Further, he noted that Bar Associations are facing many challenges, and it was the MSBA workgroup's view that "anything that increases participation and that strengthens Bar [Associations] and encourages participation and membership is a good thing."

In a nod to the hope of maintaining this vibrant local programming, Judge Jeffrey M. Geller proposed that a CLE mandate that is less restrictive than other states would allow Maryland

attorneys to choose from more options that may cover the requirement, such as self-paced learning, at-home study and instruction via Zoom. In general, he was "more optimistic that lawyers want to be competent and want to learn," though he cautioned that he was "pessimistic that we can teach people not to be jerks."

This Groups Mandate Is Should We Have a Mandate; Next Steps

Kelly Hughes Iverson noted that this group must be wary of its specific mandate, distinguishing that our task is not to discuss the broader issue of the value of CLE; "our question is 'should we mandate CLE?'" Much of the discussion shows that a lot of useful CLE exist and is utilized by the community even without a mandate. If, however, the profession was to mandate CLE, there could be unforeseen effects. In a mandated system, where CLE offerings would have to be certified for participants to gain credit, if the certification process becomes difficult and expensive, it may actually result in limiting CLE options as providers drop out of the marketplace due to logistical or financial difficulties of obtaining certification. Attendees would also find alternative sources, as they may look for the easiest methods to "check a box," and eschew programming that can satisfy the mandate. This could have downstream effects on bar associations and their programming. Kelly Hughes Iverson noted that "there are some really good brown bags and similar programs that can just disappear if certification is too difficult."

In looking towards issues that will have to be addressed as this workgroup progresses, Judge Berger informed the workgroup that he had reached out to members of the State Board of Law Examiners ("SBLE") to obtain available data regarding Maryland attorneys licensed in multiple jurisdictions. Because such attorneys would need to worry about meeting CLE requirements in all such jurisdictions, it may be wise for Maryland to look at CLE mandates in jurisdictions with the highest cross-over with Maryland licensure. From the data provided by the

SBLE, Judge Berger shared that 5,283 applicants report one or more existing non-Maryland admissions, with the most frequent jurisdictions for such admissions being the District of Columbia (2,301), New York (1,302), and Virginia (1,018). He further relayed that he had also reached out to the Attorney Grievance Commission for data regarding the frequency of complaints and resultant disciplinary actions, and categorical data regarding those complaints, in the hopes that such data may shed light on specific areas of concern that may be worthy of consideration in making topic-specific requirements to any MCLE mandate. The Commission responded and is in the process of attempting to provide an answer to that request.

The meeting ended with Judge Berger offering an invitation for workgroup members to provide him with materials related to their in-house policies regarding CLE, both programs and trainings offered, as well as administrative apparatus regarding tracking and submitting CLE information for attorneys required to satisfy the mandates in other states where they are licensed. Jamie Alvarado-Taylor also asked if the workgroup could discuss how to keep CLE costs affordable for new practitioners, solos, and similar groups likely to face a greater financial impact from a potential CLE mandate.

From there, Judge Berger attempted to parse the workgroup members' interest in meeting prior to the late December holiday break, or just after the start of the New Year. Gaining no consensus, he informed the group a poll would be sent out to gauge availability and interest in scheduling the next meeting.

Any workgroup member interested in sharing materials regarding in-house CLE programming, administration, etc., please contact Zachary Babo, at zachary.babo@mdcourts.gov.

APPENDIX A.3

Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ. (Md. Jan. 4, 2023) [hereinafter *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*].

Workgroup to Study Mandatory Continuing Legal Education ("CLE") in Maryland - Meeting Minutes from January 4, 2023

ATTENDEES (via Zoom):

- Jamie Alvarado-Taylor, Esq. (Stein Sperling)
- Zachary Babo, Esq. (Law Clerk to Judge Stuart R. Berger, Appellate Court of Maryland)[1]
- Hon. Michael S. Barranco (Circuit Court for Baltimore County)
- Hon. Stuart R. Berger (Appellate Court of Maryland)
- Angus Derbyshire, Esq. (Maryland Legal Aid)
- Ryan R. Dietrich, Esq. (Maryland Office of the Attorney General, Civil Litigation Division)
- Patrice Fulcher, Esq. (Office of the Public Defender)
- Hon. Jeffrey M. Geller (Circuit Court for Baltimore City)
- Kelly Hughes Iverson, Esq. (Goodell, DeVries, Leech & Dann)
- Lydia E. Lawless, Esq. (Bar Counsel for the State of Maryland)
- V. Peter Markuski, Jr., Esq. (Goozman, Bernstein & Markuski)
- Ryan S. Perlin, Esq. (Bekman, Marder, Hopper, Malarkey & Perlin)
- Steven W. Rakow, Esq. (Law Office of Steven W. Rakow, LLC)
- Zebulan P. Snyder, Esq. (The Law Office of Zeb Snyder)
- Hon. Julie R. Stevenson Solt (Circuit Court for Frederick County)
- Sharon M. VanEmburgh, Esq. (Ewing, Dietz, Fountain & Kaludis, P.A.)
- Dean Ronald Weich (University of Baltimore School of Law, John & Frances Angelos Law Center)
- Dennis Whitley, III, Esq. (Shipley & Horne, P.A)
- Hon. Terrence M. R. Zic (Appellate Court of Maryland)

MATERIALS REVIEW:

- Lydia Lawless, *Bar Counsel Complaints: Background & Statistics*, MD. OFF. BAR COUNS. (presented Jan. 4, 2023), PowerPoint Presentation [hereinafter *Bar Counsel Complaints PowerPoint*].

- Patrice Fulcher, *Maryland Office of the Public Defender's CLE Policy & Training Programs*, MD. OFF. PUB. DEF. (presented Jan. 4, 2023), PowerPoint Presentation [hereinafter *OPD CLE Policy & Training PowerPoint*].

[1] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

NOTES FROM WORKGROUP DISCUSSION

Introductory Comments

Judge Stuart Berger began the meeting by acknowledging the recent holiday season and wishing everyone a Happy New Year. He then explained the format of the ensuing meeting, stating that the group would review two presentations: one by Lydia Lawless, the Bar Counsel for the State of Maryland, and one by Patrice Fulcher, the Director of Training for the Maryland Office of the Public Defender. Comments and questions were welcomed after each presentation in the hopes of spurring dialogue amongst the larger group. The meeting would then conclude looking to next substantive steps for the Workgroup. From there, Judge Berger introduced Ms. Lawless and her presentation.

Guest Presenter: Lydia Lawless, **"Bar Counsel Complaints: Background & Statistics"**

After introducing herself and thanking Judge Berger and the Workgroup for the invitation to speak, Ms. Lawless explained she was there to discuss aspects of her role litigating and investigating attorney complaints, and what insights this could provide regarding mandatory CLE. Though her presentation shared data regarding attorney grievance complaints made to the Attorney Grievance Commission, she prefaced that she would speak more anecdotally regarding her personal thoughts and opinions cultivated through her 11 years of experience in the Office of Bar Counsel and her five-and-a-half years serving as Bar Counsel.

Ms. Lawless began by sharing statistics from Fiscal Year 2022. The 42,050 active attorneys licensed to practice in Maryland represent both those located in Maryland and attorneys active elsewhere. She explained her office has jurisdiction over all Maryland attorneys, wherever they practice, as well as non-attorneys physically practicing in Maryland. Though her office is not necessarily "consumer driven," anyone can file a complaint regarding an attorney (or purported attorney), and most investigations begin with such complaints.

In FY2022, Bar Counsel opened roughly 1,600 files based on complaints regarding Maryland attorneys. Though such complaints most frequently arise from clients or their kin, judges, opposing parties, or other counsel also often register complaints. Additionally, Bar Counsel can initiate its own inquiries for any reason, often citing slip opinions or legal journalism as the genesis for such files. Further, Ms. Lawless' office also oversees any attorney who maintains an Attorney Trust Account in Maryland, and thus the office receives alerts from banks regarding any overdrafts from these accounts, typically resulting in roughly 75–100 such notifications each year, though the majority are simple bank errors.

Roughly 80 percent of these complaints or alerts are resolved at the initial inquiry level, in which the complaint will be screened and a letter sent to the attorney notifying him/her of the complaint and seeking a response. At times, correspondence will be sent to whomever filed the complaint, and the issue is resolved without further investigation or disciplinary action.

Of the complaints not resolved at the initial inquiry level, complaints are docketed for investigation, at which point a litigation attorney in the Office of Bar Counsel, as well as an investigator, are assigned. Investigators and attorneys conduct investigations, often reviewing documents, taking sworn statements from witnesses, and utilizing tools like the Office's civil subpoena power.

In FY2022, 303 complaints were docketed for investigation. Sorted by jurisdiction, investigations align geographically "primarily where attorneys are located," Ms. Lawless said, with Montgomery County and "out-of-state" producing the most complaints.[2] Separated by practice area, investigations regarding civil litigation occur most frequently, followed by criminal

[2] "Investigations by jurisdiction: Montgomery County (61), Out-of-State (49), Baltimore County (41), Baltimore City (38), Prince George's County (34), Howard County (22), Anne Arundel County (16)." *Bar Counsel Complaints PowerPoint*.

defense, with family law and attorney trust accounts not far behind.[3] Ms. Lawless noted this was "probably also not surprising," as "these areas are the most contentious."

Of those roughly 300 complaints, about 50 resolved in finding of some violation of one or more rules of professional conduct but no official discipline taken. For these complaints, Bar Counsel closes the matter by sending a letter serving as a warning or admonition, potentially with cautionary advice regarding best practices. This is often sufficient when the rule violation was not considered serious, or was not intentional, and the attorney does not have a prior disciplinary history. For more serious offenses -- but not the most serious -- a reprimand is issued; 33 of which occurred in FY2022.

Another tool used by Bar Counsel is "conditional diversion agreements," which Ms. Lawless highlights as "critically important [for the Workgroup] to understand how they're used," breaking down such agreements into two categories. Eleven such conditional diversion agreements were issued in FY2022.

The first category of conditional diversion agreements involves instances when mental health or substance abuse is the cause of the misconduct, which is often seen in matters related to negligent practice, failure to appear, and/or disorganization. In these situations, Bar Counsel works with the Lawyer Assistance Program to provide services for the investigated attorney. Ms. Lawless noted that "any discussion of mandatory CLE has to include a discussion of wellness, and sort of bringing that to the forefront, and making it a part of the discourse of the Maryland Bar."

The second category involves practice monitoring, which, Ms. Lawless said, "almost always require the attorney to engage in some sort of continuing legal education," be it a specific

[3] "Civil litigation (40), Criminal defense (32) Family law (31), Attorney Trust Account (29), Personal Injury/Workers' Comp (28), Probate (21), bankruptcy (15), Immigration (14)." *Id.*

course designed by the Office of Bar Counsel to instruct on best practices for matters like trust accounts, record keeping, general practice management, or CLE dealing with substantive areas of law. "If you're talking about continuing legal education, those are the categories that would be most effective," she said, regarding the CLE subject matter stressed in Bar Counsel practice monitoring.

Ms. Lawless next tied the investigations by her office to the Maryland Rules of Professional Conduct, stating that in FY2022, roughly one-third of the 300 investigations involved primarily allegations of a lack of competence under Rule 1.1, a lack of diligence under Rule 1.3, or a failure of communication under Rule 1.4.[4] The second biggest category of issues involved matters related to fees and attorney trust accounts, under Rules 1.5 and 1.15, respectively.[5]

Judge Berger asked Ms. Lawless her thoughts as to how and if mandatory CLE could affect such diligence and competence complaints, and if she had any sense from other states or similar bar counselors if such mandatory CLE has produced this effect. Ms. Lawless acknowledged a frequent criticism of MCLE skeptics -- that there is little available data showing a causal or corollary tie between MCLE and complaints filed with attorney disciplinary agencies -- however,

[4] "Rule 1.1. Competence: An attorney shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." *Bar Counsel Complaints PowerPoint* (citing Model Rules of Pro. Conduct (Am. Bar. Ass'n 1980)). "Rule 1.3. Diligence: An attorney shall act with reasonable diligence and promptness in representing a client." *Id.* "Rule 1.4. Communication: An attorney shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required; [k]eep the client reasonably informed about the status of the matter; [p]romptly comply with reasonable requests for information; [e]xplain a matter to the extent reasonably necessary to permit the client to make informed decisions." *Id.*

[5] "Rule 1.5. Fees: An attorney shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." *Id.* "Rule 1.15. Safekeeping property: An attorney shall hold property of clients or third persons that is in an attorney's possession in connection with a representation separate from the attorney's own property." *Id.*

"I can say that one-third of the work we do is totally preventable because it comes from communication, diligence, and competence issues." She stated such issues fall into two categories. The first category relates to the failures of an attorney in running the "business" side his/her practice – trust accounts, marketing, communication, etc. The second relates to issues involving the substantive areas of practice for attorneys, in which they fail to act with competence or diligence, and then potentially add to the problem by failing to communicate or communicating in a way the client feels disrespected or unheard, Ms. Lawless explained.

As for complaints regarding such "business" operations of attorneys, Ms. Lawless acknowledged a growing emphasis on this subject matter within law school curriculums, citing the University of Baltimore School of Law's efforts, but noted that "often the business of the practice of law is the thing that falls by the wayside," and that after law school there are few resources for Maryland attorneys to learn more on these matters. She cited examples of attorneys needing to learn how to structure fees and communicate those fees with clients, or how to draft retainer agreements, or what to do if a client is demanding the lawyer not pay things like liens after receiving a settlement.

"One of the benefits of mandatory CLE would be there would be a marketplace for [these educational offerings]," which should bolster the robustness and quality of such programming based on the increased demand flowing from a CLE mandate, Ms. Lawless said. "This is another area that would be directly impacted by the work my office does." She stressed that education and training yield benefits to attorneys and most effectively prevent future grievance issues.

Lastly, Ms. Lawless spoke of more egregious misconduct issues involving Rules 8.4(c) and 8.1.[6] These matters involve more serious violations of professional conduct involving dishonesty,

[6] "Rule 8.4(c): States that it is professional misconduct for an attorney to . . . Engage in conduct involving dishonesty, fraud, deceit or misrepresentation." *Id.* "Rule 8.1: Provides that an

fraud, deceit, or misrepresentation. Ms. Lawless noted that often such issues manifest from what may have been minor misconduct, such as failing to be honest with a client to explain a prior error and then engaging in a pattern of trying to cover up this initial error. Though certain types of dishonesty cannot be prevented by CLE, Ms. Lawless noted, "a lot of dishonesty starts with a lack of competence."

At the conclusion of Ms. Lawless presentation, she answered questions and participated in a dialogue with the Workgroup. Dean Ronald Weich asked whether she thought mandatory CLE could help reveal practitioners dealing with mental health or substance abuse issues. Ms. Lawless referred to the many studies showing attorneys suffer higher rates than other professions of anxiety, depression, and substance abuse. By mandating CLE, and mandating subject matter related to these issues, it makes such education and awareness part of the profession's discourse, potentially destigmatizing what are otherwise personal and sensitive matters, helping attorneys facing these issues feel less alone and making it easier to seek help. This could have a downstream effect of fewer complaint letters due to misconduct rooted in these issues. Additionally, Ms. Lawless discussed how attorneys interact with her office, stating that CLE could provide a resource for the Office of Bar Counsel to interact with members of the Bar so that attorneys know her office exists and what it does, and that "we're not, you know, out to get anyone," and that instead the office is often trying to provide tips and insights when misconduct issues arise.

Judge Terrence Zic returned to a subject matter he has discussed in prior meetings, regarding concerns about professionalism and attorneys walking the line between being zealous advocates "without being jerks," asking if a class could impress this message. Prefacing her

attorney, in connection with a disciplinary matter, shall not knowingly fail to respond or make a false statement of material fact." *Id.*

response by stating she would share anecdotal insights, Ms. Lawless saw such an effort to curb this hostile behavior manifesting in two ways. The first regarded the filing of complaints. "People don't file complaints when they like a person," she said. She gave the example of an attorney who makes an error and then immediately apologizes and cooperates transparently with a client to resolve the issue. Such an attorney is less likely to have a complaint filed against him/her than an attorney who reacts poorly to an error or disagreement with the client, avoids or dismisses a client, and makes matters worse. Further, she mentioned how someone going around being a "jerk" to clients, opposing counsel, or judges, creates numerous people who may be eager to file complaints against such a malcontent. Second, more civility in the profession "might go a long way to improving the image of the professional," she said.

Steve Rakow noted that the American Bar Association recommends 15 hours of CLE, while most states require 12, with some portion spent on ethics training. He asked if Ms. Lawless had thoughts on these hours or subject matter requirements. Ms. Lawless first acknowledged that "I think [such recommendations are] probably above my pay grade," but that she is "a firm believer that mandatory CLE is a benefit," and that "the ethics piece of it certainly should be a large piece of it." She demurred to Workgroup member Dennis Whitley III, who is a member of the Attorney Grievance Commission and could share more insight on potential subject matter. "I think that attorneys should be trusted to take the courses that would benefit them the most," Ms. Lawless said, noting that substantive training, substance abuse awareness, or basic business practices like running trust accounts and keeping a calendar, all would be "extremely valuable."

Mr. Rakow further asked if the Office of Bar Counsel would be willing to help put together CLE materials or course offerings, to which Ms. Lawless enthusiastically responded, "yes, my office would be interested in developing more CLEs." She noted the office may need additional resources to develop such programming and highlighted jurisdictions like Washington, D.C., that

developed "a really professionalized sort of practice assistance program for attorneys that includes specifically attorney trust account training. … My office would be happy to do that," noting they already provide some of that training to attorneys in various ways.

Zachary Babo asked about CLE's potential impact on professional reputation, noting that because the Office of Bar Counsel interacts with the public this often means dealing with people angry at lawyers and distrustful of the professional overall. Noting "this is just my personal feeling," Ms. Lawless explained that part of her office's job was to protect the public through regulation of attorneys, but part of it was also to protect the reputation of attorneys by sending a public message of what is or is not appropriate professional behavior for Maryland attorneys. Mandatory CLE makes a statement about what the profession values are, she said. Not only do we, as a profession, value going to law school, passing the Bar, having the requisite character and fitness to practice law, she listed, but we also value maintaining professional excellence. "I think [mandatory CLE is] a value statement," Lawless said. "It really would pair seamlessly with the stated purpose of attorney regulation."

***Presentation: Patrice Fulcher,* "Maryland Office of the Public Defender's CLE Policy & Training Programs"**

Judge Berger next introduced Patrice Fulcher, the Director of Training for the Maryland Office of the Public Defender ("OPD"). Already a member of the Workgroup, Ms. Fulcher offered to share her experience and insights from developing, implementing, and administering training programs for the OPD, including the office's CLE offerings.

Ms. Fulcher began by connecting the OPD's utilization of CLE with the organization's mission statement, to provide "justice, fairness, and dignity" when delivering client-centered legal advocacy. Further, CLE cultivates the OPD's core values of diversity and inclusion, tenacious advocacy, building a culture of excellence, and being united in this mission. "[Requiring

continuing legal education] allows us to maintain a culture of excellence by providing the highest standards of legal representation and professionalism for the clients and communities that we serve," Ms. Fulcher said.

Ms. Fulcher pointed to both the American Bar Association ("ABA") Code of Professional Responsibility and the Maryland Rules of Professional Conduct that require attorneys to provide "competent representation" to clients. "Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for representation." Md. Rule 19-301.1. Ms. Fulcher stated that CLE "helps us to fulfill our requirement, our ethical requirement of having attorneys that are ethical and competent to practice" under both these ABA and Maryland guidelines. She explained the OPD's CLE policy has been in place for 10 years and adherence is required of all in-house attorneys, as well as panel attorneys hired to take the overflow cases.

From here, Ms. Fulcher explained the details of the policy. OPD attorneys may obtain their CLE hours by participating in programming offered by the OPD training division, approved web-based training, pre-approved training from organizations outside of the OPD, or instructing CLE training sessions. Attorneys can claim no more than six hours from instructing. Ms. Fulcher noted that the COVID-19 pandemic resulted in the OPD allowing attorneys to spend more CLE hours utilizing web-based programming, so long as such programming is preapproved. She said many attorneys accomplish their hours using the training division's offerings, often hitting their quotas during onboarding/hiring training or at annual conferences. While attorneys can go outside the organization for their training, often paying a fee to do so, all in-house training is offered free of cost. Ms. Fulcher said the in-house offerings are robust, as the OPD wants "to make sure that we provide enough training within the training division, within our various agencies, so that they can get their hours for free within our agency." Ms. Fulcher said, through a chuckle, since the OPD

requires these hours, it wants to ensure there are ample, costless ways to achieve them, as "you know our attorneys are not in it for the money."

In terms of specific requirements, the OPD uses a one-year reporting period, in which attorneys must complete 12 hours of CLE, and supervisors must complete 14 hours. Ms. Fulcher later explained that in establishing these benchmarks, she largely borrowed from the CLE mandates of Georgia, her former state of practice. Attorneys may carry over up to six hours of CLE from one year to the next.

Of the 12 hours required for attorneys, two hours must relate to ethics, and two hours must relate to diversity, equity, and inclusion ("DEI"). For the 14 hours required of managers and supervisors, two hours must relate to ethics, four hours must relate to DEI, and three hours must relate to management or supervision. For both categories of employees, all other hours must come from preapproved courses relating to practice relevant to working for an organization primarily handling criminal defense; no other legal subject matter may suffice. Ms. Fulcher noted this still permits a broad array of topics to pursue, as OPD attorneys include both criminal defense practitioners, as well as those defending parental rights, immigration, and juvenile justice, permitting aspects of civil law to count towards the requirements. As an example, she noted that attorneys attempting to study a subject like real estate law would not see those hours qualify for credit for CLE. Further, though attorneys may carry over six hours from a prior reporting period, carry over DEI and ethics hours count towards the next reporting period's general requirements, but an attorney would have to obtain new ethics and DEI hours in that new reporting period as well.

Though OPD attorneys do not have to meet these requirements as a prerequisite to remaining licensed, the OPD considers an attorney's adherence to this CLE protocol in employee evaluations and when considering promotions. Non-compliance may be the basis for disciplinary

action, Ms. Fulcher said. For panel attorneys, non-compliance may result in removal from the panel.

In terms of the logistics of reporting, staff attorneys in the OPD track their hours using a G-Suite Google form, which includes a specifically programmed spreadsheet that calculates hours and accounts for carry-over hours. Though attorneys have the full year to complete their required hours, supervisors are updated quarterly as to the CLE progress of each attorney they oversee. Panel attorneys use a SharePoint form to submit hours. To track participation in programs offered, the OPD requires sign-in sheets and registration forms for in-house programming, and certifications of completion for outside training. All such forms are electronically stored.

For attorneys licensed in states other than Maryland which have CLE requirements, this collection method allows the OPD to provide the needed information to those other jurisdictions, including descriptions of all in-house training offered in case another state requires such information to bestow the CLE credits required. The CLE reporting platform allows the training division to produce letters and forms documenting CLE requirements needed for other states. Ms. Fulcher said she does not recall having any state turn down the CLE hours recorded by OPD attorneys, and that most states accept what the OPD training division submits on behalf of attorneys.

Regarding specific training programs, Ms. Fulcher explained that new attorneys are hired as part of a "class" in the spring and fall seasons, and entire classes participate in Gideon's Promise training as they enter the OPD. Gideon's Promise is a program founded and run out of Georgia specifically designed to create zealous, client-centered public defenders. Unique to Maryland is that the OPD was the first agency in the country to create a Gideon's Promise Certified Public Defender Training Program in-house, thus obviating the need to send OPD entry-level attorneys to Georgia for such training. This training easily suffices CLE requirements for new OPD lawyers,

as it takes place over 10 days (2 weeks), from 8:30 a.m. until 5:00 p.m. each day. Attorneys learn the Maryland rules regarding procedure, ethics, and state law, as well as trial skills, DEI competency, and mental health awareness. Ms. Fulcher noted that the OPD Mental-Health Division instructs attorneys in how to represent clients with mental health issues, as well as introduces these new attorneys to members of the Maryland Lawyer Assistance Program and the services available to attorneys navigating their own mental health or substance abuse issues. "We constantly focus on the mental health of our lawyers," Ms. Fulcher said.

Following this initial two-week program, incoming attorneys also receive a day of specialized training related to specific areas of practice requiring unique skills: district court, juvenile justice, or parental defense. After this onboarding training, attorneys from each "class" return for two days of training every six months for the first three years they remain in the OPD. This schedule adheres with the goals and rigor of the original Gideon's Promise program created in Georgia. "We believe," Ms. Fulcher said, "once you stop learning you start dying."

Following this three-year training period, as attorneys at OPD progress in their careers, they may take part in in-house advanced training courses, such as advanced jury trial training, Ms. Fulcher explained. Further, the OPD runs an annual conference in Ocean City, Maryland in which more than 50 training sessions are offered to all OPD employees, both attorneys and other staff, as well as to panel attorneys. Additionally, OPD attorneys may participate in specialized summits on specific topics, such as juvenile defense, mental health, immigration, or specialty courts, often organized or operated in partnership with national organizations. Participation in these programs may provide opportunities for additional certifications.

The OPD Training Division also provides a bevy of additional CLE opportunities by relying on the organization's structure and the expertise of its personnel. Leadership training and structured mentorship programs, including training in how to be a mentor, are available to

supervisors and staff attorneys. Because the OPD is large enough to have so many specialized units in-house, office-wide virtual training conducted by units like the Forensics Division, or the Appellate Division, exist alongside additional DEI, wellness, and social work offerings. Panel attorneys may avail themselves to structured training programs and may attend the annual conference at a reduced rate.

Within each of the 12 districts of OPD offices across the state, inner office brown bag lunches provide an easy and frequent opportunity to participate in CLE with peers. A CLE representative within each office will report to the Training Division regarding these sessions so that any CLE credit may be approved beforehand. Participating attorneys may then submit forms through the office's G-Suite interface to claim credit for these hours.

Attorneys with sufficient experience may apply to join Advanced Litigation Training, a four-day program for "first chair" attorneys practicing in the various circuit courts throughout the State. From there, attorneys progress to a two-day "bring your own case" training with trial teams. Attorneys bring cases they have been assigned and work with experts within the agency on those cases. The OPD also provides membership access to online training and national conferences conducted by the National Association for Public Defense and other organizations.

Ms. Fulcher highlighted that because of this frequent and collaborative training, the professionalism training (i.e., "not being a jerk") occurs somewhat implicitly. Attorneys work with colleagues and see the value of collaboration and teamwork. Nearly all training is directly client centered. Attorneys see how respect and decorum are needed in interactions between attorneys, between attorneys and clients, and between attorneys and the valuable support staff. "We're big on ethics," Ms. Fulcher said; "we're big on professional communication."

At the close of Ms. Fulcher's presentation, Judge Berger thanked her for the comprehensiveness of both the materials she shared and the training provided by her office.

Several Workgroup members complimented Ms. Fulcher on the robust nature of the OPD's CLE offerings and the areas of focus and values espoused by the program, with many members saying this was as impressive as offerings they had seen anywhere else.

Turning to questions from the rest of the Workgroup, Zachary Babo asked Ms. Fulcher about how her office handles the logistics of providing CLE reporting for attorneys licensed in jurisdictions that require meeting a quota of CLE hours each year. For OPD attorneys who are barred in jurisdictions like Virginia or Pennsylvania that require MCLE, how does the office aid those attorneys in tracking and submitting necessary documentation to suffice these mandates?

Ms. Fulcher explained that attorneys are told from the start of their employment that if they are licensed in another jurisdiction that requires CLE credit hours, they can send the requirements and any documentation needed to the training department, and from there the department can produce a typed letter and verifying documents and send them to the relevant organizations in those jurisdictions. "We keep track and maintain everything just for that purpose," Ms. Fulcher said, stating it is rare for these other jurisdictions to protest or take issue with any such verification provided by the OPD.

After complimenting the scale of OPD's program and noting how thoroughly it has grown since his time working at the organization, Judge Jeffrey Geller asked for more content specifics regarding topics covered during the DEI and ethics training. Ms. Fulcher explained the programming focuses on ethics requirements and relates them to aspects or categories of client-centered representation. As an example, she highlighted immigration training, in which it is explained the consequences of certain actions or decisions relating to immigration status and other issues parallel to the potential criminal matter faced by that client. For DEI, topics might address attorneys exploring how to raise and navigate issues of race within your cases, or how to talk about

the cultural competence of juries. Ms. Fulcher cited an example of a judge misgendering a client, and how this can harm a client and affect their legal representation.

Judge Zic complemented the training and highlighted how the professionalism focus, and the emphasis on teamwork and respecting the entire staff, goes a long way towards teaching "not to be a jerk."

Sharon VanEmburgh asked about the timing and reporting requirements, seeking more clarification on the quarterly hours tracking and the yearly reporting period to complete the requisite hours. Ms. Fulcher explained the quarterly tracking was for supervisors and attorneys to stay aware of the hours they have completed and what they have left to finish. Ms. Fulcher explained that some attorneys do wait to the last minute, or need reminders, but this is not a widespread issue. She said often it is the same attorneys who may be disorganized or who push deadlines are the ones who struggle to complete their CLE hours by deadline as well.

Kelly Hughes Iverson asked about how attorneys can choose or access the additional trainings not already scheduled from them as part of their initial three-year program. Ms. Fulcher said that the additional CLE offerings are "set out just like a cafeteria option, and attorneys choose whatever works for them, or is part of their employment with OPD" when a specific session is required within their respective division or unit. As an example, she spoke of a situation where an attorney in the Appellate Division may have to attend a training regarding a recent change in the law that would be essential to know in their practice.

Ms. Hughes Iverson followed up asking about the interactions regarding training for panel attorneys compared to those in-house, and potential problems completing required CLE hours. Ms. Fulcher explained that panel attorneys were previously required to complete just a general 12-hour CLE requirement, but the new Maryland Public Defender, Natasha Dartigue, changed this policy so panel attorneys must meet the same requirements as staff attorneys in terms of ethics and

DEI training. Ms. Fulcher said there is a little more pushback from panel attorneys than those on staff, noting even panel attorneys are paid modestly and are not compensated for their training, but that they still participate because "they still want to take cases." She said the additional online and virtual offerings provide the best opportunities for panel attorneys to complete their hours. "It's just a matter of offering it more and making it more like videos, easy, accessible," Ms. Fulcher said. There is training specifically for new panel attorneys, though it is not as in depth and structured as there is for new agency hires. Regardless, all training ties back to the core values of the OPD.

Jamie Alvarado-Taylor asked if Ms. Fulcher could expound on any potential trends she had seen in habits of reporting hours completed, patterns of training, and how attorneys use the system and attain their hours. Ms. Fulcher explained the trends are specific to individual employees. New hires easily accomplish their hours requirements within the first two weeks, and again every six months during follow up training sessions. "They're constantly being trained," Ms. Fulcher said. Attorneys who have been with the office longer actively want to participate in the advanced training, stay abreast of advances in the law and training, and get promoted, providing ample motive for them to stay on top of training as well. The people who wait until the last minute to meet their CLE requirement are the people that wait until the last minute to do everything, Ms. Fulcher said. She explained that the twelve-hour requirement is easy to accomplish by just doing one or two training sessions a month.

"As a lawyer, it's all pedagogical as well, because if you're not making deadlines, if you don't know how to follow instructions," then the same issues you have finishing CLE requirements will manifest in other places, Ms. Fulcher said. "I think it pushes the idea of competency and following the rules and being, you know, ethical lawyers that we're looking for."

Concluding Remarks

At the close of the discussion following Ms. Fulcher's presentation, Judge Berger thanked her for sharing the materials and thanked the Workgroup for the productive and engaged conversation after both presentations. He then turned to look towards the next meeting for the Workgroup, setting out the goals of that upcoming session.

"I would really like at the next meeting, for all of us to weigh in, based on what we've read, what we thought, what really are our individual and then perhaps collective thinking is as to whether or not mandatory CLE, for all attorneys in Maryland, is something that we should recommend for the Supreme Court of Maryland[7] to consider," Judge Berger said. "Depending on that, then that'll dictate really where we go from there."

After addressing this key issue, the next steps will be to examine how to implement a potential mandatory CLE rule, Judge Berger explained. He informed the group he would send out a new scheduling poll with many options for the next meeting, with the intention of scheduling another meeting before the close of January. Knowing the Workgroup sought to address this preliminary issue regarding whether to recommend mandatory CLE or not, Mr. Babo offered all Workgroup members the opportunity to reach out to him directly if they would like to review any additional aspects of research, compiled by Mr. Babo and Judge Berger but not circulated with the entire Workgroup, prior to the upcoming meeting.

In terms of looking to next benchmarks, Ryan Dietrich asked what kind of work product the group planned to produce. Judge Berger explained this was somewhat fungible, and that it will be up to the Workgroup to determine the type of work product the workgroup wishes to compile.

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[7] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

Regardless, the report and recommendation will be drafted by his chambers and circulated within the group. Such a document would eventually be presented to the Supreme Court of Maryland for the Justices to evaluate and determine what, if any, next steps to take regarding potentially implementing mandatory CLE for all attorneys in Maryland.

With that, the meeting closed, shortly after 5 p.m.

APPENDIX A.4

Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ. (Md. Jan. 24, 2023) [hereinafter *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*].

Workgroup to Study Mandatory Continuing Legal Education ("CLE") in Maryland - Meeting Minutes from January 24, 2023

ATTENDEES (via Zoom):

- Jamie Alvarado-Taylor, Esq. (Stein Sperling)
- Mr. Zachary Babo (Law Clerk to Judge Stuart R. Berger, Appellate Court of Maryland)
- The Hon. Stuart R. Berger (Appellate Court of Maryland)
- Ryan R. Dietrich, Esq. (Maryland Office of the Attorney General, Civil Division)
- Patrice Fulcher, Esq. (Office of the Public Defender)
- The Honorable Jeffrey M. Geller (Circuit Court for Baltimore City)
- Kelly Hughes Iverson, Esq. (Goodell, DeVries, Leech & Dann)
- Professor Leigh S. Goodmark (University of Maryland Carey School of Law)
- V. Peter Markuski, Jr., Esq. (Goozman, Bernstein & Markuski)
- Mary V. Murphy, Esq. (Office of the State's Attorney for Howard County)
- Christopher W. Nicholson, Esq. (Turnbull, Nicholson & Sanders)
- Ryan S. Perlin, Esq. (Bekman, Marder, Hopper, Malarkey & Perlin)
- Steven W. Rakow, Esq. (Law Office of Steven W. Rakow, LLC)
- The Hon. Julie R. Stevenson Solt (Circuit Court for Frederick County)
- Zebulan P. Snyder, Esq. (The Law Office of Zeb Snyder)
- Beatrice C. Thomas, Esq. (Office of the U.S. Attorney for the District of Maryland)
- Sharon M. VanEmburgh, Esq. (Ewing, Dietz, Fountain & Kaludis, P.A.)
- Dean Ronald Weich (University of Baltimore School of Law, John and Frances Angelos Law Center)
- MaryEllen Willman, Esq. (Whiteford Taylor Preston)
- The Honorable Terrence M. R. Zic (Appellate Court of Maryland)

MATERIALS REVIEWED:

- Zachary Babo, *A Brief Summary of Arguments "For" and "Against" Mandatory CLE*, App. Ct of Md. (presented Jan. 24, 2023), PowerPoint Presentation.
    - [*Text of PowerPoint Presentation may be found in Appendix 1*.]

NOTES FROM WORKGROUP DISCUSSION

Introductory Comments

Judge Berger opened the meeting wishing everyone a good afternoon and thanking the Workgroup members for attending. He began his remarks with an informal progress report for the Workgroup, noting that so far "we've had three very productive meetings" in roughly two months, "so I think we're proceeding at a deliberate but appropriate pace." He noted that the past meeting, held on January 4, 2023, was "particularly enlightening." Judge Berger highlighted Bar Counsel Lydia Lawless joining the work group to discuss the attorney grievance process and the ways mandating continuing legal education could address some of the issues she sees as recurring problems for attorneys who become the subjects of disciplinary reviews and complaints. He also praised Patrice Fulcher, the Director of Training for the Maryland Office of the Public Defender ("OPD)", who shared a presentation walking the Workgroup through her office's "very comprehensive internal CLE program."

Judge Berger then shifted to address the intentions of the current meeting, as well as the two-fold charge with which the Supreme Court of Maryland tasked this Workgroup. First, the group's task is to make a recommendation to the state's high court regarding "whether Maryland should establish a CLE requirement for members of the Maryland Bar." Second, and somewhat independently of the group's recommendation as to the first question, is for the group to propose "what should such a CLE requirement entail, including technical aspects of the requirement."

As noted in the agenda for the current meeting, Judge Berger stated that the goal for today was to take a "preliminary vote," as to where the group stands regarding the first question, "whether to recommend a CLE mandate for attorneys in Maryland." He then explained that in today's meeting, we will begin with a brief PowerPoint presentation assembled by Judge Berger's

clerk, Zachary Babo, briefly summarizing the major points of the "for" and "against" arguments of mandatory CLE. Judge Berger said the purpose of the presentation was to "stimulate the conversation, because what I really want is for you all to chime in with your thoughts." Following a hopefully robust discussion, Judge Berger stated that the meeting will close with the preliminary vote. From there, Judge Berger ceded the floor to Mr. Babo for the presentation.

Presentation: "A Brief Summary of Arguments 'For' and 'Against' Mandatory CLE"

Mr. Babo prefaced the presentation by stating that he aimed to move quickly through the slides, not repeating all the text they included, focusing on the "broader strokes" of the "for" and "against" arguments regarding a CLE mandate, as most of these points had previously been discussed either in prior meetings or through materials shared and circulated with the Workgroup. In the interest of brevity, the text from the presentation has been duplicated in Appendix 1 attached to these minutes. Accordingly, a summary of his remarks has been omitted from the minutes.

Open Discussion - Whether to Recommend a CLE Mandate for Maryland

Following the presentation, Judge Berger resumed his role as steward of the meeting and opened the floor to questions and comments from Workgroup members. Commenters were called on in the order with which they utilized the "raised hand" function on Zoom, with deference to members who had yet to address the group. Though the meeting's focus remained on whether to recommend mandatory CLE, the discussion showed how concerns about such a mandate would operate were difficult to separate from whether such a mandate should exist.

Amongst both supports and skeptics of a CLE mandate, similar refrains about the value of CLE, the need to ensure baseline levels of competence, the ability to ensure study in certain overlooked topics not otherwise part of traditional legal education, and aligning with other jurisdictions and similar professionals, were often entwined with a competing chorus of cost

concerns, disproportionate impacts on certain practitioners, accreditation of CLE providers, and a lack of data showing the efficacy of a CLE mandate. Judge Berger noted "those are legitimate concerns, both regulatory and administrative, and whether or not" certain groups already providing CLE would be "grandfathered or credited." He said that these would be topics to be addressed as the Workgroup shifts focus to the second part of the mandate, involving the logistics of how a CLE mandate in Maryland would function.

Open Discussion – Comments Regarding Implementation of CLE

Steve Rakow stated he was in favor of mandatory CLE and surmised most attendees of the Workgroup meeting are also in favor of the mandate. However, Mr. Rakow proposed a potential incremental approach, akin to Maryland's pro bono requirement for attorneys.[1] Currently, though Maryland attorneys do not need to complete a certain benchmark of pro bono hours each year, they must submit the hours they did complete to the state, who tracks these figures. In adopting mandatory CLE, Mr. Rakow proposed that the Maryland could take a similar approach, in which it would not be a mandate to start, but attorneys would have to track their CLE hours and submit a report to the State reflecting these figures. "It seems to me we could collect a lot of data doing something along those lines for the next two or three years, where we say, 'it's not mandatory, but you have to self report,'" Mr. Rakow said, "and then we see where people are doing it."

In so doing, he proposed that any eventual "mandate" would be lenient regarding what would be acceptable to count for CLE hours – permitting teaching, legal writing like books or articles, "or any of those other things that we're going to say are part of CLE." The goal in this

[1] "An attorney has a professional responsibility to render pro bon publico legal service." Md. Rule 19-306.1(a). "An attorney in the full-time practice of law *should aspire* to render at least 50 hours per year of pro bono publico legal service, and an attorney in part-time practice should aspire to render at least a pro rata number of hours." Md. Rule 19-306.1(b) (emphasis added).

approach would be to use this lenient self-reporting period to see where and how attorneys are spending their CLE hours, he said. Using this data, Maryland could more appropriately craft a mandate that considers established patterns of CLE participation. He further noted his own familiarity with the CLE mandates of Ohio, where Mr. Rakow is also licensed, saying it is useful to look to those jurisdictions for insight as to how they operate CLE. "I don't think we have to reinvent the wheel," Mr. Rakow said. "I think a lot of how those other states are collecting input is something we are just going to have to adopt rather than starting from scratch."

Jamie Alvarado-Taylor also speculated on the potential implementation of a "ramp up" period, with the requirement for CLE hours increasing with the number of years an attorney is barred, and the ramp up could include forgiveness. "This is an opportunity for us to design that perfect way that [a CLE mandate] can ramp up," she said, "and can be successful and take into account all of these concerns and the costs and things like that."

Ryan Dietrich stated that he was in favor of mandating CLE in Maryland, "but it all comes down to the logistics and the specificities of it." He said that when he casually discussed his involvement with the Workgroup with other attorneys, most of that audience was opposed to mandatory CLE. "I interpret that as they just didn't want to deal with the logistics of it and the effort they would have to put into it," Mr. Dietrich said. "So, I would say that my concern in terms of getting to 'Yes,' would be how easy we make it, and how seamless we make it from sort of what people are doing now" to what will be required of them with a mandate. He proposed looking at organizations like the OPD or the MSBA, with already robust CLE offerings, and giving them presumptive status, as approved CLE providers under a mandate ("presumptive providers"). In later comments, Mr. Dietrich stated his particular vision as to an MCLE mandate would "basically

have this law mandate what people are already doing and move seamlessly to allow existing providers to continue to provide and continue to get credit for the CLE they're providing."

"I'm a proponent of mandatory CLE," said MaryEllen Willman to open her comments. "I think it's a great idea. I think 46 states [currently requiring mandatory CLE] can't be wrong." She spoke of her perspective regarding the perceived burden of such a mandate, based on her experience being licensed in Virginia and needing to comply with that state's CLE requirement. "It's just something you do; it's very easy to comply with," she said, stating that a 12-hour requirement works out to a "a lunch hour per month. It's actually easier to comply because of all the video and webinar offerings now, thanks to COVID, so it's really not a burden. . . . It may seem like a burden to people who have never had to do mandatory CLE, but it sounds like most of the folks here are doing CLE anyway."

Mr. Babo responded to a prior point made by Ms. Willman, who wondered if any state had mandatory CLE and then ended the requirement. Mr. Babo highlighted Michigan as the only such state he was aware of to rescind its CLE requirement. Also, as evidenced by a previously shared law review article, a task force of District of Columbia Bar members tasked with exploring mandatory CLE recommended such a mandate only for the D.C. Bar Board of Governors to reject the recommendation.[2]

Sharon VanEmburgh said she currently sat "in the camp" of being in favor of mandatory CLE, "but only if it's done in a way that's convenient and flexible." She suggested any such rule must permit options like online offerings, self-study, and credit for teaching. "I think we just have to be as flexible as possible and make it as convenient as possible and not be too onerous," she

[2] *See* Rocio T. Aliaga, *Framing the Debate on Mandatory Continuing Legal Education (MCLE): The District of Columbia Bar's Consideration of of MCLE,* 8 Geo. J. Legal Ethics 1145 (1995).

said, "and in that context, I would be in favor of it." She voiced approval for the idea put forth by Mr. Rakow, regarding "doing this in an incremental way . . . before the mandatory part kicks in," similar to how the State currently handles pro bono work.

Open Discussion – Comments Regarding CLE Providers and Current CLE Offerings

Ms. Fulcher stated if it was not already obvious following her thorough presentation during the prior meeting regarding the OPD's CLE offerings, she and her office are "big on CLE," and her prospective vote would be to have a mandatory CLE requirement in Maryland.[3] But her chief concern about such a mandate would be how it might affect her office's current efforts to provide such training to its staff. "Since we have been a CLE provider for our office, can we maintain that status, and how cumbersome would that be?" Ms. Fulcher asked. She noted that in most states with CLE mandates, for organizations to provide CLE that allows participants to count those hours towards their respective requirements, the organizations have "all these hoops you need to jump through." She asked whether, since her office has been doing such instruction for more than ten years, would organizations like hers be able to "waive in as a CLE provider?" This would be a primary concern for organizations like the OPD, where attorneys are more modestly compensated, so being able to attain such CLE hours in-house is crucial, she said.

Additionally, Ms. Fulcher asked if a CLE mandate would force other changes, like requiring Maryland attorneys to "have membership into the bar," as is the practice in some states, where attorneys must become members of the state bar and that bar monitors CLE participation.

[3] *See* Patrice Fulcher, *Maryland Office of the Public Defender's CLE Policy & Training Programs*, MD. OFF. PUB. DEF. (presented Jan. 4, 2023), PowerPoint Presentation [hereinafter *OPD CLE Policy & Training PowerPoint*]; *see also Workgroup to Study Mandatory Continuing Legal Education ("CLE") in Maryland – Meeting Minutes from January 4, 2023*, APP. CT. OF MD., at 9–17 (distributed Jan. 10, 2023).

She noted that currently Maryland attorneys pay a fee to the State Bar, but they are not required to be Bar members.

Mr. Rakow noted the "robust CLE programming" offered by the Maryland State Bar Association ("MSBA").[4] He shared that in his involvement with the MSBA's Budget and Finance Committee, the MSBA has discussed increasing dues to get ahead of a potential CLE mandate and have the resources needed to address potential growth in CLE participation. He noted that the MSBA would not be a "sole provider" of CLE offerings in the State, but they would continue to offer robust options.

Kelly Hughes Iverson noted that there seemed little dispute about that "well-chosen and well-produced CLE has tremendous benefit to the bar and to the individuals who take it," she said. She became more troubled, when reviewing the "pros" and "cons," about the impact of a mandate. From the perspective of someone who comes from a large firm that does some in-house CLE programming focused on specific topics germane to the practice areas of attorneys in the firm and designed to address those topics as the law changes or firm personnel need additional training, Ms. Iverson was concerned that the firm would not go through the administrative paperwork needed to have such offerings qualified as fulfilling a CLE mandate. If that is the case, then when young associates are asked to participate in such training, they may rebuff the opportunity as the coursework would not fulfill their CLE hours requirements. Speaking from the perspective of such a hypothetical young associate facing this dilemma, Ms. Iverson said that between trying to get work done and motions filed, "I'm not going to give up my time to come to your very

[4] The Maryland State Bar Association is a professional organization for Maryland attorneys, but it is not a regulatory body or branch of state government involved with the licensure of attorneys in Maryland.

educational programming that doesn't count for anything when I still have to go pay; I've got to get my 12 hours somewhere else."

Responding to concerns about organizations becoming qualified to provide CLE instruction, MaryEllen Willman noted that because of the ubiquity of mandatory CLE in other jurisdictions, there are so many providers out there, and "it's very easy to find CLEs in your practice area." She also noted that a CLE requirement focusing on certain subject matter could create "the opportunity to provide information that's not readily available out there, particularly in areas of mental health issues, DEI, and the business of law."

Open Discussion – Comments Regarding Specific CLE Subject Matter

Ms. Fulcher stressed the value and importance of a mandatory CLE rule that would make sure to mandate courses in ethics as well as diversity, equity, and inclusion ("DEI"). "Having attorneys who are familiar with issues of [DEI], as it affects our legal profession," should be a requirement to any potential CLE rule, she said. Such subject matter is paramount in the OPD training administered by Ms. Fulcher. "If you allow people to continue to take whatever CLEs they want, certain CLEs will not be done, like ethics," Ms. Fulcher said, stating subjects like ethics and DEI are essential, but not otherwise taught or impressed upon lawyers, and thus would need to be mandated.

Ms. Iverson expressed concern about making any such mandate too lenient, which would ultimately dilute its purpose. If the goal is to stress particular topics, such as ethics classes, making a CLE rule too easy to comply with may result in no beneficial training occurring. She said that due to her concerns, she remained on the fence regarding recommending a mandate be adopted by the State. "I think CLE is wonderful. I love to attend it. I put some [CLE programming] on," she said. "It's just the mandate that troubles me a little bit."

Ms. Iverson asked about any states that might have a CLE requirement just pertaining to ethics, or diversity, equity, and inclusion training, but nothing else. The trend nationally is to have some CLE-hour threshold -- typically 12-15 hours a year -- and a lower threshold within that for specific subject matter -- for example, two hours of ethics, or two hours of professionalism, etc. Mr. Babo responded that, in the research he had conducted, no state simply requires a few hours of a specific topic, and then nothing else. All either require some specific subjects and then more hours, or just a general hours benchmark that is not subject specific.

Open Discussion – Comments Regarding the Lack of Data Supporting CLE Mandates

Zeb Snyder voiced some of the clearest opposition to *mandatory* CLE. "I am not opposed to continuing legal education," Mr. Snyder clarified, noting he had taken more than 50 hours of such courses in the last year and remains dedicated to learning. "I'm against the requirement, because I feel as though it is a solution in search of a problem." He pointed to prior statistics showing that although 75% of Maryland attorneys already do CLE, there is a lack of any data showing MCLE has an impact on issues of professional discipline, attorney grievances, and misconduct. "To impose a requirement on all of us," Mr. Snyder said, "it just seems like that's not necessarily going to solve the problem." Further, he drew a connection between many of the discipline issues -- discussed by Ms. Lawless in the prior meeting relating to proper business practices -- stem from "a deeper problem in our profession where we feel like we can't say no to any potential client. We have to take all the clients we can in order to keep business going at the level that we want it to, so we wind up working 60-70 hours a week, and we make mistakes," he said. "Mistakes don't come from a lack of knowledge. They come from juggling too many cases, too much work, and I don't think a CLE requirement is necessarily going to solve that problem."

Mr. Snyder also relayed a story from when he was a younger lawyer, and older attorneys in his firm advised him that if he participated in any educational development programs, so long as he could "come away with one nugget, then it's been worth your time." If we were to impose a 15-to-20-hour requirement, much of CLE programming with which he was familiar, "[doesn't] seem to have the structure, they don't seem to have the real pedagogical component that would convey the kind of information we would need to really solve the problems of grievances and attorney malpractice."

Ryan Perlin said he found himself "on the fence" regarding a CLE mandate, particularly in reviewing the potential costs of such a recommendation. He said despite the "instinctual" feeling that CLE is beneficial, without the data to back that up, it was hard to press on down the path of making it mandatory. "There is no doubt in my mind that I am a better lawyer because of the CLE I've participated in, and I think there is no doubt that it will make some lawyers better at what they do," Mr. Perlin said, but whether it will also change the disciplinary inquiries and prosecutions by Bar Counsel, we currently lack information that supports that theory.

Mr. Perlin called the lack of data supporting mandatory CLE "troubling." "I wish there was some data, something quantifiable and tangible that I could rely on to say, 'this will make a difference,' that is strong enough to allow us to cross the Rubicon into a mandate," he said, because once a mandate occurs, inevitably it will grow, new rules and requirements will be added; "it will become much greater a burden."

"Some things will become easier with time, but the hours are likely to increase, the bureaucracy that organizations have to go through to get CLE and to qualify is going to become more onerous because the more we do it we're going to find, 'well there's this issue and there's that issue,'" Mr. Perlin said, "and we're going to come up with new rules and new rules, and new

rules." He stated that the Workgroup appears to be standing on a precipice, and once we potentially recommend mandatory CLE, even if we recommend making it lax and easier to start, "things are going to become tougher."

Ms. Iverson acknowledged that mandatory CLE could be a boon for bar associations, who offer such programming and could see their member rolls swell because of a mandate. She sees this as a positive from the associations' perspective, but potentially at a cost to individual attorneys, particularly when the data is not there to support mandatory CLE as a corrective measure to improve attorney competency and disciplinary issues. "The absence of data is something that resonates with me," she said. "We're doing this because we think it's going to be a good idea," in attempting to stress and impart more ethical and competent practice, she said, "but is their data that that actually does occur, and I don't think there is."

"Generally speaking, I'm in favor of the concept [of mandatory CLE,] because I think it would only help," said Judge Jeffrey Geller, but he returned to a common concern regarding the lack of data supporting the proposed benefits of a CLE mandate. He noted a Georgetown Law Review article that looked at attorney discipline data and seemed to dispel any link between mandatory CLE and a decline in such disciplinary matters or an improvement in public perception of attorneys.[5] "I've been back and forth on this," Judge Geller said, "because I understand that this is a burden. On the other hand, as a trial judge, I do see plenty of lawyers who could probably use some training who may have lost their way and are not up on the current state of affairs, and cite precedent that is no longer valid," or who make "my favorite argument, 'that's the way we always do it.'"

[5] *See* David D. Schein, *Mandatory Continuing Legal Education: Productive or Just PR?,* 33 GEO. J. LEGAL ETHICS 301 (2020).

Mr. Babo, as Judge Berger's clerk and someone who took the lead on researching law review articles and similar materials that discuss CLE, informed Judge Geller, and others curious, that he had yet to find an article that seemed to definitively make a case for or against mandatory CLE with data, and cautioned that even in pieces that seem to make strong arguments on either side, they must be read through the lens of understanding their potential authors' biases.

Open Discussion – Comments Regarding Costs of a CLE Mandate

In later comments, Mr. Snyder focuses his concerns on the particular cost to young lawyers. Those who work for institutional practices or big firms that offer in-house CLEs, like the OPD or a state's attorney's office, may not see much change from a mandate. "That's great," he said, "but for young lawyers that come out earlier in their practice, and they're working in a civil practice setting for a small firm, they may not have the ability to have someone else pay for it, and they may not be able to afford to pay for it themselves." He noted CLE courses can be very expensive, even with the discounts offered by some providers. He recounted his own past, going from a judicial clerkship to starting his career in a practice, and wanting to go to some programming, but having difficulty finding the time and funds for the $200 registration fee and other associated costs of attending a CLE event. "That's a real concern I have, that we're going to put that financial burden on younger lawyers who may not really be able to afford it," Mr. Snyder said, "and I don't know how we're going to address that."

Ms. Alvarado-Taylor stressed the need to consider financial support for new attorneys and solo practitioners, who may disproportionately feel imposed upon by a CLE mandate -- a concern raised by several members throughout the discussion. In later comments, Ms. Alvarado-Taylor noted that many CLE providers already offer free or low cost CLEs. She also harkened to Ms. Lawless's comments from the prior week, asserting that mandatory CLE creates a marketplace for

providers to create additional offerings that serve that market, thus a provider will likely carve out a niche for lower-cost options. She proposed that perhaps a first-year attorney could not afford to attend an expensive CLE conference, but instead that attorney could utilize online offerings, Westlaw programming, etc. She also referenced potential sponsorship dollars, from groups like bar associations, who frequently provide CLE training and are also familiar with acquiring sponsorships to many of their events. "Forty-six other states that do these things have figured these things out," Ms. Alvarado-Taylor said. "I think the benefits to us coming kind of late to the table looking at this, we have the benefit of those resources and things that are already in place to help defer the costs."

Mary Murphy said she was personally in favor of mandatory CLE, but she would not take her opinion as speaking for the other more than 26 elected officials who are prosecutors in the State. The Maryland State's Attorneys Association ("MSAA") does educational programming at its summer conference and does some programming during the year. Like other established providers of CLE, Ms. Murphy wondered if the MSAA would continue to be able to provide such offerings, and would they count towards required hours, under a future CLE mandate. Her concerns were colored by the reality that each prosecutor's office is funded at the local level, leaving varying budgets, with varying allocations for training, and even in a large department with "safe" funding, like hers in Howard County, "the training budget is de minimis." These offices rely on the MSAA for training. For such public employees, with varying salaries tied to local funding, Ms. Murphy said concerns about the costs of CLE attendance make maintaining provider status for the MSAA essential. Ms. Murphy noted this concern is likely shared by small and solo practitioners as well. "So personally, I'm in favor of it. I think it only is a positive for our

profession, and it's long overdue," Ms. Murphy said. "But I think how it's enacted is going to be something that would impact greatly at least my colleagues."

Mr. Perlin said that the concerns he has for the costs of small and solo practitioners makes it more difficult to assuage these concerns about the benefits compared to the costs of mandatory CLE. "That cost is not lost on me," he said, "that those who are least able and capable of absorbing the cost are the ones who will be hit the hardest with it." Ms. VanEmburgh also cautioned about the "fiscal impact for small firms," like hers, which would be wary of a large financial cost of a more stringent rule.

Bea Thomas shared her experience as a young attorney now at the United States Attorney's Office ("USAO"), which provides extensive training to its attorneys. "I've gained the opportunity to have a lot of training," Ms. Thomas said. "I don't know if I would have had access to this much training if I had not been at the U.S. Attorney's Office . . . I say that to say the opportunity for CLE, I think, would be a great benefit to younger attorneys to get some of the necessary training to shore up their knowledge, to share their practice skills, to shore up their ability to persuasively advocate," Ms. Thomas said, "particularly with respect to the changing landscape of how the legal community provides services post-COVID." She acknowledged concerns of attorneys like Mr. Snyder, who worry about the burden placed on small and solo practitioners and are unconvinced MCLE yields the solutions it professes, but "when you're thinking about it from a cost-benefit analysis," Ms. Thomas said, "I can't see their being so detrimental a cost to require people to improve their knowledge and to enhance the way they practice."

Mr. Babo spoke up, more to assert open questions to ponder than to weigh in with insights or his stance on CLE. He noted how it appears large firms, and big "institutional" employers like the OPD or state's attorney's offices seem to have a leg-up in already providing great programming

and doing so at little to no cost to their employees. He wondered if mandatory CLE would create an "arms race" among such employers, as bigger and better CLE offerings could be a recruiting tool since all attorneys would be required to complete such hours under a mandate. He wondered if such an arms race could add to the widening gulf of "haves" and "have nots" in the legal profession, as small employers and some public interest offices lack the resources to offer such in-house training. In contrast, he wondered if such robust CLE offerings by organizations like the USAO, OPD, and MSAA could make a public interest career more palatable if attorneys know at least such an employer can help navigate CLE requirements at no cost and integrate it into a work schedule. In the end, CLE could become a recruiting or retention tool.

Open Discussion – Comments Regarding CLE's Value to the Profession

Dean Ron Weich focused on the reputational benefits to the legal profession provided by CLE in his endorsement of making CLE mandatory for Maryland attorneys. Additionally, he referred to prior discussions regarding how CLE addressing issues of mental health and substance abuse prove useful in connecting at-risk attorneys to such resources and removing some of the stigma around these topics. Dean Weich phrased it as "the value of a check-in." "There are problems of substance abuse, and mental health challenges in our profession," he said, "and if lawyers who have sort of drifted away from colleagues had an opportunity to come back to local bar associations or otherwise using CLE, it might provide a benefit."

Ms. Alvarado-Taylor added that the "for" and "against" presentation reviewed at the start of the meeting fortified her conviction that the arguments "against" CLE "are things that are going to either resolve themselves" or are issues that would arise generally within the practice of law, in terms of compliance issues certain attorneys may have with any rule or code of conduct. "The arguments in the 'cons' column will resolve themselves," Ms. Alvarado-Taylor said, particularly

if we carefully approach the second question of the Workgroup's mandate, addressing how a CLE requirement would be implemented and function.

In reflecting on the value of a CLE policy within his practice, V. Peter Markuski, Jr. spoke of the near-unanimously favorable response to requiring CLE for attorneys practicing under him when he was chairman of a family and juvenile law section. Because the law frequently changed in family and juvenile law, CLE was imperative to ensuring attorneys stayed abreast of the current state of the law. Also, in a flattering nod to Ms. Fulcher's impressive presentation regarding the CLE programming she aided in implementing and operating for the OPD, Mr. Markuski recommended any future state body running a mandatory CLE program should attempt to "steal" Ms. Fulcher away from the OPD to run it.

Christopher Nicholson framed the CLE debate as more of an obligation of the profession than a means to a particular end. "I just think it's part of our obligation as members of the bar, and the juice is worth the squeeze to me," said Mr. Nicholson. He had no expectation that implementing CLE will somehow solve the ills that exist in the profession, saying that "it's too high a standard to say it's going to be a one-for-one exchange, that whatever we put in we're going to somehow save on malpractice cases or something else." To him, it was more about professional ideals. "It's something we all ought to achieve," he said, "and we all want to strive for."

Workgroup Vote

At the close of the discussion, Judge Berger turned the group's attention to the goal of the meeting, to take the preliminary vote regarding the Workgroup's recommendation to the Supreme Court of Maryland. He commended the group for the dialogue, noting that "I am really trying to keep an open mind, and the robust discussion goes a long way where I net out at this point."

Using the Polling feature provided by Zoom, Workgroup members were presented the question: "Should our Workgroup recommend to the Supreme Court of Maryland that Maryland require continuing legal education for all attorneys licensed by the State?" Workgroup members could select one of the following three options: "(A) Yes; (B) No, (C) Yes, *depending on the details of the recommendation*."

The 20 workgroup members present submitted their votes. Two votes submitted by email from two members who could not attend were added to the tallies. The results of the poll netted eight "Yes," votes, three "No" votes, and eleven votes for "Yes, *depending on the details of the recommendation*." Therefore, the preliminary recommendation of the Workgroup would be that Maryland should require mandatory CLE for all attorneys licensed by the state, so long as a suitable mandate may be crafted.

Closing Remarks

Judge Berger again thanked the Workgroup for their participation and debate, and for being a part of this process. He suggested they look to schedule another meeting in roughly two weeks. The next meeting will aim to address "the technical aspects or mechanics of [a proposed mandatory CLE rule]," he said, "taking into consideration so many of the things that were brought up here today." Judge Berger advised the members that new materials would be shared prior to the next meeting, such as proposed model CLE rules and relevant research. He informed the group that

minutes from the meeting would be distributed swiftly. After providing an opportunity for anyone to ask any final questions or raise any final points or concerns, he again thanked the group and looked to the future. "I think through four meetings we've made a lot of progress," Judge Berger said. "Let's continue to march forward."

The meeting closed at 5:20 p.m.

APPENDIX 1 – Materials Discussed

Zachary Babo, *A Brief Summary of Arguments "For" and "Against" Mandatory CLE*, App. Ct of Md. (presented Jan. 24, 2023), PowerPoint Presentation.

[*Text of presentation reproduced below, including small edits to correct errors*.]

See attached slides.

A brief summary of arguments “for” and “against” mandatory CLE (“MCLE”).

REASONS FOR Mandatory CLE in Maryland:

- 46 states have continuing legal education requirements.
    - Only Maryland, Massachusetts, Michigan, and South Dakota (and the District of Columbia) do not.
- Many Maryland attorneys already participate in CLE
    - 75% of respondents to an MSBA survey stated they participate in one to five CLE programs each year, with 8% saying they participate in six or more such offerings.
    - Mandating CLE would not result in onerous new impediments but would instead give credit to those already pursuing such efforts and requiring others to invest similar time and attention
    - Attorneys licensed in other jurisdictions already must complete MCLE requirements for those jurisdictions; hours completed for those jurisdictions' MCLE mandates would count for such a mandate in Maryland, resulting in little additional burden.

REASONS FOR Mandatory CLE in Maryland:

- MCLE provides reputational benefits to the legal profession.
    - A CLE mandate is public signal that the profession cares about excellence, currentness of information, and policing the profession and practice of law.
    - MCLE helps instill public confidence in attorney competence; in so doing it helps differentiate attorneys from new legal-products (Legal Zoom, etc.) growing in popularity.
- MCLE aligns with policies in similar white-collar professions such as doctors, CPAs, etc.
    - CPAs require 80 hours CLE every 2 years
    - Architects require 12 hours of CLE every year
    - Professional Engineers require 16 hours of CLE to renew their licenses
    - Real Estate Professionals require 15 hours of CLE per license renewal
    - Polysomnographers (sleep techs) require 12 hours of CLE every 2 years

REASONS FOR Mandatory CLE in Maryland:

- Advances in technology and shifts in work habits (expedited by the pandemic) make participating in CLE much easier.
    - Numerous CLE programs are offered via webcasts, virtual sessions, or on-demand.
    - In-person events provide the added benefit of professional development, networking, interpersonal skill-building, and the ability to complete numerous CLE hours at once.
- Participation in MCLE may cultivate professional skills and bolster professional organizations
    - Many bar associations offer events and trainings already. Converting such programs into CLE offerings could increase enrollment in these organizations and encourage interaction with bar associations and colleagues.
    - A growing marketplace for CLE offerings increases incentive for bar associations to increase programming and recruit new members who join to gain access to CLE programming needed for a state mandate.

REASONS FOR Mandatory CLE in Maryland:

● Mandating CLE will inject additional funds and scrutiny into the world of professional legal education, resulting in more, and better, course offerings.

- Requiring hours in certain subject matter aids in raising professional standards in matters like competency, ethics, diversity/ethics/inclusion, etc.
- Requiring hours addressing issues/concerns affecting lawyer's personal lives removes stigma, increases opportunities for help, allows such conversations to become more frequent and part of a healthy professional dialogue, and aids those in need of such resources, or who may not yet realize they are in such straits.

● Courses focusing on subjects pertaining to the "business of law" fill an absence of such instruction that is not the focus of law school or bar prep but is needed.

- A focus on the "business of law" addresses the genesis for many attorney grievance complaints that grow from issues with client funds, conflicts, client communications, marketing, and similar business practices.

REASONS FOR Mandatory CLE in Maryland:

● The onus is on the legal profession, and its leaders, to establish and enforce professional standards, and to ensure those standards are maintained.

- "[A client's the Sixth Amendment guarantee of assistance of counsel] relies instead on the legal profession's maintenance of standards sufficient to justify the law's presumption that counsel will fulfill the role in the adversary process that the Amendment envisions." *Strickland v. Washington*, 466 U.S. 668, 688 (1984)

●Maryland Rule 19.301.1 - Competence - "An attorney shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

- "*Maintaining competence* —To maintain the requisite knowledge and skill, an attorney should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the attorney is subject." Md. Rule 19.301.1 cmt. 6.

CONCERNS Regarding Mandatory CLE in Maryland:

● NO DATA - No quantifiable evidence shows that MCLE requirements do what their advocates profess they accomplish.

- No data is available showing correlation, let alone causation, of CLE mandates and decreases in attorney grievance complaints, misconduct cases, malpractice suits, etc.
- With most attorney grievance issues resulting from failures of diligence in subject matter, diligence in running a business, and larger ethical violations resulting from dishonesty, current CLE offerings do little to address these issues, and it is unproven a CLE mandate would lessen these occurrences.
- Lawyers prone to such ethical lapses or disorganization are unlikely to have such behavior corrected due to a mandate and are less likely to comply with a mandate.
- No data shows a relationship between CLE usage and an increase in the quality of legal services provided or a decline in disciplinary issues

CONCERNS Regarding Mandatory CLE in Maryland:

- Mandatory CLE is unnecessary as professional development is built into the practice of law.
    - Many attorneys already participate in CLE training.
        - Self-directed CLE lets attorneys optimize offerings, focusing only on what is most relevant to them, pursuing such training only when it is needed and conducive to their schedules.
    - Mandating CLE hours and subject matter will force attorneys to potentially shift focus from the most useful allocation of their time attaining knowledge in the subjects most germane to them, to instead check boxes to fulfill their requirements.
    - Mandating CLE may shift attorney focus away from other useful means of professional development.
        - Time spent on required CLE programming may be swapped for time previously spent on pro bono activities, community engagement, bar association participation, or networking events.

CONCERNS Regarding Mandatory CLE in Maryland:

- Reputational benefits are speculative at best.
    - We are all familiar with the lawyer jokes, and the public image problem attorneys often have. This is as much tied to the nature of the profession and the public's disconnect with understanding exactly what the law is and what lawyers do, than to some chasm in continuing professional education.
    - There is little evidence that MCLE would improve that stigma, and that the public would understand, or care, about a professional requirement meant to increase competency and integrity.

- "Opponents of MCLE also argue that required classes would do little to remedy the root causes of the profession's credibility crisis: lawyers' perceived lack of responsiveness to clients, lack of courtesy to the bench and colleagues, and lawyers' inevitable championing of unpopular clients." Gregory C. Bauman, *Mandatory Continuing Legal Education Plan Put on Hold*, THE DAILY RECORD (June 26, 1995).

CONCERNS Regarding Mandatory CLE in Maryland:

- The BURDEN - Adding CLE requirement is a tremendous resource allocation for attorneys.
  - Fitting additional hours into already busy schedules is difficult for all attorneys, more so for small and solo practitioners.
  - The cost and time burden will have outsized effects on small and solo practitioners
  - Large firms and organizations have resources to better accommodate CLE training, absorb lost work hours, and offer in-house resources

- The growth of the CLE marketplace could crowd-out offerings by local bar associations, who rely on such programming to attract membership.
  - Events like brown-bag lunches may not immediately qualify as certified CLE or may be ignored for other programming that more readily meets MCLE guidelines.
  - Bar associations will face the additional burdens and costs of registering such events with state regulators and ensuring such events attain credit.

CONCERNS Regarding Mandatory CLE in Maryland:

● Logistics of operating and overseeing CLE administration will be difficult and will likely lead to bureaucracy and logistical issues rife for litigation and dispute.

- To enforce the mandate, Maryland must create, staff, and fund an oversight committee or board that reviews: program and provider accreditation, violations of MCLE rules, exceptions, comity and reciprocation with other jurisdictions, and attorney appeals regarding rule violations.

●The piecemeal nature of state-by-state MCLE mandates is rife for conflict and forces attorneys licensed in multiple jurisdictions to juggle multiple MCLE requirements.

- Maryland attorneys who are already required to adhere to MCLE rules of other states may face difficulties ensuring classes they take meet all relevant requirements in all states in which they are licensed, while also avoiding redundancy or extra hours.
- By building an MCLE requirement now, after so many jurisdictions built theirs beforehand, leaves Maryland either to carve its own path and wait to sort out conflicts, or to largely adopt another state's rule.

QUESTION PRESENTED:

Should our Workgroup recommend to the Supreme Court of Maryland that Maryland require continuing legal education for all attorneys licensed by the State?

A. YES

A. NO

A. YES, *depending on the details of the recommendation adopted.*

APPENDIX A.5

Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ. (Md. Feb. 13, 2023) [hereinafter *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*].

Workgroup to Study Mandatory Continuing Legal Education ("MCLE") in Maryland
Meeting Minutes from February 13, 2023

ATTENDEES (via Zoom):

- Jamie Alvarado-Taylor, Esq. (Stein Sperling)
- Mr. Zachary Babo (Law Clerk to Judge Stuart R. Berger, Appellate Court of Maryland[1])
- The Hon. Stuart R. Berger (Appellate Court of Maryland)
- Ryan R. Dietrich, Esq. (Maryland Office of the Attorney General, Civil Division)
- The Hon. Jeffrey M. Geller (Circuit Court for Baltimore City)
- Dean Renée McDonald Hutchins (University of Maryland Carey School of Law)
- Kelly Hughes Iverson, Esq. (Goodell, DeVries, Leech & Dann)
- V. Peter Markuski, Jr., Esq. (Goozman, Bernstein & Markuski)
- Christopher W. Nicholson, Esq. (Turnbull, Nicholson & Sanders)
- Ryan S. Perlin, Esq. (Bekman, Marder, Hopper, Malarky & Perlin)
- Zebulan P. Snyder, Esq. (The Law Office of Zeb Snyder)
- Beatrice C. Thomas, Esq. (Office of the U.S. Attorney for the District of Maryland)
- Sharon M. VanEmburgh, Esq. (Ewing, Dietz, Fountain & Kaludis, P.A.)
- Dean Ronald Weich (University of Baltimore School of Law)
- MaryEllen Willman, Esq. (Whiteford, Taylor, Preston)
- The Hon. Dana Moylan Wright (Circuit Court for Washington County)
- The Hon. Terrence M. R. Zic (Appellate Court of Maryland)

MATERIALS REVIEWED:

- *Model Rule for Minimum Continuing Legal Education (MCLE),* AM. BAR ASS'N (Feb. 2017).

- [Md. Rules Attorneys,] Pro Bono Public Service (6.1). Md. Rule 19-306.1.

- *Rules of the Court of Appeals for Minimum Continuing Legal Education* & *Rules of the Commission on Continuing Legal Education* [from *Report of the Continuing Legal Education Committee Regarding Minimum Continuing Legal Education*, MD. ST. BAR ASS'N (Mar. 21, 1995).

- *(Proposed) Rules of the Maryland Commission on Mandatory Continuing Legal Education*, COMM'N ON PROFESSIONALISM (date unspecified, likely circa 2003).

Any workgroup member wishing to review additional materials, such as law review articles read but not circulated amongst all members, may contact Zachary Babo, at zachary.babo@mdcourts.gov.

NOTES FROM WORKGROUP DISCUSSION

Introductory Comments

Judge Berger opened the meeting remarking on the progress of the Workgroup thus far. Viewing the Workgroup's goal as addressing the "two-part charge" regarding MCLE in Maryland, he stated that we had addressed the first issue of "whether we should establish MCLE in Maryland." He noted that at the conclusion of the January 24, 2023 meeting, the Workgroup informally voted to recommend that the Supreme Court of Maryland mandate a continuing legal education requirement for all attorneys licensed in Maryland, though this recommendation was contingent upon the details of the eventual mandate. Now the Workgroup turns its focus to "phase two – what would such a CLE requirement entail."

Judge Berger broke down this issue into subparts that parallel the component provisions likely to be addressed in an eventual MCLE rule: (1) whether, and what, subject matter would be required; (2) what activities would count as a "CLE hour;" (3) how many CLE hours would be required, and what is a reasonable mandate; (4) what would be the length and mechanics of the reporting period; and (5) should the rule provide categorical exceptions for those who would not need to adhere to such a mandate. Building off an idea raised in the previous meeting, Judge Berger also proposed addressing whether such a CLE mandate should be phased in over time, beginning as an aspirational goal that permits attorneys and regulators to adjust to the new rule before it becomes an enforceable requirement -- akin to the current status of the "pro bono requirement" in Maryland.[1] From there, Judge Berger led the group into the discussion, addressing each facet of a potential MCLE rule in the order provided above.

[1] Currently, attorneys involved in the full-time practice of law in Maryland "should aspire to render at least 50 hours per year of pro bono publico legal service," with part-time practitioners aspiring to render "a pro rata number of hours." Md. Rule 19-306.1(b). However, "[t]his Rule is

Question 1: Should an MCLE rule require hours be spent on specific subject matter, and if so, what subjects should be required?

Zachary Babo began the discussion with a brief overview of subject-matter requirements from other jurisdictions' MCLE rules. He noted that nearly all states with MCLE require at least some allotment of hours to be spent on specific topics. These requirements usually account for fewer than half of the total CLE hours mandated. The most frequent required topics were (1) ethics, professional responsibility, professionalism, or some combination thereof; (2) attorney assistance programming, such as mental health awareness or substance abuse awareness; (3) diversity equity and inclusion, such as cultural sensitivity training or inherent bias; and (4) topics related to "the business of law," such as handling client funds, attorney marketing, leadership and management, etc. Many other jurisdictions have also required or recommended "technology" training, which may crossover with ideas of professionalism, or "business of law," which often focuses on both better utilizing technology and on issues like data security and privacy. Some jurisdictions require or recommend courses involving conflict resolution, mediation, or alternative dispute resolutions.

Dean Renée Hutchins began the discussion related to CLE subject matter requirements by commenting that generally, for CLE hours to count, in addition to mandating certain subjects for all attorneys, it would be more productive if only those hours spent on CLE subject matter related to the attorney's current field of practice should count. If the goal of MCLE is to improve

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aspirational, not mandatory. Noncompliance with this Rule shall not be grounds for disciplinary action or other sanctions. *Id.* at 19-306.1(c). Regardless, "each attorney admitted to practice in Maryland, by September 10 of each year and in accordance with this Rule, shall file electronically, through [the Attorney Information System], a Pro Bono Legal Services report." Md. Rule 19-503(b). "The purpose of pro bono legal service reporting is to document the pro bono legal service performed by attorneys in Maryland and determine the effectiveness of the Local Pro Bono Action Plans, the State Pro Bono Action Plan, the Rules in this Chapter, and Rule 19-306.1 (6.1) of the Maryland Attorney's Rules of Professional Conduct." *Id.* comm. note.

professional competence and provide meaningful study, she proposed that it made more sense to require such study in topics germane to the legal counsel they render. This would also hopefully mitigate attorneys attempting to avoid the spirit of the mandate by simply "checking the box" and completing any random course they could find prior to a looming reporting deadline.

In terms of specific subject matter that would be required of all attorneys, Dean Hutchins "heavily support[s] ethics, responsibility, and attorney wellness." She noted that in prior discussions, and in looking across CLE rules from other jurisdictions, an ethics requirement "is near unanimous." She also highlighted a recent American Bar Association report on "attorney wellbeing" which found that attorneys "are some of the least happy professionals," Dean Hutchins said, and as a result, they suffer from disproportionate rates of substance abuse and mental health issues.

Ryan Perlin reiterated the concern that only CLE hours spent on "something relevant to practice" should count towards a requirement, as he feared a scenario where an attorney low on hours at the end of a reporting period would just take a random CLE to cover the requirement, which in the end does not accomplish much in terms of the goal of such a mandate. He gave the example of an attorney like himself, who practices personal injury, taking a trusts and estates CLE course just to attain the hours, despite having no interest in practicing trusts and estates law and such law having little value to his practice. "If we are going to have it, I think there should be some requirement that ties it to truly improving the attorney's knowledge in their own practice area."

Zeb Synder asserted that an MCLE rule would be a "minimum requirement, nothing that would cap [the CLE hours an attorney completes]." Thus, it would not prohibit attorneys from taking time and exploring new areas for personal or professional growth. Instead, requiring subject

matter germane to an attorney's area of practice "just establishes baseline competence in core practice areas," which is the goal of MCLE. "This is a minimum threshold," he said, "not a cap."

Judge Dana Moylan Wright agreed that requiring attorneys take CLE course work germane to their practice area seemed more in line with the goals of a CLE mandate. She also thought subject matters like ethics and diversity, equity and inclusion ("DEI") should be required of all attorneys. Drawing from her experience both on the bench and participating in judicial training, she said that "I don't think individuals always feel like they need [DEI training], but I think they need that." Regarding ethics, she commented that developing relevant course material can be challenging, particularly doing so in a way that "doesn't seem too obvious and doesn't seem insulting."

Judge Berger noted that any required ethics training would likely benefit from input from the Office of Bar Counsel. As addressed in a prior meeting, because many attorney grievance investigations originate from issues that would likely fall under the category of "ethics" violations -- such as mismanagement of client funds, or conflicts of interests, or more egregious attempts to cover-up such errors -- "tuning [ethics training] to issues of attorney grievance makes sense," Judge Berger said.

Zachary Babo cautioned that an eventual rule that would only count CLE courses in subjects germane to an attorney's current area of practice could present two issues. First, an obvious administrative or regulatory burden exists for some entity overseeing the CLE mandate to have to assess what subject is or is not related to an individual's area of practice, which could lead to discrepancies and disputes. Second, demanding hours must relate to an attorney's *current* area of practice could inadvertently harm attorneys seeking to either expand their practice into new

fields and to cultivate broader general legal knowledge, or those hoping to make a career change to a whole new field of practice.

Dean Hutchins responded that there would likely need to be a "good faith" element to such a rule, where attorneys would largely be trusted to pursue CLE relevant to their practice, as "we don't want to play hall monitor." Her primary concern was that "this is not a box checking exercise." Hutchins said the message needs to be that these hours have to count, "otherwise people may try to find a way to jump around the burden" and just check a box. "I think when CLE isn't taken seriously it is a waste of everyone's time," she said.

Sharon VanEmburgh cautioned, "I don't think we should be proscriptive as to subject matter." She advised that it should be left to individual attorneys to determine what subject matter they need, noting that likely such a choice will involve "something they already do that might be useful to them." She highlighted "technology" training as something that should count for all attorneys, though that does not necessarily mean it should be proscribed.

Kelly Hughes Iverson reiterated similar concerns as those proposed by Mr. Babo. She gave the example of an attorney currently involved in medical malpractice but seeking to transition into a trusts and estates practice. For that attorney, would taking trusts and estates CLE courses not count, as they are not relevant now, but will be after the change of specialty? She raised a similar concern with pro bono training, where often attorneys use such pro bono opportunities to grow skills in new areas, or practice outside of their usual expertise. Making calls on what does or does not count would likely create enforcement issues, she warned.

In later comments, Judge Jeffrey Geller returned to the issue of subject-matter requirements, noting that requiring CLE hours only in "core practice areas" may be hard to police. Additionally, there are situations where it is good to encourage people to take training in other

areas, even if not for a career pivot. He spoke of his experience overseeing the family law docket and noting he would have "loved to have more people learning adult guardianship [law,] even if it was not their practice area."

Judge Wright challenged the idea of "easy options" for completing CLE, noting she was not sure what that might be. Her opposition to the concept was two-fold. First, "I just don't have a concern that lawyers are going to be wasting their own time, finding 'easy courses,'" she said. "I think they are going to try to find something helpful to [their] practice and helpful to clients." Additionally, "when I think of the panoply of subjects" for attorneys to pursue in CLE, she was "not sure what the 'easy' subjects are."

"I don't think attorneys doing courses in things not relevant to [their current practice area] is going to be a big issue," said Jamie Alvarado-Taylor. She joked that she never heard of someone doing CLE "just for fun, or 'easy ones.' People pick subject matters that matter to them." She said that since people pay for these courses personally, they won't want to waste money. If firms arrange training or absorb the costs, they will not approve something irrelevant. She advocated for a rule that would attempt to accommodate the exploration of new subject matter. She tied this into concerns for mental health, in that an attorney may be unhappy or stressed in their current practice area, and thus by permitting exploration of new areas of practice and career transition, the CLE requirement can still achieve the goals of "attorney wellness."

Dean Ronald Weich supported the idea of having a general hours' requirement, and mandating specific subject matter therein, but otherwise leaving it less directive. In so doing, regulators could "see how it goes, see what people utilized, they react to certain subject matter," and develop the rule further from there, if needed.

Ryan Dietrich looked to another jurisdiction with universally mandated subjects but with a rule that otherwise left CLE participation voluntary, both in terms of subject matter pursued and even pursuing the hours at all. He used Alaska's CLE rule as an example.[2] There, attorneys must complete three hours of training focused on some combination of ethics or professional responsibility. Otherwise, attorneys are "encouraged" to complete an additional nine hours of CLE training, without specific mandates as to subject matter. Dietrich proposed that a rule like Alaska's would "let us slow roll it," ensuring the most important subject matter -- like ethics, professional responsibility, or DEI -- is required from the beginning, "and then we see how hours are otherwise spent." Such an approach would align with a proposal from the prior meeting, in which a CLE mandate would begin similar to Maryland's current "aspirational" pro bono requirement, in which the pro bono service hours are heavily recommended but not required.[3] Under this model, early CLE participation could be monitored as attorneys submit their hours, and a true mandate could be shaped with the knowledge gained from this data.

Christopher W. Nicholson responded that "if we are going to require mandatory CLE, it ought to be mandatory." He expressed skepticism that an aspirational rule would actually push attorneys to engage in more CLE. "If we say 10 hours are required, but seven of them are voluntary, then we are really getting three [hours]," he said.

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[2] Alaska Rule 65 (available at https://alaskabar.org/wp-content/uploads/Rule-65.pdf); *see also Alaska General CLE Rules*, AM. BAR ASS'N, https://www.americanbar.org/events-cle/mcle/jurisdiction/alaska/, (last visited 01:00 P.M. Feb. 14, 2023); *MCLE Rule*, Alaska Bar Ass'n, https://alaskabar.org/cle-mcle/mcle-rule/ (last visited 1:02 P.M. Feb. 14, 2023).

[3] *See* note 3, *supra*, regarding Maryland's pro bono requirement. *See also Workgroup to Study Mandatory Continuing Legal Education ("CLE") in Maryland – Meeting Minutes for January 24, 2023*, APP. CT. OF MD., at 4–5 (Jan. 27, 2023).

Dean Hutchins was suspicious of drawing too many conclusions from how Maryland currently handles pro bono hours and using that as a model for implementing MCLE. Though the pro bono rule is meant to increase participation while otherwise remaining voluntary, no fixed data has been shared to assess how the rule works and its effect on actual pro bono services provided.

An informal vote gave the impression that the Workgroup favored being less proscriptive with subject-matter requirements, while likely embracing certain benchmarks for subjects like ethics, professional responsibility, and attorney wellness. Additionally, Judge Berger said that he and his clerk would pursue additional information about Maryland's pro bono requirement to see what lessons could be learned that may be applicable to developing an MCLE rule.

Question 2: What activities should count as a CLE hour?

Next, the discussion shifted to how attorneys can accomplish their CLE requirement, in terms of what activities would count as a CLE "hour." Judge Berger opened discussion of this topic by referencing the model rules shared with the Workgroup, and the activities stipulated therein.[4] In looking at these proposals, and at CLE rules from other jurisdictions, attorneys often achieve their CLE benchmarks through participation in: (1) third-party CLE courses, attended in real time either live in-person or online; (2) educational or academic pursuits like teaching law school courses, taking law school courses, or through legal writing; (3) self-study credit hours, which can cover an amorphous swath of activities from on-demand video offerings, to listening to lectures, to individualized study plans and reading; and (4) in-house training programs organized

[4] *See generally Model Rule for Minimum Continuing Legal Education (MCLE),* AM. BAR ASS'N (Feb. 2017); *Rules of the Court of Appeals for Minimum Continuing Legal Education* & *Rules of the Commission on Continuing Legal Education* [from *Report of the Continuing Legal Education Committee Regarding Minimum Continuing Legal Education*, MD. ST. BAR ASS'N (Mar. 21, 1995); *(Proposed) Rules of the Maryland Commission On Mandatory Continuing Legal Education*, COMM'N ON PROFESSIONALISM (date unspecified, likely circa 2003).

by employers, such as the training regimes implemented by the Maryland Office of the Public Defender, or similar programming developed within large private firms.[5] "My view is to be as inclusive as possible" when it comes to dictating what would be permissible to achieve CLE credit, Judge Berger said, as "we want to encourage participation." By counting more activities, it would permit more attorneys to adapt to the new requirement.

Dean Weich noted that many of the in-house programs "are great," as they offer comprehensive study in areas obviously relevant to participating attorneys' actual practice and help establish organization competency. He was more skeptical of taking too broad of an approach to "self-study," providing the example of wanting to make sure an attorney "cannot satisfy this by saying, 'I took a deposition, and I learned a lot.'" He advised taking an approach that would broadly allow many activities but make it clear that "not everything will count."

Mr. Babo weighed in with some background and context from his research reviewing other jurisdictions' MCLE requirements, as well as the proposed rules. He noted the proposed MCLE rule from the Maryland Commission on MCLE allowed attorneys to accomplish up to half of their required hours through self-study.[6] This contrasts the 2017 ABA model rule on CLE, which said that self-study was encouraged, but it should not qualify for MCLE credit.[7] The ABA attempted to define "self-study" as "activities that are important for a lawyer's continuing education and

[5] See, *e.g.*, Patrice Fulcher, *Maryland Office of the Public Defender's CLE Policy & Training Programs*, MD. OFF. PUB. DEF. (presented Jan. 4, 2023), PowerPoint Presentation [hereinafter *OPD CLE Policy & Training PowerPoint*].

[6] *Rules of the Commission on Continuing Legal Education* [from *Report of the Continuing Legal Education Committee Regarding Minimum Continuing Legal Education*, MD. ST. BAR ASS'N, at 10 (Mar. 21, 1995) (stating up to 15 of the recommended 30 hours of CLE could be spent on self-study).

[7] *Model Rule for Minimum Continuing Legal Education (MCLE), supra*, note 4, at 10.

professional development, but which do not qualify as MCLE," a definition Mr. Babo noted was less clarifying and more circular than he had hoped.[8]

Mr. Babo also referenced a proposal he found in a law review article that sought to bolster both CLE and pro bono by permitting pro bono hours to count towards CLE requirements.[9] Whether counting only hours spent in pro bono training programs, or also including pro bono hours spent delivering client services, the hope with such a rule is that both more needed pro bono counsel becomes available, and attorneys engage in the type of professional development and training to bolster competence and social awareness which is at the heart of many CLE mandates.

Question 3: How many CLE hours should be required in a given year?

Mr. Babo opened this discussion with a brief summary of the CLE hours benchmarks in other jurisdictions, noting that most rules require 12 to 15 hours of CLE credit each year. He explained that some jurisdictions only require reporting CLE every two or three years, thus their requirements adjust on a pro rata basis (i.e. a state may require an attorney completes 24 hours of CLE every two years, or 45 hours every three years). Thus, built into this question is also the need to define a "reporting period" in which attorneys must complete their hours and report those hours to regulators.

Dean Hutchins said that 12 hours seems ideal, guessing that 15 would likely feel too high. Twelve hours works out to one class each quarter of the year – assuming a "class" would be three CLE credit hours -- which is simple, she said; "15 complicates things." MaryEllen Willman noted

[8] *Id.* at 3.

[9] *See* Rima Sirota, *Making CLE Voluntary and Pro Bono Mandatory: A Law Faculty Test Case*, 78 LA. L. REV. 547, 579 (2018) ("One option is to change the math, allowing attorneys to fully discharge their mandatory CLE obligations through pro bono hours and allowing one pro bono hour to count for one mandatory CLE hour.").

the advantages of aligning an MCLE rule in Maryland with similar rules in surrounding jurisdictions, as many Maryland attorneys are also licensed in these neighboring states. She pointed out that Virginia, where she is licensed, requires 12 hours, with two hours of required ethics training.[10] Maryland would do well to match that, she said. Judge Geller echoed the support for a 12-hour benchmark. "Twelve seems manageable," he said. "Fifteen [or] sixteen, sounds like a lot."

Mr. Dietrich commented that how strict the rule is regarding activities that would count for a CLE hour may directly influence how many hours are required. The less strict the requirements of what counts, the higher the hours threshold could be, as it will be easier for attorneys to attain their hours, and they may need more hours to maintain the hoped-for benefits of a CLE rule. Conversely, the more strictly the rule confines what can count as a CLE hour, the fewer hours should be required in order to ease the burden on attorneys, he said.

Judge Berger attempted to take an informal vote of raised hands as to whether 12 hours seemed the appropriate threshold to suggest. The results of the vote revealed a soft consensus that 12 hours should be the recommendation.

Question 4: How long should a "reporting period" be, and when and how should attorneys report their CLE hours?

Judge Berger next introduced the issue of what should define a "reporting period," noting that this part of the discussion may drift deeper into the technical aspects of implementation. He pointed to the 2017 Proposed MCLE Rule from the ABA, noted the increased flexibility provided

[10] *See* Va. R CLE Reg. 102 ("Each active member, other than a newly-admitted member as defined in Regulation 101, shall complete, during each completion period in which he or she is an active member for any part thereof, a minimum of twelve (12) credit hours of approved continuing legal education (also referred to as CLE) courses, of which at least two (2) hours shall be in the area of legal ethics or professionalism.").

to lawyers in reporting every two or three years, though cautions this could feed procrastination as well.[11] Prior proposed Maryland rules suggested reporting hours every two years. This would be accomplished by splitting all licensed attorneys into one of two groups, with one group reporting in even number years, and one group reporting in odd number years. In terms of what attorneys "report," they would submit sworn affidavits attesting to the CLE hours accomplished in a given year.

Ms. Iverson weighed in first, stating that it did not make sense to her to have a different reporting period than the period within which attorneys were required to complete the hours. "Lawyers are procrastinators," she said, so if you have a two-year reporting period, lawyers are unlikely to apportion their CLE hours evenly over those 24 months; instead, they'll likely put off the requirement only to frantically complete their hours closer to the deadline. Having a rule that requires reporting every two years but requires completion of a threshold amount of hours every year "will add to the mess," she said. She pointed out that attorneys already annually report their pro bono hours and pay into the Client Protection Fund of the Bar of Maryland through the Attorney Information Systems ("AIS") website.[12] Any CLE requirement should also be tracked through this portal and should be reported yearly, along with these other requirements. This idea of aligning CLE reporting with reporting mechanisms already in place through the AIS platform received a favorable response from much of the Workgroup.

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[11] *Model Rule for Minimum Continuing Legal Education (MCLE)*, *supra*, note 4, at 6 ("Allowing a lawyer to take credits over a two-year or three-year period provides increased flexibility for the lawyer in choosing when and which credits to earn, but it may also lead to procrastination and may provide less incentive for a lawyer to regularly take CLE that updates his or her professional competence.").

[12] *See Client Protection Fund of the Bar of Maryland*, MD. CTS., https://www.courts.state.md.us/cpf (last visted 5:19 P.M. Feb. 14, 2023).

Ms. VanEmburgh agreed that annual reporting should apply to an annual requirement, and that stretching the time past a calendar year to complete hours or to report them will likely produce confusion and administrative difficulties. Ryan Perlin concurred, saying "if we are going to mandate a yearly requirement of hours, then make reporting yearly." He also encouraged using the AIS platform for reporting and recommended instantaneous reporting be allowed, so that as soon as an attorney completes a CLE activity, the attorney can go into AIS and note the hours. "Assuming the tech side can handle everything," he said, "it makes sense to me to do this as simple as possible."

Ms. VanEmburgh suggested a carry-over provision, though, so that attorneys who exceed the CLE threshold for one year can have some of those extra hours count towards the following reporting period. Mr. Babo expanded on this point later, explaining that other jurisdictions have embraced carry-over provisions, though usually such provisions have limits. Often, attorneys cannot use carry-over hours for more than half of the next year's requirement. Additionally, carry-over hours do not suffice yearly subject matter requirements. As an example, a jurisdiction that permits six carry-over hours, but that also requires four hours annually of ethics training, will not let an attorney who completes 10 ethics hours in a given year contribute any of those extra ethics hours to the next year's annual ethics requirement, though the extra hours may count towards the general CLE requirement.

Question 5: Should an MCLE rule have any exceptions or exemptions for those who do not need to meet the requirement?

Judge Berger opened discussion of potential exceptions by citing those used by other jurisdictions and proposed in the model rules the Workgroup reviewed. Frequently senior attorneys, both those who do not practice and those beyond a certain benchmark age, are exempt from CLE mandates, as well as judges or judicial officers and staff, and often nuanced rules exist

for newly-licensed attorneys. He explained that the reasoning for carving out newly-licensed attorneys relies on the fact that such attorneys' recent completion of law school, bar prep, and MPRE study means they are likely to have ample training on core subject matters of ethics and professional responsibility. Additionally, because these attorneys obtain their licenses at odd intervals of the year, it is difficult for them to fit into the reporting calendar.

Exempting judges, on the other hand, may occur because they are more akin to non-practice lawyers, who do not render legal services directly to clients, and because judicial codes of conduct often require their own CLE or training mandates for judges. Maryland has such requirements, adding the practical difficulty of potentially piling even more training hours onto the current judicial calendar.

Judge Geller noted that the Maryland Judiciary just increased the hours for its training requirement for the coming year, making adding any more educational mandates an administrative challenge that could be prohibitive. With the number of hours Maryland judges must already spend out of chambers and courtrooms and instead participating in the Judicial College, he said, "it would be difficult to add an additional 12 hours."

Judge Wright proposed that any CLE requirement for judges would not be duplicative but complementary. Judicial training could count for CLE hours as well, as both advance the same goal of staying abreast of changes of the law and encouraging professional development. Judges would have to fulfill the same requirements as other attorneys, they could just do so through the judiciary, she said.

Judge Berger was sympathetic to the concerns of overloading the judicial calendar with more training, as his ample experience on both the Circuit Court for Baltimore City and the Appellate Court provide him insight into the difficulty of managing these mandates. He was

concerned, though, about the public perception of a judicial exception to CLE. If a benefit of MCLE is a boost to public perception and accountability of the legal profession, he said, "exempting judges would be a hit to public perception." Mr. Babo added the point made in a previously shared editorial piece in which the author noted that having both judges and attorneys participate in the same CLE programming could help the two camps understand and relate to each other better and operate from similar frames of understanding regarding certain subject matter, thus bolstering professionalism.[13] Judge Berger responded that this still was unlikely to assuage significant concerns about burdening judges with additional training.

Turning to other exceptions, Dean Weich argued that an exception for nonpracticing lawyers made sense, but this would negate the need for an exception based on the age of the attorney alone. "If you practice in the state, at whatever age, you should have to do CLE," he said. "If you are not practicing, then check that box."

Judge Terrence Zic thought an exception for newly-licensed attorneys made sense, as they likely recently completed professionalism classes and took the MPRE, which should warrant "giving them a pass for a year or two on those requirements." A large concern for new lawyers is cost, said Ms. Iverson. Attorneys fresh from law school are not yet professionally established, and they are likely carrying large debt burdens from paying tuition and life expenses. Some may be fortunate enough to have CLE costs covered by their employers, but those working solo, or at small practices, or in public interest, will face the obstacle of having to fund CLE on their own.

[13] E.I. "Skip" Cornbrooks, IV, *Mandatory CLE in Maryland? Pro/Con*, MD. LITIGATOR, at 14 (June 2010) (explaining why judicial exception would be bad, better to have everyone take the same courses. "If judges and attorneys receive the same information, justice would be administered more efficiently because each will know what the other is thinking, the problems confronted by each and communication between the two would improve.").

Ms. Iverson noted that these cost concerns may be able to be ameliorated, at least partially, based on what activities wind up counting as a "CLE hour."

Ms. VanEmburgh agreed that newly-licensed attorneys should be exempt, "at least for the year they are admitted [to practice]." For her, it was simple: the cost issues present real concerns, and practically, if you get admitted late in the year, you cannot complete the requirement for that year. Ms. Alvarado-Taylor pointed to the Virginia MCLE rule, which exempts attorneys the year they are admitted, but the following year they must comply.[14] The exemption is not a full reprieve from the rule, she said, as new lawyers also need to complete one ethics course, though they have until the following year to achieve this. She also mentioned the cost issues, wanting to make sure MCLE would not be "prohibitive to entry into the profession."

Bea Thomas, herself a fairly-recent graduate, said she was in favor of delaying a mandate for new attorneys. She noted that a lot of students leave school and enter clerkships where they would not be practicing anyway, and that clerks are also exempt from paying into the Client Protection Fund. When it does come time to report, though, she agreed doing so through the AIS platform makes the most sense. Both Judge Geller and Dean Hutchins later weighed in, noting that clerks are considered non-practicing lawyers, thus any exemption to the CLE requirement for non-practicing lawyers would also wind-up covering clerks, thus giving reprieve to young attorneys inhabiting those roles. Mr. Nicholson raised concerns, though, that exempting clerks creates two classes of young lawyers and could produce unfairness, particularly when sometimes young lawyers who feel pressure to begin maximizing their earnings swiftly after school eschew

[14] Va. R CLE Reg. 110 ("The Rule exempts from the certification requirement a newly admitted member for the completion period in which he or she is first admitted to practice in Virginia. A newly admitted member will not receive credit under these regulations for attending or teaching any course prior to his or her admission to the Virginia State Bar.")

clerkships. "I just don't think having a clerkship should exempt you from having to do [a CLE requirement]," he said.

Judge Wright was skeptical of a complete exemption for newly-licensed lawyers, particularly as applied to practice-area, subject-matter specific training. She noted how CLE programming is often more geared towards the actual practice of law than what recent students experienced in law school, bar prep, or even doing clinic. Additionally, a benefit to participatory CLE is the ability to meet other professionals and to interact and learn from more experienced attorneys and benefit from their perspectives. This is valuable experience, Judge Wright said. "I think it could be a significant benefit to younger lawyers to be included." Judge Geller concurred, saying that if the goal is a CLE mandate, then "we want to have people get in the habit of this right from the beginning of their careers." He acknowledged the valid cost concerns, though, and proposed consideration of a reduced cost or no cost waiver for new attorneys within some designated number of years from completing law school or taking the bar exam.

Mr. Nicholson echoed this sentiment, saying young lawyers "should be in from the very beginning." He looked to his own experience, saying that as he came into practice in the field of Family Law, he was not sure "if anything I learned in law school translated." As such, young attorneys should be required to attain practice-area-relevant CLE hours from the beginning. Further, Mr. Nicholson mentioned a generalized concern with exceptions and exemptions to a rule, supposing that if we start exempting judges, or public officials, or let large firms or organizations create and police their own in-house CLE programs, there may not be enough people left to have "bring everyone together" opportunities that are a benefit of CLE participation. Judge Wright built off this point, recalling a joint bench-and-bar conference in Ocean City, Maryland from about eight years ago that provided "a good opportunity for everyone to interact and to mix."

Additionally, she wondered how much capacity is out there currently within the CLE market to absorb an influx of attorneys clamoring to complete a new requirement. This could be exacerbated by more large employers running their own in-house programs, potentially taking those attorneys, and those funds, out of the overall CLE market. "Do we have capacity out there to provide enough CLE hours for everyone?" she asked.

Closing Remarks

Judge Berger closed the meeting by thanking everyone for attending and providing such robust discussion. He noted that the next meeting will likely delve deeper into the particulars of a CLE requirement, and thus he would keep the Workgroup abreast of any new materials that could be valuable to circulate beforehand. He asked all committee members to keep a look out for the next email he would send to assess scheduling availability in the coming weeks, and he advised everyone that minutes would be distributed in the coming days. With that, Judge Berger thanked everyone again and adjourned the meeting at roughly 5:20 p.m.

APPENDIX A.6

Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ. (Md. Mar. 13, 2023) [hereinafter *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*].

Workgroup to Study Mandatory Continuing Legal Education ("MCLE") in Maryland - Meeting Minutes from March 13, 2023

ATTENDEES (via Zoom):

- Jamie Alvarado-Taylor, Esq. (Stein Sperling)
- Mr. Zachary Babo (Law Clerk to Judge Stuart R. Berger, Appellate Court of Maryland)
- The Hon. Stuart R. Berger (Appellate Court of Maryland)
- Ryan R. Dietrich, Esq. (Maryland Office of the Attorney General, Civil Division)
- Patrice Fulcher, Esq. (Office of the Public Defender)
- The Honorable Jeffrey M. Geller (Circuit Court for Baltimore City)
- Mary V. Murphy, Esq. (Office of the State's Attorney for Howard County)
- The Hon. Stenise L. Rolle (Circuit Court for Prince George's County)
- Zebulan P. Snyder, Esq. (The Law Office of Zeb Snyder)
- The Hon. Julie R. Stevenson Solt (Circuit Court for Frederick County)
- Beatrice C. Thomas, Esq. (Office of the U.S. Attorney for the District of Maryland)
- Dean Ronald Weich (University of Baltimore School of Law)
- Dennis Whitley, III, Esq. (Shipley & Horne, P.A.)
- MaryEllen Willman, Esq. (Whiteford Taylor Preston)
- The Honorable Terrence M. R. Zic (Appellate Court of Maryland)

MATERIALS REVIEWED:

- Zachary Babo, *MCLE Rules & Regulations from Top Five Non-Maryland Bar Admission Jurisdictions*, MCLE Workgroup, App. Ct. of Md. (March 9, 2023).

NOTES FROM WORKGROUP DISCUSSION

Introductory Comments

Judge Berger began the meeting by providing a brief overview of the goals for the ensuing discussion and a status report as to what the group has thus far covered and what may be its path going forward. He explained that the goal for this March 13, 2023 meeting was to look in greater detail at some of the mechanical aspects of a CLE mandate, should the Workgroup recommend MCLE to the Supreme Court. By this, he meant that the discussion would focus on specific

provisions of a hypothetical MCLE rule. This builds off the discussion from the last Workgroup Meeting, where focus shifted from whether the Workgroup should recommend MCLE, to what might an MCLE rule might look like in Maryland. While the February 13, 2023 meeting discussed the broader terms of Maryland's hypothetical MCLE mandate -- such as how many CLE hours should be required, should there be subject-matter requirements, what should the length of a reporting period be, and should the rule exempt certain groups of legal professionals -- this March 13 meeting would drill down into these details such that the Workgroup could assess more specific potential provisions of a future MCLE rule.

Further, Judge Berger commented on the progress made by the Workgroup, noting how robust discussion regarding the first question debated -- whether MCLE should be recommended for Maryland -- has now given way to robust discussion of the details of such a rule. He noted that his chambers had begun review of the materials and minutes from prior meetings and has now turned to assembling and drafting a report to eventually provide the Supreme Court of Maryland. With that, he turned the floor over to his law clerk, Zachary Babo, to discuss a document Mr. Babo drafted and shared with Workgroup members that served as a reference for discussions regarding details of an MCLE rule.

Document Summary: MCLE Rules & Regulations from Top Five Non-Maryland Bar Admission Jurisdictions

Mr. Babo provided a brief overview of a document he compiled and shared with the Workgroup in which he collected relevant CLE provisions from five jurisdictions most frequently reported to the State Board of Law Examiners as jurisdictions where attorneys seeking admission to the Maryland bar report prior admission. These jurisdictions were Washington, D.C. (the

District of Columbia), New York, Virginia, Pennsylvania, and New Jersey.[1] In drafting this document, Mr. Babo explained that because these are the most commonly reported non-Maryland admissions, and because most attorneys barred in these non-Maryland jurisdictions would need to adhere to those jurisdictions' rules regarding CLE to remain in good standing, these jurisdictions' CLE rules are likely the most common that Maryland attorneys comply with already. As such, Maryland may benefit from looking to these jurisdictions' CLE rules both for guidance, and out of due consideration to ease the administrative burden on attorneys, as the more Maryland's eventual CLE rule aligns with the rules of these jurisdictions, the less of an additional burden MCLE in Maryland would be on attorneys barred in Maryland and elsewhere.

Mr. Babo explained that the document attempted to focus on: (1) the number of CLE hours each jurisdiction requires; (2) what counts as a CLE hour, in terms of length of time, types of activities, accreditation or certification of programs and providers, etc.; (3) how hours earned in excess of the CLE benchmark may be applied to future reporting periods; (4) whether specific subject matter must be studied in a given reporting period; (5) if newly-admitted attorneys are treated differently than those having been licensed, and (6) any exemptions or exceptions from the rule. Rather than review such provisions within the document, Mr. Babo steered the conversation toward discussing potential aspects of a future Maryland MCLE rule, remarking that the group would return to the document as a reference throughout this discussion.

[1] Because Washington, D.C. does not have mandatory CLE, the document focused just on the relevant rules, regulations, and statutes from New York, Virginia, Pennsylvania, and New Jersey.

Discussion: Specific Provisions of a Proposed Maryland MCLE Rule – Subject-Matter Requirements, Carry-Over Hours, and Exemptions

To begin discussion of specific provisions, Mr. Babo referenced that in his review of prior meeting minutes, the Workgroup appeared to reach informal consensus that any future Maryland MCLE rule would require 12 hours of CLE annually, tracked and reported to the state during a one-year reporting period. From there, the Workgroup appeared in favor of a rule that would require a portion of the annual hours requirement to focus on addressing particular subject matter, such as ethics, professionalism, and diversity, equity, and inclusion ("DEI"). Additionally, the Workgroup previously discussed potential groups of attorneys who could be eligible for an exemption to an MCLE rule. Mr. Babo explained that the hope today would be to drill deeper into the specifics of these issues so that a more detailed recommendation could be drafted. Because the Workgroup seemed in agreement with a 12-hour MCLE requirement, he hoped details of these provisions could be discussed within a 12-hour-per-year MCLE framework.

1. Specific Subject-Matter Requirements

Mr. Babo began discussion of specific subject-matter requirements by reviewing such requirements in the five jurisdictions analyzed in the document shared with the work group. He noted that all four states – New York, Virginia, Pennsylvania, and New Jersey (D.C. does not require MCLE) – require roughly two to five hours of annual study on specific topics that usually include some combination of: ethics and/or professionalism; DEI; and substance abuse, mental-health awareness, or attorney wellness. These allotments usually represent between one-sixth to one-third of the overall hours' requirement. Additionally, some states may require, or list amongst the options for "required" subjects, topics such as technology courses, courtroom procedure, law business management, and/or "practice relevant" training.

Judge Berger noted that from prior discussions, the Workgroup appeared interested in including an ethics component to a MCLE recommendation. An informal vote at the opening of the meeting showed unanimous agreement that Maryland should require some allocation of ethics study in an MCLE rule. Judge Berger also mentioned prior interest expressed by the group regarding requiring classes focused on aspects of "attorney wellness," such as substance abuse or mental health concerns. Mr. Babo added that these discussions focusing on "attorney wellness" credited the potential for such mandated programming making conversations regarding these topics a familiar part of the professional legal world such that attorneys will both be more comfortable seeking and offering help to others when needed. Further, this would likely increase both access to and awareness of resources to aid attorneys navigating such struggles. He explained that the hope of the ensuing discussion would be to develop more detail on how such a subject-specific aspect of Maryland MCLE would operate.

Dennis Whitley, III agreed that there definitely should be an ethics component of an MCLE rule, but this subject alone should not consume one-third, or 25 percent, of the required hours. Instead, it should account for perhaps an hour or two of the 12-hour CLE mandate proposed. Assuming roughly four hours of a mandate, or one-third, would focus on specific topics, ethics should be an hour or two of that allotment, with the remaining hours of the four-hour designation being spent on substance abuse, mental health awareness, or perhaps DEI.

Judge Zic concurred, recommending one or two hours of ethics or professionalism training yearly, with the other subjects like DEI and mental health rotating every few years. He expressed a concern about impact and fatigue, in that requiring too much focus on these subjects, particularly without a robust curriculum and course offerings, could become stale if similar information is frequently reiterated, thus diluting the utility of such programming. He suggested potentially

requiring some subjects like ethics each year, while allowing other subject-matter requirements to be accomplished on a rotating basis, every other year. Judge Berger also agreed that one or two hours, but no more, of annual ethics training seemed appropriate.

Judge Rolle noted that the reporting period for all CLE hours could influence the eventual subject-specific requirements. If the reporting period was two years, then this offers attorneys more time to meet these requirements, thus a higher benchmark could be set. But if reporting remained one year, as the Workgroup appeared to prefer, then only one credit of ethics would be better. She pointed out that most CLE classes last about one to two hours, and ethics material may be the sole subject-matter, or folded into other topics in such a course, thus requiring more than one hour could make achieving such study more difficult. A two-year reporting period could make accomplishing some of these subject-specific requirements easier.

MaryEllen Willman agreed that more than two hours of ethics training would be excessive, particularly because a lot of CLE does not have an ethics component, so it may be difficult to cobble together two hours of such study. Judge Berger built on this idea, expressing concern about the availability of such course offerings on the subjects of ethics, mental health, and substance abuse.

Patrice Fulcher noted that most national defense organizations and associations require and offer ethics training that often incorporates DEI, substance abuse, and mental health awareness study. She also highlighted the American Bar Association's "mental health tool kit" as a useful resource.[2] Ms. Fulcher explained that with so many organizations attempting to address these

[2] *See* Anne M. Brafford, *Well-Being Toolkit For Lawyers and Legal Employers*, Am. Bar Ass'n (August 2018), https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ls_colap_well-being_toolkit_for_lawyers_legal_employers.pdf, *see also Well-Being in the Legal Profession*, Am. Bar Ass'n, https://www.americanbar.org/content/aba-cms-dotorg/

issues, "I have not found a shortage of it on the defense side," providing perspective from her efforts to keep the Maryland Office of the Public Defender's CLE programming current. "Every training is now having something on mental health, something on DEI, and also ethics."

Regarding the availability of such programming, later in the discussion, Jamie Alvarado-Taylor expressed faith in the marketplace reacting to the needs, and thus the opportunity, created by a mandate. "If we say these are the requirements, we are going to see them pop up," she said regarding the emergence of programming options to address Maryland MCLE requiring specific subject-matter courses. "We will create a market for these subjects, and I think that will happen very quickly."

Mary Murphy recommended that the Workgroup look to the New York regulations, which she felt were very inclusive as to how attorneys could achieve their CLE hours. In particular, she felt that the specific allowance of "in-house" CLE programming was crucial.[3] The Office of the State's Attorney for Howard County where she works, and the Maryland State's Attorneys Association where she is a member, offer such programming and find it essential to serving their professional goals while doing so in a cost-effective manner. She noted that meeting specific requirements for mental health and ethics would be easier if they could be addressed by such in-

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en/groups/lawyer_assistance/well-being-in-the-legal-profession/ (last visited March 15, 2023); Institute for Well-Being in the Law, https://lawyerwellbeing.net/.

[3] "In-house programming" is CLE courses and activities provided and designed by employers (such as firms, government departments or agencies, or legal organizations) for their employees, and aimed at teaching general skills but not at completing specific legal work conducted by the organization. *See* 204 Pa. Code § 5(d); id. § 1 ("In-house activity is any educational activity offered by lawyer's law firm or group of two (2) or more lawyers or law firms or a corporation or group of corporations or any combination thereof with whom a lawyer is affiliated and which has an attendance restriction on lawyers who are not affiliated with the law firm or corporation.").

house offerings. Judge Berger seconded both this praise for New York's inclusiveness, as well as a general concern and priority to be as inclusive as possible with any potential roll out of MCLE.

Mr. Whitley expressed that he felt an hour of ethics training would suffice in a 12-hour yearly CLE requirement. He went on to suggest that the required subjects include an hour of ethics and/or professionalism training, an hour of DEI, and an hour spent on mental health and/or substance abuse. This allocation soon became referred to as the "1-1-1 plan" while the group continued to debate the topic.

Judge Berger noted that the "1-1-1 plan" works out to three hours of required subject matter, or roughly one-quarter or 25 percent of the 12-hour requirement, which would be on par with similar requirements in other jurisdictions. Judge Geller said this allocation "sounds reasonable," as it gives attorneys the other nine hours to study subjects related to their practice. Judge Zic concurred that the 1-1-1 subject-specific requirements seemed a good fit.

Zeb Snyder expressed concern about the amorphous nature of some of these required subjects, asking rhetorically "what is an hour of ethics?" He noted that for a topic like professionalism, there are the Rules of Professional Conduct, which sets a standard that can then be taught, and which provides a baseline to evaluate programming offered under the label "professionalism." But for subjects like DEI or mental health, there is no existing rule book or similar standard bearer that affords whatever entity may oversee CLE to evaluate curriculums of such programming. "What are the standards? What are the criteria that will have to be met, and who sets that?" he pondered. He was in favor of an hour of ethics or professionalism training, but he felt that the remaining hours would be better spent on practice-relevant material or other subject matter that may be easier to evaluate for quality and utility.

Ryan Dietrich said that the 1-1-1 breakdown of required subject matter worked well in terms of apportionment. He argued that the value of requiring such specific subject matter was that topics like ethics, professionalism, DEI, substance abuse, and mental health awareness are the areas that attorneys are least likely to pursue on their own without a requirement. He noted that in his own consumption of CLE, and in similar patterns he sees with colleagues, attorneys pursue topics more relevant to their particular areas of practice. Therefore, if the state is going to require any CLE at all, the focus should be on this required subject matter, even if there exists difficulty in evaluating standards for some of the topics. "The vision I have is 1-1-1 for ethics, mental health, and DEI, and the rest to be self reporting," with little administrative burden for a potential curriculum committee to establish what will count, he said, while noting that curriculum criteria may be needed for DEI and substance abuse training.

Ms. Fulcher later responded to concerns about criteria for certain subjects by noting that amongst programming already in existence addressing topics like DEI there are clear descriptions of what does or does not count and clear requirements for such programming to meet, thus Maryland could borrow from these materials.

As the reporter for future reports and recommendations produced by the Workgroup, Mr. Babo paused the discussion for clarification. He stated that so far, what it appears the group favors is one hour of ethics/professionalism, one hour of mental health/substance abuse, and one hour of DEI as the subject matter requirements, and that this would operate within the 12-hour yearly CLE requirement that aligns with a one-year reporting period. Mr. Babo sought clarification on the reporting period, as some discussion alluded to longer periods, and because several of the jurisdictions mentioned in the shared document using a two-year reporting period. Additionally,

there seemed some potential interest in having subject-matter requirements alternate from year to year.

Judge Geller said that he was not a fan of a reporting period longer than one year, nor did he like the idea of certain subjects being required in alternate years. "Keep it simple," he said, "one year." He liked the 1-1-1 allocation. He thought combining "ethics" and "professional responsibility" into a one-hour requirement made sense, and that mental health and substance abuse training could aid in lessening attorney grievance complaints, as often such issues germinate from personal difficulties suffered by attorneys that begin to manifest in their professional work. In response to an idea regarding a trial advocacy refresher course recommended by Ms. Fulcher, Judge Geller stated that while he saw the utility of such a course, he was reticent to require it, as it would be difficult to tell an attorney with countless hours of successful trial litigation experience to spend additional time in trial advocacy courses, though such courses may be immensely valuable to new attorneys. "I like the 1-1-1, and then we let the rest be for individuals to decide," he said.

Judge Rolle closed the discussion in agreement with the previous comments, stating that if the group were to stay with the one-year reporting period, then the 1-1-1 allocation of specific subjects worked well. However, she was curious how attending a three-hour ethics course would count, either for the general hours' requirement, or for subject-specific requirements, which helpfully steered the conversation into the next topic, of carry-over hours.

2. How to Count Excess or Carry-Over Hours

Mr. Babo opened the discussion by attempting to define "carry-over hours," as well as by briefly discussing how other jurisdictions handle these hours. "Carry-over hours" refer to CLE hours attorneys complete within one reporting period that are more than that reporting period's required threshold and thus may be applied to ensuing reporting periods' hours requirements. He

explained that most jurisdictions permit attorneys to carry over a portion of their excess hours to the next reporting period, though often this is limited to no more than half of that subsequent reporting period's threshold.[4]

Additionally, jurisdictions often have particular rules regarding carrying over excess hours in specific subject matter. As an example, in a jurisdiction requiring two hours of ethics training each reporting period, an attorney who completes five such hours, of which three are also in excess of the overall hours requirement, can apply those three excess hours to the next reporting period's *general hours requirement*, but these hours would not also suffice the specific ethics requirement, therefore the attorney would still need to take two ethics courses in the subsequent reporting period. The distinction between allowing carry over of general hours but not of specific subjects is rooted in the idea that jurisdictions' requiring specific subjects want to ensure frequent engagement with these topics and therefore do not want attorneys to be able to forego such study from year-to-year.

Judge Berger stated that he felt strongly that any CLE rule should include a carry-over provision, though he was more ambivalent as to whether specific subjects should be allowed to carry over, as well.

Dean Ronald Weich commented that he thought carry-over provisions made sense, though he thought a cap permitting carry-over hours to suffice up to 50 percent of the next reporting period's overall requirement seemed a good cut off. He also thought attorneys should engage with subjects like ethics every year, thus, while he liked the 1-1-1 construction for such subject-matter requirements, he did not think excess hours on those subjects should count toward sufficing the 1-

[4] To illustrate this concept, if a jurisdiction requires 24 CLE hours every two years, and an attorney does 40 CLE hours in one two-year period, the attorney has 16 excess hours. Most jurisdictions would permit applying 12 of those hours, but not the full 16, to the next reporting period's 24 required hours.

1-1 requirement for the next year. Generally, though, he felt the best approach would be to be flexible with most rules while a CLE mandate was first implemented, knowing there would be immense push back.

Ms. Fulcher agreed that if Maryland adopted a 12-hour CLE requirement, no more than six carry-over hours should be permitted, and those excess hours should not alleviate the need to also accomplish the 1-1-1 ethics, DEI, mental health and substance abuse requirements. As such, any excess credits from the 1-1-1 subjects would just count towards the next year's overall total. "Any mandatory subjects, you should have to get those every year," she said, as "that's the point" of mandatory CLE.

As an attorney licensed in Virginia, and thus needing to meet that jurisdiction's CLE requirements, Ms. Alvarado-Taylor noted that Virginia permits carry-over hours. She mentioned that when she had spoken to professional colleagues recently about potential CLE mandates in Maryland, the response surprised her. The common theme she heard was fear of potential difficulties in compliance with all aspects of such a rule. Therefore, "whatever we can do to help this effort, the better." Carry-over hours are one way this can be achieved, as attorneys have flexibility to bulk up on CLE when it is available to them and gain some breathing room in subsequent years. To aid compliance, she argued there should be no cap on carry over, therefore if an attorney completes 24 CLE hours in a given year, she should be able to apply the full excess 12 credits to the next year's requirement. Further, she felt it would be good to permit carrying over of subject-specific requirements as well, as this would ease compliance, but it may also encourage more substantive, in-depth courses on these key subjects. Instead of taking a one-hour ethics course each year, attorneys could take three-hour intensives on the subject, using the extra

two hours to suffice the next reporting period's ethics requirement, as well as chipping away at the general 12-hour requirement.

Judge Zic built on this point, noting how in his time as a practicing attorney, he would routinely go to conferences and classes that may last for two or three days. Such attendance under a 12-hour CLE mandate would likely result in attorneys building up extra hours. Therefore, in the name of making compliance easy, those excess hours should be put towards the next year.

Judge Rolle was in favor of carry-over hours, though she pointed out that if we allow carry-over hours up to 100 percent of the next year's requirement, "then you are in effect extending the reporting period to a second year, thus it becomes a two-year reporting period *de facto*," she said. Contemplating this point, the group seemed unfazed, wishing to stick to the one-year reporting period for ease of administration, but otherwise not in opposition of such a generous carry-over provision due to it affording increased flexibility to attorneys in navigating a CLE mandate.

Judge Rolle went on to assert that "full carry over" does not undercut the goals of MCLE, because attorneys are still engaging in this material regularly, and with carry over applying to just the next reporting period, but not acting as a stockpile for multiple years into the future, then attorneys using carry-over hours would forego courses on required subjects for at most one year. "Since [any CLE mandate] is a new requirement, we have to be friendly [to attorneys making the adjustment]," she said. "From the onset, carry over is a good idea. It addresses some of the issues that people on [the Workgroup] already raised."

Judge Geller continued the favorable comments regarding a one-year reporting period that allowed ample carry over, though he did not appear in favor of exempting the 1-1-1 requirement from that carry over. Bea Thomas agreed "with allowing up to [nine] hours of carry over, but the 1-1-1 needs to be taken each year." Judge Geller would later relent on this point, noting that full

carry over, so long as subject-matter credits for 1-1-1 subjects were represented in the carry over, should be allowed, particularly since it would remove an attorney from studying the required subjects for at most one year.

Addressing potential carry over of 1-1-1 subjects, Judge Zic noted that he cannot think of many classes on such subjects that lasted for only an hour, or that filled an entire hour, potentially leading to issues for attorneys attempting to reach their 1-1-1 requirements. He cited this issue as further reason to permit carry over of those subjects. Attorneys should get credit if they take more than a one-hour class. "I don't have a problem with full carry over, as long as the required subject matter is represented in the carry-over hours," he said.

Mr. Whitley agreed that there could be advantages to allowing carry over of required subjects. "If it's a longer class than two hours of ethics, I assume it's more in-depth, then you should get credit for that," he said. He presumed a class on ethics or DEI that lasts just an hour would address these topics in lesser depth compared to a longer class. "I like people to take the class every year," he said, "but taking a longer class may be more beneficial."

Ms. Fulcher noted that some of these carry-over ideas could get tricky administratively. If an attorney takes four hours of ethics, and carries over three, and one of the three count for the next reporting periods one-hour ethics requirement, with the other two going to the general requirement, that becomes a lot of moving parts to keep straight. Additionally, she was in favor of having attorneys address the 1-1-1 subjects every year, regardless of what hours they carry over and the subject matter of those carry-over hours.

3. Exemptions from yearly CLE mandate

Mr. Babo began discussion of exemptions by recapping such discussions from the prior Workgroup meeting and highlighting such provisions from New York, Virginia, Pennsylvania,

and New Jersey. At the previous Workgroup meeting, vigorous debate surrounded whether judges, senior attorneys, or newly-admitted attorneys should be exempt. Through these concerns, a common theme emerged that, if possible, all attorneys actually rendering legal services to clients and/or "practicing law" should be required to adhere to a CLE rule. In looking at the states highlighted in the shared document, Mr. Babo noted that most require all active attorneys to meet the CLE requirements in the jurisdictions where they practice, with attorneys considered inactive in one jurisdiction verifying their compliance in jurisdictions where they remain active. Additionally, these states all carve out special provisions for newly-admitted attorneys.

As such, Mr. Babo proposed that, based on prior Workgroup conversations, a Maryland CLE requirement should apply to all *actively practicing* attorneys. Such language by default exempts "non-practicing" attorneys, a group that would include retired attorneys, judges, and judicial clerks. Much of the ensuing debate struggled at times to set out language or categories of lawyers who may or may not fall within the realm of "actively practicing."

Mr. Dietrich noted we would likely need to define "active" or "inactive," and how an attorney makes such a public designation. He generally thought, though, that if someone was paying dues to actively practice, they should adhere to MCLE requirements.

Dean Weich wondered what to do with those who are using their legal skills, but not necessarily actively practicing and going to court, such as in-house attorneys, law school faculty, legislators, or those doing policy work. "There are a lot of people who still use their law degrees but who do not call themselves 'active attorneys.'" As the discussion moved on, Dean Weich clarified that he thought those who are still using legal skills should adhere to a CLE mandate, even in these nontraditional roles, as they could still gain great value from participation and adherence to the CLE rule backstops the public's trust. He felt that "inactive" and therefore

"exempt," should be strictly applied only to those not engaging in what would be considered legal work or practice.

Ms. Fulcher added context by sharing her own experience with such labels. She noted that "inactive" could mean an attorney is not practicing within that state. She said that she is "inactive" in Georgia, where she used to work and practice law. Though she still pays dues to the Georgia bar, she does not have to meet Georgia's CLE requirement, but she also may not actively practice in Georgia. She would need to declare to the Georgia bar her intention to return to "active" status in that state in order to take on clients and engage in such legal work.

Judge Rolle shared similar experience, noting her time in Florida, and saying that in that state, an attorney must designate her status as active or inactive, which she believed was how such classifications operate in Maryland as well. Judge Geller followed this with a look to information supplied by the Maryland Judiciary, showing that the same platform used to handle client-protection fund matters provides information regarding inactive or active status in Maryland.[5] Judge Rolle succinctly stated, "if you have the ability to represent someone, then you should be taking the CLE courses."

As for newly-admitted attorneys, Mr. Babo explained that often exemptions are made because of the administrative difficulties that exist due to such attorneys only gaining their new professional status and entering the Maryland bar at odd intervals of the year. Using his experience as an example, Mr. Babo explained that he was sworn in on November 28, 2022. Thus, if he was

[5] The "Frequently Asked Questions" page of the Client Protection Fund of the Bar of Maryland's website discusses attorneys signifying if they are "inactive, exempt status" and thus do not have to pay into the fund. *Attorneys – Frequently Asked Questions, Client Protection Fund of the Bar of Maryland*, Md. Cts., https://www.courts.state.md.us/cpf/attorneyfaq (last visited March 15, 2023 2:57 P.M.) (stating attorneys must submit a notarized copy of the Affidavit of Inactive/Retired Status form, found at https://www.courts.state.md.us/sites/default/files/import/cpf/pdfs/affidavitfy24.pdf, to be exempt from paying into the Client Protection fund).

required to complete a CLE mandate with a reporting period that ran from January 1 to December 31, he would have roughly one month to complete all of his CLE hours.[6] Adjustments to a reporting period, such that an attorney's CLE reporting calendar would be individualized so that the date of gaining licensure controlled, would create a messy administrative scheme prone to lapses by attorneys and regulators.

Judge Berger proposed that to limit such administrative issues, compliance for new attorneys should not begin until the start of the next full reporting period following the reporting period in which newly-admitted attorneys gain licensure. This inevitably would create some inequities, as attorneys gaining admittance in November would have less reprieve than those gaining admittance in February, but this would not prompt such concern as to draft a more convoluted rule.

Ms. Alvarado-Taylor agreed that, for the sake of ease for both future regulators and attorneys, exempting newly-admitted attorneys works best. She noted how states like Pennsylvania do not require newly-admitted attorneys to immediately meet the full CLE requirements, but the state still makes such attorneys participate in a "Bridge the Gap" program focusing on professional readiness. She felt some type of similar standalone program would be valuable. She recalled the existence of such a program focused on professionalism in Maryland which previously required newly-admitted attorneys to take a full-day course. Ms. Murphy added

[6] For the ease of administrative burden, the Workgroup has operated under an assumption that a single-year reporting period would run from January 1 to December 31.

that this program likely ended when Maryland disbanded the Professionalism Center, which administered the course. She agreed it was a "great program."[7]

Mr. Babo confirmed that such a professionalism program for newly-admitted attorneys does not exist. He clarified that attorneys who submit applications to the Maryland bar must complete a "Maryland competent," in which applicants are provided several large outlines of Maryland-specific law which they are to review.[8] An applicant then must successfully complete within one hour an online test consisting of roughly 50 questions regarding Maryland law. So long as the applicant answers at least 40 of those questions correctly, he or she may gain bar admission.

Next Steps

Judge Berger concluded the meeting by thanking the participants again for a robust discussion and by laying out next steps for the Workgroup. He stated that it appears they have made considerable progress, and that at this time it seems appropriate to move forward with beginning to draft a report and recommendation that will eventually be shared with the Supreme Court of Maryland. He stated that his chambers would carry the burden on drafting such a document, but that it would be circulated with the group prior to submission to the high court.

He noted that prior committees like the Workgroup attempted to draft the specific provisions of such a rule, however, he was reticent to do that here, thinking such work is more appropriate for the Rules Committee or the General Assembly, as the Workgroup's role was more

[7] *See Maryland Professionalism Center*, *Maryland Manual Online*, Maryland.gov, https://msa.maryland.gov/msa/mdmanual/33jud/defunct/html/20profession.html (last visited March 16, 2023 1:42 P.M.).

[8] *Maryland Law Component, State Board of Law Examiners*, MarylandCourts.gov, https://www.mdcourts.gov/ble/mdlawcomponent (last visited March 16, 2023, 1:44 P.M.).

to provide context and guidance on the issue. With the looming and large undertaking of drafting such a document, Judge Berger recommended that the Workgroup suspend meetings for a stretch such that a report could be compiled and time could be efficiently spent on that endeavor. With that, Judge Berger adjourned the meeting at roughly 5:15 P.M., marking one hour and 15 minutes of discussion.

APPENDIX A.7

Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ. (Md. June 12, 2023) [hereinafter *MCLE Workgroup June 12, 2023 Meeting Minutes*].

Workgroup to Study Mandatory Continuing Legal Education (MCLE) in Maryland - Meeting Minutes from June 12, 2023

ATTENDEES (via Zoom):

- Jamie Alvarado-Taylor, Esq. (Stein Sperling)
- Zachary Babo, Esq. (Law Clerk to the Hon. Stuart R. Berger, Appellate Court of Maryland)
- The Hon. Michael S. Barranco (Circuit Court for Baltimore County)
- The Hon. Stuart R. Berger (Appellate Court of Maryland)
- Ryan R. Dietrich, Esq. (Maryland Office of the Attorney General, Civil Division)
- Patrice Fulcher, Esq. (Maryland Office of the Public Defender)
- Professor Leigh S. Goodmark (University of Maryland Carey School of Law)
- Dean Renée McDonald Hutchins, Esq. (University of Maryland Carey School of Law)
- Kelly Hughes Iverson, Esq. (Goodell, DeVries, Leech & Dann)
- V. Peter Markuski, Jr., Esq. (Goozman, Bernstein & Markuski)
- Christopher W. Nicholson, Esq. (Turnbull, Nicholson & Sanders)
- Ryan S. Perlin, Esq. (Bekman, Marder, Hopper, Malarkey & Perlin)
- Zebulan P. Snyder, Esq. (The Law Office of Zeb Snyder)
- The Hon. Julie R. Stevenson Solt (Circuit Court for Frederick County)
- Beatrice C. Thomas, Esq. (Office of the U.S. Attorney for the District of Maryland)
- Dean Ronald Weich, Esq. (University of Baltimore School of Law)
- Dennis Whitley, III, Esq. (Shipley & Horne, P.A)
- MaryEllen Willman, Esq. (Whiteford Taylor Preston)
- The Hon. Terrence M. R. Zic (Appellate Court of Maryland)

MATERIALS REVIEWED:

- WORKGROUP TO STUDY CONTINUING LEGAL EDUC. IN MD., FINAL REPORT AND RECOMMENDATIONS (Md. June 12, 2024) [draft copy].

NOTES FROM DISCUSSION*:

* *The Workgroup's June 12, 2023 meeting served as a session to review the Final Report and Recommendations document (prior to subsequent edits and revisions), in particular the "Executive Summary and Recommendations" section and the details of the resultant Recommendations. The meeting occurred roughly one week prior to the Workgroup finalizing its Report and Recommendations and providing this final document to the Supreme Court of Maryland.*

I. Open Remarks

Judge Stuart Berger opened the meeting welcoming the Workgroup and explaining the goals of the June 12, 2023 meeting. Judge Berger provided a brief overview of the Final Report and Recommendations and proceeded to explain the document's structure, what information could be found in each section, and what will be included in the appendices. He expressed that at this June 12, 2023 meeting, the Workgroup would review the Recommendations for any additional discussion. Further, he intended to have the Workgroup vote among the members present as to endorsing each Recommendation, respectively. Zachary Babo followed up, briefly expounding on Judge Berger's explanation of the structure and organization of the Final Report and Recommendations, before leading the Workgroup into a review of the Recommendations, individually.

II. Review of Executive Summary and Recommendations from Final Report.

A. Recommendation 1: The Supreme Court of Maryland should adopt a requirement that attorneys complete a minimum number of CLE hours to remain in good standing.

Mr. Babo reiterated the Workgroup's two-part assignment from the Supreme Court of Maryland: (1) to recommend whether or not the Supreme Court should pursue instituting mandatory CLE for all attorneys licensed in Maryland; and (2) if Maryland were to adopt a CLE mandate, to recommend provisions that would govern such a mandate. He explained that, as to the first question, the Workgroup made the qualified Recommendation that Maryland should adopt mandatory CLE for all attorneys licensed in the jurisdiction, so long as the potential provisions of the CLE mandate adheres to the suggested rules put forth by the Workgroup.

In reviewing the text of this section of the Recommendations, Kelly Iverson Hughes pointed to language following Recommendation 1 that appeared to make the assertion that

mandatory CLE will have a definitive, quantifiable impact on attorney grievance and misconduct issues. She noted that because much debate centered on the lack of such clear data showing either a causal or correlative connection between MCLE and lower rates of misconduct, the language in this section should not be so conclusive. She recommended the wording be changed to express how such a reduction in attorney grievance issues was more of an "aspirational goal." Professor Leigh Goodmark also spoke to this concern, stating that we cannot make such a conclusive finding without data, and thus if we try to justify MCLE by affirmatively saying it will lessen attorney grievance issues, we contradict later sections of the report that attempt to grapple with this absence of conclusive data. Accordingly, the Workgroup decided to amend this language. Proceeding to a vote, the Workgroup members present at the meeting unanimously endorsed this first Recommendation.

B. Recommendation 2: If the Supreme Court of Maryland adopts mandatory CLE, such a mandate should include the following provisions:

1. Recommendation 2(a): A mandate should require a minimum of 12 hours of CLE each year.

Mr. Babo briefly explained the Workgroup landed at a 12-hour-per-annum minimum CLE requirement rather than higher thresholds because 12 hours worked out to roughly one CLE session each month. This was preferred to more onerous mandates of 15 or more CLE hours each year. Further, this figure aligned with what appeared to be the "average" CLE requirement of roughly 12-13 hours each year. The Workgroup accepted this 12-hour standard early in its deliberations and utilized this understanding in future discussions of other MCLE provisions. Brought to a vote before the members present at this Workgroup meeting, the annual 12 hours of CLE requirement received unanimous support.

2. *Recommendation 2(b): Attorneys should report their CLE completion each year, with a reporting period that runs from January 1 to December 31, or that otherwise aligns with the other reporting requirements imposed upon Maryland attorneys.*

The Workgroup did not have a formal preliminary vote in earlier meetings regarding the structure of a reporting calendar, but considerable discussion often focused on administrative burdens of MLCE, to both state regulators and attorneys. These concerns produced the Recommendation that the reporting period align with the calendar year, or, in the alternative, that it align with other reporting requirements (i.e. paying into the Client Protection Fund, reporting pro bono hours). Brought to a vote among the members present at this Workgroup meeting, the recommended reporting calendar received unanimous support.

3. *Recommendation 2(c): The "1-1-1 plan" – within the 12-hour requirement, attorneys should complete at least one-hour each of CLE concerning (1) ethics and professional responsibility; (2) diversity, equity, and inclusion; and (3) mental health and substance abuse.*

The most critical debate of the meeting centered on the Recommendation of the "1-1-1 plan" of required CLE subjects. The Report captured much of this debate from previous meetings, and similar concerns were given new voice during this meeting. Mr. Babo portrayed the Workgroup's adoption of the "1-1-1 plan" as the product of compromise between the recognition of the importance of these three subjects, the value of requiring their study, and the administrative complications of requirements that may shift from year to year. As such, requiring all three subjects each year both avoided the potential compliance challenges of requiring some subjects some years, while not requiring them other years, as well as ensured these important topics would garner substantial focus.

Judge Berger shared comments provided by Steve Rakow, who was not present, but who stated in an email that while he was generally in favor of the CLE mandate and all other provisions

recommended by the Workgroup, he did not endorse the "1-1-1 plan." He agreed that ethics should be a yearly requirement, but that the diversity, equity, and inclusion ("DEI") requirement, as well as the attorney wellness requirement, should instead be biennial. He felt that the "1-1-1 plan" comprised one-quarter (25 percent) of the overall CLE requirement, which was too much, and thus crowded out other hours better spent on practice-relevant skills more directly related to attorney competency.

Dean Ronald Weich echoed these concerns, noting that much of the Workgroup's efforts were to "find the sweet spot" in crafting a mandate, and that the "1-1-1 plan" may be too rigid to begin, and too dominant among the overall hours required. He agreed all three topics were very important, but he argued that requiring all three every year was "overly specific for the first set of requirements." He suggested instead for a CLE mandate to "encourage" study on these three topics, and from there the State could collect data as to attorneys' engagement in programs related to the "1-1-1 plan" subjects and utilize this in further revisions of the CLE mandate as it evolves. Dean Weich, however, noted that he would vote to endorse the Report, and this provision was not a "deal breaker."

Ryan Dietrich voiced concern about how well DEI and attorney wellness could be defined, a topic explored further in the Report as it cites definitions provided by the American Bar Association in its 2017 Model Rule on MCLE. This concern about the clarity of definitions wrapped into concerns about organizations seeking to gain accreditation for programming in these subjects. In addition, Mr. Dietrich suggested in an email prior to the meeting, that we consider broadening the definition of "attorney wellness," to include programs related to meditation, mindfulness, and nutrition, in addition to courses targeting the more acute issues of mental health disorders and substance abuse.

Professor Goodmark expressed strong support for the "1-1-1 plan" framework, stating that she "really supports attorney wellness and DEI. . . . These issues are incredibly important. We see every day why they are so important." She pointed to comments made by Mr. Babo in summarizing prior discussions the Workgroup had regarding the "1-1-1 plan," noting that attorneys will not take such courses unprompted, and, by requiring them, it raises awareness and engagement with these issues. As a point of comparison, Judge Berger relayed information he learned regarding Maryland's judicial training requirement adding an additional three hours of programming focused on diversity and equity issues.

Judge Berger recommended the Final Report and Recommendations be amended to continue to endorse the "1-1-1 plan," but to note that this particular issue was quite challenging, and that the endorsement reflected only a "majority" of the Workgroup's support. This led to a debate about drawing such attention to the lack of unanimity on this one Recommendation compared to where such division may exist on other Recommendations. Dean Renee Hutchins expressed concern to this end, asking why this would be the one Recommendation that is hedged compared to other suggested provisions for which some Workgroup members also had reservations. She advocated for consistency, such that if a particular Recommendation was highlighted for their lack of unanimity, this stipulation should be made for every such point in which the Workgroup did not speak with a unified voice. While the larger Report expounds upon the nuances and competing viewpoints debated on certain issues, the Executive Summary and Recommendations should not draw attention to disagreements regarding suggested CLE provisions unless it did so for every provision where such discord existed.

Proceeding to vote on the "1-1-1 plan" recommendation, 15 Workgroup members endorsed the Recommendation, while four voted against this Recommendation.

4. Recommendation 2(d): Attorneys can carry-over up to 100 percent, or 12 hours, of CLE in excess of the 12-hour minimum, from one reporting period to the next; this includes carrying over the "1-1-1 plan" requirements, so long as each of the required subjects are reflected within the carried over hours.

Mr. Babo summarized that the Workgroup debated single-year and multi-year reporting periods for CLE hours, ultimately landing on single-year reporting, but, as a means of providing additional flexibility to attorneys in meeting their hours thresholds, attorneys would be permitted to carry over to the subsequent reporting period 100 percent (12 hours) of CLE hours obtained in excess of the 12 hours required each year.

Patrice Fulcher stated that she generally agreed with the carry-over allowance, but that it should not apply to the DEI and ethics requirements, which were important enough to warrant repetition each year. "As a profession, it says something important to have DEI and ethics each year." Jamie Alvarado-Taylor agreed that these subjects were important, but she harkened to prior debate that asserted that permitting such "1-1-1 plan" carry over may encourage attorneys to take longer, more substantive classes on these subjects that could yield greater engagement. Incentivizing this by allowing the carry-over of additional hours spent on these topics speaks to the subject matter's importance.

Proceeding to vote on this Recommendation, the Workgroup voted 18-1 in favor of recommending attorneys be permitted to carry over 12 excess hours of CLE to the ensuing reporting period, with the carry-over of "1-1-1 plan" subjects permitted, as well.

5. *Recommendation 2(e): Only judges and attorneys registered as "inactive" with the Maryland bar should be exempt from compliance with a CLE mandate in Maryland; newly-admitted attorneys should be exempt from compliance during the reporting period in which they earn admission to the Maryland bar*.

Mr. Babo explained that the Workgroup sought limited exemptions to the CLE mandate, believing the mandate should apply to all practicing lawyers and interpreting the idea of "practicing" broadly such that it included all attorneys admitted to practice in Maryland who were not otherwise designated as "inactive" with the Client Protection Fund. Because judges did not practice, and because they must adhere to their own judicial training requirements, they too were exempted. Newly admitted attorneys would not have to abide by the mandate until the first full reporting period following their admission to practice, largely to avoid the administrative complications of those attorneys gaining "admitted" status at different points within a potential reporting calendar.

The Workgroup did not dispute this Recommendation in spirit, though there were issues with how to present the "judicial exemption." Dean Weich thought it was "optically unwise" to clearly carve judges out from the requirement, particularly as such a mandate is bound to create pushback from the legal community. He noted that judges already have an educational requirement that could be applied to a CLE mandate, particularly as the Workgroup suggested "in-house programs" be granted CLE credit. As such, programming of the Judicial College could easily suffice the CLE mandate.

Dean Hutchins agreed with this sentiment, stating that if judges are already completing 12 hours of CLE annually through judicial training, they can easily comply with a CLE mandate without overburdening the court calendar, and without any public perception issues inherent in a judicial exemption. Mr. Dietrich built from this and recommended that the judicial exemption be

removed, and that the Recommendation's language be changed to reflect that as long as judges meet their judicial training requirement, it would suffice for the CLE mandate.

The Workgroup proceeded to vote on this Recommendation, with the caveat that the language would be revised to remove an explicit judicial exemption and to instead explain how meeting judicial training requirements would also apply to meeting the requirements of a CLE mandate. The Workgroup unanimously endorsed this revised Recommendation.

C. Recommendation 3: Maryland should embrace the following approach to developing and applying a CLE mandate.

Mr. Babo stated that the following Recommendations were not necessarily provisions explicitly laid out and voted upon preliminarily by the Workgroup, but they were instead constant themes and points of emphasis that reappeared throughout the months of debate. As such, they were less "rules" for CLE and more guideposts for the Supreme Court of Maryland or its Rules Committee to follow in further developing the eventual provisions of a mandate.

1. Recommendation 3(a): Any mandatory CLE rule should take an inclusive and flexible approach to providing credit for CLE activities in an effort to ease the burden of compliance.

Mr. Babo stated that, throughout the Workgroup's discussions, members frequently stressed that because the mandate would be a new burden upon attorneys, likely met with some degree of confusion and recalcitrance, a more lenient and flexible approach governing the approval of activities, providers, and compliance will inevitably aid implementation. Of particular controversy, though, both at this meeting and during prior discussions, involved usage of the term "self-study" among permitted CLE activities.

Dean Weich reiterated his concerns that "self-study" was too lenient, serving as a "get out of jail free" card that would allow attorneys to effectively escape much of the mandate's desired goal by picking flimsy activities and gaining credit for them. "I think that is going to blow a big

hole in the mandate." Judge Berger, Mr. Dietrich, and Ms. Fulcher all later added similar concerns with self-study being too broad of a term if left undefined.

Though Dean Weich was cautious to change too much of the language in the Executive Summary and Recommendations, he hoped that the body of the Report would expound upon this concern. Other Workgroup members pointed to later pages of the Report that dove deeper into this debate and the concerns about leniency with "self-study."

At the root of much "self-study" worries was the inexactness of this language. At times, "self-study" was used as a catch all for several types of otherwise recognized CLE activities, like teaching, academic writing, or pro bono activity. At other times, however, "self-study" existed as an ambiguous term at the end of a list, distinct from other recognized CLE activities, and thus looked at skeptically.

A compromise eventually emerged, in which the term "self-study" was removed from the non-exclusive list of potential CLE activities expressly mentioned in the text following Recommendation 3(a). Further, the Report would be reviewed to add potential additional context around the issue of "self-study." The Workgroup proceeded to vote on this Recommendation, with the requisite amendment, unanimously endorsing it.

2. *Recommendation 3(b): Any mandatory CLE rule for Maryland should seek to align itself as closely as possible with those rules of neighboring jurisdictions such as Virginia, Pennsylvania, or New York, in an effort to ease compliance for Maryland attorneys who must adhere to both a Maryland CLE rule, as well as CLE rules from other jurisdictions.*

The last Recommendation proved potentially the least controversial. Mr. Babo explained that, though not discussed as an explicit provision in his building of the Report, he frequently looked to the MCLE rules of other jurisdictions. Noting that such CLE mandates form a patchwork of at times competing provisions, and, learning from the experiences of Workgroup members

already complying with these rules from other jurisdictions, it became incumbent to stress the need for reciprocity among jurisdictions. The spirit of Recommendation 3(b) was for the Supreme Court and for the Rules Committee to remain cognizant of this need for harmony where possible and thus the value of aligning Maryland's potential CLE mandate with those of other jurisdictions where many Maryland attorneys also report admission. The Workgroup voted to unanimously endorse this final Recommendation.

III. Conclusion

Following the review of the Executive Summary and Recommendations, Judge Berger called the group to a general vote endorsing the Workgroup's Final Report and Recommendations. This too was unanimous. He then explained the timeline for concluding the Workgroup's mission. Changes suggested during the June 12, 2023 meeting would be incorporated and shared with the group by the end of the day on June 13, 2023. Any additional feedback from Workgroup Members should be submitted to Zachary Babo (zachary.babo@mdcourts.gov) by close of business on Thursday, June 15, 2023. This deadline for changes was also shared with Workgroup members unable to attend the June 12, 2023 meeting. A final version would be produced and distributed to the Supreme Court of Maryland during the last week of June 2023. All Workgroup Members would also be provided a final copy of this Report.

Judge Berger expressed his considered thanks to the Workgroup members for convening again and for all their time and effort in advancing this important task through the prior months. Several Workgroup members weighed in with encouragement and complements to their colleagues, to Judge Berger in stewarding this effort, to Mr. Babo in his work composing minutes and the Final Report and Recommendations, and to Kathy Boone for keeping the Workgroup

scheduled and informed. After beginning at approximately 9:00 a.m., the meeting concluded at roughly 10:15 a.m.

APPENDIX B

Documents Shared with the Workgroup

B2 ABA Jurisdictional Breakdown of CLE Requirements, Am. Bar Ass'n, (compiled from https://www.americanbar.org/events-cle/mcle/).

B27 AM. BAR ASS'N SEC. LEGAL EDUC. ADMISSIONS, LEGAL EDUCATION & PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter *The MacCrate Report*].

B49 MD. ST. BAR ASS'N, REPORT OF THE CONTINUING LEGAL EDUCATION COMMITTEE REGARDING MINIMUM CONTINUING LEGAL EDUCATION (Mar. 21, 1995) [hereinafter *1995 MSBA Report on MCLE*].

B66 E.I. "Skip" Cornbrooks, IV, *Mandatory CLE in Maryland? Pro/Con*, MD. LITIGATOR, at 14 (June 2010).

B69 AM. BAR ASS'N, MODEL RULE FOR MINIMUM CONTINUING LEGAL EDUCATION AND COMMENTS, INCLUDING REPORT [hereinafter *2017 ABA Model Rule for MCLE & Report*].

B100 MD. ST. BAR ASS'N STRATEGIC IMPLEMENTATION COMM., PROFESSIONAL DEVELOPMENT & THE MARYLAND LEGAL PROFESSION, MSBA: REPORT & RECOMMENDATIONS, at 14 (Fall 2020) [hereinafter *2020 MSBA Professional Development Report*].

APPENDIX B.1

ABA Jurisdictional Breakdown of CLE Requirements, Am. Bar Ass'n, (compiled from https://www.americanbar.org/events-cle/mcle/).

STATE-by-STATE CLE REQUIREMENTS[1]

SUMMARY:

- Four States (Maryland, Massachusetts, Michigan, and South Dakota) and the District of Columbia do not have continuing legal education requirements.
- The average CLE requirement is roughly 12.5 hours per year.
- The most common "reporting period" to complete a state's CLE requirement is 1 year, but several jurisdictions extend the period up to 3 years, with the minimum hours required aligning accordingly (i.e. Indiana requires 36 hours of CLE training within a 3-year reporting period, thereby aligning with "12-hours per year" average among jurisdictions).

JURISDICTIONAL CONTINUING LEGAL EDUCATION REQUIREMENTS:

- **ALABAMA**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 1 hour of ethics or professionalism credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Reporting date:** January 31
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
  - **Attendance Reporting Procedure:** The ABA reports participation for all program completions, irrespective of program format.
  - **Newly-Admitted CLE Rules:** Alabama newly admitted attorneys are exempt from the annual CLE requirement through December 31st in the year in which they are admitted, but MCLE Rule 9 requires each new admittee to complete a 3-hour Mandatory Professionalism Course within one year of admission. Credits earned from the mandatory professionalism course will count toward the general 12-hour annual requirement. If newly admitted attorneys complete the requirement in the same calendar year as they were admitted, these credits may be carried over toward their first annual requirement the following calendar year.

- **ALASKA**
  - **Credit hours required:** 3 hours of ethics credit per reporting period. Attorneys are encouraged to complete an additional 9 hours of general or ethics voluntary CLE (VCLE).
  - **Specialty credits required:** 3 hours of ethics credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Reporting date:** February 1
  - **Compliance group:** All attorneys report annually.

[1] All information provided by the American Bar Association's website, in the section cataloging Continuing Legal Education requirements from all 50 states, as well as United States territories and neighboring Canadian provinces. Am. Bar Ass.'n, *Mandatory CLE*, Am. Bar Ass'n, https://www.americanbar.org/events-cle/mcle/ (last visited)##.

- **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
- **Attendance Reporting Procedure:** The ABA does not report your participation. Attorneys must report to Alaska whether they took 3 hours of ethics and 9 hours of voluntary credit.
- **Newly-Admitted CLE Rules:** New attorneys in Alaska are exempt from MCLE requirements during their year of admission, but are required to take an ethics program specifically for newly admitted attorneys.

- **ARIZONA**
  - **Credit hours required:** 15 hours per reporting period
  - **Specialty credits required:** 3 hours of ethics credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** June 30
  - **Reporting date:** September 15
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
  - **Attendance Reporting Procedure:** The ABA does not report your participation. Each attorney must report their participation per Arizona's reporting requirements.
  - **Newly-Admitted CLE Rules:** Attorneys admitted in Arizona between July and December of the educational year have a reduced requirement of 10 total credits, 2 of which must be ethics. Attorneys admitted between January and June have no MCLE requirement for that educational year. Arizona also requires new admittees to complete a mandatory professionalism course within the first year of admission. This is a one-time requirement of 4.25 CLE hours and is offered only in Phoenix and Tucson four to five times per year.

- **ARKANSAS**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 1 hour of ethics credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** June 30
  - **Reporting date:** August 31
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
  - **Attendance Reporting Procedure:** The ABA reports your participation as of July 1, 2021.
  - **Newly Admitted CLE Rules:** Arkansas new admittees must complete their first CLE requirement by June 30 of the year following admission to the Bar. A mandatory ethics/skills course must be taken within 2 years of certification.

- **CALIFORNIA**
  - **Credit hours required:** 25 hours per reporting period

- **Specialty credits required:** 4 hours of ethics credit; 1 hour of competency issues credit; and 2 hours of elimination of bias in the profession credit (at least 1 of which must be implicit bias), per reporting period
- **Length of reporting period:** 3 years
- **Compliance date:** January 31
- **Reporting date:** February 1
- **Compliance group:** California attorney membership is divided into 3 compliance groups by last name: Group 1 (A-G); Group 2 (H-M); and Group 3 (N-Z). Each group is up for compliance every 3 years. Group 1's compliance period is 2/1/16 -1/31/19; Group 2's is 2/1/15 - 1/31/18; and Group 3's is 2/1/17-1/31/20.
- **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round to the nearest quarter hour.
- **Limit on credit hours for self-study**: Attorneys must earn 12.5 credit hours through activities qualified for participatory credit (or one half of their proportional requirement). The remainder (up to 12.5 hours) can be earned via self-study. ABA On-Demand CLE courses are considered participatory in California. All 25 credit hours may be earned with ABA On-Demand CLE courses.
- **Attendance Reporting Procedure:** Attorneys are responsible for tracking their CLE credit and reporting compliance to the State Bar of California at the end of the reporting period. Prior to the end of the reporting period, the State Bar sends compliance cards to those who must comply that year. Attorneys must retain their certificates of attendance for participatory credit activities. Neither the ABA nor attorneys send certificates of attendance to the California State Bar unless requested during an audit.
- **Newly-Admitted CLE Rules:** California new attorneys are required to complete a 10-hour program of New Attorney Training, developed and provided by the State Bar of California. The New Attorney Training can also be used toward fulfilling the regular MCLE requirement for new attorneys.

- **COLORADO**
  - **Credit hours required:** 45 hours per reporting period
  - **Specialty credits required:** 5 hours of ethics credit and 2 hours of equity, diversity, & inclusivity per reporting period
  - **Length of reporting period:** 3 years
  - **Compliance date:** December 31
  - **Reporting date:** January 31
  - **Compliance group:** Varies by admission date. Attorneys report every 3 years after becoming licensed in Colorado.
  - **Minutes per credit hour:** 50 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 50 and round general credits to the nearest whole credit, and round ethics credits down to the nearest 1/10th credit.
  - **Attendance Reporting Procedure:** Colorado lawyers must complete an online affidavit form via the Supreme Court's lawyer reporting site. and enter the course approval code found on attorney certificates of completion.

- **Newly-Admitted CLE Rules:** Colorado attorneys must complete a mandatory course on professionalism presented by the Colorado Bar Association prior to being admitted, which shall satisfy 6 general credits toward their first CLE requirement.

- **CONNECTICUT**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 2 hours of ethics and/or professionalism credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Reporting date:** Subsequent year's attorney registration form
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
  - **Attendance Reporting Procedure:** The ABA does not report your participation. Each attorney must report their participation per Connecticut's reporting requirements.
  - **Newly-Admitted CLE Rules:** Newly admitted attorneys in Connecticut are not required to complete any CLE credits in the year that they are admitted.

- **DELAWARE**
  - **Credit hours required:** 24 hours per reporting period
  - **Specialty credits required:** 4 enhanced hours of ethics credit per reporting period
  - **Length of reporting period:** 2 years
  - **Compliance date:** December 31
  - **Reporting date:** March 31
  - **Compliance group:** Varies by admission date. Attorneys admitted in even-numbered years must complete credits by December 31 of every even-numbered year; odd-numbered year admissions complete credit by December 31 of every odd-numbered year. E.g., 12/31/2010 compliance date covers attorneys admitted in any even-numbered year such as 1986, 1998, 2002, 2004, etc.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round to the nearest one-tenth of an hour.
  - **Attendance Reporting Procedure:** The ABA reports attendance to Delaware on each attorney's behalf.
  - **Newly-Admitted CLE Rules:** After passing the Bar Exam but before being admitted to the Delaware Bar, attorneys must attend a two-day Pre-Admission Conference. In addition, newly admitted attorneys must complete all 7 Fundamentals programs with the first two compliance periods (4 years). Each Fundamentals program is approximately 6 hours.

- **DISTRICT of COLUMBIA (Washington, D.C.)**
  - District of Columbia attorneys do not have MCLE requirements.
  - **Newly-Admitted CLE Rules:** Attorneys newly admitted to the District of Columbia must complete the DC Rules of Professional Conduct and District of Columbia Practice mandatory course. This is a one-day offered by the DC Bar.

- **FLORIDA**

- **Credit hours required:** 33 hours per reporting period
- **Specialty credits required:** 5 hours in the areas of approved legal ethics, professionalism, bias elimination, substance abuse, or mental illness awareness programs, per reporting period, with at least 1 of the 5 hours in an approved professionalism program; and 3 credits in approved technology programs
- **Length of reporting period:** 3 years
- **Compliance date:** Assigned by Florida
- **Reporting date:** Assigned by Florida
- **Compliance group:** Varies. Each attorney is assigned a three-year reporting cycle.
- **Minutes per credit hour:** 50 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 50 and round to the nearest 1/2 hour.
- **Attendance Reporting Procedure:** The ABA does not report your participation. If the program has been approved, Florida attorneys must report their completion with the Florida approval code provided on your ABA Certificate of Completion in the MCLE portal. On April 15, 2021 the Florida Supreme Court issued Order SC 21-284 ("Order") that stated that it would no longer approve for continuing legal education any programs submitted by a sponsor that uses "quotas" based on race, ethnicity, gender, religion, national origin, disability, or sexual orientation in the selection of course faculty or participants. Florida Bar regulators have stated that attorneys will not receive Florida credit for any ABA program, even if they self-apply; speakers will not receive Florida credit for their participation in our programs; and, self-application forms submitted by attendees or speakers will not be approved. Programs approved by Florida prior to the Florida Supreme Court Order SC SC 21-284 remain approved for Florida credit. (See "Florida Rule Change" box above for link to more information.)
- **Newly-Admitted CLE Rules**: Florida attorneys must complete "Practicing with Professionalism" within the first year of being admitted and 3 basic level courses (or 21 hours of basic level programming) sponsored Young Lawyers Division within the first three years of admission to the Bar.

- **GEORGIA**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 1 hour of ethics credit and 1 hour of professionalism credit, per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Reporting date:** March 31
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round to the nearest half hour.
  - **Attendance Reporting Procedure:** The ABA reports attendance to Georgia on each attorney's behalf. Attorneys report/verify compliance by submitting an annual report to Georgia, which is sent to attorneys between December and January by the Georgia Commission.
  - **Newly-Admitted CLE Rules:** In their year of admission or in the next calendar year Georgia new attorneys must complete the mentoring and CLE requirements of Georgia's Transition into Law Practice Program/Mentoring Program.

- **HAWAI**
  - **Credit hours required:** 3 hours per reporting period.
  - **Specialty credits required:** 1 hour of ethics credit every 3 years.
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Reporting date:** December 31
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. In order to receive CLE credit for an approved course, an attorney must be present for 50 minutes out of a 60 minute course. After the first 60 minutes, an attorney may receive credit for the time the attorney is actually present at the course rounded down to the nearest quarter hour.
  - **Limit on credit hours for recorded programs:** No limit. Attorneys can earn all CLE hours via recorded programs.
  - **Attendance Reporting Procedure:** Attorneys must self-report CLE compliance on the annual attorney registration statement. Attorneys should not send certificates of attendance to Hawaii after each program.
  - **Newly-Admitted CLE Rules:** New attorneys in Hawaii electing active status in the year they are licensed to practice law are exempt from the MCLE requirement for that year. However, they must complete a specific Hawaii Professionalism course by December 31st of the first full calendar year after admission. The course is worth 4.5 CLE credits, 3 of which can be carried forward into the following year to meet the annual CLE requirement.

- **IDAHO**
  - **Credit hours required:** 30 hours per reporting period
  - **Specialty credits required:** 3 hours of ethics or professional responsibility
  - **Length of reporting period:** 3 years
  - **Compliance date:** December 31
  - **Reporting date:** February 1
  - **Compliance group:** Varies by admission date; attorneys are up for compliance every 3 years.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
  - **Attendance Reporting Procedure:** Attorneys report attendance by sending in the ABA uniform certificate of attendance. The ABA does not report your participation. Idaho attorneys may individually apply for course approval by submitting the Application for CLE credit to the Idaho State Bar with the required attachments. You can download a copy of the program brochure/agenda from many ABA program websites, or print a copy of the program web page (if no separate brochure available) for submission with your application. There is no fee for Idaho attorneys to seek individual course approval.
  - **Newly-Admitted CLE Rules:** Pursuant to Idaho Bar Commission Rule 402(f), all new members must complete and certify a total of ten (10) New Attorney Credit (NAC)-Approved CLE on Idaho practice, procedure, and/or ethics no later than one year following admission. The required ten NAC credits must include four required Idaho Substantive Law Courses. These courses address Idaho law on ethics, civil and criminal procedure, and community property and are available

online on-demand through the Idaho State Bar website. New members who have not actively practiced law for at least three (3) years prior to admission shall complete the New Attorney Program consisting of an introduction to practice, procedure and ethics. The New Attorney Program is held twice a year in Boise in the spring and the fall on the morning of each admission ceremony. It is not available online or as a recorded program. After completing the Idaho Substantive Law Courses and, if required, the New Attorney Program, new members must complete additional NAC approved credits to bring the total to ten

- **ILLINOIS**
  - **Credit hours required:** 30 hours per reporting period
  - **Specialty credits required:** 4 hours of professional responsibility credit, 1 hour of diversity and inclusion, and 1 hour of mental illness & addiction issues credit.
  - **Length of reporting period:** 2 years
  - **Compliance date:** June 30
  - **Reporting date:** July 31
  - **Compliance group:** There are 2 compliance groups: attorneys with last names beginning A through M are required to report in even numbered years (2018, 2020, 2022, etc.); attorneys with last names beginning N through Z are required to report in odd numbered years (2017, 2019, 2021, etc.).
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
  - **Attendance Reporting Procedure:** Attorneys must self-report completion of CLE requirements each reporting period. The ABA does not send certificates of attendance to the Illinois MCLE board.

- **INDIANA**
  - **Credit hours required:** 36 hours per reporting period
  - **Specialty credits required:** 3 hours of ethics credit per reporting period
  - **Length of reporting period:** 3 years
  - **Compliance date:** December 31
  - **Reporting date:** December 31
  - **Compliance group:** Varies by admission date; attorneys are up for compliance every 3 years.
  - **Minutes per credit hour:** 60 minutes. To calculate credits for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest tenth hour.
  - **Limit on credit hours for distance education programs:** Attorneys may earn up to 18 credit hours via distance education per three-year period.
  - **Attendance Reporting Procedure:** The ABA reports attendance for all program completions within 30 days after the program.
  - **Newly-Admitted CLE Rules:** Newly admitted attorneys in Indiana are required to complete 36 total credit hours, including 3 hours of ethics credits in their 3-year educational period. They must also complete an approved 6-hour Applied Professionalism program or a mentoring program approved for applied professionalism credit.

- **IOWA**
  - **Credit hours required:** 15 hours per reporting period

- **Specialty credits required:** 1 hour of legal ethics and 1 hour of either "attorney wellness" or "diversity and inclusion" each year (starting calendar year 2021)
- **Length of reporting period:** 1 year
- **Compliance date:** December 31
- **Reporting date:** March 10
- **Compliance group:** All attorneys report annually.
- **Minutes per credit hour:** 60 minutes. To calculate credits for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
- **Attendance Reporting Procedure:** Attorneys must self-report completion of CLE requirements at the end of each reporting period. Neither the ABA nor attorneys send certificates of attendance for individual programs to the Iowa Commission on CLE.
- **Live Moderated Webinars:** Credit is not available in Iowa for ABA programs and sessions listed as live moderated webinars. Credit remains available for live webinars subject to jurisdictional approval.
- **Newly-Admitted CLE Rules:** Iowa newly admitted attorneys must complete an 8-hour Basic Skills course within one year from the date of admission to practice in Iowa. The program must have at least 1 hour of ethics and focus on Iowa law in at least 8 of the following 10 practice areas: Civil Procedure; Criminal Law; Criminal Procedure; Family Law; Guardianship, Conservatorships, Trusts, and Powers of Appointment; Business Entities; Probate; Torts; Contracts; Real Estate Transactions; and Ethics and Professionalism.

- **KANSAS**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 2 hours of ethics and professionalism credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** June 30
  - **Reporting date:** July 31
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 50 minutes. To calculate credits for a specific program, divide the total length of the program in minutes by 50 and round down to the nearest half hour.
  - **Attendance Reporting Procedure:** The ABA reports attendance to Kansas on each attorney's behalf for all programs.
  - **Live Moderated Webinars:** Credit is not available in Kansas for ABA programs and sessions listed as live moderated webinars. Credit remains available for live webinars subject to jurisdictional approval.
  - **Newly-Admitted CLE Rules:** Newly admitted Kansas attorneys are exempt from CLE requirements for the first compliance period in which they were admitted to the Kansas Bar.

- **KENTUCKY**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required**: 2 hours of ethics credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** June 30
  - **Reporting date:** August 10

- **Compliance group:** All attorneys report annually.
- **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round to the nearest quarter hour.
- **Attendance Reporting Procedure:** Attorneys must send certificates of attendance for each program to the Kentucky Bar Association. The ABA does not send certificates of attendance to Kentucky.
- **Newly-Admitted CLE Rules:** Kentucky new admittees must complete a 12-hour New Lawyer Program within one year of admission.

- **LOUISIANA**
  - **Credit hours required:** 12.5 hours per reporting period
  - **Specialty credits required:** 1 hour of ethics and 1 hour of professionalism per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date**: December 31
  - **Reporting date:** January 31
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round to the nearest hundreth of an hour.
  - **Attendance Reporting Procedure:** The ABA reports attendance on behalf of attendees for all programs for which we directly apply to Louisiana for approval. Programs which are not accredited by the ABA in Louisiana may be available for self-application and self-reporting with the state.
  - **Newly-Admitted CLE Rules:** Louisiana newly admitted attorneys must complete 12.5 hours, including 8 hours of ethics, professionalism, or law office management, during the period from the year of admission through December 31st of the next calendar year.

- **MAINE:**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 1 hour of ethics and 1 hour of avoidance of harassment and discrimination in the legal profession credit
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Reporting date:** December 31
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round up or down to the nearest quarter hour.
  - **Limit on credit hours for recorded programs:** Attorneys can earn up to 5 CLE hours via recorded programs. The product formats listed below are approved in Maine.
  - **Attendance Reporting:** The ABA reports attendance to Maine on behalf of attendees for live webinars, in-person events and on-demand courses.
  - **Newly-Admitted CLE Rules:** Newly admitted attorneys who complete an approved Bridging-the-Gap program or other practical skills course made available by the Board of Overseers of the Bar will be exempt from the requirements during the year in which the attorney is admitted to the bar of Maine and during the following calendar year.

- **MARYLAND**
  - Maryland Attorneys do not have MCLE Requirements.

- **MASSACHUSETTS**
  - Massachusetts attorneys do not have MCLE requirements.
  - **Newly-Admitted CLE Rules:** Newly admitted Massachusetts attorneys must complete a one-day Practicing with Professionalism course no later than 18 months after being admitted to practice in Massachusetts.

- **MICHIGAN**
  - Michigan attorneys do not have MCLE requirements
  - **Newly-Admitted CLE Rules**: Michigan attorneys do not have MCLE requirement.

- **MINNESOTA**
  - **Credit hours required:** 45 hours per reporting period
  - **Specialty credits required:** 3 hours of ethics and 2 hours of elimination of bias per reporting period
  - **Length of reporting period:** 3 years
  - **Compliance date:** June 30
  - **Reporting date:** August 31
  - **Compliance group:** There are 3 categories for CLE reporting and new attorneys are assigned to Category 1, 2, or 3 for reporting every 3 years. Category 1 attorneys report in 2018; Category 2, in 2019; and Category 3, in 2017.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round to the nearest quarter hour.
  - **Attendance Reporting Procedure:** Attorneys must self-report completion of CLE requirements each reporting period through an affidavit or online reporting. Neither the ABA nor attorneys send certificates of attendance to the Minnesota State Board of CLE.
  - **Newly-Admitted CLE Rules:** Newly admitted Minnesota attorneys are assigned to one of three reporting groups for CLE purposes. Attorneys can find their assigned group in the upper left-hand corner of their wallet licenses.

- **MISSISSIPPI**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 1 hour of legal ethics, professional responsibility, or malpractice prevention credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** July 31
  - **Reporting date:** August 15
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round up or down to the nearest one-tenth of an hour.
  - **Limit on credit hours for distance-learning programs:** Attorneys can earn up to 6 CLE hours via live webinars and teleconferences and on-demand online courses.
  - **Attendance Reporting Procedure:** The ABA reports attendance on behalf of attendees.

- **Newly-Admitted CLE Rules:** Mississippi newly admitted attorneys must complete an approved New Lawyer program of 12 hours of CLE courses, including 6 hours in Basic Skills training and 6 hours in Ethics and Professionalism by the second July 31st following admission.

- **MISSOURI**
  - **Credit hours required:** 15 hours per reporting period
  - **Specialty credits required**: 2 hours of ethics, professionalism, substance abuse and mental health, or malpractice prevention credit and 1 hour of cultural competency, diversity, inclusion, and implicit bias credit
  - **Length of reporting period:** 1 year
  - **Compliance date:** June 30
  - **Reporting date:** July 31
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 50 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 50 and round up or down to the nearest one-tenth of an hour.
  - **Limit on credit hours for recorded programs:** Attorneys can earn up to 6 CLE hours via recorded programs (i.e., self-study). However, specialty credits required must be earned via live programs (in-person or webinar) only, not through recorded programs.
  - **Attendance Reporting Procedure:** Attorneys must self-report completion of CLE requirements each reporting period through the Attorney's Annual Report of Compliance (available on website below). Neither the ABA nor attorneys send certificates of attendance to the Missouri Bar Association.
  - **Newly-Admitted CLE Rules:** New lawyers in Missouri have no educational or reporting requirement for the MCLE compliance year in which they are first admitted.

- **MONTANA**
  - **Credit hours required:** 15 hours per reporting period
  - **Specialty credits required:** 2 hours of ethics credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** March 31
  - **Reporting date:** May 15
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round to the nearest quarter hour.
  - **Limit on credit hours for recorded programs:** Attorneys can earn up to 5 CLE hours via recorded programs (classified as "other" credit in Montana). The product formats listed below are approved in Montana.
  - **Attendance Reporting Procedure:** Attorneys must self-report completion of CLE requirements each reporting period through the affidavit mailed to them by the Montana Bar Association. The ABA does not send certificates of attendance to the Montana Bar Association.

- **NEBRASKA**
  - **Credit hours required:** 10 hours per reporting period
  - **Specialty credits required:** 2 hours of professional responsibility credit per reporting period

- **Length of reporting period:** 1 year
- **Compliance date:** December 31
- **Reporting date:** December 31
- **Compliance group:** All attorneys report annually.
- **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round to the nearest quarter hour.
- **Attendance Reporting Procedure:** For programs that are listed as applied for or approved, the ABA will report attendance on behalf of the attendee. For programs listed as self-apply, attorneys must submit their own request for credit through the Nebraska CLE portal.
- **Newly-Admitted CLE Rules:** Nebraska attorneys are exempt from requirements in year of admission.

- **NEVADA**
  - **Credit hours required:** 13 hours per reporting period
  - **Specialty credits required:** 2 hours of ethics credit and 1 hour of substance abuse per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Reporting date:** March 1
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest half hour.
  - **Attendance Reporting Procedure:** The ABA reports attendance on behalf of attendees.
  - **Newly-Admitted CLE Rules:** Nevada new active attorneys must participate in the TIP (Transition Into Practice) Program, administered by the State Bar of Nevada. This is the only requirement for new admittees. They are CLE exempt their 1st full year.

- **NEW HAMPSHIRE**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 2 hours ethics per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** June 30
  - **Reporting date:** June 30
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round to the nearest quarter hour.
  - **Limit on credit hours for recorded programs:** Attorneys can earn up to 6 CLE hours via recorded programs.
  - **Attendance Reporting Procedure:** Effective for ABA programming beginning July 1, 2014. New Hampshire attendees must self-determine whether a program is eligible for credit, and self-report their attendance online at www.nhbar.org. The ABA cannot report your participation.
  - **Newly-Admitted CLE Rules:** New Hampshire new lawyers are required to complete the NHBA's Practical Skills Course within 2 years of admission. This is a separate requirement from the annual CLE requirement, but these credits may be used toward the annual CLE requirement.

- **NEW JERSEY**
  - **Credit hours required:** 24 hours per reporting period
  - **Specialty credits required:** 3 hours in ethics and professionalism, 2 hours of diversity, inclusivity, & elimination of bias per reporting period
  - **Length of reporting period:** 2 years
  - **Compliance date:** December 31
  - **Reporting date:** March 31
  - **Compliance group:** There are 2 compliance groups determined by attorney birthday. Every attorney is permanently assigned to one of the compliance groups. Compliance Group 1 consists of attorneys born from January 1 through June 30; Group 1 certifies compliance in even-numbered years. Compliance Group 2 consists of those born from July 1 though December 31; Group 2 certifies compliance in odd-numbered years.
  - **Minutes per credit hour:** 50 minutes, rounded down to the nearest tenth.
  - **Attendance Reporting Procedure:** In New Jersey, the ABA relies on their reciprocity policies pursuant to which other programs are deemed accredited once they are approved by another MCLE jurisdiction. All ABA programs are approved in California, New York, Georgia, Alabama, Illinois, Missouri and many others. New Jersey is a self-reporting state; attorneys certify compliance when required and on forms provided by the New Jersey board. New Jersey attorneys are not required to report individual course attendance as each course is completed, but must retain their certificates of attendance for at least 3 years and must produce them if audited.
  - **Newly-Admitted CLE Rules:** Newly admitted attorneys in New Jersey must complete 24 credits of approved CLE in their first full two-year compliance period. Of the 24 credits: at least 4 credits must be in Ethics and/or Professionalism, and 15 credits must be in any 5 of the following 9 subject areas: New Jersey Basic Estate Administration; New Jersey Basic Estate Planning; New Jersey Civil or Criminal Trial Preparation; New Jersey Family Law Practice; New Jersey Real Estate Closing Procedures; New Jersey Trust and Business Accounting; New Jersey Landlord/Tenant Practice; New Jersey Municipal Court Practice; and New Jersey Law Office Management.

- **NEW MEXICO**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 2 hours of ethics or professionalism
  - **Length of reporting period:** 1 year
  - **Compliance date:** February 1
  - **Reporting date:** February 1
  - **Compliance group:** All attorneys
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
  - **Limit on credit hours for recorded programs**: Attorneys can earn up to 4 CLE hours via recorded programs.
  - **Attendance Reporting Procedure:** The ABA reports attendance on behalf of attendees.
  - **Newly-Admitted CLE Rules:** New Mexico attorneys must complete the New Mexico Bridge the Gap Program within their first full year of admission.

- **NEW YORK**
  - **Credit hours and reporting:** Experienced attorneys (admitted to the New York Bar for more than two years) are required to complete 24 credit hours, with at least 4 of the 24 credit hours in the Ethics and Professionalism category and 1 of the remaining credits in Diversity, Inclusion, and Elimination of Bias every two years, reporting within 30 days after the attorney's birthday.
  - **Minutes per credit hour:** 50 minutes. To calculate credit for a specific program, divide the total minutes of instruction by 50 and round down to the nearest half hour.
  - **Credit requirements and format limitations for newly admitted attorneys:** Attorneys who are admitted to the New York state bar two years or less are considered to be newly admitted attorneys and are required to take 16 hours of transitional credit in each of the first two years (3 hours of ethics and professionalism, 6 hours of skills, and 7 hours of law practice management or areas of professional practice each year). Effective January 1, 2016, New York revised its format restriction rules to allow newly admitted attorneys to earn CLE credit for certain categories of transitional credit via approved webinar, teleconference, or on-demand/recorded products, in addition to the traditional live classroom setting or fully interactive videoconference. As of January 1, 2016, newly admitted attorneys also may earn ethics and professionalism credit, law practice management, and areas of professional practice credit through approved webinars or teleconferences, and may also earn credit for law practice management and areas of professional practice through on-demand/recorded products. Skills credit may only be earned through the traditional live classroom setting or through a fully interactive videoconference for newly admitted attorneys. Newly admitted attorneys based in law offices outside of the United States may earn up to 16 credit hours in any approved format; the remaining credit hours must be completed in a format permissible for the credit category. Newly admitted attorneys eligible for a prorated CLE requirement must complete the credit in a format permissible for the credit category, except that no more than 14 credits may be earned through approved on-demand/recorded formats. See below for approved ABA formats for experienced and newly admitted attorneys.
  - **Attendance Reporting Procedure:** The ABA issues New York certificates of attendance to attorneys after verifying their participation. Attorneys must retain these certificates for four years after the program and certify completion of CLE requirements each reporting period. The ABA does not send certificates of attendance to the New York board.
  - **Newly-Admitted CLE Rules**: Newly Admitted attorneys (admitted to the New York Bar for two years or less) are required to complete 32 credit hours in transitional accredited programs during the first two years of admission - 16 credit hours in each year as follows: 3 in Ethics and Professionalism credit, 6 in Skills, and 7 in Law Practice Management and/or Areas of Professional Practice. Newly admitted attorneys must complete the first set of 16 transitional CLE credit hours before the first anniversary of admission to the NY Bar, in the designated categories of credit. The second set of 16 transitional CLE credit hours must be completed between the first and second anniversaries of admission. Newly admitted attorneys may not earn credit in the new diversity, inclusion, and elimination of bias credit category. This credit type does not qualify for transitional credit.

- **NORTH CAROLINA**
  - **Credit hours required:** 12 hours per reporting period.

- **Specialty credits required:** 2 hours of ethics/professionalism and 1 hour of technology credit annually, by Dec 31st. Once every 3 years, attorneys must complete 1 hour of substance abuse/mental health awareness training.
- **Length of reporting period:** 1 year
- **Compliance date:** December 31
- **Reporting date:** February 28
- **Compliance group:** All attorneys report annually.
- **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
- **Attendance Reporting Procedure:** The ABA reports attendance on behalf of attendees.
- **Newly-Admitted CLE Rules:** North Carolina newly licensed attorneys are required to complete a 12-hour course on professionalism. This course must also contain instruction in professional responsibility and trust account management.

- **NORTH DAKOTA**
  - **Credit hours required:** 45 hours per reporting period
  - **Specialty credits required:** 3 hours of ethics credit per reporting period
  - **Length of reporting period:** 3 years
  - **Compliance date:** June 30
  - **Reporting date:** July 30
  - **Compliance group:** There are 3 compliance groups to which attorneys are assigned that report in alternate years. Group 1 reports in 2021 (July 1, 2018 through June 30, 2021); Group 2 reports in 2022 (July 1, 2019 through June 30, 2022); and Group 3 reports in 2023 (July 1, 2020 through June 30, 2023).
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round up or down to the nearest quarter hour.
  - **Limit on credit hours for recorded programs:** Attorneys can earn up to 15 CLE hours via recorded programs.
  - **Attendance Reporting Procedure:** Attorneys must self-report completion of CLE requirements by sending certificates of attendance to the North Dakota Commission for CLE.
  - **Newly-Admitted CLE Rules:** Depending on when an attorney is admitted to practice in North Dakota, he or she is assigned to one of three reporting groups. These groups are designed so that all attorney compliance periods are staggered, and not all attorneys complete and report compliance in the same year.

- **OHIO**
  - **Credit hours required:** 24 hours per reporting period
  - **Specialty credits required:** 2.5 hours of professional conduct credit per reporting period
  - **Length of reporting period:** 2 years
  - **Compliance date:** December 31
  - **Reporting date:** January 31
  - **Compliance group:** There are 2 compliance groups. Attorneys with last names beginning with A through L must complete credits by December 31 of each odd-numbered year; attorneys with last

names beginning with M through Z must complete credits by December 31 of each even-numbered year.

- **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round up or down to the nearest quarter hour.
- **Attendance Reporting Procedure:** The ABA reports attendance on behalf of attendees.
- **Live Moderated Webinars:** Credit is not available in Ohio for ABA programs and sessions listed as live moderated webinars. Credit remains available for live webinars subject to jurisdictional approval.
- **Newly-Admitted CLE Rules:** Ohio newly admitted attorney must complete 12 hours of new lawyers training, consisting of 9 hours of substantive law topics, 1 hour of professionalism, 1 hour of client fund management, and 1 hour of law office management by the end of the attorney's first biennial compliance period.

- **OKLAHOMA**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 2 hours of ethics credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Reporting date:** February 15
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 50 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 50 and round up or down to the nearest half hour.
  - **Attendance Reporting Procedure:** The ABA reports attendance for live programs within 30 days after the program to the Oklahoma Bar Association. The ABA does not report attendance for on-demand online courses.
  - **Newly-Admitted CLE Rules:** Oklahoma newly admitted attorneys are exempt from completing the requirement in the calendar year in which they are first admitted.

- **OREGON**
  - **Credit hours required:** 45 hours per reporting period
  - **Specialty credits required:** 5 hours of ethics, 1 hour on lawyers' statutory duty to report elder or child abuse, and either 1 hour in mental health, substance use or cognitive impairment that can affect a lawyer's ability to practice law. In alternate reporting periods, at least 3 additional hours must be in programs accredited for access to justice (elimination of bias) under Rule 5.14(c).
  - **Length of reporting period:** 3 years
  - **Compliance date:** December 31
  - **Reporting date:** May 31
  - **Compliance group:** All attorneys report every 3 years. The first reporting period for new admittees begins with admission date and ends on April 30 of the next calendar year. All subsequent reporting periods are 3 years.
  - **Minutes per credit hour:** 60 minutes
  - **Attendance Reporting Procedure:** The ABA reports attendance on behalf of attendees.
  - **Newly-Admitted CLE Rules:** In Oregon, within one year after the end of year in which admitted, new admittees must complete 15 credits including 9 practical skills (4 must be devoted to Oregon

practice and procedure), 2 legal ethics (one must be devoted to Oregon ethics and professionalism), 1 mental health/substance use, and a 3 credit introductory course in access to justice.

- **PENNSYLVANIA**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 2 hours of ethics, professionalism, or substance abuse prevention credit
  - **Length of reporting period:** 1 year
  - **Compliance date:** Varies by compliance group. See information below.
  - **Reporting date:** Varies by compliance group. Attorneys have 30 days after compliance date to report credit. Below are the reporting periods for the 3 compliance groups.
  - **Compliance group:** There are 3 compliance groups to which all Pennsylvania attorneys have been permanently assigned randomly by attorney ID number. The reporting periods for each group are as follows:
    - Group I - May 1 through April 30 every year
    - Group II - September 1 through August 31 every year
    - Group III - January 1 through December 31 every year.
  - **Attendance Reporting Procedure:** The ABA reports attendance on behalf of attendees.

- **RHODE ISLAND**
  - **Credit hours required:** 10 hours per reporting period
  - **Specialty credits required:** 2 hours of ethics credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** June 30
  - **Reporting date:** June 30
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 50 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 50 and round down to the nearest half hour.
  - **Attendance Reporting Procedure:** The ABA reports attendance on behalf of attendees.
  - **Newly-Admitted CLE Rules:** Rhode Island new admittees must complete the "Rhode Island Bridge the Gap course" unless the attorney has been admitted for at least three years in another jurisdiction at the time he/she was sworn in in Rhode Island.

- **SOUTH CAROLINA**
  - **Credit hours required:** 14 hours per reporting period
  - **Specialty credits required:** 2 hours of ethics or professional responsibility and 1 hour of substance abuse credit every 2 years.
  - **Length of reporting period:** 1 year
  - Compliance date: February 28
  - **Reporting date:** March 1
  - **Compliance group:** All attorneys report annually.
  - Minutes per credit hour: 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
  - **Attendance Reporting Procedure:** The ABA reports attendance to the South Carolina Bar on behalf of attendees.

- **Newly-Admitted CLE Rules:** South Carolina newly admitted attorneys are required to complete a one-year mentoring program as well as to complete an Essentials program as provided by the SC State Bar during their first filing period.

- **SOUTH DAKOTA**
  - South Dakota attorneys do not have MCLE requirements.
  - South Dakota new admittee attorneys do not have MCLE requirements.

- **TENNESSEE**
  - **Credit hours required:** 15 hours per reporting period
  - **Specialty credits required:** 3 hours of ethics and professionalism credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Reporting date:** March 1
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest hundredth of an hour.
  - Limit on credit hours for recorded programs: Attorneys can earn up to 8 CLE hours via recorded programs per reporting period.
  - **Attendance Reporting Procedure:** The ABA reports attendance on behalf of attendees.
  - **Newly-Admitted CLE Rules:** Tennessee newly admitted attorneys must meet the general CLE requirement but do not have any additional course requirements.

- **TEXAS**
  - **Credit hours required:** 15 hours per reporting period
  - **Specialty credits required:** 3 hours of ethics credit annually, by the last day of the month preceding their birth month
  - **Length of reporting period:** 1 year for attorneys licensed two years or more. Initial compliance period for newly licensed attorneys is two years.
  - **Compliance date:** Last day of birth month
  - **Reporting date:** Last day of birth month
  - **Compliance group:** Varies by birth month. Attorneys must report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest quarter hour.
  - **Attendance Reporting Procedure:** The ABA reports attendance on behalf of attendees.
  - **Newly-Admitted CLE Rules:** Texas newly admitted attorneys must complete a 4-hour course entitled "The Guide to the Basics of Law Practice" within one year of licensure. This is an admission requirement and not an MCLE requirement, although attorneys may receive MCLE credit for completing the course. The course is administered through the Texas Center for Legal Ethics and Professionalism.

- **UTAH**
  - **Credit hours required:** 12 hours per reporting period. Note that Utah attorneys completing their last two-year reporting cycle in June 2020 are required to complete 24.00 credit hours.

- **Specialty credits required:** 1 hour of ethics and 1 hour of professionalism credit. Note that Utah attorneys completing their last two-year reporting cycle in June 2020 are required to complete 2 hours of legal ethics or professional responsibility, and 1 hour of professionalism and civility
- **Length of reporting period:** 1 year
- **Compliance date:** June 30
- **Reporting date:** July 31
- **Compliance group:** All attorneys report annually
- **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round down to the nearest half hour.
- **Limit on credit hours for distance learning programs:** At least 6 of the 12 required hours must be completed as Live CLE. At this time, only live, in-Person courses produced by the ABA qualify as live CLE in Utah. The remaining 6 hours can be completed with self-study CLE, which includes ABA Webinars, Live Moderated Webinars and On-Demand CLE courses.
- **Attendance Reporting Procedure:** For programs listed as self-apply, the attorney will need to self-apply with Utah and report attendance. For programs listed as applied for or approved, the ABA will report your attendance.
- **Newly-Admitted CLE Rules:** For Utah new admittees, the first two-year reporting period ends on June 30 of the second complete year following the new lawyer's year of admission to the Bar. New lawyers are required to complete the twelve-month NLTP mentoring term during their first year of admission to the Bar. Upon completion, new lawyers will receive 12 NLCLE hours. New lawyers are required to attend the New Lawyer Ethics Program. This program is offered two times per calendar year, typically in the spring and the fall. New lawyers need only attend 1 seminar. This class satisfies the ethics requirement. In addition to the 12 NLCLE credits earned from the NLTP and attending the New Lawyer Ethics Program, new lawyers must complete 12 additional accredited MCLE hours.

- **VERMONT**
  - **Credit hours required:** 24 hours per reporting period
  - **Specialty credits required:** 2 hours of legal ethics, 1 hour attorney wellness, and 1 hour diversity and inclusion credit per reporting period
  - **Length of reporting period:** 2 years
  - **Compliance date:** June 30
  - **Reporting date:** July 1
  - **Compliance group:** All attorneys report every 2 years. Newly admitted attorneys are required to report on July 1 of the second full year following the year of admission and biennially thereafter.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round up or down to the nearest quarter hour.
  - **Attendance Reporting Procedure:** Attorneys must self-report completion of CLE requirements each reporting period through the required affidavit. Neither the ABA nor attorneys send certificates of attendance to the Vermont Board of Mandatory Continuing Legal Education.
  - **Newly-Admitted CLE Rules:** Newly admitted Vermont attorneys must complete the general CLE requirement. In addition, they must complete at least 15 CLE credits on Vermont practice and procedure in courses approved by the Board of Continuing Legal Education and certified by the Board of Bar Examiners. Newly admitted attorneys who were admitted by bar exam or transferred

UBE score must also complete a 40-hour mentorship program. For newly admitted attorneys who were admitted without the bar examination, the 15 Vermont-specific credit requirement must be completed within one year of admission. For those who were admitted by bar exam or transferred UBE score, the 15 credits can be completed up to 6 months before sitting for the bar and no later than one year after admission. The 40-hour mentorship program must also be completed within one year of admission.

- **VIRGINIA**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 2 hours of professionalism or legal ethics credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** October 31
  - **Compliance Reporting date:** December 15
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round up or down to the nearest half hour.
  - **Attendance Reporting Procedure:** Attorneys must self report their attendance at ABA program using the Virginia course number provided to attendees on their certificate of completion. The ABA does not send certificates of attendance to the Virginia MCLE board. View details on certifying compliance with Virginia.
  - **Live Moderated Webinars:** Credit is not available in Virginia for ABA programs and sessions listed as live moderated webinars. Credit remains available for live webinars subject to jurisdictional approval.
    - On-demand programs may not be viewed until approval is received from the state. Check program details page for each program before completion to ensure that the program is available for credit.

- **WASHINGTON (STATE)**
  - **Credit hours required:** 45 hours per reporting period
  - **Specialty credits required:** 6 hours of ethics
  - **Length of reporting period:** 3 years
  - **Compliance date:** December 31
  - **Reporting date:** February 1
  - **Compliance group:** There are 3 compliance groups. Attorneys are assigned to groups in a consecutive manner based upon their year of admission.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round up or down to the nearest quarter hour.
  - **Limit on credit hours for recorded programs:** Washington no longer has a live credit requirement as of January 1, 2016. Attorneys can earn all credits through approved live programs, recorded products, or other approved methods of earning credit such as writing and teaching. See the Washington State Bar Association website below for additional approved methods and pertinent requirements.

- **Attendance Reporting Procedure:** The ABA reports attendance to the Washington State Board of Continuing Legal Education for live programs (in-person programs, webinars, and teleconferences) within 30 days after the program. The ABA does not report attendance for recorded products.
- **Newly-Admitted CLE Rules:** Newly admitted Washington attorneys gain the remainder of the year in which they are admitted as additional time to complete their first reporting period.

- **WEST VIRGINIA**
  - **Credit hours required:** 24 hours per reporting period
  - **Specialty credits required:** 3 hours of legal ethics, office management, substance abuse and/or elimination of bias in the legal profession per reporting period
  - **Length of reporting period:** 2 years
  - **Compliance date:** June 30 of even-numbered years
  - **Reporting date:** July 31 of even-numbered years
  - **Compliance group:** All attorneys report biennially.
  - **Minutes per credit hour:** 50 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 50 and round down to the nearest one-hundredth of an hour.
  - **Limit on credit hours for recorded programs:** Attorneys can earn up to 12 CLE hours via recorded programs per reporting period.
  - **Live Moderated Webinars:** Credit is not available in West Virginia for ABA programs and sessions listed as live moderated webinars. Credit remains available for live webinars subject to jurisdictional approval.
  - **Attendance Reporting Procedure:** The ABA reports attendance to the CLE Commission of the West Virginia State Bar on behalf of all attendees.
  - **Newly-Admitted CLE Rules:** West Virginia new admittees must complete a mandatory Bridge the Gap program within 24 months of admission to bar unless they meet an exemption (admitted to practice more than 5 years in another jurisdiction or completed new lawyer training in another state of at least 7 credits, including 2 in legal ethics/law office management/attorney well-being/elimination of bias in the legal profession).

- **WISCONSIN**
  - **Credit hours required:** 30 hours per reporting period
  - **Specialty credits required:** 3 hours ethics credit per reporting period
  - **Length of reporting period:** 2 years
  - **Compliance date:** December 31
  - **Reporting date:** February 1
  - **Compliance group:** There are 2 compliance groups. Attorneys admitted in an even-numbered year report in even-numbered years. Attorneys admitted in an odd-numbered year report in odd-numbered years.
  - **Minutes per credit hour:** 50 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 50 and round down to the nearest half hour.
  - **Limit on credit hours for recorded programs:** Attorneys can earn up to 15 CLE hours via recorded online programs. Attorneys cannot earn ethics or professional responsibility CLE hours via recorded programs.

- **Attendance Reporting Procedure:** Attorneys in Wisconsin must report earned CLE credits to the Supreme Court of Wisconsin Board of Bar Examiners. Click here for CLE reporting information.
- **Newly-Admitted CLE Rules:** Newly admitted Wisconsin attorneys are exempt from taking and reporting CLE credits in their first year of admission to the Wisconsin State Bar.

- **WYOMING**
  - **Credit hours required:** 15 hours per reporting period
  - **Specialty credits required:** 2 hours of ethics credit per reporting period
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Reporting date:** January 30
  - **Compliance group:** All attorneys report annually.
  - **Minutes per credit hour:** 60 minutes. To calculate credit for a specific program, divide the total length of the program in minutes by 60 and round up or down to the nearest quarter hour.
  - **Attendance Reporting Procedure:** Attorneys may individually apply for course approval within a reasonable time after completion of the activity by submitting the Application for CLE credit (available on website below). This is the same form that is currently required for attendance reporting. There is no fee for Wyoming attorneys to individually seek Wyoming course approval.
  - **Newly-Admitted CLE Rules:** Wyoming newly admitted attorneys are exempt from the CLE requirement during the calendar year in which they are admitted.

OTHER JURISDICTIONS

- **BRITISH COLUMBIA, CAN**
  - **Credit hours required:** 12 hours per reporting period
  - **Specialty credits required:** 2 hours of professional responsibility and ethics and practice management
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Compliance group:** All attorneys
  - **Minutes per credit hour:** 60 minutes.
  - **Limit on credit hours for recorded programs:** No limit. Attorneys can earn all CPD (continuing professional development) hours via recorded programs so long as the program formats have an interactive component, which is defined as 2 or more lawyers listening to or viewing the program together. ABA recorded product formats listed below are approved in British Columbia.
  - **Attendance Reporting Procedure:** Attorneys must self-report completion of CPD requirements each reporting period through the online Law Society of British Columbia portal. Neither the ABA nor attorneys send certificates of attendance to the Law Society of British Columbia.
  - **Newly-Admitted Rules:** New admittees to the Law Society of BC have the same CPD requirements as those listed under General CPD rules. New members of the LSBC who have completed the bar admission program of a Canadian law society during the reporting year are exempt from the LSBC CPD Requirement.

- **GUAM:**
  - **Credit hours required:** 10 hours per reporting period
  - **Specialty credits required:** 2 hours of ethics or professionalism
  - **Length of reporting period:** 1 year
  - **Compliance date:** December 31
  - **Compliance group:** All attorneys report annually.
  - **Reporting date:** January 31
  - **Limit on credit hours for recorded programs:** No limit. Attorneys can earn all CLE hours via recorded programs.
  - **Attendance Reporting Procedure:** Attorneys must self-report completion of CLE requirements each reporting period through the Certification of Attendance Report (available on website below). Neither the ABA nor attorneys send individual program certificates of attendance to the Guam Bar Association.
  - **Newly-Admitted CLE Rules:** A newly admitted member shall be exempted from filing a certification for the reporting period in which he or she is first admitted.

- **PUERTO RICO**
  - **Credit hours required:** 24 hours per reporting period
  - **Specialty credits required:** 4 hours of ethics.
  - **Length of reporting period:** 2 years
  - **Compliance date:** Last day of month preceding birth month
  - **Compliance group:** Varies by birth month. The 24-month compliance period begins on the first day of the attorney's birth month and ends on the last day of the month preceding the attorney's birth month.
  - **Reporting date:** Upon completion of the required CLE hours in the applicable compliance period or within 30 days after following the end of the attorney's compliance period.
  - **Minutes per credit hour:** 60 minutes, rounded down to the nearest quarter hour.
  - **Attendance Reporting Procedure:** Attorneys must self-report completion of CLE requirements each reporting period and send certificates of attendance to the Continuing Education Board of the Supreme Court of Puerto Rico. The ABA does not send certificates of attendance to the CLE board.
  - **Newly-Admitted CLE Rules:** Puerto Rico newly admitted lawyers are exempted from compliance for the first three years after the admittance date.

- **QUEBEC, CAN**
  - **Credit hours required:** 30 hours per reporting period
  - **Specialty credits required:** 3 hours per reporting period in ethics, professional responsibility and professional practice.
  - **Length of reporting period:** 2 years
  - **Compliance date:** March 31
  - **Compliance group:** All attorneys
  - **Reporting date:** April 30
  - **Minutes per credit hour:** 60 minutes, rounded down to the nearest quarter hour.
  - **Limit on credit hours for recorded programs:** No limit. Attorneys can earn all CPD hours via recorded programs.

- **Attendance Reporting Procedure:** Attorneys must self-report completion of CPD requirements each reporting period through the online portal of the Barreau du Québec. Neither the ABA nor attorneys send certificates of attendance to the Barreau du Québec.
- **Newly-Admitted CLE Rules:** New admittees to the Barreau du Québec are required to complete a pro rata number (by month) of hours, of the 30hrs total, from the date of their registration. 3hrs of their total must fulfill the specialty credit requirement of ethics, professional responsibility or professional practice. If the new admittee's pro rate number of hours is less than 3, all must fulfill the specialty credit requirements: ethics, professional responsibility or professional practice.

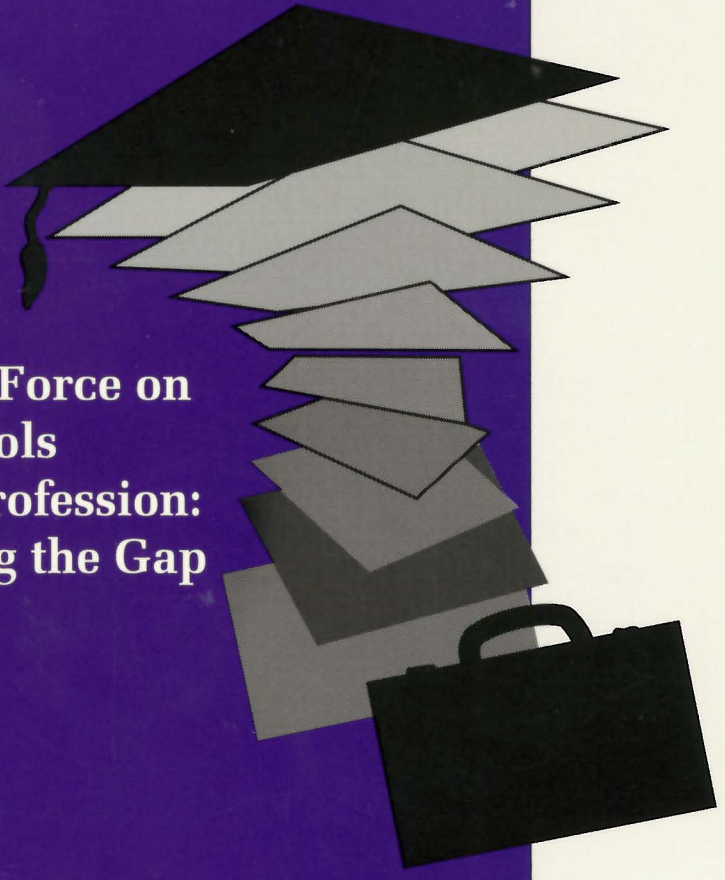
- **VIRGIN ISLANDS (U.S.)**
  - **Credit hours required:** 24 hours per reporting period
  - **Specialty credits required:** Ethics and Professionalism Programming (at least four Credit Hours); Mental Health and Substance Use Disorders Programming (at least one Credit Hour); Technology Programming (at least two Credit Hours); Virgin Islands Law Programming (at least four Credit Hours)
  - **Length of reporting period:** 2 years
  - **Compliance date:** December 31
  - **Reporting date:** December 31
  - **Compliance group:** Reporting Group 1: Last Name A - K (reports even years); Reporting Group 2: Last Name L-Z (reports odd years)
  - **Minutes per credit hour:** 50 minutes, rounded down to the nearest tenth.
  - **Attendance Reporting Procedure:** Attorneys must self-report completion of CLE requirements each reporting period. The ABA does not send certificates of attendance to the Virgin Islands Bar Association.
  - **Newly-Admitted CLE Rules:** Virgin Islands newly admitted attorneys must meet the general CLE requirement but do not have any additional course requirements.

APPENDIX B.2

AM. BAR ASS'N SEC. LEGAL EDUC. ADMISSIONS, LEGAL EDUCATION & PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter *The MacCrate Report*].

Legal Education and Professional Development

—An Educational Continuum



Report of The Task Force on Law Schools and the Profession: Narrowing the Gap

American Bar Association
Section of Legal Education and Admissions to the Bar

Legal Education and Professional Development —An Educational Continuum

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JULY 1992

B29

ISBN: 0-89707-774-1

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR

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A. The Development of Continuing Legal Education

The history of continuing legal education in the United States is intertwined with the history of legal education. Legal education began as apprenticeships, then moved to free standing law schools, then to the academy as these law schools joined the university movement.[1] But this very movement to the academy, which promoted a common education program prior to entry into the profession, tended to neglect the further education and training of the attorney once in practice.

Programs of special instruction for new lawyers are primarily a development only of the last 30 years. They were an outgrowth, however, of the earlier movement to establish post-admission legal education for all lawyers. The first organized programs to provide supplementary legal education for lawyers after their admission to the bar were the courses for veterans returning from World War I. Some bar groups such as the Association of the Bar of the City of New York sponsored lecture series to provide update and refresher programs for the veterans to bring them back up to speed. The Depression and the resulting rash of New Deal legislation prompted a much larger number of sponsors around the country (including the University of Iowa College of Law, Stanford University, the Cleveland Bar) to sponsor more substantial continuing legal education programs.

The most lasting of these programs appears to be the courses organized in 1933 by Harold Seligson, with the encouragement of Dean Frank Sommer of New York University Law School, and called the "Practising Law Courses." The first series were held in July at

1. *See* Chapter 3, *supra*.

NYU's Law Review office, were free, consisted of fifteen two-hour evening lectures, and were attended by about sixty lawyers. The second series was held in October, this time with a charge of $25 for a series of 25 lectures. The fee did not discourage attendance. Seligson's series ultimately became in 1938 the Practising Law Institute (PLI).[2]

PLI's efforts spawned other programs. Seligson's presentation to the 1937 annual meeting of the ABA Section of Legal Education and Admissions to the Bar led to an ABA resolution to sponsor and encourage a nationwide program of continuing legal education, yet little happened at the national level for a number of years. By 1938 bar groups in Toledo, San Francisco, Los Angeles, Washington, Boston, Milwaukee, and Dallas had begun courses similar to the "Practising Law Courses" and which used the Seligson materials. Inspired by this interest, Seligson conducted a summer program in New York City to which he invited attorneys from across the country. This program is probably the first national CLE program.

The veterans returning from World War II stimulated the ABA Section of Legal Education and Admissions to the Bar to provide refresher courses around the country from 1944 through 1947. The success of these courses prompted the ABA House of Delegates, in 1946, to direct the Section, through its Committee on Continuing Education of the Bar, to initiate and foster a national program of continuing education of the bar. With the assistance of the Association of American Law Schools and the ABA Junior Bar Conference, the Section's Committee on Continuing Education, in August of 1947, presented its report to the ABA House recommending that the American Law Institute, with the cooperation of the ABA and PLI, develop the national program. The report was approved by the House of Delegates; however, the operating "Memorandum of Understanding" which followed was only between the ALI and the ABA. PLI was in effect relegated to conducting programs in New York, while the new group, a joint committee eventually called the American Law Institute-American Bar Association Committee on Continuing Professional Education (soon dubbed ALI-ABA), began its work.[3]

ALI-ABA quickly went about its mission. In the period from 1947 to 1958, ALI-ABA set about to encourage state and local bar associations to create sponsoring agencies which could put on CLE courses with ALI-ABA's help through co-sponsorship, supplying literature, and providing speakers. The first director was Harold Mulder, a law

2. For an account of these early years, as well as of the half century that followed, see PRACTISING LAW INSTITUTE, THE FIRST FIFTY YEARS (1983).

3. The history of ALI-ABA is told by Paul Wolkin in ALI-ABA . . . XL! (1988).

professor at the University of Pennsylvania Law School. He was soon joined by a Director for the Western Area, Professor James Brenner of Stanford University Law School, and soon thereafter by Professor Charles Joiner, then of the University of Michigan School of Law, who became the Director for the Mid-Western Area. By 1958 ALI-ABA had participated in approximately 500 courses which drew an attendance exceeding 50,000 attorneys.

In 1958, the presidents of the ABA and the ALI convened the first Arden House National Conference on Continuing Education of the Bar. Arden House I recommended that permanent CLE organizations be formed in many states, modeled after existing organizations in California and Wisconsin. The conference recommended increased emphasis on education for professional responsibility. ALI-ABA was urged to stimulate lawyers to attend more CLE programs and to give special attention to meeting the needs of newly admitted lawyers. ALI-ABA was also asked to study the possibility of establishing standards for CLE programs.[4]

The Arden House recommendations quickly took root. In the next five years 22 additional states had established continuing legal education administrations. The state administrators had formed their own professional organization (now called ACLEA, the Association of Continuing Legal Education Administrators), with Felix Stumpf of California Continuing Education of the Bar as its first president and ALI-ABA Director Mulder as its secretary. ALI-ABA had begun to sponsor directly and independently national programs of continuing legal education. Success, however, bred its own problems as programs proliferated and private providers began offering CLE.

To deal with these problems, ALI-ABA sponsored a second Arden House conference, held in December 1963.[5] This conference dealt with four areas: (1) improvement of education literature, programs, and techniques; (2) meeting the education needs of the newly admitted lawyer; (3) implementing the concept of education for professional responsibility; and (4) the organization and financing of CLE.

For professional responsibility education, the conference concluded that while direct instruction was desirable, it was far more likely that issues of ethics and professional responsibility would be met if taught by a "pervasive" method of infusion into coursework

4. The text of the Final Statement of Arden House I can be found as Appendix A to the ARDEN HOUSE III REPORT (1988), at 579-82. See AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, CLE AND THE LAWYER'S RESPONSIBILITIES IN AN EVOLVING PROFESSION (1988). (Hereafter ARDEN HOUSE III REPORT.)

5. ARDEN HOUSE II REPORT, *supra* Chapter 8, note 32.

or by a "collateral" method where the problems were treated separately but as part of a substantive program. In response, ALI-ABA engaged Professor Vern Countryman of Harvard Law School to prepare professional responsibility materials for use by state CLE administrators.[6]

This same time period saw the emergence of the American Bar Association as a major provider of continuing legal education courses. The ABA Standing Committee on Continuing Education of the Bar had been established in 1958, perhaps to reestablish a separate role for the ABA in CLE apart from its joint participation in ALI-ABA. By 1966 the efforts of the ABA Standing Committee and the ABA Sections had begun to collide with the efforts of ALI-ABA. Attempts at reconciliation resulted in a standoff, with the ABA at its annual meeting authorizing the creation of an extensive program of National Institutes whose schedules were to be "coordinated" with ALI-ABA.[7] However the relationship is characterized, the ABA Standing Committee had become a major CLE player. In 1974, the ABA established, under the jurisdiction of the Standing Committee, the Division for Professional Education to assist sections and divisions in their CLE efforts and ultimately to develop CLE programs for the Association. In 1976 the ABA established the Consortium for Professional Education which has since become the leading producer of Video Law Seminars as an alternative to conventional CLE programming.

At about the same time the Practising Law Institute began to venture off Manhattan Island. During 1968-1969, PLI offered courses first in San Juan, Puerto Rico, then in St. Louis and Las Vegas. By 1970, PLI was offering 338 courses in 21 cities in 18 states. By the mid-1970s, PLI, ALI-ABA, and the ABA Division for Professional Education had all become major national providers.

In 1981, ALI-ABA began transmitting by satellite live programs which were produced by ALI-ABA or by the ABA. Today, the American Law Network (ALN), under ALI-ABA management, but working closely with both the ABA and PLI, operates a dedicated satellite broadcast network which delivers CLE programs of the three sponsors throughout the country to more than 75 downsites primarily at bar associations and law schools.

In response to the development during the 1980s of in-house

6. Professor Countryman's materials are published as AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, PROBLEMS OF PROFESSIONAL RESPONSIBILITY UNDER THE UNIFORM COMMERCIAL CODE, UNIFORM COMMERCIAL CODE PRACTICE HANDBOOK 7 (1969).

7. *See* Wolkin, *supra* note 3, at 77-93.

training programs, ALI-ABA, in cooperation with the ABA Standing Committee, established in 1984 the American Institute for Law Training within the Office (AILTO). By 1992 AILTO had 193 member law firms, corporate law departments, and government agencies sharing in its resource materials, workshops, special programs, and an extensive roster of consultants who deliver in-house programs in a wide variety of skills and substantive subjects.

Meanwhile ALI-ABA has continued an extensive program of research and development to enhance the quality of lawyering. In the recent past it has included projects relating to the quality of law practice, the quality of CLE, instructional models for newly-admitted lawyers, and methods for self-evaluation both as to the quality of law practice and as to subject competence in particular practice modules.[8]

The presidents of the ABA and the ALI have convened three Arden House National Conferences on Continuing Education of the Bar (in 1958, 1963, and 1987). Out of the recommendations from these conferences came permanent CLE organizations in many states; a professional organization for CLE administrators (ACLEA); concern for the organization, financing, and quality of CLE; and a continuing emphasis on the relationship between CLE and lawyer competence. The Final Statement of Arden House III urged the organized bar to encourage all efforts to enhance competence, stressed the role that law schools could continue to play in teaching skills, and encouraged CLE providers to conduct meaningul transition education programs and to offer a wide variety of skills programs. The report concluded that a central objective of CLE should continue to be the enhancement of lawyer competence.[9]

B. The Growth in Mandatory CLE

Concerns about lawyer competence were the impetus for Mandatory Continuing Legal Education (MCLE) which began in 1975 when Iowa and Minnesota adopted the first programs.[10] By the end of the seventies, these states had been joined by Colorado, Idaho, North Dakota, Washington, Wisconsin, and Wyoming.

In August 1986, the ABA House of Delegates, on the motion of

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8. *See* AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, 1992 ANNUAL REPORTS, REPORT OF THE EXECUTIVE DIRECTOR 1-17.

9. ARDEN HOUSE III REPORT, *supra* note 4, at 4-5.

10. *See* Ralph G. Wellington, "MCLE: Does It Go Far Enough and What Are the Alternatives?" ARDEN HOUSE III REPORT, *supra* note 4, at 359-73.

the Young Lawyers Division and the State Bars of Colorado, Georgia, Mississippi and Wisconsin, adopted a resolution supporting the concept of mandatory continuing legal education for all active lawyers and urging the various states that had not yet adopted such a program to seriously consider doing so. The resolution was followed by additional states adopting MCLE.

In 1991 California became the thirty-seventh state to adopt MCLE (though in California the "M" stands for "Minimum" not "Mandatory"). Pennsylvania became the thirty-eighth state in mid-1992. Several other major states, including New York, are seriously considering joining these ranks.

The requirements in all of these states are strikingly similar.[11] Attorneys must complete a certain number of hours of coursework (ranging from 8 to 15 per year) and regularly report their compliance (every two or three years) to a state authority. Failure to comply leads ultimately to suspension from practice.

There are minor variations among state requirements. Many states grant exemptions for special groups, such as judges, elected officials, legislators, or non-residents. Some states grant credit for self-study; some for the preparation of teaching materials or attendance at bar meetings. Some states are hostile to in-house programs presented by law firms, while others grant full parity to such programs.[12]

A number of states specify substantive course requirements. Twenty states require hours in ethics or professionalism, eighteen in discrete course units, one (Minnesota) pervasively through regular course offerings. Pennsylvania, the twentieth, has as its only MCLE requirement five hours per year on the Pennsylvania Rules of Professional Conduct and "the subject of professionalism generally."

California has the largest number of special requirements. In California, of the 36 hours required in three years, at least eight

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11. Many states have adopted requirements which are closely based on the AMERICAN BAR ASSOCIATION MODEL RULE FOR MINIMUM CONTINUING LEGAL EDUCATION, passed by the ABA House of Delegates in August 1988 (and slightly modified in February 1989) after development by the ABA Standing Committee on Continuing Education of the Bar. The Model Rule, in turn, was developed in response to a resolution adopted by the ABA House of Delegates in August 1986 supporting the concept of MCLE for all active members and urging the serious consideration of MCLE by the various states that had not yet adopted such a program. A chart summarizing the various state requirements can be found in the annual AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR AND NATIONAL CONFERENCE OF BAR EXAMINERS, COMPREHENSIVE GUIDE TO BAR ADMISSIONS REQUIREMENTS.

12. *See* "MCLE Credit for In-House Activities," AILTO Update, THE AILTO INSIDER: A NEWSLETTER OF IN-HOUSE TRAINING DEVELOPMENTS, Vol. 5, No. 1 (Winter 1991).

must be in legal ethics and/or law practice management, with at least four of the eight hours in legal ethics. In addition, California requires at least one hour on the "prevention, detection, and treatment of substance abuse and emotional distress" and at least one additional hour on "elimination of bias in the legal profession based on any of, but not limited to the following characteristics: sex, color, race, religion, ancestry, national origin, blindness or other physical disability, age, and sexual orientation."

MCLE and Competence

MCLE has usually been justified as an effort to maintain the competence of the bar.[13] California, for example, describes the purpose of its continuing legal education requirement as "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."[14]

Not surprisingly, there is little evidence regarding mandatory CLE's effect on competence. Some writers focus on statistics that show that large numbers of attorneys do not participate in voluntary CLE and therefore need the inducement of a mandatory requirement in order to get appropriate education.[15] Efforts to compare attorneys in mandatory and non-mandatory states have not produced any useful results. An Arden House III recommendation that the ABA arrange for a study of MCLE to determine "whether it makes a significant contribution to lawyer competence" has not been followed.

While the debate over the effectiveness of mandating CLE continues,[16] the Task Force is concerned about the lack of focus on the development of lawyering skills and values. Despite the call at Arden House III for increased attention to professional skills instruction in CLE, there has been little progress to this time. For the new lawyer, only seven states require some instruction in

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13. *See* the articles cited in Wellington, *supra* note 10. Indeed, the notion that all CLE, whether or not mandatory, is fundamental to enhancing competence was assumed by the Arden House III Conference. *See, e.g.*, the title of the Third Plenary Session: "CLE and the Responsibilities of the Lawyer: The Lawyer's Responsibility for Continuing Education to Enhance Competence." *See also* the Final Statement, ARDEN HOUSE III REPORT, *supra* note 4, at 4.

14. STATE BAR OF CALIFORNIA, MCLE RULES AND REGULATIONS, Section 1.0, adopted by the Board of Governors on December 8, 1990.

15. *See, e.g.*, the studies reported in Wellington, *supra* note 10, at footnote 8.

16. *See* Wellington, *supra* note 10, for a flavor of the debate. For recent negative commentary, see Chapter 5, "Mandatory CLE: An Incompetent Solution to the Competency Problem," in JOEL HENNING, HIRING, TRAINING AND DEVELOPING PRODUCTIVE LAWYERS (1992); and Victor Rubino, "MCLE: The Downside," THE CLE JOURNAL AND REGISTER, Vol. 38, No. 1 (January 1992), at 14-17.

professional lawyering skills.[17] For the established lawyer, none of the thirty-eight MCLE jurisdictions requires any instruction in lawyering skills. Only twenty states require any hours in ethics or professionalism.

The Task Force recommends that all states, including those that have yet to adopt an MCLE requirement, give serious consideration to imposing upon all attorneys subject to their jurisdiction a requirement for periodic instruction in fundamental lawyering skills and professional values. We would urge that such instruction be participatory in nature, be taught by instructors trained in teaching skills and values, and include concurrent feedback and evaluation.

C. The Extent and Diversity of Current CLE Programs

Today, continuing legal education is provided by an array of over 300 organizations. These range from the three national providers described above (PLI, ALI-ABA, and the ABA), to significant independent state organizations such as California's Continuing Education of the Bar (CEB) and Michigan's Institute for Continuing Legal Education (ICLE), to major local bar associations such as the Association of the Bar of the City of New York and the Bar Association of San Francisco, to joint ventures among various bar groups, to a number of law schools.[18]

The vast majority of CLE providers are not-for-profit organizations, although the last few years have seen a dramatic increase in the number of for-profit groups, such as The Rutter Group in California, and various publishers such as the Bureau of National Affairs (BNA), Federal Publications (FPI), the Law Journal Seminars-Press, Prentice-Hall, and Bancroft-Whitney. Other significant national for-profit groups include the Professional Education Group (PEG) and

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17. See Chapter 8.E, *supra*.

18. *See* Austin Anderson, "Continuing Legal Education Organizations: Structure and Financing," ARDEN HOUSE III REPORT, *supra* note 4, at 81-99; and Kathleen H. Lawner, "Summary of Findings: CLE Structure and Finance Survey," *id.* at 101-57. For additional background *see* AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, A MODEL FOR CONTINUING LEGAL EDUCATION: STRUCTURE, METHODS, AND CURRICULUM, DISCUSSION DRAFT, ALI-ABA (1980); and AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, STUDY OF THE QUALITY OF CONTINUING LEGAL EDUCATION (1979). For a recent effort to establish standards for CLE organizations, *see* AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, ATTAINING EXCELLENCE IN CLE: STANDARDS FOR QUALITY AND METHODS FOR EVALUATION, OFFICIAL DRAFT (1991), [hereafter "CLE STANDARDS"] discussed in Chapter 9.D, *infra*.

Professional Education Systems, Inc. (PES). National not-for-profit groups include the Defense Research Institute (DRI), the Association of Trial Lawyers of America (ATLA), The National Institute for Trial Advocacy (NITA), and the American Arbitration Association.

The primary activity of most CLE providers is the furnishing of courses. However, the sales of course materials, hardbound books, audiotapes, video cassettes, periodicals, floppy diskettes, newsletters, special reports, and workshops, and in-house training have become increasingly important sources of revenue. The courses have usually fallen into three groups: intermediate and advanced courses for specialists; refresher courses for experienced practitioners; and courses stimulated by new court rules, new court decisions, new agency rulings, or new legislation. Fewer than 10 percent of the courses are introductory or so-called "bridge-the-gap" courses.

There do not appear to be any statistics on the proportion of CLE courses which deal with fundamental lawyering skills. The National Institute for Trial Advocacy (NITA) sponsors a large number of regional and national workshops in its field. Similarly intensive programs are offered by a few law schools, such as Hastings College of Law, University of California in San Francisco, and Temple University School of Law in Philadelphia. Shorter, less intensive programs are sponsored by specialty bar groups, some of the larger state CLE organizations, and by PLI, ABA, and ALI-ABA.

Fewer than half of the CLE organizations provide discrete courses on ethics and professional responsibility. Such discrete courses have not attracted large enrollments except when offered to satisfy specific ethics requirements in mandatory CLE jurisdictions. CLE providers claim that they have included ethics and professional responsibility issues in 90% of their substantive courses.

The 1980s saw a dramatic increase in the number and kinds of CLE providers within the following groups:

- National, state, and local bar associations;
- Special interest bar associations;
- Law schools and other private and public educational institutions;
- Individual lawyer entrepreneurs;
- For-profit organizations; and
- Law firms.

These new organizations provide the profession today with a wealth of opportunities to obtain CLE.

There are very few national statistics about the scope and

content of CLE course offerings. ALI-ABA publishes six times a year THE CLE JOURNAL AND REGISTER, which lists by date, state, and subject those courses which CLE providers have requested be listed. Regrettably, this is a self-selecting list that does not capture courses offered by many state CLE organizations and most local bar associations. It does, however, list most of the offerings of the major CLE providers.

These selected statistics are nonetheless impressive. A year of listings in THE CLE JOURNAL AND REGISTER (May 1991-March 1992) totals 3,734 courses. Of these, 1965 were provided by state sponsors, 390 by PLI, 116 by Federal Publications, 111 by ALI-ABA, 85 by the Bureau of National Affairs (BNA), and 76 by the ABA.[19] The largest number of courses offered by state CLE organizations were in Pennsylvania (321), California (312), Michigan (171), Texas (130), and New York (111). Even these incomplete statistics testify to the multitude of CLE courses available today to the legal profession.

D. On-the-Job and In-House Training

In the last decade, there has been dramatic growth of "in-house" (or on-site) training programs in law firms, corporate law departments, and government agencies.[20] Many of these legal organizations now have training committees, often assisted by part-time non-lawyer staff. A number have hired full-time professionals to develop and manage their training programs.[21] Others have made extensive use of outside training consultants for their in-office programs. The law training programs conducted within the office are perceived by these law organizations as an efficient way to deal with the expanded training needs for large legal staffs with special training requirements.

Today, many private law firms, corporate law departments, and government agencies rely on in-house training programs to handle a substantial portion of their training needs instead of CLE programs

19. AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, 1992 ANNUAL REPORTS, APPENDIX H/CLE PROGRAMS OFFERED 166-167.

20. *See* Richard D. Lee, "The Organization and Role of In-House Training," ARDEN HOUSE III REPORT, *supra* note 4, at 333-56.

21. There are now over seventy full-time professionals at some of the nation's larger firms, corporate law departments, and government agencies. These individuals have recently founded a professional organization, the Professional Development Consortium, which has formal meetings twice a year and regularly shares training and educational information. In a number of larger cities, such as San Francisco, Washington, New York, Atlanta, and Cleveland, full-time and part-time professional development managers have formed regional consortia which meet regularly.

outside the office. These programs (as in the case of in-house programs for new lawyers, *supra* Chapter 8.E) have many of the following formal elements:

- Orientation of new attorneys;
- Showcase presentations;
- Training in substantive areas;
- Training in lawyering skills and values;
- Senior attorneys trained as instructors;
- Outside experts used as presenters or consultants;
- Course materials developed from practice files; and
- Simulations, often taped and critiqued.

The programs are planned in advance, materials prepared, and participants informed as to specific content. Legal organizations, and particularly the larger law firms, have long engaged in less formal training efforts in the day-to-day supervision of work and discussion of assignments. It is the more formal programs that have recently been added.

The formal in-house programs have the advantage of being tailored to the specific needs of the lawyers in the particular office. The program may include forms and procedures that are unique to the office, and the attorneys can learn both the subject specialty and the related office practice. Moreover, the organization can use its own expertise. More senior attorneys can do the planning, develop teaching materials, and make actual presentations. Programs can be scheduled at the most convenient time. More attorneys can be exposed to more training opportunities. Travel to programs outside the office can be reduced and time away from the office.

Instruction and training in fundamental lawyering skills and professional values are a prominent part of many in-house programs. Many legal organizations regularly schedule training in research techniques, writing, drafting, client interviewing, client counseling, negotiating, trial preparation, and trial advocacy. Most of the skills training is done with simulations, with instruction by specially trained teachers, and with feedback and contemporaneous evaluation of lawyer performance.

An important element of many in-house programs is training senior attorneys to become more effective supervisors, to make better work assignments, to manage the efficient flow of work done under their direction, and to provide effective critiques of that work. A few firms have sought to improve supervisory skills by having asso-

ciates regularly and systematically evaluate partner abilities to supervise effectively.[22]

Some legal organizations have developed regular, systematic training in-house in professional responsibility and in risk management topics, including conflicts of interest, confidentiality, new business intake procedures, and docket and calendaring procedures.

Austin G. Anderson, A PLAN FOR LAWYER DEVELOPMENT, prepared for the ABA Standing Committee on Continuing Education of the Bar, comprehensively treats the major phases involved in planning and implementing an in-office training program. *The AILTO Insider* is a newsletter of in-house training developments, published quarterly by AILTO, The American Institute for Law Training within the Office (a project of ALI-ABA in cooperation with the ABA Standing Committee). A third aid is the *Lawyer Hiring & Training Report* published monthly by Prentice-Hall, Inc. A useful new resource for law offices is the self-evaluation guide recently produced by ALI-ABA, A PRACTICAL GUIDE TO ACHIEVING EXCELLENCE IN THE PRACTICE OF LAW: STANDARDS, METHODS, AND SELF-EVALUATION (1992).[23]

E. The Continuing Quest for Excellence

The Arden House III Conference spent an entire plenary session addressing the quality of CLE. Attorneys expressed general satisfaction with the quality of the programs they attended, but professional educators expressed the view that programs could be substantially improved through better teaching methods adapted to the ways by which adults learn. Conferees identified other potential improvements, including innovative delivery systems, use of computer-assisted instruction, mandatory CLE, and the need for training of new CLE instructors. The Final Statement of the Conference included a recommendation that ALI-ABA "undertake a study to design methods to evaluate the quality of CLE programs and materials and the performance of CLE providers."

The ALI-ABA study, ATTAINING EXCELLENCE IN CLE: STANDARDS

22. *See* Richard D. Lee, "Associate Evaluations of Partners," In-House Applications, THE AILTO INSIDER: A NEWSLETTER OF IN-HOUSE TRAINING DEVELOPMENTS, Vol. 4, No. 4 (Fall 1990).

23. THE PRACTICAL GUIDE is divided in three parts: stages of client representation, managing the lawyer's practice, and skills to be employed in accomplishing the client's objectives. It includes "black letter" standards, followed by extensive Comments with suggested practice and ethical considerations, practical examples often drawn from actual cases, and a comprehensive series of self-evaluation questions which enable readers to evaluate their own practice.

FOR QUALITY AND METHODS FOR EVALUATION (Official Draft, 1991), is the product of the recommended study. The study was led by attorney Robert K. Emerson, who chaired the Arden House III conference, and Felix F. Stumpf (former head of the California Continuing Education of the Bar), who served as Reporter. The study stressed the importance of evaluating CLE providers to establish accountability and to ensure acceptable quality. The study concluded that CLE providers could effectively engage in self-evaluation if they rigorously tested themselves against a set of educational quality standards, but that it was "premature" to consider an independent accreditation system to ensure compliance with standards. The report noted that the standards could serve as guidelines in states with mandatory CLE in approving CLE programs and providers.

The standards are based on the PRINCIPLES OF GOOD PRACTICE IN CONTINUING EDUCATION, promulgated in 1984 by The International Association for Continuing Education and Training (formerly the Council on the Continuing Education Unit). The 1984 *Principles* have been lauded by some and criticized by others. The criticism has centered on what has been described as the "heavy emphasis on the ideology of technical competence" without addressing ethical concerns and values and the ends of education.[24]

The whole thrust of the Task Force effort is at odds with isolating "the ideology of technical competence" as expressed in the 1984 Principles of Good Practice. The Statement of Skills and Values emphasizes the essential linkage between lawyering skills and professional values. It is hoped that this holistic approach to lawyering will in the future help avoid the perpetuation of the notion that competence is simply a matter of attaining proficiency in specified skills.[25]

24. *See* critics cited in Introduction to CLE Standards, *supra* note 18, at 22.

25. *See* Chapter 4.D, *supra*, for a discussion of uses by practicing lawyers of the Statement of Skills and Values in self-evaluation and self-development.

APPENDIX B.3

MD. ST. BAR ASS'N, REPORT OF THE CONTINUING LEGAL EDUCATION COMMITTEE REGARDING MINIMUM CONTINUING LEGAL EDUCATION (Mar. 21, 1995) [hereinafter *1995 MSBA Report on MCLE*].

REPORT

of the

CONTINUING LEGAL EDUCATION COMMITTEE

regarding

Minimum Continuing Legal Education

MARYLAND STATE BAR ASSOCIATION INC. Est. 1896

MARYLAND STATE BAR ASSOCATION

Approved by the Board of Governors March 21, 1995

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REPORT OF THE
CONTINUING LEGAL EDUCATION COMMITTEE

MARYLAND STATE BAR ASSOCATION

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CONTINUING LEGAL EDUCATION COMMITTEE

MARYLAND STATE BAR ASSOCIATION

Introduction

The Continuing Legal Education Committee unanimously recommends that the Court of Appeals of Maryland approve a system of minimum continuing legal education (MCLE) for all attorneys licensed to practice law in Maryland.

In 1993, the Committee was asked by former State Bar President Edward Shea Jr. to re-evaluate MCLE for Maryland, because Maryland is now one of only ten jurisdictions that does not now have a system of MCLE[1], and because the State Bar has not analyzed this issue since 1986. The CLE Committee in 1986, chaired by the Honorable Ellen M. Heller, recommended that MCLE not be adopted in Maryland.

When Dennis Belman assumed the MSBA presidency in June 1994, he made MCLE one of the priorities of his term, and has strongly supported the work of the Committee. The Committee has met on numerous occasions since it received the charge from Presidents Shea and Belman, and has studied the MCLE of other states. The Committee now recommends adoption of MCLE as described in this report, requiring every attorney licensed to practice in Maryland to take 30 hours of CLE every two years.

Reasons for Recommendation

MCLE is necessary for compliance with the Maryland Rules of Professional Conduct. Rule 1.1 requires that a lawyer

> "provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation."

The comment states that "to maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education."

The need for CLE has increased over the past few years. Every attorney is aware of the increasing complexity of the legal issues presented. The legislative and executive branches constantly add laws and regulations, which are then interpreted by the judicial branch. It is incumbent on every attorney to keep current with these changes in the law that governs our society.

The Committee believes that attorneys generally agree on the efficacy of CLE. The issue is - should CLE be required? To put the question another way - do the merits of CLE outweigh the potential burden of a required program? The Committee answers this question in the affirmative with the following reasons:

1. The evidence, both anecdotal and in survey form, from those states that have

MCLE, indicates that attorneys in those states generally believe that their competence has been improved since the advent of MCLE in their respective states. For example, studies in Colorado, Georgia, Minnesota, Tennessee, Texas and Washington showed that lawyers in all six states believed that their attendance at CLE programs improved their competence.

2. While definitive numbers do not exist, the Committee believes that between 1/3 and 1/2 of all Maryland lawyers do not consistently participate in CLE. This belief is based upon discussions with MICPEL and other CLE providers in the State. Support is provided by a survey conducted among lawyers in the District of Columbia, showing that 2/3 of lawyers in the District had taken less than 12 hours of CLE in the past 12 months. The Committee believes that the press of time and the pressures of the economics of the legal profession in today's environment prevent many lawyers with good intentions from participating in CLE. It is important, therefore, that a system of MCLE be sensitive to time and economic pressures.

3. The articulated criticisms of MCLE do not withstand considered analysis. These criticisms can be characterized as follows:

> *There is no empirical evidence that MCLE increases lawyer competence or decreases the incidence of legal malpractice or ethical violations.*

The Committee acknowledges that there is no such empirical evidence, but this criticism does not address the purpose of MCLE. If we were to adopt a system that had as its goal the diminution of these very real problems and demanded that the system justify or "prove" its efficacy, then the plan we recommend is the wrong plan. A plan that would "prove" its efficacy would have to include some meaningful testing of attorney competence "before" and "after" implementation of MCLE. Alternatively, the plan would provide for control groups. One group would be required to take CLE and the second would not. The competency of each group would be measured at the beginning of the program and then at the end, perhaps 5 or 10 years later. Our investigation did not reveal any study by any insurance company, any educational testing agency, any bar association or any other entity. This lack of empirical data does not eliminate the need for MCLE, nor the evidence that a substantial number of lawyers, if not a majority, probably do not participate in a consistent program of CLE. A MCLE system that balances the demonstrated need of our profession with the burdens associated with the system is needed in Maryland and is appropriate.

> *There is no assurance that an attorney will take courses that are useful to his or her practice, nor is there any assurance that the attorney will profit from the course or "learn" what the program seeks to teach.*

These criticisms seem to be based on the proposition that attorneys, when forced to take education courses, will search for ways to avoid receiving benefit from the education program. The Committee believes that lawyers who are required to behave in a certain way are, by overwhelming percentage, mature adults, wish to act in a professional manner, wish to provide competent advice to their clients, and do consider themselves as officers of the court. The great majority of lawyers will accept the requirement of MCLE, will use

their time wisely to take courses that will be helpful to them in their practice, and will learn and profit from these courses.

The Proposed MCLE System for Maryland

The issue of MCLE for Maryland cannot be meaningfully discussed without a specific, proposed plan. Proposed Rules of the Court of Appeals, and proposed rules of a Commission to administer MCLE, are attached to this report.

The Committee used the following criteria to design the proposed plan:

> . . . . First, because attorneys are professionals, the system should be self-regulatory so far as possible. This is necessary both to reduce the administrative burden and cost of the system, and for the system to be financially self-sustaining.
>
> . . . . Second, there should be a mechanism to insure that the programs offered are good programs offering a significant educational benefit.
>
> . . . . Third, the system should be designed with the knowledge that attorneys are extremely busy and have many demands placed on them.
>
> . . . . Fourth, the system should be designed to permit as many providers as possible to offer courses, including local, national, and specialty bar associations, firms and government agencies. The system should be inclusive as to providers, not exclusive.

With these criteria in mind, the Committee recommends the following system:

1. Number of hours, content and frequency of reporting. The Committee proposes that each attorney take 30 hours of education activity every two years. This requirement includes, during each two reporting periods (a four-year period) four hours of instruction in legal ethics and four hours on professionalism. Carryover of excess hours in one reporting period to the next succeeding period is not permitted.

There is variation among other states in the required number of hours and required content of those hours. Florida, for example, requires 30 hours over three years, with three hours of ethics. Virginia requires 12 hours each year, with two hours of ethics. The range is generally from 6 to 15 hours, per year, measured over one to three years. The Committee decided that 15 hours per year was appropriate, and that a two year reporting period would increase flexibility.

As to course content, the Committee noted that almost every MCLE jurisdiction has called for attorneys to take courses on legal ethics and/or professionalism. The Committee agrees and recommends that MCLE include education both on legal ethics and professionalism. To provide flexibility, the Committee suggests that these course hours be measured over two reporting periods.

2. **Education Activities.** The Committee recommends that both participatory and self-study activities be eligible for credit. Self-study credits can be used for only one-half of the total requirement, which is up to 15 hours per reporting period. Both publication and teaching activities are recognized for credit. Teaching activities are given both participatory and self-study credit, because they provide a high level of education to the teacher. Self-study credit is given for actual preparation time up to a maximum of three times the presentation time, and participatory credit is given for the presentation itself. Credit is given for the professionalism course required of new admittees and for bar review courses.

3. **Exemptions.** Other MCLE states reflect a wide variety in exemptions offered, perhaps reflecting the political process of MCLE adoption. For example, Ohio exempts retired attorneys, federal judges and first-year lawyers; Pennsylvania exempts members of the judiciary; and Texas exempts attorneys over the age of 70.

Fairness dictates that the system be as inclusive as possible. We recommend that the system contain no exemptions and that every person licensed to practice law in Maryland meet the requirements of MCLE. Reciprocity with other states is recognized, but exemption in another state does not satisfy the Maryland requirement.

4. **Standards.** Most states set standards that education programs must meet to qualify for MCLE credit. The Committee agrees that quality control is important, and has given the Commission the authority to review both programs and providers. For a provider to be recognized as qualified, the provider must have sponsored at least four separate activities during the preceding two years. The proposed regulations list five standards:

a. The activity must have significant, current intellectual or practical content. For example, programs on law office management are appropriate.

b. The activity must constitute an organized program of learning related to the legal profession and may include related fields such as accounting, tax or medicine as related to law.

c. The activity must be conducted by an individual or group qualified by practical or academic experience.

d. There must be substantive written materials if the program exceeds one hour.

e. In-house activities must be free of interruptions from telephone calls and other office matters.

5. **Administration.** The Committee recommends that a Commission of nine persons be appointed by the Court of Appeals to administer MCLE. Members of the Judiciary and up to one lay member will be eligible to serve on the Commission. Commission members will receive no compensation for their services, but can be

reimbursed for their expenses. A member cannot serve more than two three-year terms, and terms of members are staggered.

The Commission will approve providers and activities. Approval can be granted to either a sponsor or an attorney, and can be granted for an individual activity, or for all activities sponsored by a provider. Administrative costs of the MCLE system will be set by the Commission, subject to review by the Court of Appeals.

The Committee did not try to recommend a specific fee schedule, but after reviewing similar programs that have operated in other jurisdictions for several years, we believe the administrative costs will not be significant either to the attorney or to the provider.

6. **Compliance and Sanctions.** A key aspect of the proposed system is its emphasis on self-regulation. There are essentially two compliance models that have been adopted in other MCLE states. The first, which we recommend, relies on the attorney and the provider to maintain their own records. It simply provides that the attorney, once every reporting period, submit a one-page form to the Commission, certifying that the attorney has met the standards for that reporting period. The Commission will have the power to audit randomly to verify compliance. The other compliance system is much more cumbersome. It requires each provider to file a report after each education activity, and each attorney must file a report of participation after each activity. The two sets of records are then matched by the administrator, and it is the administrator who determines whether each attorney has complied with MCLE.

The advantages of the first, simplified compliance mode seem obvious, and entirely consistent with our basic view that the vast majority of attorneys can be trusted to comply. If the Commission finds that there has not been compliance in a particular instance, it will report the matter to the Court of Appeals and request that the attorney be suspended from practice until the noncompliance has been remedied. Upon compliance, the suspended attorney may move the Court of Appeals for readmission to the practice of law.

7. **Transition.** There may be an interim period of time between adoption of MCLE by the Court of Appeals and the effective date of the MCLE system. The Committee does not want the adoption of MCLE to dissuade attorneys from continuing to take CLE during that interim period. The Committee recommends, therefore, that approved education activities taken after adoption of MCLE by the Court of Appeals, but before the effective date, should be allowable credit hours to support the attorney's first MCLE affidavit.

[1]The other jurisdictions are, as of July, 1994, Alaska, South Dakota, Nebraska, Illinois, Michigan, New York, Massachusetts, Connecticut, New Jersey and the District of Columbia. The District of Columbia Bar task force to review MCLE recommended MCLE in August, 1994.

RULES OF
THE COURT OF APPEALS
FOR MINIMUM CONTINUING LEGAL EDUCATION

Rule CE 1.0 - Scope

The Rules of Minimum Continuing Legal Education are adopted because of the importance to the administration of justice and to the public that attorneys licensed to practice law in the State of Maryland continue their legal education so long as they engage in the practice of law. These rules establish minimum criteria for continuing legal education, and the means by which the criteria shall be enforced.

Rule CE 1.1 - Commission of Continuing Legal Education.

(a) Establishment. There is hereby established a Commission of Continuing Legal Education (the "Commission") which shall administer the program of minimum legal education established by these rules.

(b) Members. The Court of Appeals shall appoint eight Commission members plus a chairperson. The Commission may include one lay person, and each other member of the Commission shall be a member of the judiciary or an active lawyer who practices and has his or her principal office in the State of Maryland. The Commission may designate other officers and form committees of commissioners as it deems appropriate.

(c) Terms. The regular terms of Commission members shall be for three years, and no member shall serve for more than two consecutive three-year terms. Of the first members appointed, three shall be appointed for one year, three for two years and three for three years.

(d) Quorum. A majority of the duly appointed Commission members shall constitute a quorum.

(e) Compensation and Expenses. The members of the Commission shall serve without compensation, but shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties.

Rule CE 1.2 - Commission Powers and Procedures.

(a) The Commission shall supervise and administer the program of minimum continuing legal education in accordance with this subtitle.

(b) In addition, the Commission shall:

1. Adopt regulations and procedures consistent with the authorization

granted by this subtitle;

2. Accredit, per its regulations and procedures, individual courses, and all or portions of the entire continuing legal education program of specific providers, which, in the judgment of the Commission, satisfy the educational objectives of this subtitle;

3. Determine the number of credit hours to be allowed for each accredited course;

4. Encourage educational organizations to offer courses and programs within the State of Maryland;

5. Randomly audit, examine, inspect and review the records of attorneys and of providers of continuing legal education programs to assure compliance with this subtitle and any regulations adopted by the Commission;

6. Charge attorneys admitted to practice law in the State of Maryland, and providers of continuing legal education programs, reasonable fees as approved by the Court of Appeals;

7. Decide requests for exemptions from the education requirements of this subtitle on an individual basis in cases of extreme hardship or extenuating circumstances; and

8. Report to the Court of Appeals at least annually and at such other times as directed by the Court of Appeals.

Rule CE 1.3 - Requirements.

(a) General. Every attorney shall complete a minimum of thirty hours of approved continuing legal education during each reporting period of two fiscal years (July 1-June 30). During each two reporting periods, at least four hours shall be taken in courses on legal ethics and four hours shall be taken in courses on professionalism.

(b) Lawyers covered by this subtitle.

1. Every person admitted to practice law in the State of Maryland must meet the requirements of this subtitle. A person licensed to practice law during any part of the year must comply with this subtitle.

2. A person admitted to practice law in the State of Maryland, who is also admitted to practice law in another jurisdiction of the United States that requires minimum continuing legal education, may fulfill the requirements of this subtitle by satisfying the requirements of such other jurisdiction, except that a person exempted by the requirements of such other jurisdiction shall continue to be subject to the requirements of this subtitle.

Rule CE 1.4 - Reporting.

On or before July 31 following the applicable reporting period, every person admitted to practice law in the State of Maryland shall file with Commission a written statement, in such manner and form as the Commission may prescribe, including a statement that the attorney has satisfied at least the minimum continuing legal education requirements of this subtitle during the preceding reporting period.

Rule CE 1.5 - Noncompliance and Sanctions.

(a) Notification. If an attorney fails to comply with this subtitle or the procedures of the Commission, or if an attorney is determined by the Commission to be deficient in his or her minimum continuing legal education requirements, such attorney shall be notified in writing by the Commission of the nature of such noncompliance, and that the noncompliance must be remedied within 90 days.

(b) Sanctions. Upon the expiration of the ninety day remedy period, if the Commission finds the attorney not in compliance with this subtitle or the regulations of the Commission, it shall notify the Court of Appeals of such fact and shall request the Court of Appeals to suspend such attorney until such attorney has remedied such noncompliance. When noncompliance has been remedied, and any applicable reinstatement fee paid, the suspended attorney may move for reinstatement to the practice of law, and shall serve a copy of such Motion on the Commission.

Rule CE 1.6 - Confidentiality.

Unless otherwise directed by the Court of Appeals, the files, records and proceedings of the Commission, as they relate to or arise out of any failure of any attorney to satisfy the requirements of this subtitle or the regulations of the Commission, shall be confidential and shall not be disclosed, except in furtherance of the duties of the Commission, or upon the request of the attorney affected, or
as they may be introduced in evidence or otherwise produced in proceedings under this subtitle.

RULES OF THE COMMISSION ON CONTINUING LEGAL EDUCATION

Pursuant to Rule CE 1.1 of the Rules for Minimum Continuing Legal Education (MCLE) of the Court of Appeals, the Commission on Continuing Legal Education adopted the following Rules of the Commission on _____, 19___, to be effective immediately:

Rule 1. Fees.

Attached hereto is a schedule of fees established by the Commission to be paid by MCLE providers and attorneys. This schedule will be reviewed annually by the Commission and may be modified at any time upon approval by the Court of Appeals.

{Schedule to be provided later.}

Rule 2. Reporting Requirements.

(a) The Commission shall divide all attorneys into two groups approximately equal in number. On or before July 31 of even-numbered years, one group shall file an affidavit with the Commission in such form as the Commission may prescribe, reporting compliance with Rule CE 1.3. The other group shall file the required affidavit on or before July 31 of odd-numbered years.

(b) Before July 1 of each year, commencing in 19___, the Commission shall mail the prescribed form of affidavit to those attorneys who are to report before the end of that month. An affidavit that is postmarked on or before July 31 shall be deemed to have been timely filed. An attorney who, for whatever reason, files the affidavit after the July 31 due date shall pay a late filing penalty in the amount listed in the attached schedule of fees.

(c) An attorney required to report by July 31, 19___ shall fulfill the requirements of Rule CE 1.3 if such attorney attends and reports 15 hours of approved continuing legal education activities through July 1, 19___.

Rule 3. Categories of Credit.

(a) Participatory Credit. Participatory credit may be claimed for:

1. Attending approved education activities, including: lectures; panel discussions; question-and-answer periods; or open, advertised in-house education;

2. Speaking in approved education activities, including presentation (but not preparation) time, without credit for repeated presentations;

3. Attending a law school class after the attorney's admission to practice in Maryland, provided the attorney officially registers for and satisfactorily completes the class by audit or grade, as required by the law school;

4. Teaching an approved education activity at law school;

5. Attending bar review courses; or

6. Attending any course that is required of new admittees by the Court of Appeals.

(b) Self-study Credit. Up to but not more than 15 hours of self-study credit may be claimed per compliance period for:

1. Viewing approved videotapes or videotapes of approved activities or viewing or participating in other approved audiovisual activities;

2. Listening to approved audiotapes or audiotapes of approved activities including interactive video instruction and activities electronically transmitted from another location;

3. Preparing, as an author or co-author, written materials published or accepted for publication (e.g. in the form of an article, chapter, or book) that contribute to the legal education of the author attorney, or that accompany speaking in an approved education activity; but in either case that are not prepared in the ordinary course of the attorney's practice or employment;

4. Participating in self-assessment testing (open-book tests that are completed by the attorney, submitted to the provider, graded, and returned to the attorney with the correct answers and an explanation of why the answer given by the provider is the correct answer);

5. Reading the written materials from approved activities or other approved written materials; or

6. Attending or presenting closed, in-house approved education activities.

Rule 4. Computation of Credit Hours.

(a) Formula for Computation. Credit hours are computed based on actual time spent in an activity (actual instruction or speaking time, running time of tapes, audio or video) in hours to the nearest one-quarter hour reported in decimals. Providers shall compute credit hours for approved activities based on this formula and announce the approved number of hours. The attorney shall compute credit hours for MCLE under Rule 3(b), and in cases when the attorney attends only part of a session of an approved activity.

(b) Credit for Panelists. Credit hours for presentation as part of a panel in an approved education activity are computed in the same manner as other participants.

(c) Credit for Preparation. Credit hours for preparing to present an approved education activity are computed by multiplying actual presentation time by three. For a panelist, "actual presentation time" means the length of time the panelist is scheduled to present material rather than the actual length of the panel. For law school instructors, "actual presentation time" means the number of credit hours granted by the law school for the completion of the class multiplied by three.

Rule 5. Criteria for Approval of Education Activities.

Continuing legal education activities may be approved in three ways: (1) the provider of the activity is an approved provider and certifies that the activity meets the criteria of Rule 5(a); (2) the provider of an individual activity receives approval of that activity; or (3) a member receives approval of an activity, which is not individually approved, is sponsored by a provider which is not an approved provider, or is sponsored by an approved provider but without certification that the activity meets the criteria of Rule 5(a).

(a) Standards for All Education Activities. All continuing legal education activities must meet the following standards:

1. The activity shall have significant current intellectual or practical content for attorneys;

2. The activity shall constitute an organized program of learning related to legal subjects, law office management or the legal profession, including cross profession activities (e.g., accounting - tax or medical - legal) that enhance legal skills or the ability to practice law;

3. The activity shall be conducted by an individual or group qualified by practical or academic experience;

4. Where the activity is more than one hour in length, substantive written materials must be distributed at or before the time the activity is offered; and

5. In-house education activities must be free of interruptions from telephone calls or other office matters.

(b) Requirements for All Providers. All approved providers and providers of approved continuing legal education activities shall agree to the following:

1. An official record verifying the attendance of all attorneys who participated in the activity shall be maintained by the provider for at least four years after the completion date. The provider shall include the attorney on the official record of attendance only if the attorney's attendance was verified by the attorney's signature at the activity. The official record of attendance shall contain the name of each attorney attending, the time, date, location, subject matter, and length of the education activity, and shall be provided to the Commission upon request at no cost to the Commission. The provider's failure to comply with this record keeping requirement shall not give rise to a lawsuit by any attorney against the provider.

2. Providers shall supply a record to each attorney attending continuing legal education activities sponsored by the provider. The record shall include the time, date, location, subject matter, and length of the education activity or activities.

(c) Activities Approved for Credit by Other States. Education activities of the type described in Rule 3, approved for continuing legal education credit by another jurisdiction with MCLE requirements, shall count towards an attorney's compliance with Rule CE 1.3 to the same extent as in the approving jurisdiction.

Rule 6. Requirements for Approval of Individual Education Activities.

The education activities referred to in Rule 3 may be approved on an individual basis, upon the written application of the provider. All such applications for approval shall be submitted:

1. At least 30 days, and preferably longer, in advance of the presentation of the activity, although approval may be granted retroactively;

2. On a form provided by the Commission, with all information requested completed in full;

3. Along with the appropriate activity approval fee.

Rule 7. Approval of Providers.

Approval for one year may be extended in advance to a MCLE provider for all of the education activities referred to in Rule 3 presented by such provider, and certified by the provider to comply with Rule 5. Approved providers are not required to seek approval pursuant to Rule 6 for the individual education activities sponsored while an approved provider.

(a) Types of providers. All providers of MCLE activities, including but not limited to government agencies, non-profit professional associations of attorneys, and in-house providers, are eligible to be certified as approved providers, upon compliance with the application process.

(b) Requirements for Approval of Providers. Applications for provider approval shall be submitted:

1. At least 30 days, and preferably longer, in advance of the presentation of education activities;

2. On a form provided by the Commission, with all information requested completed in full;

3. With the appropriate provider approval fee; and

4. If received before _____, 19___, demonstrate that during the two years immediately preceding its application, the applicant has sponsored at least four separate education activities, not including repeated presentations, that would have complied with Rule 5. Applications received on or after _____, 19___, shall demonstrate that during the two years immediately preceding the application, the applicant has sponsored at least four separate education activities, not including repeated presentation, that were approved pursuant to Rule 6 or Rule 7.

(c) Revocation of Provider Approval. Approval of any approved provider may be revoked at anytime when sufficient evidence demonstrates that the provider is not complying with Rule 5; but no attorney shall be denied credit for any activity attended by the attorney before actual revocation of the approval.

Rule 8. Member Request for Education Activity Approval.

An attorney may seek credit for attending an education activity, including a self-study course, that complies with the requirements of Rule 5, not previously approved, by completing a form provided by the Commission and submitting the form with the appropriate activity approval fee.

Rule 9. General Compliance Procedures.

(a) Affidavit.

Each attorney shall receive a form of affidavit approximately two months before the end of the attorney's compliance period. Each attorney shall complete the affidavit by attesting under penalty of perjury that the attorney has complied with the education requirement. The affidavit must be returned to the address listed on the affidavit and postmarked no later than the applicable July 31.

APPENDIX B.4

E.I. "Skip" Cornbrooks, IV, *Mandatory CLE in Maryland? Pro/Con*, MD. LITIGATOR, at 14 (June 2010).

THE DAILY RECORD

RYLAND'S BUSINESS & LEGAL RESOURCE 6-26-95 Serving the public daily since 1888

LAW

Mandatory Continuing Legal Education Plan Put on Hold

Eventual Action to Force CLE Still Seen Likely, as State High Court, Rules Panel, Prepare to Survey Bar Members on Current Practices

BY GREGORY C. BAUMANN
Daily Record Legal Affairs Writer

The Court of Appeals' rules committee has put on hold a proposal that would make continuing legal education mandatory for every lawyer in Maryland.

During that delay, a subcommittee of the court's Standing Committee on Rules of Practice and Procedure will team up with the state high court to conduct a survey of every lawyer in Maryland to determine the need for formal, required continuing legal education.

The decision came despite strong lobbying by P. Dennis Belman, immediate past president of the Maryland State Bar Association. Belman urged the committee to adopt a pending MSBA proposal that would require lawyers to complete 15 hours of further education each year.

The MSBA plan calls for self-regulation, suggesting that lawyers submit compliance affidavits every two years. Noncomplying attorneys detected in ran-

SEE CLE PAGE 5

OTHER RULES COMMITTEE VOTES

In other action Friday, the state rules committee:

- Sent back to subcommittee proposed changes to Rule 2-601 on final judgments. The changes are intended to bring the state rule into closer conformance with its federal counterpart.
- Sent to its style subcommittee changes to Rule 3-241, providing for automatic extensions of time requirements upon the death of a party.
- Passed a motion to bring Rule 9-105 on show cause orders for adoptions and guardianships into conformance with § 5-322 of the Family Law article of the Code.
- Sent back to subcommittee changes to Rule 9-616 on notice procedures prior to foreclosure sales to bring the rule into conformance with Chapter 580 of the Laws of Maryland of 1995.

CLE

CONTINUED FROM PAGE 1

dom audits conducted by a legal education commission would face suspension from practice.

Nationally, Maryland is one of only 10 states that do not have minimum continuing legal education standards. Maryland does, however, require new attorneys to take a course in professional responsibility.

Belman argued that Maryland lawyers need MCLE in order to competently represent their clients.

"I took MCLE on as an initiative in my year as bar president because I thought part of my duty was to tackle hard issues and MCLE is one of those hard issues," Belman said.

Many Maryland practitioners differ with Belman's view of the need for MCLE. That fact was conceded by Albert D. Brault of Rockville's Brault, Graham, Scott & Brault, chair of the rules panel's Lawyers Subcommittee.

Brault was careful to note that the poll proposed by his subcommittee would not directly ask whether lawyers want MCLE.

"We all accept [that a poll on whether lawyers want MCLE] would be a useless exercise because we assume that a majority of lawyers don't want it," he said.

Instead, the poll proposed Friday would gather information as to the current forms of continuing professional education available to lawyers. It would also ask lawyers how much formal continuing legal education they currently undertake, and what kind of classes they find most useful.

The subcommittee recommended that the poll be taken under the aegis of the Chief Judge of the Court of Appeals, Robert C. Murphy. A similar survey was conducted in 1989 to determine how Maryland lawyers were responding to the need for *pro bono publico* services to the underrepresented.

Like the poll approved by the committee last week, the *pro bono* survey was taken amidst calls for a mandatory requirement on all Maryland lawyers.

A study conducted after the 1989 poll resulted instead in the creation of the Peoples Pro Bono Action Center, the state's clearinghouse for *pro bono* providers and volunteers.

Opponents of mandatory MCLE claim that calls for a mandatory program amount to little more than a politically correct response to the public's bad opinion of the profession.

They cite cost of administration, cost to individual lawyers, the lack of exceptions for lawyers who do not practice law and a lack of MCLE providers as reasons to reject the MSBA's MCLE standards.

Towson lawyer Joanne M. Finegan testified at Friday's meeting. In a letter to the rules committee, she wrote, "If enacted in *any* form, such requirements will accelerate the erosion of professionalism and individual responsibility."

Opponents of MCLE also argue that required classes would do little to remedy the root causes of the profession's credibility crisis: lawyers' perceived lack of responsiveness to clients, lack of courtesy to the bench and colleagues, and lawyers' inevitable championing of unpopular clients.

Supporters of MCLE argue that any truth in those complaints is outweighed by the fact that the MSBA's proposal would not be unduly burdensome, especially given that the great majority of lawyers can well afford MCLE classes.

Proponents also note that given the availability of evening and weekend MCLE courses, lawyers can fulfill any MCLE obligations without missing any work.

Belman also observed that MCLE providers would spring up to fill the statewide demand for classes should continuing education be required.

In 1975, the MSBA's board of governors approved a proposal for required MCLE and submitted it to the rules committee. The committee quashed the suggestion.

In lieu of MCLE, the MSBA created the Maryland Institute for Professional Education for Lawyers which, according to Belman, is now one of Maryland's two largest providers of continuing legal education.

APPENDIX B.5

AM. BAR ASS'N, MODEL RULE FOR MINIMUM CONTINUING LEGAL EDUCATION AND COMMENTS, INCLUDING REPORT [hereinafter *2017 ABA Model Rule for MCLE & Report*].

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 6, 2017

RESOLUTION

RESOLVED, That the American Bar Association adopts the Model Rule for Minimum Continuing Legal Education (MCLE) and Comments dated February 2017, to replace the Model Rule for MCLE and Comments adopted by the American Bar Association in 1988 and subsequently amended.

American Bar Association
Model Rule for Minimum Continuing Legal Education
February 2017

Purpose

To maintain public confidence in the legal profession and the rule of law, and to promote the fair administration of justice, it is essential that lawyers be competent regarding the law, legal and practice-oriented skills, the standards and ethical obligations of the legal profession, and the management of their practices. In furtherance of this purpose, the ABA recommends this Model Rule for Minimum Continuing Legal Education (MCLE) and Comments, which replaces the prior Model Rule for MCLE and Comments adopted by the American Bar Association in 1988 and subsequently amended.

Contents

Section 1. Definitions.

(A) "Continuing Legal Education Program" or "CLE Program" or "CLE Programming" means a legal education program taught by one or more faculty members that has significant intellectual or practical content designed to increase or maintain the lawyer's professional competence and skills as a lawyer.

(B) "Credit" or "Credit Hour" means the unit of measurement used for meeting MCLE requirements. For Credits earned through attendance at a CLE Program, a Credit Hour requires sixty minutes of programming. Jurisdictions may also choose to award a fraction of a credit for shorter programs.

(C) "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.

(D) "Ethics and Professionalism Programming" means CLE programming that addresses standards set by the Jurisdiction's Rules of Professional Conduct with which a lawyer must comply to remain authorized to practice law, as well as the tenets of the legal profession by which a lawyer

demonstrates civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rules of law, the courts, clients, other lawyers, witnesses, and unrepresented parties.

(E) "In-House CLE Programming" means programming provided to a select private audience by a private law firm, a corporation, or financial institution, or by a federal, state, or local governmental agency, for lawyers who are members, clients, or employees of any of those organizations.

(F) "Interdisciplinary Programming" means programming that crosses academic lines that supports competence in the practice of law.

(G) "Jurisdiction" means United States jurisdictions including the fifty states, the District of Columbia, territories, and Indian tribes.

(H) "Law Practice Programming" means programming specifically designed for lawyers on topics that deal with means and methods for enhancing the quality and efficiency of a lawyer's service to the lawyer's clients.

(I) "MCLE" or "Minimum Continuing Legal Education" means the ongoing training and education that a Jurisdiction requires in order for lawyers to maintain their license to practice.

(J) "Mental Health and Substance Use Disorders Programming" means CLE Programming that addresses the prevention, detection, and/or treatment of mental health disorders and/or substance use disorders, which can affect a lawyer's ability to perform competent legal services.

(K) "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. Current delivery methods considered Moderated Programming include, but are not limited to:

(1) "In-Person" – a live CLE Program presented in a classroom setting devoted to the program, with attendees in the same room as the faculty members.
(2) "Satellite/Groupcast" – a live CLE Program broadcast via technology to remote locations (i.e., a classroom setting or a central viewing or listening location). Attendees participate in the program in a group setting.
(3) "Teleseminar" – a live CLE program broadcast via telephone to remote locations (*i.e.,* a classroom setting or a central listening location) or to individual attendee telephone lines. Attendees may participate in the program in a group setting or individually.
(4) "Video Replay" – a recorded CLE Program presented in a classroom setting devoted to the program, with attendees in the same room as a qualified commentator. Attendees participate in the program in a group setting.

(5) "Webcast/Webinar" – a live CLE Program broadcast via the internet to remote locations (*i.e.,* a classroom setting or a central viewing or listening location) or to individual attendees. Attendees may participate in the program in a group setting or individually.
(6) Webcast/Webinar Replay" - a recorded CLE program broadcast via the internet to remote locations (*i.e.,* a classroom setting or a central viewing or listening location) or to individual attendees. A qualified commentator is available to offer comments or answer questions. Attendees may participate in the program in a group setting or individually.

(L) "New Lawyer Programming" means programming designed for newly licensed lawyers that focuses on basic skills and substantive law that is particularly relevant to lawyers as they transition from law school to the practice of law.

(M) "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. Current delivery methods considered Non-Moderated Programming with Interactivity as Key Component include, but are not limited to:

(1) "Recorded On Demand Online" – a recorded CLE Program delivered through the internet to an individual attendee's computer or other electronic device with interactivity built into the program recording or delivery method.
(2) "Video or Audio File" – a recorded CLE Program delivered through a downloaded electronic file in mp3, mp4, wav, avi, or other formats with interactivity built into the program recording or delivery method.
(3) "Video or Audio Tape" – a recorded CLE Program delivered via a hard copy on tape, DVD, DVR, or other formats with interactivity built into the program recording or delivery method.

(N) "Self-Study" includes activities that are helpful to a lawyer's continuing education, but do not meet the definition of CLE Programming that qualifies for MCLE Credit. Self-Study includes, but is not limited to:

(1) "Informal Learning" - acquiring knowledge through interaction with other lawyers, such as discussing the law and legal developments
(2) "Non-Moderated Programming Without Interactivity" - viewing recorded CLE Programs that do not have interactivity built into the program recording or delivery method
(3) "Text" - reading or studying content (periodicals, newsletters, blogs, journals, casebooks, textbooks, statutes, etc.)

(O) "Sponsor" means the producer of the CLE Program responsible for adherence to the standards of program content determined by the MCLE rules and regulations of the Jurisdiction. A Sponsor may be an organization, bar association, CLE provider, law firm, corporate or government legal department, or presenter.

(P) "Technology Programming" means programming designed for lawyers that provides education on safe and effective ways to use technology in one's law practice, such as to communicate, conduct research, ensure cybersecurity, and manage a law office and legal matters. Such programming assists lawyers in satisfying Rule 1.1 of the ABA Model Rules of Professional Conduct in terms of its technology component, as noted in Comment 8 to the Rule ("To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]").

Section 2. MCLE Commission.

The Jurisdiction's Supreme Court shall establish an MCLE Commission to develop MCLE regulations and oversee the administration of MCLE.

Comments:

1. Section 2 assumes that the Jurisdiction's highest court is its Supreme Court and that the Supreme Court is the entity empowered to create an MCLE Commission. The titles of the applicable entities may vary by Jurisdiction.

2. Supreme Courts are encouraged to consider the following when establishing an MCLE Commission: composition of the Commission; terms of service; where and how often the Commission must meet; election of officers; expenses; confidentiality; and staffing.

3. It is anticipated that MCLE Commissions will develop Jurisdiction-specific regulations (or rules) to effectuate the provisions outlined in this Model Rule, such as regulations concerning when and how lawyers must file MCLE reports, penalties for failing to comply, and appeals. Further, it is anticipated that MCLE Commissions will develop regulations concerning the accreditation process for MCLE that is provided by local, state, and national Sponsors. This Model Rule also addresses recommended accreditation standards in Sections 4 and 5.

Section 3. MCLE Requirements and Exemptions.

(A) Requirements.

(1) All lawyers with an active license to practice law in this Jurisdiction shall be required to earn an average of fifteen MCLE credit hours per year during the reporting period established in this Jurisdiction.

(2) As part of the required Credit Hours referenced in Section 3(A)(1), lawyers must earn Credit Hours in each of the following areas:

(a) Ethics and Professionalism Programming (an average of at least one Credit Hour per year);
(b) Mental Health and Substance Use Disorders Programming (at least one Credit Hour every three years); and
(c) Diversity and Inclusion Programming (at least one Credit Hour every three years).

(3) A jurisdiction may establish regulations allowing the MCLE requirements to be satisfied, in whole or in part, by the carryover of Credit Hours from the immediate prior reporting period.

(B) Exemptions. The following lawyers may seek an exemption from this MCLE Requirement:

(1) Lawyers with an inactive license to practice law in this Jurisdiction, including those on retired status.

(2) Nonresident lawyers from other Jurisdictions who are temporarily admitted to practice law in this Jurisdiction under *pro hac vice* rules.

(3) A lawyer with an active license to practice law in this Jurisdiction who maintains a principal office for the practice of law in another Jurisdiction which requires MCLE and who can demonstrate compliance with the MCLE requirements of that Jurisdiction.

(4) Lawyers who qualify for full or partial exemptions allowed by regulation, such as exemptions for those on active military duty, those who are full-time academics who do not engage in the practice of law, those experiencing medical issues, and those serving as judges (whose continuing education is addressed by other rules).

Comments:

1. While many Jurisdictions have chosen to require twelve Credit Hours per year, and a minority of Jurisdictions require fewer than twelve Credit Hours per year, Section 3(A)(1) recommends an average of fifteen Credit Hours of CLE annually, meaning lawyers must earn fifteen Credit Hours per reporting period in Jurisdictions that require annual reporting, thirty Credit Hours per reporting period in Jurisdictions that require reporting every two years, and forty-five Credit Hours per reporting period in Jurisdictions that require reporting every three years. In addition, this Model Rule recommends sixty minutes of CLE Programming per Credit Hour, which is the standard in the majority of Jurisdictions, although a minority of Jurisdictions have chosen to require only fifty minutes of CLE Programming per Credit Hour.

2. Section 3(A)(1) does not take a position on whether lawyers should report annually, every two years, or every three years, all of which are options various Jurisdictions have chosen to implement, in part based on their own Jurisdiction's administrative needs. Allowing a lawyer to take credits over a two-year or three-year period provides increased flexibility for the lawyer in choosing when and which credits to earn, but it may also lead to procrastination and may provide less incentive for a lawyer to regularly take CLE that updates his or her professional competence.

3. Section 3(A)(2) recognizes that Jurisdictions may choose to identify specific MCLE credits that each lawyer must earn, such as those addressing particular subject areas. This Model Rule recommends that every lawyer be required to take the specific credits outlined in Section 3(A)(2)(a), (b), and (c). While requiring specific credits may increase administrative burdens on accrediting agencies, CLE Sponsors, and individual lawyers, and also requires proactive efforts to ensure the availability of programs, it is believed that those burdens are outweighed by the benefit of having all lawyers regularly receive education in those specific areas.

4. Many Jurisdictions currently allow CLE Programs on topics outlined in Section 3(A)(2)(b) and (c) (relating to Mental Health and Substance Use Disorders Programming, and Diversity and Inclusion Programming) to count toward the general CLE requirement or the Ethics and Professionalism Programming requirement, rather than specifically requiring attendance at those specialty programs. This Model Rule recommends stand-alone requirements for those specialty programs, in order to ensure that all lawyers receive minimal training in those areas. With respect to Mental Health and Substance Use Disorders Programming in particular, research indicates that lawyers may hesitate to attend such programs due to potential stigma; requiring all lawyers to attend such a program may greatly reduce that concern. Nonetheless, this Model Rule recognizes that Jurisdictions may choose not to impose a stand-alone requirement and, instead, accredit those specialty programs towards the Ethics and Professionalism Programming requirement. All Jurisdictions are encouraged to promote the development of those specialty programs in order to reach as many lawyers as possible. Nearly every Jurisdiction has a lawyers assistance program that can offer, or assist in offering, Mental Health and Substance Use Disorders Programming. In addition, numerous bar associations, including the American Bar Association, have diversity committees that can offer, or assist in offering, Diversity and Inclusion Programming.

5. Section 3(A)(3) endorses regulations that allow lawyers to carry over MCLE credits earned in excess of the current reporting period's requirement from one reporting period to the next, which encourages lawyers to take extra MCLE credits at a time that meets their professional and learning needs without losing credit for the MCLE activity. It is anticipated that each Jurisdiction will draft carryover credit regulations that best meet the Jurisdiction's needs, taking into account factors such as the length of the reporting period, the availability of CLE Programs in the Jurisdiction, administrative considerations, and other factors.

6. Section 3(B) recognizes that Jurisdictions may choose to exempt certain lawyers from MCLE requirements. It is anticipated that regulations addressing such exemptions will identify those who are automatically exempt, those who may seek an exemption based on their particular circumstances, and the process for claiming an exemption.

7. Section 3(B)(3) provides a mechanism for lawyers licensed in more than one Jurisdiction to be exempt from MCLE requirements if the lawyer satisfies the MCLE requirements of the Jurisdiction where his or her principal office is located. A Jurisdiction may consider limiting this exemption to lawyers with principal offices in certain Jurisdictions if the Jurisdiction is concerned that the MCLE rules of other Jurisdictions vary too greatly from its own rules. A Jurisdiction may also consider limiting this exemption to require that the lawyer attend particular CLE Programs, such as a Jurisdiction-specific professionalism program, or other specific programs not required in the Jurisdiction where the lawyer's principal office is located.

Section 4. MCLE-Qualifying Program Standards.

To be approved for credit, Continuing Legal Education Programs must meet the following standards:

(A) The program must have significant intellectual or practical content and be designed for a lawyer audience. Its primary objective must be to increase the attendee's professional competence and skills as a lawyer, and to improve the quality of legal services rendered to the public.

(B) The program must pertain to a recognized legal subject or other subject matter which integrally relates to the practice of law, professionalism, diversity and inclusion issues, mental health and substance use disorders issues, civility, or the ethical obligations of lawyers. CLE Programs that address any of the following will qualify for MCLE credit, provided the program satisfies the other accreditation requirements outlined herein:

(1) Substantive law programming

(2) Legal and practice-oriented skills programming

(3) Specialty programming (*see* Section 3(A)(2))

(4) New Lawyer Programming (*see* Section 1(L))

(5) Law Practice Programming (*see* Section 1(H))

(6) Technology Programming (*see* Section 1(P))

(7) Interdisciplinary Programing (*see* Section 1(F))

[(8) Attorney Well-Being Programming]

(C) The program must be delivered as Moderated Programming, or Non-Moderated Programming with Interactivity as a Key Component. The Sponsor must have a system which allows certification of attendance to be controlled by the Sponsor and which permits the Sponsor to verify the date and time of attendance.

(D) Thorough, high-quality instructional written materials which appropriately cover the subject matter must be distributed to all attendees in paper or electronic format during or prior to the program.

(E) Each program shall be presented by a faculty member or members qualified by academic or practical experience to teach the topics covered, whether they are lawyers or have other subject matter expertise.

Comments:

1. This Model Rule recommends approval of CLE programs designed for lawyers on the topics outlined in Section 4(B). This Model Rule supports allowing a lawyer to make educated choices about which programs will best meet the lawyer's educational needs, recognizing that the lawyer's needs may change over the course of his or her career. Therefore, this Model Rule does not place limits on the number of credits that can be earned through the programs identified in Section 4(B).

2. Section 4(B)(4) supports accrediting CLE Programs specifically designed for new lawyers. Many Jurisdictions require new lawyers to take one or more specific programs that focus on basic skills and substantive law particularly relevant to new lawyers, either prior to or immediately after bar admission. Other Jurisdictions simply accredit such programs as general CLE. The catalyst for some Jurisdictions to begin offering such programs was a 1992 ABA task force report entitled: "Task Force on Law Schools and the Profession: Narrowing the Gap" (commonly known as the "MacCrate Report"), which offered numerous recommendations for preparing law students and new graduates to practice law. This Model Rule supports the creation of programs designed for new lawyers, but does not specifically require such programs, because many Jurisdiction-specific

factors may influence a Jurisdiction's decision on this issue, such as the number of lawyers in the Jurisdiction, the availability of existing CLE programs, whether there are specific Sponsors available to teach such programs, similar educational programs required before licensure, and other factors.

3. Law Practice Programming, Section 4(B)(5), is programming specifically designed for lawyers on topics that deal with means and methods for enhancing the quality and efficiency of a lawyer's service to the lawyer's clients. Providing education on the operation and management of one's legal practice can help lawyers avoid mistakes that harm clients and cause law practices to fail. In some cases, Law Practice Programming may qualify as Ethics and Professionalism Programming.

4. Technology Programming, Section 4(B)(6), provides education on safe and effective ways to use technology in one's law practice, such as to communicate, conduct research, ensure cybersecurity, and manage a law office and legal matters, thereby assisting lawyers in satisfying Rule 1.1 of the ABA Model Rules of Professional Conduct in terms of its technology component, as noted in Comment 8 to the Rule ("To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]"). In some cases, Technology Programming may qualify as Ethics and Professionalism Programming.

5. Interdisciplinary Programming, Section 4(B)(7), provides a lawyer the opportunity to gain knowledge about a subject pertinent to his or her law practice, such as the treatment of particular physical injuries, child development, and forensic accounting.

6. In recent years, some Jurisdictions have begun accrediting programming that addresses attorney wellness or well-being topics. Some of those programs qualify for accreditation under this Model Rule's definitions of Mental Health and Substance Use Disorders Programming and Ethics and Professionalism Programming. In the future, this Model Rule may be amended to include additional programming that falls within a broader definition of Attorney Well-Being Programming. For that reason, Section (4)(B)(8) appears in brackets and Attorney Well-Being Programming is not defined in this Model Rule.

7. If a lawyer seeks MCLE credit for attending a program that has not been specifically designed for lawyers, including but not limited to programs on the topics identified in Section 4(B), Jurisdictions may choose to consider creating regulations that would require the lawyer to explain how the program is beneficial to the lawyer's practice. The regulations could also address how to calculate Credit Hours for programs that were not designed for lawyers.

8. In-Person Moderated Programming, *see* Section 4(C) and Section 1(K)(1), requires lawyers to leave their offices and learn alongside other lawyers, which can enhance the education of all and promote collegiality. Other forms of Moderated Programming and Non-Moderated Programming

with Interactivity as a Key Component, such as Section 4(C), Section 1(K) and (M), and Section 4(A)(2), allow lawyers to attend programs from any location and, in some cases, at the time of their choice. This flexibility allows lawyers to select programs most relevant to their practice, including specialized programs and programs with a national scope. Some Jurisdictions have expressed concern with approving programming that does not occur In-Person on grounds that the lawyer is less engaged. Thus, some Jurisdictions have declined to accredit or have limited the number of credits that can be earned through these other forms of programming. This Model Rule supports allowing a lawyer to make educated choices about whether attending Moderated Programming (In-Person or other) or Non-Moderated Programming with Interactivity as a Key Component will best meet the lawyer's educational needs, recognizing that the lawyer's needs may change over the course of his or her career. Therefore, this Model Rule does not place limits on the number of credits that can be earned through Moderated Programming or Non-Moderated Programming with Interactivity as a Key Component. If a Jurisdiction believes that Moderated Programming, specifically In-Person Programming, is crucial to a lawyer's education, then it is recommended that the Jurisdiction establish a minimum number of credits that must be earned through this type of programming, rather than place a cap on the number of credits that can be earned through other types of programming. A key factor in deciding whether to require In-Person Programming is the availability of programs throughout a particular Jurisdiction, which may be affected by geography, the number of CLE Sponsors, and other Jurisdiction-specific factors.

9. Currently, all Jurisdictions calculate credits exclusively based on the number of minutes a presentation lasts. Several Jurisdictions have explored offering MCLE credit for self-guided educational programs, such as those offered using a computer simulation that is completed at the lawyer's individual pace. Jurisdictions may wish to consider offering MCLE credit for such programs, especially as technology continues to advance.

10. Self-Study does not qualify for MCLE Credit. Jurisdictions have used the term "self-study" in varying ways. As defined in this Model Rule, Self-Study refers to activities that are important for a lawyer's continuing education and professional development, but which do not qualify as MCLE. Lawyers are encouraged to engage in Self-Study as a complement to earning MCLE Credits.

Section 5. Accreditation.

(A) The Jurisdiction shall establish regulations that outline the requirements and procedures by which CLE Sponsors can seek approval for an individual CLE Program. The regulations should indicate whether the Jurisdiction imposes specific requirements with respect to the following:

(1) Faculty credentials

(2) Written materials

(3) Attendance verification

(4) Interactivity

(5) Applications and supplemental information required (agenda, sample of materials, faculty credentials, etc.)

(6) Accreditation fees

(B) Any Sponsor may apply for approval of individual programs, but if the Jurisdiction determines that a Sponsor regularly provides a significant volume of CLE programs that meet the standards of approval and that the Sponsor will maintain and submit the required records, the Jurisdiction may designate, on its own or upon application from a Sponsor, such a Sponsor as an "approved provider." The MCLE Commission may revoke approval if a Sponsor fails to comply with its regulations, requirements, or program standards.

(C) Programs offered by law firms, corporate or government legal departments, or other similar entities primarily for the education of their members or clients will be approved for credit provided that the program meets the standards for accreditation outlined in Section 4.

(D) A Jurisdiction may establish regulations allowing an individual lawyer attendee to self-apply for MCLE Credit for attending a CLE program that the Sponsor did not submit for accreditation in the Jurisdiction where the individual lawyer is licensed.

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Comments:

1. The vast majority of Jurisdictions now require MCLE. Over the four decades during which Jurisdictions began implementing MCLE requirements, they have taken a variety of approaches to accreditation requirements and processes. This has allowed Jurisdictions to consider Jurisdiction-specific priorities and needs when drafting CLE requirements. However, this has created challenges for CLE Sponsors seeking program approval in multiple Jurisdictions. Many regional and national CLE Sponsors spend considerable time and resources to file applications in multiple Jurisdictions with differing program requirements. This increased financial and administrative burden can increase costs for CLE attendees, and it can also affect the number of programs being offered nationwide on specialized CLE and federal law topics. While differences in regulatory requirements among Jurisdictions are likely to continue, Jurisdictions are encouraged to consider ways to reduce financial and administrative burdens so that CLE Sponsors can offer programming that meets lawyers' educational needs at a reasonable price. For instance, Jurisdictions can promulgate regulations that are clear and specific, and they can streamline application processes, both of which would make it easier for Sponsors to complete applications and know with greater certainty whether programs are likely to be approved for MCLE credit. In addition, Jurisdictions may choose to reduce administrative costs to the Jurisdictions, CLE Sponsors, and individual lawyers by recognizing an accreditation decision made for a particular program by another Jurisdiction, thereby eliminating the need for the CLE Sponsor or individual lawyer to submit the program for accreditation in multiple Jurisdictions. Jurisdictions might also consider creating a regional or national accrediting agency to supplement or replace accreditation processes in individual Jurisdictions.

2. Many Jurisdictions outline specific requirements for CLE program faculty members, such as requiring that at least one member of the faculty be a licensed lawyer. Section 5(A)(1) does not suggest specific regulations with respect to faculty, but Section 4(B) recognizes the value of programming in Law Practice, Technology, and Interdisciplinary topics. For CLE Programs on those topics, the most qualified speaker may be a non-lawyer. Therefore, Jurisdictions are encouraged to allow non-lawyers to serve as speakers in appropriate circumstances, and Sponsors are encouraged to include lawyers in the planning and execution of programs to ensure that any subject area is discussed in a legal context.

3. All Jurisdictions currently require that a CLE program include written materials, which enhance the program and serve as a permanent resource for attendees. Section 4(D) continues to require program materials for a program to qualify for credit. Section 5(A)(2) does not suggest specific requirements for written materials, but Jurisdictions are encouraged to provide clear guidance on the format and length of required materials, which will better enable CLE Sponsors and individual lawyers seeking credit for programs to satisfy the Jurisdiction's requirements with respect to written materials.

4. Section 5(A)(3) recognizes that many Jurisdictions require lawyers to complete attendance sheets at In-Person CLE programs or provide proof they are attending an online program. This

Model Rule does not take a position on how Jurisdictions should verify attendance, but Jurisdictions are encouraged to weigh the benefits of particular methods of verifying attendance against the administrative cost of the various methods of tracking and reporting attendance.

5. Section 5(A)(4) acknowledges that many Jurisdictions require that attendees have an opportunity to ask the speakers questions. While this Model Rule does not offer specific regulations on this topic, this Model Rule does endorse Moderated Programming with Interactivity as a Key Component, which includes allowing lawyers to attend CLE on demand. Those Jurisdictions that wish to provide an opportunity for attendees to ask questions are encouraged to consider alternate ways of allowing speakers and attendees to communicate, such as using Webinar chat rooms or email.

6. Section (5)(A)(6) recognizes that most Jurisdictions impose fees on CLE Sponsors or individual lawyers to offset the cost of accrediting and tracking MCLE credits. The amount and type of fees vary greatly by Jurisdiction. In some cases, CLE Sponsors make decisions about where they will apply for accreditation based on the fees assessed, and may decide not to seek credit in particular Jurisdictions, such as if providing MCLE credit for a handful of attendees costs more than the tuition paid by those attendees. This can affect the availability of CLE programming to individual lawyers, especially on national and specialized topics that may not otherwise be offered in a particular Jurisdiction. Jurisdictions are encouraged to consider various fee models when determining how best to cover administrative costs.

7. For an approved provider system, *see* Section 5(B), Jurisdictions should create regulations which define the standards, application process for approved provider status, ongoing application process for program approval, reporting obligations, fees, and benefits of the status. Benefits may include reduced paperwork when applying for individual programs, reduced fees for program applications, or presumptive approval of all programs.

8. Many Jurisdictions impose specific requirements on In-House CLE Programming, which is sponsored by a private law firm, a corporation, or financial institution, or by a federal, state or local governmental agency for lawyers who are members, clients, or employees of any of the those organizations. This Model Rule recommends that Jurisdictions treat In-House Sponsors the same as other Sponsors and allow for full accreditation of programs when all other standards of Section 4 have been met.

9. Section 5(D) endorses regulations that allow an individual lawyer to self-apply for MCLE credit for attending a CLE Program that would qualify for MCLE Credit under Section 4, but which was not submitted for accreditation by the Sponsor in the Jurisdiction where the individual lawyer is licensed. This allows greater flexibility for a lawyer to select CLE programming that best meets his or her educational needs regardless of where the program Sponsor has chosen to apply for MCLE credit. It is anticipated that each Jurisdiction will draft regulations that best meet the Jurisdiction's needs, taking into account factors such as: the standards, delivery format, and

content of the program; the Sponsor's qualifications; other accreditation of the program by CLE regulators; the availability of CLE Programs in the Jurisdiction; administrative considerations, including fees; and other factors.

Section 6. Other MCLE-Qualifying Activities.

Upon written application of the lawyer engaged in the activity, MCLE credit may be earned through participation in the following:

(A) Teaching – A lawyer may earn MCLE credit for being a speaker at an accredited CLE program. In addition, lawyers who are not employed full-time by a law school may earn MCLE credit for teaching a course at an ABA-accredited law school, or teaching a law course at a university, college or community college. Jurisdictions shall create regulations which define the standards, credit calculations, and limitations of credit received for teaching or presenting activities.

(B) Writing – A lawyer may earn MCLE credit for legal writing which:

(1) is published or accepted for publication, in print or electronically, in the form of an article, chapter, book, revision or update;

(2) is written in whole or in substantial part by the applicant; and

(3) contributed substantially to the continuing legal education of the applicant and other lawyers.

Jurisdictions shall create regulations which define the standards, credit calculations, and limitations of credit received for writing activities.

[**(C)** Pro Bono]

[**(D)** Mentoring]

Comments:

1. A minority of Jurisdictions award MCLE credit for providing pro bono legal representation. This Model Rule takes no position on whether such credit should be granted, as many Jurisdiction-specific factors may influence a Jurisdiction's decision on this issue, such as the extent of free legal services existing in the Jurisdiction and pro bono requirements imposed by the Jurisdiction's ethical rules. Accordingly, this option appears in brackets in this Model Rule.

2. A minority of Jurisdictions award MCLE credit for participating in mentoring programs for fellow lawyers. This Model Rule takes no position on whether credit should be available for that activity, as many Jurisdiction-specific factors may influence a Jurisdiction's decision on this issue, such as the perceived need for formal mentoring programs in the Jurisdiction and the

availability of organizations to administer formal mentoring programs. Accordingly, this option appears in brackets in this Model Rule.

REPORT

Nearly thirty years have passed since the American Bar Association House of Delegates adopted the Model Rule for Minimum Continuing Legal Education (MCLE) and Comments (hereafter, "1988 MCLE Model Rule") to serve as a model for a uniform standard and means of accreditation of CLE programs and providers. The CLE landscape has changed considerably in the last three decades. Technological advancements have made it possible for lawyers to learn about the law in new and exciting ways. Evolution in the practice of law and changes in society have also created opportunities for educating lawyers about new subjects. In addition, increasing numbers of lawyers are licensed in more than one Jurisdiction.[1]

Although only thirty United States Jurisdictions required MCLE in 1988, forty-six states and four other Jurisdictions now do so.[2] While each Jurisdiction has its own MCLE rules and regulations, many requirements are consistent across Jurisdictions. As Jurisdictions continue to evaluate their MCLE requirements, they look to successes and challenges other Jurisdictions have experienced, as well as to the 1988 MCLE Model Rule. In light of the many changes that have occurred in CLE and the legal profession over the past thirty years, the time has come to adopt a new MCLE Model Rule to assist Jurisdictions in the years to come. This Model Rule retains many of the core provisions of the 1988 MCLE Model Rule, but it eliminates some detailed recommendations, such as those concerning the organization of MCLE commissions in each Jurisdiction and specific penalties for lawyers who do not satisfy MCLE requirements. This Model Rule also adds a definitions section, as well as new recommendations for specific types of programming and methods of program delivery. In addition, it has been reorganized for easier navigation.

I. Model Rule drafting process.

Although the 1988 MCLE Model Rule was amended by the House of Delegates several times over the last three decades, the House of Delegates has not considered the document as a whole since it was adopted. In recent years, the MCLE Subcommittee of the ABA Standing Committee on Continuing Legal Education ("SCOCLE") discussed several developments in CLE

[1] The terms "Jurisdiction" and "Sponsor" are among those defined in Section 1 of the Model Rule. Those terms are capitalized in this report.

[2] United States Jurisdictions include the fifty states, the District of Columbia, territories, and Indian tribes. The following forty-six states require lawyers to take MCLE: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. In addition, Guam, Mariana Islands, Puerto Rico, Virgin Islands, and some Indian tribes (e.g., Navajo Nation) require MCLE.

that could necessitate amendments to the 1988 MCLE Model Rule. Then, in August 2014, the House of Delegates passed Resolution 106, which specifically asked SCOCLE to consider changes to the 1988 MCLE Model Rule, including those related to law practice CLE. *See* 2014A106.

To address issues identified by the MCLE Subcommittee and by Resolution 106, SCOCLE initiated the MCLE Model Rule Review Project (hereafter, "Project"), which has undertaken a comprehensive review of the 1988 MCLE Model Rule. The Project began by seeking volunteers from within and outside the ABA to serve on working groups. Over fifty volunteers—including individual lawyers, ABA leaders, CLE regulators, CLE providers, judges, academics, law firm professional development coordinators, and state/local/specialty bar association leaders—considered a wide variety of issues related to MCLE, including: CLE delivery methods, substantive law programming, specialty programming, CLE for specific constituent groups, the impact of technology on CLE, international approaches to CLE,[3] and many other topics.

Based on reports of the various working groups and larger discussions with working group members and other interested persons, the Project prepared a draft Model Rule that was circulated for comment to entities within and outside the ABA in August 2016. As a result of feedback from various entities and individuals, the draft was revised and is now being submitted to the House of Delegates for adoption.

II. The Purpose of MCLE.

Long before Jurisdictions began requiring CLE, Jurisdictions recognized the need for CLE.[4] "Continuing legal education … was originally implemented as a voluntary scheme after World War II to acclimate attorneys returning to practice after a lengthy absence in the military

[3] The International Approaches working group looked at MCLE requirements in Canada, New Zealand, Australia, England, and Wales. In Canada, between 2009 to 2016, eight of the ten provinces and the three territories introduced a mandatory credit hours system. Although these Canadian requirements are similar to those in the U.S.A., the regulatory mechanisms have been designed to be less complex and significantly less expensive to administer. In New Zealand and four Canadian jurisdictions, a learning or study plan requirement has been introduced either in combination with or in place of a credit hours requirement. Most Australian states have a mandatory credit hours system. Very recently in England and Wales, the credit hours requirement for solicitors has been eliminated in place of a requirement that solicitors certify they are maintaining their competence to practice law. For information on these changes in England and Wales, please visit: http://www.sra.org.uk/solicitors/cpd/solicitors.page. Barristers in England and Wales moved to a similar requirement that became effective on January 1, 2017. *See* https://www.barstandardsboard.org.uk/regulatory-requirements/regulatory-update-2016/bsb-regulatory-update-may-2016/changes-to-cpd/.

[4] Several important national conferences considered the role of CLE. They were known as the "Arden House" conferences and were held in 1958, 1963, and 1987. More recently, in 2009, the Association for Continuing Legal Education Administrators (ACLEA) and the American Law Institute-American Bar Association (ALI-ABA) cosponsored an event called "Critical Issues Summit, Equipping Our Lawyers: Law School Education, Continuing Legal Education, And Legal Practice in the 21st Century."

and to meet the needs of increased numbers in the profession."[5] In 1975, Minnesota and Iowa became the first states to require MCLE, in part to counteract negative publicity caused by the involvement of lawyers in the Nixon Watergate scandal.[6]

Ultimately, it is clear that the primary reasons for requiring CLE have remained the same since the first states began requiring MCLE forty years ago: ensuring lawyer competence, maintaining public confidence in the legal profession, and promoting the fair administration of justice. In recognition of those goals, this Model Rule includes the following Purpose Statement, from which all other provisions of the Model Rule flow:

> To maintain public confidence in the legal profession and the rule of law, and to promote the fair administration of justice, it is essential that lawyers be competent regarding the law, legal and practice-oriented skills, the standards and ethical obligations of the legal profession, and the management of their practices. In furtherance of this purpose, the ABA recommends this Model Rule for Minimum Continuing Legal Education (MCLE) and Comments, which replaces the prior Model Rule for MCLE and Comments adopted by the American Bar Association in 1988 and subsequently amended.

III. Key themes addressed by this Model Rule.

The Project's working groups were asked to consider what works well in Jurisdictions that require MCLE and what has challenged consumers, providers, and regulators of MCLE. Several key themes emerged and are reflected in this Model Rule.

First, when it comes to regulating MCLE, there are many similarities among Jurisdictions, but no two Jurisdictions have identical rules and regulations. Given that the vast majority of Jurisdictions already have MCLE rules and regulations in place, it is unrealistic to expect that every Jurisdiction will adopt identical rules. Rather than suggest that every Jurisdiction adopt identical rules for every aspect of MCLE administration, this Model Rule focuses on the most important aspects of MCLE, including those that affect MCLE on a national level. The Model Rule states that it is anticipated that Jurisdictions will develop additional rules and regulations to address administrative decisions such as reporting deadlines, fees, attendance verification, and other issues.

Second, the continuing education needs of lawyers vary based on the lawyer's length of experience, practice setting, and area of practice. For instance, an introduction to an individual

[5] Lisa A. Grigg, Note, "The Mandatory Continuing Legal Education (MCLE) Debate: Is It Improving Lawyer Competence or Just Busy Work?", 12 BYU. J. PUB. L. 417, 418 (1998). For additional history of the development of MCLE, *see* Cheri A. Harris, MCLE: The Perils, Pitfalls, and Promise of Regulation, 40 VAL. U. L. REV. 359, 369 (2006); and Chris Ziegler and Justin Kuhn, "Is MCLE A Good Thing? An Inquiry Into MCLE and Attorney Discipline," available at: https://www.clereg.org/assets/pdf/Is_MCLE_A_Good_Thing.pdf.

[6] *See* Rocio T. Aliaga, "Framing the Debate on Mandatory Continuing Legal Education (MCLE): The District of Columbia Bar's Consideration of MCLE," 8 GEO J. LEGAL ETHICS 1145, 1150 (1995).

state's laws of intestacy will be helpful to a newer lawyer engaging in general practice in a single state, but of little use to a lawyer with twenty years of experience practicing products liability law in federal courts in six Jurisdictions. It is imperative that lawyers have access to high-quality CLE that most meets their educational needs. One way to achieve that goal is to allow lawyers to access CLE in person or using technology-based delivery methods such as teleconferences and webinars. This Model Rule addresses that goal by recommending that Jurisdictions allow lawyers to choose CLE offered in a variety of program delivery formats and not limit the number of credits that can be earned using a particular delivery format.

Third, it is important that lawyers continue to receive CLE on substantive legal topics—especially those areas in which the lawyer practices—because the law is ever-evolving. At the same time, it is also important that lawyers have access to CLE that addresses the management of their practices to ensure that they can properly serve and manage their clients. For these reasons, it is imperative that CLE be offered in substantive law areas, law practice, and technology. This Model Rule addresses that goal by recommending that Jurisdictions accredit substantive law programs, law practice programs, and technology programs, and further recommending that Jurisdictions not limit the number of credits that can be earned in a particular subject area.

Fourth, although this Model Rule is designed to allow lawyers to choose the CLE topics that best meet their educational needs, there are several topics that are so crucial to maintaining public confidence in the legal profession and the rule of law, and promoting the fair administration of justice, that all lawyers should be required to take CLE in those topic areas. Those areas include: (1) Ethics and Professionalism; (2) Diversity and Inclusion; and (3) Mental Health and Substance Use Disorders.

Fifth, the Model Rule recognizes that having each Jurisdiction draft its own rules and regulations over the past thirty years has allowed Jurisdictions to consider Jurisdiction-specific priorities and needs when drafting CLE requirements, but has also created challenges for CLE Sponsors seeking program approval in multiple Jurisdictions. There are increased financial and administrative burdens associated with seeking MCLE credit in multiple Jurisdictions, which can increase costs for CLE attendees and affect the number of programs being offered nationwide on specialized CLE and federal law topics. This Model Rule suggests several strategies Jurisdictions may consider to reduce those financial and administrative burdens so that CLE Sponsors can offer programming that meets lawyers' educational needs at a reasonable price.

Sixth, with the vast majority of Jurisdictions now requiring MCLE, many law firms, government legal departments, and other legal workplaces—especially those with offices in multiple cities and states—offer in-house CLE programs that address educational topics most relevant to the legal entity. In some Jurisdictions, these programs are not granted MCLE credit. This Model Rule recommends that Jurisdictions treat in-house Sponsors of CLE programs the same as other Sponsors and allow for full accreditation of programs when all other accreditation standards have been met.

Seventh, the legal profession includes hundreds of thousands of lawyers who are licensed in more than one Jurisdiction.[7] Some of these lawyers experience challenges meeting the requirements of each Jurisdiction in which they are licensed due to differences in requirements and the process for MCLE program approval. To reduce the administrative burdens on those lawyers, this Model Rule recommends that Jurisdictions adopt a special exemption for lawyers licensed in multiple Jurisdictions, pursuant to which a lawyer is exempt from satisfying MCLE requirements if he or she satisfies the MCLE requirements of the Jurisdiction where the lawyer's principal office is located.

IV. 2017 MCLE Model Rule: A Closer Look.

The Model Rule contains the aforementioned Purpose Statement plus six Sections, including:

Section 1. Definitions.
Section 2. MCLE Commission.
Section 3. MCLE Requirements and Exemptions.
Section 4. MCLE-Qualifying Program Standards.
Section 5. Accreditation.
Section 6. Other MCLE-Qualifying Activities.

The discussion below highlights some of the most important provisions of those Sections.

A. Section 1. Definitions.

The Definitions section defines sixteen important terms which are then incorporated in the five sections that follow. The term "Jurisdiction," which we use throughout this report, is defined as: "United States jurisdictions including the fifty states, the District of Columbia, territories, and Indian tribes." The term "Sponsor" refers to "the producer of the CLE Program responsible for adherence to the standards of program content determined by the MCLE rules and regulations of the Jurisdiction" and may include "an organization, bar association, CLE provider, law firm, corporate or government legal department, or presenter."

B. Section 2. MCLE Commission.

Section 2 and its three Comments recognize that Jurisdictions, generally acting through the Jurisdiction's highest court, will develop MCLE regulations and oversee the administration of MCLE.

C. Section 3. MCLE Requirements and Exemptions.

[7] Based on publicly available information, it is estimated that approximately twenty-one percent of lawyers are licensed in more than one Jurisdiction. The percentage varies greatly by Jurisdiction. For instance, nearly forty percent of lawyers licensed in New York are licensed in another Jurisdiction, but less than ten percent of lawyers in Florida are licensed in another Jurisdiction.

Section 3(A) outlines several MCLE requirements, such as requiring lawyers with an active law license to earn an average of fifteen credit hours each year; credit hours are defined in Section 1(B) as sixty minutes. Section 3, Comment 1 recognizes that some states have chosen to require fewer than fifteen hours or to define a credit hour as less than sixty minutes. Section 3, Comment 2 acknowledges that the Model Rule does not take a position on whether lawyers should report annually, every two years, or every three years, and it includes the following observation from the 1988 MCLE Model Rule: allowing a lawyer to take credits over a two-year or three-year period provides increased flexibility for the lawyer in choosing when and which credits to earn, but it may also lead to procrastination and may provide less incentive for a lawyer to regularly take CLE that updates his or her professional competence.

Section 3(B) recommends that all lawyers be required to take three types of specialty MCLE, including: (a) Ethics and Professionalism Credits (an average of at least one Credit Hour per year); (b) Mental Health and Substance Use Disorders Credits (at least one Credit Hour every three years); and (c) Diversity and Inclusion Credits (at least one Credit Hour every three years).

Ethics and Professionalism Credits are currently required in every state and territory with MCLE. They assist in expanding the appreciation and understanding of the ethical and professional responsibilities and obligations of lawyers' respective practices; in maintaining certain standards of ethical behavior; and in upholding and elevating the standards of honor, integrity, and courtesy in the legal profession. This Model Rule defines Ethics and Professionalism Programming as: "CLE programming that addresses standards set by the Jurisdiction's Rules of Professional Conduct with which a lawyer must comply to remain authorized to practice law, as well as the tenets of the legal profession by which a lawyer demonstrates civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rules of law, the courts, clients, other lawyers, witnesses, and unrepresented parties." *See* Section 1(D). Many Jurisdictions have similar definitions and, like the Model Rule, do not separate Ethics topics from Professionalism topics, but at least one Jurisdiction requires separate credits for those topics.[8]

Mental Health and Substance Use Disorders Programming is currently accredited in most Jurisdictions, and many Jurisdictions allow such programs to count towards Ethics and Professionalism Programming requirements. Three Jurisdictions specifically require all lawyers to attend programs that focus on mental health disorders and/or substance use disorders.[9] This Model

[8] Georgia requires lawyers to attend both Ethics programs and Professionalism programs. Georgia's Rule 8-104, Regulation 4 offers this definition of the latter: "Professionalism refers to the intersecting values of competence, civility, integrity, and commitment to the rule of law, justice, and the public good. The general goal of the professionalism CLE requirement is to create a forum in which lawyers, judges, and legal educators can explore and reflect upon the meaning and goals of professionalism in contemporary legal practice. The professionalism CLE sessions should encourage lawyers toward conduct that preserves and strengthens the dignity, honor, and integrity of the legal profession."

[9] The following three states require one credit every three years of programming addressing mental health and/or substance use disorder issues: Nevada (substance abuse), North Carolina (substance abuse

Rule recommends that all lawyers be required to take one credit of programming every three years that focuses on the prevention, detection, and/or treatment of mental health disorders and/or substance use disorders. It is anticipated that programs may address topics including, but limited to, the prevalence and risks of mental health disorders (including depression and suicidality) and substance use disorders (including the hazardous use of alcohol, prescription drugs, and illegal drugs).

The need for required Mental Health and Substance Use Disorders Programming was underscored in early 2016 with the release of a landmark study conducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs, which revealed substantial and widespread levels of problem drinking and other behavioral health problems in the U.S. legal profession.[10] The study, entitled "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," found that twenty-one percent of licensed, employed lawyers qualify as problem drinkers, twenty-eight percent struggle with some level of depression, and nineteen percent demonstrate symptoms of anxiety. The study found that younger lawyers in the first ten years of practice exhibit the highest incidence of these problems. The study compared lawyers with other professionals, including doctors, and determined that lawyers experience alcohol use disorders at a far higher rate than other professional populations, as well as mental health distress that is more significant. The study also found that the most common barriers for lawyers to seek help were fear of others finding out and general concerns about confidentiality. Many organizations, including the ABA Commission on Lawyer Assistance Programs, have seen the study's findings as a call to action, which led to this Model Rule's recommendation that all lawyers take one credit of Mental Health and Substance Use Disorder Programming every three years. Section 3, Comment 4 explains: "[R]esearch indicates that lawyers may hesitate to attend such programs due to potential stigma; requiring all lawyers to attend such a program may greatly reduce that concern."[11]

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and debilitating mental conditions), and California ("Competence Issues," formerly known as "Prevention, Detection and Treatment of Substance Abuse or Mental Illness").

[10] *See* Krill, Patrick R.; Johnson, Ryan; and Albert, Linda, "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," JOURNAL OF ADDICTION MEDICINE, February 2016 Volume 10 Issue 1, available at: http://journals.lww.com/journaladdictionmedicine/toc/2016/02000. The mainstream media have also shone a light on rates of depression in the legal system. *See* http://www.cnn.com/2014/01/19/us/lawyer-suicides/.

[11] At the same time, Section 3, Comment 4 recognizes that "Jurisdictions may choose not to impose a stand-alone requirement and, instead, accredit those specialty programs towards the Ethics and Professionalism Programming requirement." In those Jurisdictions, Lawyer Assistance Programs, bar associations, and other CLE providers may wish to focus on increasing the amount of available Mental Health and Substance Use Disorder Programming, so that lawyers more frequently choose it to satisfy their Ethics and Professionalism requirement. It is extremely unlikely, however, that one hundred percent of lawyers will elect to take Mental Health and Substance Use Disorder Programming if it is not specifically required, which is why this Model Rule recommends a stand-alone requirement.

Diversity and Inclusion Programming can be used to educate lawyers about implicit bias, the needs of specific diverse populations, and ways to increase diversity in the legal profession. Currently, only three states require lawyers to take specific Diversity and Inclusion Programs, while other states allow programs on elimination of bias to qualify for Ethics and Professionalism Credits.[12] In February 2016, the ABA House of Delegates recognized the importance of requiring this programming when it adopted a resolution encouraging Jurisdictions with MCLE requirements to "include as a separate credit programs regarding diversity and inclusion in the legal profession of all persons regardless of race, ethnicity, gender, sexual orientation, gender identity, or disabilities, and programs regarding the elimination of bias." *See* 2016M107.[13] Resolution 107 did not specify the number of credits that should be required. This Model Rule recommends that all lawyers be required to take one credit every three years.

Section 3(B) recognizes that Jurisdictions may choose to provide MCLE exemptions for certain categories of lawyers, such as those on retired status. Section (3)(B)(3) recommends an exemption for lawyers licensed in multiple Jurisdictions who satisfy the MCLE requirements of the Jurisdiction where their principal office is located. This exemption is designed to reduce the administrative burden and costs to those lawyers who have already satisfied the requirements of the Jurisdiction where their principal office is located. Section 3, Comment 7 recognizes that Jurisdictions may choose to limit the exemption to lawyers with principal offices in certain Jurisdictions, or to require that the lawyer attend particular CLE Programs, such as a Jurisdiction-specific Ethics and Professionalism Program.

D. Section 4. MCLE-Qualifying Program Standards.

Section 4 outlines the types of programs that the Model Rule suggests should receive MCLE credit. It explicitly addresses seven types of programming that are defined in Section 1, such as Technology Programming. Section 4, Comment 1 emphasizes that this Model Rule supports allowing a lawyer to make educated choices about which programs will best meet the lawyer's educational needs, recognizing that the lawyer's needs may change over the course of his or her career. Therefore, this Model Rule does not place limits on the number of credits that can be earned for any particular type of program, including those outlined in Section (4)(B).

[12] California, Minnesota, and Oregon require specific Diversity and Inclusion Programming (which they refer to "elimination of bias" or "access to justice" programming), while states such as Hawaii, Kansas, Illinois, Maine, Nebraska, Washington, and West Virginia allow such programs to count towards their Ethics and Professionalism Programming requirements. This Model Rule encourages Jurisdictions to implement a stand-alone credit requirement, but Section 3, Comment 4 also recognizes that "Jurisdictions may choose not to impose a stand-alone requirement and, instead, accredit those specialty programs towards the Ethics and Professionalism Programming requirement." As with the Mental Health and Substance Use Disorder Credit, it is extremely unlikely that one hundred percent of lawyers will elect to take Diversity and Inclusion Programming if it is not specifically required, which is why this Model Rule recommends a stand-alone requirement.

[13] The full text of ABA House of Delegates Resolution 2016M107 is available at: http://www.americanbar.org/content/dam/aba/directories/policy/2016_hod_midyear_107.docx.

Section 4, Comment 2 explains that while the Model Rule supports the creation of programs designed for new lawyers, it does not specifically require such programs, because many Jurisdiction-specific factors may influence a Jurisdiction's decision on this issue, such as the number of lawyers in the Jurisdiction, the availability of existing CLE programs, whether there are specific Sponsors available to teach such programs, similar educational programs required before licensure, and other factors.[14]

Section 4(B)(5) and Section 4, Comment 3 recommend that Law Practice Programming be approved for MCLE credit. That programming is defined as: "programming specifically designed for lawyers on topics that deal with means and methods for enhancing the quality and efficiency of a lawyer's service to the lawyer's clients." *See* Section 1(H). This Model Rule provision builds on policy adopted by the ABA House of Delegates in August 2014. *See* 2014A106.[15] Resolution 106 and this Model Rule both recognize that providing education on the management of one's legal practice can help lawyers avoid mistakes that harm clients and cause law practices to fail. Lawyers require far more than knowledge of substantive law to set up and operate a law practice in a competent manner. In fact, at a national conference on CLE, it was noted that the percentage of cases involving lawyers' shortcomings in personal and practice management far outweighs the percentage of cases involving lack of substantive law awareness.[16] Effective client service requires lawyers to be good managers of their time and offices, skilled managers of the financial aspects of running a practice, and knowledgeable in areas that do not necessarily involve substantive law. Law Practice Programming is designed to help lawyers develop those skills.

Section 4(B)(5) and Section 4, Comment 4 recommend that Technology Programming be approved for MCLE credit. Technology Programming is defined as "programming designed for lawyers that provides education on safe and effective ways to use technology in one's law practice, such as to communicate, conduct research, ensure cybersecurity, and manage a law office and legal matters." *See* Section 1(P). The definition and Section 4, Comment 4 also recognize that Technology Programming "assists lawyers in satisfying Rule 1.1 of the ABA Model Rules of

[14] Section 4, Comment 2 also recognizes that many of the Jurisdictions that have mandated specific CLE programming for new lawyers based the development of those programs on recommendations from a 1992 ABA task force report entitled: "Task Force on Law Schools and the Profession: Narrowing the Gap" (commonly known as the "MacCrate Report" after the late Robert MacCrate, who chaired the commission), which offered numerous recommendations for preparing law students and new graduates to practice law. New lawyer programming varies by jurisdiction. For instance, Florida, Pennsylvania, and Tennessee require new lawyers to complete basic skills courses, but Virginia requires new lawyers to take a professionalism course that focuses primarily on ethics CLE.

[15] The full text of ABA House of Delegates Resolution 2014A106 is available at: http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2014_hod_annual_meeting_106.authcheckdam.pdf.

[16] *See* Critical Issues Summit, *supra* note 4.

Professional Conduct in terms of its technology component, as noted in Comment 8 to the Rule ("To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]"). The ABA Ethics 20/20 Commission that proposed that Comment to Rule 1.1 concluded that "in a digital age, lawyers necessarily need to understand basic features of relevant technology" and "a lawyer would have difficulty providing competent legal services in today's environment without knowing how to use email or create an electronic document." *See* 2012A105A.[17] The Commission further noted it was important to make this duty explicit because technology is such an integral—and yet, at times invisible—aspect of contemporary law practice. One MCLE Jurisdiction not only allows for the accreditation of these programs, but also requires lawyers to take technology-related courses.[18]

Section 4, Comment 6 acknowledges that some Jurisdictions have begun accrediting programming that addresses attorney wellness or well-being. While some Jurisdictions explicitly accredit attorney wellness or well-being programs, others allow accreditation under their Ethics and Professionalism or Mental Health and Substance Use Disorder programming. *See*, *e.g.*, Maryland, South Carolina, Tennessee, and Texas.[19] Across the country, numerous bar association committees, lawyer assistance programs, and other entities have recognized attorney wellness and well-being as compelling and important issues that affect attorney professionalism, character, competence, and engagement. The National Task Force on Lawyer Well-Being is currently compiling the various approaches and research regarding attorney mental health and wellness and will be preparing a formal report in 2017 outlining its findings and recommendations.[20] ABA

[17] The text of ABA House of Delegates Resolution and Report 2012A105A and additional information on the Ethics 20/20 Commission are available at: http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20.html. That resolution revised then Comment 6 to Model Rule 1.1, which was renumbered as Comment 8 pursuant to Resolution and Report 2012A105C.

[18] On September 29, 2016, Florida became the first state to require Technology CLE, effective January 1, 2017. The Florida Supreme Court amended the MCLE requirements "to change the required number of continuing legal education credit hours over a three-year period from 30 to 33, with three hours in an approved technology program." *See* http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/3b05732accd9edd28525803e006148cf!OpenDocument.

[19] For more information, please visit: www.msba.org/committees/wellness/default.aspx (Maryland); www.scbar.org/lawyers/sections-committees-divisions/committees/wellness-committee/ (South Carolina); cletn.com/images/Documents/Regulations2013.04.16.pdf (Tennessee); and www.texasbar.com/AM/Template.cfm?Section=Lawyers&Template=/CM/ContentDisplay.cfm&ContentID=15117 (Texas).

[20] The National Task Force on Lawyer Well-Being is a collection of entities within and outside the ABA that was created in August 2016. Its participating entities include: ABA Commission on Lawyer Assistance Programs; ABA Standing Committee on Professionalism; ABA Center for Professional Responsibility; ABA Young Lawyers Division; ABA Law Practice Division Attorney Well-Being Committee; The National Organization of Bar Counsel; Association of Professional Responsibility Lawyers; and others.

entities participating in the Task Force may, in the future, propose amendments to the MCLE Model Rule based on the Task Force's findings and recommendations.

Section 4, Comment 8 discusses In-Person Moderated Programming, *see* Section 4(C) and Section 1(K)(1), which requires lawyers to leave their offices and learn alongside other lawyers, which can enhance the education of all and promote collegiality. Other forms of Moderated Programming and Non-Moderated Programming with Interactivity as a Key Component, such as Section 4(C), Section 1(K) and (M), and Section 4(A)(2), allow lawyers to attend programs from any location and, in some cases, at the time of their choice. This flexibility allows lawyers to select programs most relevant to their practice, including specialized programs and programs with a national scope. Some Jurisdictions have expressed concern with approving programming that does not occur in person on grounds that the lawyer is less engaged. Thus, some Jurisdictions have declined to accredit or have limited the number of credits that can be earned through these other forms of programming. This Model Rule supports allowing a lawyer to make educated choices about whether attending Moderated Programming (In-Person or other) or Non-Moderated Programming with Interactivity as a Key Component will best meet the lawyer's educational needs, recognizing that the lawyer's needs may change over the course of his or her career. Therefore, this Model Rule does not place limits on the number of credits that can be earned through Moderated Programming or Non-Moderated Programming with Interactivity as a Key Component. If a Jurisdiction believes that Moderated Programming, specifically In-Person Programming, is crucial to a lawyer's education, then it is recommended that the Jurisdiction establish a minimum number of credits that must be earned through this type of programming, rather than place a cap on the number of credits that can be earned through other types of programming.[21] A key factor in deciding whether to require In-Person Programming is the availability of programs throughout a particular Jurisdiction, which may be affected by geography, the number of CLE Sponsors, and other Jurisdiction-specific factors.

Section 4, Comment 9 recognizes that jurisdictions currently calculate the number of credits earned based on the number of minutes of instruction or lecture provided to attendees, but it suggests that Jurisdictions may wish to consider offering MCLE credit for self-guided educational programs, especially as technology continues to advance. Those that choose to explore other ways of calculating credit could look to the experience of other professions. For instance, Certified Professional Accountants (CPAs) may earn credit for self-paced learning programming. Calculation of credit is determined by review by a panel of pilot testers (professional level, experience, and education consistent with the intended audience of the program) and the average time of completion (representative completion time) is then used to determine credit to be received

[21] Currently, several Jurisdictions limit the number of credits that may be earned through non-live programming. These include: Georgia, Indiana, Kansas, Louisiana, Mississippi, Nebraska, New Jersey, Ohio, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Utah, and West Virginia. There are currently no Jurisdictions that explicitly require In-Person Programming credits; instead, they use the cap on non-live formats to effectively require In-Person Programming credits.

by all who complete the program.[22] The regulators require additional safeguards as part of the program including review questions and other content reinforcement tools, evaluative and reinforcement feedback, and a qualified assessment such as a final examination. CPAs may also earn credit for text-based content with credit calculation based on a word-count formula, and now allow for nano-learning—short programs (minimum 10 minutes) focusing on a single learning objective.

Section 4, Comment 10 recognizes that Jurisdictions have used the term "self-study" in varying ways. As defined in this Model Rule, Self-Study refers to activities that are important for a lawyer's continuing education and professional development, but which do not qualify as MCLE.

E. Section 5. Accreditation.

Section 5(A) recognizes the need for regulations on topics including faculty credentials, written materials, attendance verification, interactivity, applications and accreditation fees, but it does not prescribe those specific regulations, leaving that role to individual Jurisdictions.

Section 5, Comment 1 recognizes that because regulations vary among Jurisdictions—and are likely to continue to vary—Sponsors bear significant financial and administrative burdens to seek MCLE credit in multiple Jurisdictions, which can affect the number of programs being offered nationwide on specialized CLE and federal law topics. Comment 1 suggests several ways Jurisdictions can minimize those burdens, such as by promulgating regulations that are clear and specific and by streamlining the application processes, both of which would make it easier for Sponsors to complete applications and know with greater certainty whether programs are likely to be approved for MCLE credit. Section 5, Comment 1 further states that Jurisdictions may choose to reduce administration costs to the Jurisdictions, CLE Sponsors, and individual lawyers by recognizing an accreditation decision made for a particular program by another Jurisdiction, thereby eliminating the need for the CLE Sponsor or individual lawyer to submit the program for accreditation in multiple Jurisdictions. Finally, Section 5, Comment 1 recognizes that Jurisdictions might consider creating a regional or national accrediting agency to supplement or replace accreditation processes in individual Jurisdictions.

Section 5, Comments 2, 3, 4, 5, and 6 discuss suggested provisions for faculty credentials, written materials, attendance verification, interactivity, applications and accreditation fees.

Section 5(B) recognizes that Jurisdictions may choose to create an approved provider program for Sponsors who frequently present CLE in the Jurisdiction. Section 5, Comment 7

[22] The Statement on Standards for Continuing Professional Education (CPE) Programs (2016) (Standards) is published jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA) to provide a framework for the development, presentation, measurement, and reporting of CPE programs. General information on those Standards is available at: https://www.nasbaregistry.org/the-standards. The Standards, including a discussion of the methods of calculating credit, is available at: https://www.nasbaregistry.org/__media/Documents/Others/Statement_on_Standards_for_CPE_Programs-2016.pdf.

discusses the types of regulations that would need to be created and the list of possible benefits for preferred providers.

Section 5(C) and Section 5, Comment 8 recommend that in-house programs, such as those offered by law firms, corporate or government legal departments, should be approved for credit as long as the program meets the general standards for accreditation outlined in Section 4.

Section 5(D) and Section 5, Comment 9 endorse regulations that allow an individual lawyer to self-apply for MCLE credit for attending a CLE Program that would qualify for MCLE Credit under Section 4, but which was not submitted for accreditation by the Sponsor in the Jurisdiction where the individual lawyer is licensed.

F. Section 6. Other MCLE-Qualifying Activities.

Section 6(A) and (B) recommend that lawyers be allowed to earn MCLE credit for teaching and writing, and that Jurisdictions create regulations which define the standards, credit calculations, and limitations of credit received for teaching or presenting activities or writing on legal topics.

Section 6(C) and Section 6, Comment 1 recognize that a minority of Jurisdictions award MCLE credit for providing pro bono legal representation, but this Model Rule takes no position on whether such credit should be granted, as many Jurisdiction-specific factors may influence a Jurisdiction's decision on this issue, such as the extent of free legal services existing in the Jurisdiction and pro bono requirements imposed by the Jurisdiction's ethical rules.[23] For that reason, Section 6(C) appears in brackets.

Similarly, Section 6(D) and Section 6, Comment 2 recognize that a minority of Jurisdictions award MCLE credit for participating in mentoring programs for fellow lawyers, giving credits to both mentors and mentees.[24] This Model Rule takes no position on whether credit should be available for that activity, as many Jurisdiction-specific factors may influence a Jurisdiction's decision on this issue, such as the perceived need for formal mentoring programs in the Jurisdiction and the availability of organizations to administer formal mentoring programs. For that reason, Section 6(D) appears in brackets.

[23] Jurisdictions that currently allow lawyers to earn credit through the provision of pro bono legal services include: Arizona, Colorado, Delaware, Louisiana, Minnesota, New York, North Dakota, Ohio, Tennessee, Washington, Wisconsin, and Wyoming.

[24] For instance, Georgia and Ohio both offer lawyer-to-lawyer mentoring programs that allow lawyers to earn MCLE credit for participation. For more information on those programs, visit: https://www.gabar.org/aboutthebar/lawrelatedorganizations/cjcp/mentoring.cfm (Georgia) and http://www.supremecourt.ohio.gov/AttySvcs/mentoring/ (Ohio). Other Jurisdictions which allow mentors and mentees to gain credit are: Alaska, Arizona, Colorado, Illinois, Indiana, Oregon, Texas, Utah, Washington, and Wyoming.

V. Conclusion.

MCLE continues to play a crucial role in maintaining public confidence in the legal profession and the rule of law and promoting the fair administration of justice. This Model Rule, which builds on four decades of experience in the Jurisdictions that have mandated MCLE, recognizes effective ways to provide lawyers with the high quality, accessible, relevant, and affordable programming that enables them to be competent regarding the law, legal and practice-oriented skills, the standards and ethical obligations of the legal profession, and the management of their practices. The American Bar Association strongly urges all Jurisdictions—whether they currently have MCLE or not—to consider implementing the recommendations in this Model Rule to further the continuing education of lawyers throughout the United States.

Respectfully Submitted,

Micah Buchdahl, Chair
Standing Committee on Continuing Legal Education

February 2017

APPENDIX B.6

MD. ST. BAR ASS'N STRATEGIC IMPLEMENTATION COMM., PROFESSIONAL DEVELOPMENT & THE MARYLAND LEGAL PROFESSION, MSBA: REPORT & RECOMMENDATIONS, at 14 (Fall 2020) [hereinafter *2020 MSBA Professional Development Report*].

Professional Development & the Maryland Legal Profession

I. Executive Summary

The Strategic Implementation Committee (the "Committee") was charged with providing recommendations on how to implement key pieces of the MSBA Strategic Priorities and Objectives ("Strategic Plan"). A key piece of the Strategic Plan was to ensure that the MSBA helps Maryland attorneys become "future ready." To do so, the MSBA should serve as a guidepost for trends and challenges facing the legal profession, identify potential solutions, and provide valuable resources and tools to Maryland attorneys related to these trends and challenges.

The Committee, in identifying its recommendations outlined within this report, reviewed certain information, including prior surveys and town halls that identified various trends and challenges facing the legal profession. It expanded on a few of these challenges and explored solutions. It also reviewed recent consumption rates of continuing legal education ("CLE") provided through the MSBA, and how these consumption rates changed over time and with the implementation of virtual delivery methods.

Based on this work, the Committee identified some key takeaways regarding the Maryland legal profession. First, it identified that the legal profession is facing both ongoing and unprecedented challenges that are having a significant impact on the profession. These challenges include, but are not limited to, the continuing and residual impact of the pandemic, emerging and rapidly changing technologies and cybersecurity risks, declining public confidence in the legal profession, increasing competitiveness in the legal profession and encroachment by other professions on traditional legal work, managing stress, maintaining professionalism and civility, and creating alternatives to the traditional billable hour model.

Although not a silver bullet, many of these challenges can be overcome by attorneys actively engaging in continued Professional Development.[1] In fact, in order for the Maryland legal profession to maintain and improve its ability to serve the legal needs of its clients and the public, it needs to adopt a new model of continued Professional Development in a post law school setting.

Ultimately, the Committee makes several recommendations, including holding a Professional Development Summit, during which the MSBA would convene key constituencies of the entire legal profession to discuss the challenges confronting it, and how best to create a new Professional Development model to address these challenges. From there, the MSBA would convene a smaller workgroup from summit participants to implement methods to achieve these key objectives:

a. Ensure that Maryland legal professionals have the requisite knowledge, capability, and competency to best serve their clients and the public;
b. Ensure that Maryland legal professionals are able to understand and utilize new technologies in their practices and identify emerging legal issues and practice areas related to these technologies;
c. Ensure that Maryland legal professionals are equipped with the skills to manage stress and remain professional and civil in an increasingly adversarial profession;
d. Ensure that Maryland legal professionals have the requisite skills to distinguish themselves from alternative on-demand legal solutions and other internet-based services;
e. Incentivize and encourage attorneys to engage in continued Professional Development after being admitted to practice through a new model for Professional Development in Maryland.

In addition to these key recommendations, the Committee also recommends the continuation of a pilot program providing complimentary CLE for a modest increase in MSBA dues, as well as continuing to provide virtual learning opportunities.

[1] In this report, Professional Development is defined broadly to include various types of learning and development, including, but not limited to, accredited continuing legal education ("CLE"), seminars, workshops, mentoring, experiential learning, pro bono activities, scholarly writing and presentations, and Bar leadership.

II. Continued Professional Development is Vital for the Future of the Legal Profession in Maryland

The first rule of professional conduct for attorneys is to "provide competent representation to a client." Maryland Rule 19.301.1. Comment 6 of Rule 19.301.1 expands on this, stating: "To maintain the requisite knowledge and skill, an attorney should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all legal education requirements to which the attorney is subject." Id.

Beyond the ethical duty of competence, continued Professional Development is essential for many reasons. It helps practitioners stay abreast of changes to the law and understand emerging issues. It allows attorneys to learn about and adopt new technologies for their practice. It ensures that attorneys are prepared to recognize and overcome challenges to the legal profession as the pace of change in technological, medical and scientific advancements has accelerated, and with it the development of law affecting all aspects of modern life. Society also evolves and changes, and with it the law. Finally, Professional Development enhances the performance and economic vitality of the legal profession as a whole, allowing it to better serve the public, thus improving public confidence in the profession.

As will be explained later in this report, 46 American states and jurisdictions which govern admission to the legal profession have found Professional Development so vital that they have adopted a minimum continued legal education mandate. In addition, nearly every profession in Maryland (outside of the legal profession) mandates a minimum learning component necessary to maintain licensure. The Maryland legal profession is unique in that it does not require any continued learning or Professional Development of attorneys after they have been admitted to practice.

The future of the legal profession is dependent on incentivizing and encouraging legal professionals to engage in continued learning, or as referenced in this report, Professional Development. Without a new Professional Development model, the Maryland legal profession will struggle to continue to serve the public interest in the face of increasing challenges to the legal profession and rapid changes in technology.

III. Background & Approach

In 2018 the Maryland State Bar Association ("MSBA") adopted six strategic priorities and objectives ("Strategic Plan") to guide its work over the next three to five years. Those objectives include the importance of researching and informing attorneys "on existing and future trends affecting the practice of law" and ensuring that attorneys have access to high quality Professional Development that will assist them in expanding their skills, building their practices and careers, and preparing them for the legal profession of tomorrow. This objective will contribute to the profession's ability to maintain and enhance its performance, it's economic stability, and its ability to serve the public, and ultimately to build confidence in the legal profession as a whole.

In furtherance of implementing its Strategic Plan, the MSBA created a Strategic Implementation Committee ("Committee") chaired by past-president, Michael Baxter, Esq. The Committee was charged with researching key priorities and making recommendations to the MSBA Board of Governors for implementation of these key priorities. The Committee focused on three priorities, including the MSBA's objective to ensure that attorneys are prepared for the legal profession of tomorrow through high quality Professional Development.

As part of its work, the Committee explored challenges faced by the legal profession that could be addressed through improved Professional Development, the current state of Continuing Legal Education ("CLE") as provided by the MSBA, the status of Maryland CLE compared to other jurisdictions and other professions in Maryland, and changes to CLE consumption and delivery options. Based on this analysis, the Committee makes several recommendations, perhaps the most significant of which is to convene a Professional Development Summit and a subsequent workgroup including representatives of key constituencies to explore ways to:

A. Ensure that Maryland legal professionals have the requisite knowledge, capability, and competency to best serve their clients and the public;
B. Ensure that Maryland legal professionals are able to understand and utilize emerging technologies in their practices and identify legal issues and practice areas related to these technologies;
C. Ensure that Maryland legal professionals are equipped with the skills to manage stress and remain professional and civil in an increasingly adversarial profession;

D. Ensure that Maryland legal professionals have the requisite skills to distinguish themselves from alternative on-demand legal solutions and other internet-based services;
E. Incentivize and encourage attorneys to engage in continued Professional Development after being admitted to practice through a new model for Professional Development in Maryland.

IV. Challenges Faced by the Legal Profession

In 2018 the MSBA surveyed its members and held several town halls throughout the State to learn about the challenges facing attorneys. Although not an exhaustive list of challenges facing the profession, we highlight a few that were identified through these methods below:

- Stress/Burnout/Health & Wellness Issues
- Changing/Emerging Technology; Cybersecurity & Risk
- Evolution of Traditional Billable Hour Models & Economic Vitality of the Traditional Law Firm Model
- Introduction of UBE
- Public Confidence in & Perception of the Legal Profession
- Increased Competition & Changing Competitive Landscape
- Declining Civility & Professionalism in the Legal Profession

Below are further details on the challenges identified as well as desired outcomes that can be achieved through a new learning framework.

A. Health & Wellness

Challenge: A 2016 landmark study found "substantial and widespread levels of problem drinking and other behavioral health problems in the U.S. legal profession." Indeed, the MSBA Lawyers Assistance Program ("LAP") has seen an increase in the number of program participants since the beginning of the COVID-19 pandemic. Additionally, the Director of MSBA LAP, Lisa Caplan LCSW-C, advised that the severity of the issues faced by program participants has also increased.

Despite increased health and wellness resources, including programs on managing stress and mindfulness, the programs see limited participation and attendance. Research, including the ABA Model Rule on MCLE, notes that lack of attendance in health and wellness programming is likely affected by the stigma associated with "needing help." In addition, generally speaking, legal professionals tend to wait to seek help or are referred to solutions once a problem becomes evident rather than engage in preventative practices.

Professional Development Opportunity: The increase in problem drinking and behavioral health problems in the legal profession may be attributed to many things: increasing competitiveness in the legal profession, adversarial nature of the profession, speed of communication and fast-paced environment, and increasing and unrealistic expectations of clients. Regardless of the driving force behind the increase, it is clear that legal professionals need to develop stress management and coping skills to handle the pressures and anxiety of their professional lives in a positive manner.

Improved education and providing resources around this topic are the first step in assisting the legal profession. Of particular significance, as noted by the ABA, there must be increased incentives for legal professionals to participate in education on the topic to reduce stigma associated with seeking help.

B. Public Confidence in & Perception of the Legal Profession

Challenge: Based on MSBA survey data, attorneys perceive that public confidence in the legal profession is waning, and that the public may be less likely to consult an attorney for certain legal matters. This perception is supported by the rise of alternative legal solutions like LegalZoom, mobile apps and other solutions that market directly to consumers and suggest that they are cheaper and faster alternatives to traditional attorney work. These "on-demand" solutions as well as the advent of the "Google Lawyer," (e.g., the ability to quickly "Google" a possible solution to a legal problem), has had a negative impact on the legal profession.

Further supporting the perception is the recent political environment. Attacks launched on the independence, impartiality and competency of the judiciary and the legal profession generally have resulted in declining public confidence in the legal profession and our court systems.

Professional Development Opportunity: The Maryland legal profession must demonstrate to the public that attorneys are continuously honing their skills and knowledge to respond to changing jurisprudence in order to distinguish themselves as superior to these alternative legal solutions. Organizations, including the MSBA, would then be well positioned to engage in public confidence marketing campaigns that would differentiate the legal profession from the on-demand solutions and to combat attacks prevalent in the current political landscape.

Further, attorneys need to learn marketing skills, not typically taught in law school, to reach consumers and potential clients. Understanding marketing techniques and technology and its intersection with ethical rules governing attorneys is also an important aspect of Professional Development.

Professional Development may assist in the creation of non-traditional practice models that rely less on billable hours, and instead focus on fixed fee engagements or limited scope engagements. Again, understanding the intersection of these new models and ethical rules is an important aspect of this area of learning.

Finally, as will be explained in more detail later in this report, through different modes of learning, including experiential learning and pro bono opportunities, attorneys can build better relationships with their communities and increase confidence in the profession while expanding and honing their skills.

C. Emerging Technologies

Challenge: Technology is playing a larger role in society, and the legal profession has, in some respects, lagged behind in adoption of technology. In fact, as exposed by the COVID-19 pandemic, many attorneys were not prepared for a fully remote/virtual professional landscape, unlike many other businesses.

From a data management perspective, increased use of technology and various communication platforms (e.g., mobile devices, cloud computing, social media, Slack, project management tools, etc.) have increased the overall volume of data. Attorneys must be mindful of how this increase in data impacts a variety of practice areas, including corporate law, labor and employment matters, and of course, litigation. Indeed, the voluminous records produced

in discovery phases of litigation directly impacts the cost of litigation and may leave certain firms behind if they are unable to utilize technology to assist with the review and production of this data. Once thought of as futuristic, artificial intelligence applications in business and commerce are present and will continue to evolve and grow, no doubt having an impact on the legal profession.

Of more immediate concern, there are constant cybersecurity threats which can cause significant disruption to a practice or put confidential client data at risk. Attorneys and law firms of all sizes are often the target of various cyber-attacks, including: phishing email scams, ransomware (significant impact on law firm finances, potentially impacting client trust funds), and data breaches (impact on attorney/client privilege, trade secrets.) Attorneys need to have a better understanding of technology to protect themselves, their practices and their client data from various cyber attacks

Understanding technology is fundamental for attorneys to maintain their ethical duty of competency. For instance, the ABA Model Rules of Professional Conduct (adopted by 38 states) defines competence as including competence in technology.

> Comment 8 "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject."

Emphasis added.

Professional Development Opportunities: For attorneys to satisfy their ethical duty of competence, they must maintain knowledge and proficiency in emerging technologies. This pertains not only to attorneys using technology in their practices but also understanding how technologies impact their clients.

In addition, attorneys must understand and protect against cybersecurity issues. Once again, attorneys must understand this issue from a business owner perspective in order to preserve attorney-client relationships, sensitive client data, and client funds, as well as be able to advise their clients on cybersecurity issues.

Finally, it is important that attorneys understand and utilize new technologies in order to build a resilient, competitive law practice. Understanding technology will allow them to mitigate risks and improve positioning for emerging issues and practice areas.

D. Increased Competition & Changing Competitive Landscape

Challenge: The legal profession is faced with increasing levels of competitiveness from a variety of sources, including the expansion of national and international law firms with regional locations, non-attorney firms invading traditional legal spaces (e.g., accountants and certified financial planners advising on risk management and tax planning), and an increase in artificial intelligence and technology giants (e.g., LegalZoom). The legal profession is likely not immune from economic displacement caused by technological advances and evolution including automation and artificial intelligence applications.

In addition, potential clients are increasingly sophisticated and pragmatic. Legal resources are readily available through the internet, including basic legal research, sample documents/forms, and savvy applications for routine legal issues (i.e. parking tickets, etc.) The traditional billable hour model is falling out of favor with institutional and individual clients, and more often, clients are seeking unbundled services versus full representation for smaller or more routine issues.

Professional Development Opportunities: Law School does not typically prepare attorneys to run a business, and certainly does not provide needed information on how to assess competitors and differentiate their practice from their competitors. Through Professional Development opportunities, attorneys can gain insight into the competitive landscape, anticipate changes to the legal landscape, and evolve their practices when opportunity arises.

Further, attorneys can benefit from understanding branding and marketing strategies that will allow them to differentiate themselves while adhering to ethical rules governing attorney marketing.

E. Declining Professionalism & Civility

Challenge: MSBA survey data and town halls have frequently indicated that the majority of attorneys perceive a decline in professionalism and civility in the legal profession. Many respondents attributed this to the increase in digital communication (e.g. keyboard warriors). Further, survey data found that 65% of respondents noted that resources on improving and maintaining professionalism and civility would be beneficial to the legal profession.

The challenge of professionalism and civility is not an issue limited to the legal profession. The prevalence of online forums has led to more hostile engagement than is typically seen in an in-person environment.

Professional Development Opportunities: Although professionalism is a key subject taught in law schools, application of professionalism and civility in the real world, particularly in a virtual world, is often difficult. The legal profession is adversarial by nature with attorneys on both sides charged with zealously advocating for their clients. Putting into practice habits that allow an attorney to meet their duty of zealous advocacy while maintaining professionalism and civility can be advanced by Professional Developmental opportunities, including mentoring and CLE. Within the broad subject of professionalism, there is also increased interest in programs to bring awareness to issues affecting both the legal profession and society at large, such as diversity and inclusion, implicit bias and a variety of other important topics.

F. UBE

Challenge: Like many states, Maryland moved to the Universal Bar Examination model in 2019. As a result, attorneys seeking to be admitted to practice in Maryland need only to pass a short, multiple-choice, open book test on certain aspects of Maryland law, and are not otherwise required to show in depth proficiency in Maryland jurisprudence before being admitted to practice in Maryland. Notably, two of the other five jurisdictions that do not have required MCLE, Michigan and South Dakota, have not adopted the UBE.

Professional Development Opportunities: Improved education around Maryland specific jurisprudence is important to ensure that those admitted to practice through the UBE not only have a solid foundation of Maryland law, but continue to expand their knowledge in

this area. Notably, most jurisdictions that have adopted the UBE as a method for admission also have minimum CLE requirements ("MCLE"). As will be explained in more detail below, only Maryland and Massachusetts allow UBE admission without MCLE

V. CLE Landscape: Bar Associations, MCLE, and Comparable Professions

A. Mandatory v. Voluntary Bar Associations

Nationwide, legal jurisdictions are served by Bar Associations. In the majority of jurisdictions, Bar Associations act as both the professional association for attorneys as well as the licensing agency. These Bar Associations, known as mandatory or unified Bar Associations, are the entity that admits attorneys to practice as well as handles attorney disciplinary issues. Essentially, attorneys must belong to the Bar Association to maintain their license to practice in good standing. Examples include: D.C. Bar, Florida Bar, North Carolina State Bar and Virginia State Bar.

Conversely, 20 jurisdictions in the United States have voluntary Bar Associations that act as the professional association for the legal profession, but are NOT responsible for admitting attorneys to practice, are NOT involved in disciplinary matters and are NOT mandatory in membership. Examples include the Maryland State Bar Association, Pennsylvania Bar Association, and Delaware State Bar Association.

B. Minimum & Standardized Approach to Continuing Legal Education

In February 2017, the American Bar Association's House of Delegates adopted a Model Rule for Minimum Continuing Legal Education ("MCLE").[2] This rule replaced the model rule adopted in 1988. Ultimately, the ABA recommends that states adopt a requirement of 15 MCLE hours per year, including one hour of Ethics, one hour of Mental Health & Substance Abuse and one hour of Diversity & Inclusion programming. Although the Rule does not recommend a specific number of hours in technology programming, Rule 1.1 of the ABA Model Rules of Professional Conduct regarding attorney competency does recommend that attorneys take some form of technology programming to maintain compliance with their ethical duty of competency.

All but five jurisdictions have adopted a requirement for MCLE, and although the ABA Model Rule recommends 15 hours, most jurisdictions have adopted 12 hours of MCLE as the standard and require one or more hours of Ethics programming.[3] In recent years, jurisdictions have also begun adding technology programming minimums. Two jurisdictions have already adopted minimum technology programming requirements, including:

- Florida - three hours every three years - adopted in 2016
- North Carolina - one hour every year - adopted in 2018

Maine adopted an aspirational goal in 2019 and New York is considering adding a cybersecurity programming requirement of one hour per year.

The five jurisdictions that have not adopted an MCLE requirement include: District of Columbia, Maryland, Massachusetts, Michigan, and South Dakota. Of those five jurisdictions, only two are in jurisdictions without a mandatory Bar Association: Maryland and Massachusetts.

[2] https://www.americanbar.org/content/dam/aba/directories/policy/2017_hod_midyear_106.pdf
[3] https://www.americanbar.org/events-cle/mcle/

C. Standards of Other Professions In Maryland

Although Maryland lawyers are not subject to a minimum continued learning requirement to maintain licensure, many other professions within the State are subject to continued learning standards. A small sampling is presented below:

- CPAs require 80 hours of Continuing Education, including four hours of ethics, per two-year renewal period.
- Architects require 12 hours of Continuing Education every year (or 24 hours over a two-year renewal period.)
- Professional Engineers require 16 hours of Continuing Education to renew their license.
- Real Estate professionals require 15 hours of Continuing Education broken into various subcategories per renewal period.
- Polysomnographers (Sleep Techs) require 20 hours of Continuing Education per two-year renewal period.

D. State of CLE In Maryland

Professional Development comes in many forms. For example: mentorship and coaching provide learning opportunities for both the mentor and mentee. Attorneys learn when given the opportunity for experiential learning and practical application of existing and new skills through work or pro bono activities. Legal professionals also grow their knowledge and skill set when sharing their expertise through research, writing articles, white papers, and serving as faculty or panelists for programs. Finally, Professional Development also occurs in a more traditional sense from academic courses, programs, webinars, presentations and lectures sponsored by bar committees and section activities and more formal (often accredited) continuing legal education ("CLE") provided by the MSBA, out of State Bar Associations, or for profit CLE providers

1. MSBA CLE Overview

The MSBA is an accredited provider for many of the surrounding MCLE states, including Virginia (most stringent accreditation standards in the country), Pennsylvania, and Delaware. Since the MSBA is an accredited provider with Virginia, it receives reciprocity from other major jurisdictions, including New York, Florida and California. In addition, the MSBA is also able to provide accredited courses for mediators and paralegals

MSBA CLE is priced well below market and charges, on average:

- $29 for one hour programs
- $149 for ½ day programs
- $199 for full day programs

In addition, MSBA membership includes complimentary CLE. Prior to 2020, MSBA members received one (1) free CLE up to a $225 value when renewing online, which provided up to six (6) credit hours. In March 2020, given the extraordinary circumstances associated with COVID-19, the MSBA allowed both members and non-members to have unlimited access to its extensive OnDemand CLE Catalog through June 30, 2020. Beginning in August 2020, MSBA offered members six months of complimentary virtual CLE[4] as part of their membership benefits,.This was extended in January 2021 through the end of the fiscal year (June 30, 2021). The MSBA is considering continuing this benefit in the 2021-22 Bar year.

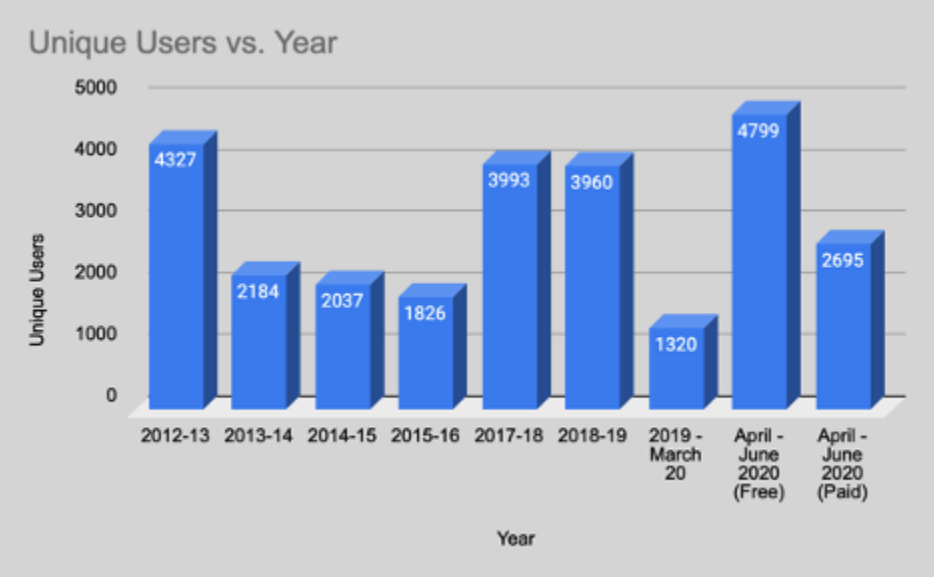
Typically, MSBA offers 70+ new live accredited (virtual or in-person) CLEs annually, and has a library of over 230+ accredited OnDemand courses available.[5] In addition, MSBA Conferences & Events, including the Legal Summit & Annual Meeting and Solo & Small Firm Summit offer another 20+ accredited CLE options. Finally, MSBA Sections often offer programming that may qualify for CLE accreditation.

2. CLE Consumption

Legal professionals tend to self-report high CLE consumption. For instance, in 2014, the MSBA CLE department conducted a member survey related to CLE consumption. Notably, 75% of respondents stated that they engaged in one to five CLE programs per year with an additional 8% stating that they engaged in six or more programs per year. Notably, 11% of respondents indicated that they did not engage in any CLE programming. When asked where they obtained their CLE, 37% of respondents indicated that they received some or all of their programming through the MSBA.

[4] Complimentary CLE included programs up to 90 minutes in length that are available virtually (either live-streamed or OnDemand).
[5] Many of the accredited CLEs offered by the MSBA are driven by various MSBA Sections that provide insight on emerging issues and subject matter experts to serve as faculty.

Despite high self-reporting rates, MSBA CLE consumption rates have been erratic over time. Below is a chart showing unique users/purchasers of MSBA CLE programs and publications annually through the first half of 2019-20.[6]



The chart indicates a downward trend in consumption until 2017-18. In that year, the MSBA dramatically increased the number of new CLE programs and book titles annually, which led to increased consumption.

At the end of March 2020, the MSBA, in response to the COVID-19 pandemic, provided complimentary CLE to both members and non-members. During that time, the MSBA saw a significant increase in CLE consumption, with over 22,000 hours of CLE consumed between March and August 2020. This accounts for the dramatic increase in unique CLE users for the last quarter (April - June) of the 2019-20 Bar year, as illustrated in the graph above and the infographic below. Additionally, as shown in the chart, despite providing a significant number of complimentary CLE, the MSBA still generated a significant number of paid CLE registrations, consistent with (and slightly exceeding) prior years.

[6] Please note that in November 2019, the MSBA transitioned its CLE delivery platform and the number of unique users for the 2019-March 20, and April - June 2020 do not include publications sales.

3. Example Areas of CLE

The MSBA delivers accredited CLE on a variety of topics and practice areas on an annual basis and delivers CLE as stand-alone courses or as part of larger conferences of events, such as the Annual Legal Summit in Ocean City and Mid-Year Meeting. Typically, accredited CLE is provided in partnership with MSBA's substantive law sections, and includes substantive topics areas like Business Law, Real Property, Estates & Trusts, Family Law, Criminal Law, Litigation topics and ADR. In addition to these substantive topics, the MSBA Department of Learning provides skill-based courses, including mediation training, deposition training, and trial preparation skills among others. Finally, accredited CLE courses may include ethics components or are specifically geared to addressing emerging ethical issues faced by the legal profession,

Although typically not accredited CLE, the MSBA also offers other courses focused on legal practice management, including starting and maintaining a solo or small firm, emerging technology for solo and small firms, as well as marketing. Although we identified these areas as challenges to the legal profession, many surrounding MCLE states do not allow these courses to "count" towards minimum requirements.

Finally, the MSBA has also recently increased its focus on providing tools and resources around health and wellness, both to address the rising mental health crisis facing the legal profession, but also information on maintaining a healthy lifestyle

E. CLE Consumption Drivers

In the 2014 Survey conducted by the MSBA CLE Department, respondents were asked to rank what attracted them to CLE programs. Second only to "Topic", the "Location" of the CLE program was listed as the most important factor. Additionally, when asked what deterred respondents from attending CLE, respondents ranked "Cost," "Time out of Office," and "Location." This survey data appears to be in line with a more current survey of MSBA members, of whom 67% stated they would continue to attend MSBA programs if offered virtually. Objectively, the MSBA has continued to see increased consumption of CLE, particularly given that all of the current CLE options are available virtually, and many are complimentary for MSBA members.

VI. Evolving Professional Development Modes & Methods

The COVID-19 pandemic has taught many of us that learning also comes in various different formats. In-person classroom instruction is no longer the only way to present new information. Like many organizations, since the onset of the pandemic in March 2020, the MSBA has offered courses exclusively through virtual methods.

As noted previously, reception to the transition to virtual learning has been received positively by attorneys throughout Maryland. Many have noted that it provides increased access to Professional Development, allowing for increased flexibility in scheduling, retaining work-life balance, reducing the burden of extensive travel or time out of office.

Beyond the transition to virtual CLE, there are still other opportunities to provide differentiated Professional Development and to address the challenges identified herein, as well as other challenges not discussed or identified. Examples of other learning delivery methods include, but are not limited to:

- Audio files/podcasts are one area that other professions have utilized for learning;
- Short on-demand training modules (20 mins or less) are also options, particularly for practical application of certain skills or examples.

The legal profession can also benefit from other modes of Professional Development, for instance:

- Coaching and mentorship has also exploded in other professions, and, more recently, for-profit entities are entering the legal profession landscape to help solo or small firm attorneys navigate the increased competition of the profession;
- Experiential Learning/Pro Bono opportunities can provide attorneys with practical real life experience that is not typically available in law school.

VII. Recommendations

The Committee, having analyzed the above outlined areas, recommends the following related to Professional Development in Maryland.

1. **Hold a Professional Development Summit:** It is recommended that the MSBA host a Professional Development Summit by the end of the 2021-22 Bar year that would include key constituencies of the Maryland legal profession to address the issues identified in this report, including a threshold level of Professional Development and CLE.
    a. Invitees to include: Maryland and Federal Judiciary, Attorney Grievance Commission, Client Protection Fund, Access to Justice Commission, Attorney General's Office, Maryland Public Defender's Office, Maryland States' Attorneys, Local & Specialty Bar representatives, Maryland Law School Deans, and MSBA's Director of Lawyer Assistance Program ("LAP"), and attorneys from various and diverse sectors of the profession, including: Top 10 Largest Firms, Medium Size Firms, Solo/Small Firms, Public Service (e.g. attorneys working within legal services organizations such as MVLS or PBRC), In-House/Corporate Counsel, non-traditional attorneys.
    b. Summit will feature thought leadership programs on the state of Professional Development and the issues facing the legal profession as well as facilitated discussion on how to address these issues.

2. **Convene a Workgroup**: From the Learning Summit, we recommend the formation of a small workgroup (10-15 members) led by representatives from the MSBA and includes representatives from: Maryland Judiciary, Attorney Grievance Commission, Client Protection Fund (or other reporting entity), the Director, or their designee, of the MSBA Lawyers Assistance Program Committee, members of the Rules Committee, and representatives from Local & Specialty Bar Associations (including 1 representative from

a Large Local Bar, 1 representative from a smaller Local Bar, and 1 representative from a Specialty Bar as appointed by the respective Bars).

1. The purpose of the workgroup would be to review and discuss the following:
    1. The importance of Professional Development on the future of the profession and its ability to serve the public and build public confidence;
    2. Maintaining and enhancing the performance and economic viability of the legal profession through improved Professional Development;
    3. Identifying challenges faced by the legal profession that should be addressed in Professional Development;
    4. Improvements to the Professional Development landscape in Maryland;
    5. Professional Development models, including examining expanding modes and methods of learning.
    6. Positioning the Maryland legal profession with respect to other jurisdictions and other professions within Maryland.

2. The workgroup shall implement methods to achieve these key objectives:
    1. Ensure that Maryland legal professionals have the requisite knowledge, capability, and competency to best serve their clients and the public;
    2. Ensure that Maryland legal professionals are able to understand and utilize emerging technologies in their practices and identify emerging legal issues and practice areas related to these technologies;
    3. Ensure that Maryland legal professionals are equipped with the skills to manage stress and remain professional and civil in an increasingly adversarial profession;
    4. Ensure that Maryland legal professionals have the skill to distinguish themselves from alternative on-demand legal solutions and other encroaching professions;
    5. Incentivize and encourage attorneys to engage in continued Professional Development after being admitted to practice through a new model for Professional Development in Maryland.

3. **Continue Complimentary CLE Pilot:** Enhance MSBA membership to include an "all you can eat" model for CLE consumption for a modest increase in MSBA dues. The Committee's recommendation is based on its review of increased consumption trends over the past year, where complimentary CLE was piloted.

4. **Continue Virtual Access:** Ensure that at least 50% of all MSBA programs and events (both accredited and unaccredited CLE, and whether produced by MSBA Staff, Sections or Committees) shall be accessible through virtual platforms. The Committee's recommendation is centered around the fact that virtual CLE, programs, and event opportunities:
    1. Allows for a greater variety of program topics, including more niche topics;
    2. Improves faculty participation and participation from attorneys that are outside the Baltimore Metro area;
    3. Creates greater flexibility in scheduling and convenience for attorneys/members;
    4. Reduces expenses related to producing CLE, programs, and events.

5. **Incentivize MSBA Sections to develop accredited CLE.** MSBA Sections are a significant resource to help identify potential CLE topics as well as provide subject matter experts on these topics. As such, The Committee recommends creating an incentive for Sections (e.g. increased budget allocation) that meet certain minimum CLE development milestone.

APPENDIX C

Maryland Judiciary Materials - Minutes & Reports from the Supreme Court of Maryland Committees

APPENDIX C.1

Extract from Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., (Md. June 14-15, 1977).

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a two-day meeting of the Rules Committee held on board the "Maryland Lady", on Tuesday, June 14, 1977, commencing at 10:30 A.M. and on Wednesday, June 15, 1977, commencing at 10:00 A.M.

Members present were:

Hon. Kenneth C. Proctor, Chairman
Mr. Robert H. Bouse
Albert D. Brault, Esq.
Hon. Clayton C. Carter
Hon. John P. Corderman
(Tuesday only)
Leo William Dunn, Jr., Esq.
John O. Herrmann, Esq.
Hon. Frederick W. Invernizzi
Alexander G. Jones, Esq.
Dean Michael J. Kelly
(Tuesday only)
James J. Lombardi, Esq.
Henry R. Lord, Esq.
(Tuesday only)
Hon. John F. McAuliffe
George W. McManus, Jr., Esq.
Paul V. Niemeyer, Esq.
George A. Nilson, Esq.
(Tuesday only)
Russell R. Reno, Jr., Esq.
Lawrence F. Rodowsky, Esq.
Hon. David Ross
Neil Tabor, Esq.
William Walsh, Esq.
Hon. Alan M. Wilner

In Attendance:

Hon. Robert C. Murphy
George B. Gifford, Esq., Reporter
Prof. Bernard Auerbach, Assistant Reporter
(Tuesday only)

1. Announcements.

EXTRACT FROM JUNE 14/15, 1977 MINUTES

2. Consideration of the Report of the Attorney Competency Subcommittee.

The chairman next called on Mr. McManus to present the report of the Attorney Competency Subcommittee.

Mr. McManus stated that a draft of possible Subtitle BX Rules (Attorneys' Commission on Professional Competency), modelled on the BV Rules to put the problem into some sort of framework but abridged and modified, had been drafted and distributed to the meeting, together with a suggested form of introduction to the draft rules, copies of which are attached.

Mr. McManus reminded the members of Norwood Orrick's recent remarks as to the high priority which the Maryland State Bar Association had assigned to the public removal of incompetent lawyers, and quoted from his address to the membership of the State Bar Association on June 11, 1977, in which he stated:

> ". . . obviously there is no way in which this Association can set true standards of competency, measure our professional capability against those standards, and disbar those of us who fail to meet them."

Mr. McManus also quoted from the remarks of Chesterfield Smith, former President of the American Bar Association, at an April 22, 1977 meeting of the American Law Institute-American Bar Association:

> "No longer do we as a collective profession allow marginal lawyers repeatedly to accept legal matters that they cannot proficiently handle. Indeed, the time has come for a recognition by the organized bar as an ethical principle that every lawyer is ethically obligated both to be individually competent and, within the bounds of reason, also to see that all other lawyers continuously maintain minimum standards of professional fitness. . .

> "The legal profession owes to society as a whole a greater return for the grant of its personal service monopoly than has been made heretofore. Malpractice--detriment in the economic market--is not enough. . .
>
> "Each lawyer truly should be his brother's keeper. They are not now. Lawyers, including particularly those in large firms, do have a joint and several obligation for the professional fitness of all lawyers. Lack of fitness, if unreasonably ignored, warrants professional sanctions, including, in extreme cases, removal from the legal profession and from the law firm."

Following the Bar Association's 1976 Annual Meeting, at which a Resolution had been adopted requesting that the Rules Committee review with the bar association any rules on attorney competency which it might propose to the Court of Appeals, Chief Judge Murphy had asked Mr. James H. Cook, the then President of the State Bar, to nominate representative attorneys who might be appointed as consultants to the Rules Committee to assist the Subcommittee in drafting appropriate rules. This had been done, and Messrs. Marvin J. Garbis, John H. Mudd, Parker B. Smith and Ronald L. Spahn had been appointed. The Subcommittee and Consultants had met on a number of occasions.

Although at first Mr. Garbis had appeared concerned at the concept of rules, he had come to concede that a complaint-oriented peer review commission was a commendable idea, provided it was kept separate from the concept of mandatory continuing legal education, which he had hoped would also be proceeded with.

Mr. Mudd had acknowledged that though he recognized that the Attorney Grievance Commission and the suggested Attorney Commission on Professional Competency were two different things, it seemed to him that perhaps the scope of the Attorney Grievance Commission could be broadened to accomplish what the Subcommittee was trying to do.

At one Subcommittee meeting attended by L. Hollingsworth Pittman, Esq., Bar Counsel of the Attorney Grievance Commission, Mr. Pittman had stated that he was initially of the opinion that in the event an Attorney Competency Commission is formed, it should not be connected with the Attorney Grievance Commission. However, he was now of the opinion that many of the matters that come to his office initially are really matters of competency. He gave, as an example, his investigation of a recent case regarding the complaint that a certain lawyer did not know how to handle a change of name, which definitely is a matter of competency rather than of grievance. He recommended that the Attorney Competency Commission be a parallel commission to the Attorney Grievance Commission, but that it should be under the direction of Bar Counsel.

Mr. McManus stated that so far, from the materials which has been collected and studied by the Subcommittee, Michigan is the only state which appears to be developing a program for enforcing lawyer competency. On September 16, 1976, the Michigan State Bar Association had passed a resolution which stated:

> "That a system of mandatory continuing legal education is not presently feasible or in the best interests of the people of Michigan at this time.
>
> BE IT FURTHER RESOLVED: That there is hereby referred to the Committee on Continuing Legal Education for study and report the following matters:
>
> 1. Appropriate treatment, perhaps by a specialized grievance procedure, for those few lawyers who, in derogation of their duties under Canon 6 of the Code of Professional Responsibility, undertake legal problems for which they lack the requisite competence."

Mandatory continuing legal education was initially thought to be the remedy to this problem, but mandatory continuing legal

education has not received much support because it is considered by many to be a sham solution; it misleads the public into a false sense of security; it is too generalized in its approach and therefore does not solve the problems; and it is difficult to enforce.

The alternative proposals to mandatory continuing legal education include an adoption of one or more of the following: a "wait and see" position; a voluntary peer review system; a mandatory peer review system; self-testing programs; recertification programs; monitoring of attorneys; and new standards to be met prior to being admitted into certain courts, such as had been proposed by the Federal Court in New York. Voluntary peer review does exist in the medical and accounting fields.

Mr. McManus stated that it was evident from Stern's recent (1977) book "An Attorney's Guide to Malpractice Liability" published by The Michie Company, that attorney malpractice suits are being filed in increasing number all over the United States, and that people seem to be taking to the idea of suing lawyers with considerable relish. This increase in professional malpractice cases indicates that the legal profession is not generally held in high esteem by the general public. If lawyers do not do something about keeping lawyers competent, then the Congress and/or the legislatures will do it for them.

Mr. McManus indicated that since amendment of the Social Security Act in 1972, there is mandatory peer review in Medicaid and Medicare cases. Also, the Securities Exchange Commission has instituted a form of mandatory peer review within the legal profession insofar as attorneys practicing before the SEC is

concerned. It would appear that a rather structured system of peer review is being developed for Judicare cases. The Urban Institute study "Field Test Results of Peer Review Quality Assessment of Legal Services" prepared for the Legal Services Corporation indicate that peer review assessment is a valid procedure to test the quality of traditional services offered to clients. The study contains in Appendix D, a Peer Review Assessment Manual, which had been published in parts in the ALI-ABA CLE Review and which could probably be adapted for use in assessing Attorney Competency.

Mr. McManus stated that Dean Kelly, who had been appointed to the Subcommittee to succeed Judge Invernizzi, had injected fresh thinking and new directions into the Subcommittee's considerations. He had indicated the necessity of analyzing, and of reporting to the Court of Appeals, the causes of attorneys failing to practice law competently. He viewed the suggested Commission not as a censuring, disciplinary body, but rather as one which should counsel and assist lawyers to improve their performance.

Dean Kelly remarked that at the Maryland State Bar Association's Long Range Planning Conference held on December 10, 1976 at Towson State University Campus, the following recommendation was agreed upon:

> "The Bar Association has a duty to ensure that it is doing everything possible to protect the public by removing those members of the Bar who are incapable of providing competent legal services in general or in a specific area of practice."

He stated further that no state in the nation, to his knowledge, has a systematic and mandatory method of reviewing lawyer

incompetence, other than the continuing legal education gestures mentioned earlier, and that in his opinion Maryland should be the first to initiate such a program.

Mr. McManus concluded his remarks by saying that the Subcommittee recommended that an Attorneys Commission on Professional Competency be established by rule of the Court of Appeals of Maryland embracing the following eight points:

(1) That the Commission be separate from the Attorney Grievance Commission.

(2) That the Commission be complaint-oriented, rather than make investigations on its own initiative.

(3) That the Commission receive, process, and act upon complaints of attorney incompetency.

(4) That the Commission analyze the causes of failure to practice law competently.

(5) That the Commission provide assistance to cooperative attorneys against whom a complaint has been filed if it finds they are not practicing law competently.

(6) That the Commission preserve the confidentiality of its proceedings, investigations and disposition of complaints.

(7) That the Commission distinguish between cooperative consenting attorneys, and recalcitrant attorneys who fail to cooperate, or who simply continue in breach of Canon 6.

(8) That the Commission report annually to the Court of Appeals of Maryland on their activities, findings and conclusions.

A discussion followed, during which Mr. Rodowsky observed that the Attorney Grievance Commission actually has jurisdiction to enforce Canon 6 (A Lawyer Should Represent A Client Competently),

although this would probably necessitate a change in the name, image and powers of the Attorney Grievance Commission.

Mr. Niemeyer stated that in his opinion, the function should not be included within the Attorney Grievance Commission's responsibilities, but suggested that the recommended structure of the Commission be simplified.

The Chairman observed that the Attorney Grievance Commission was already overloaded.

Mr. Lombardi stated that he felt the suggested procedures were too bureaucratic, and that any parallel with the Attorney Grievance Commission should be avoided.

Mr. McManus stated that at the May, 1977, Subcommictee meeting it had been recommended that any competency commission be separate from the Attorney Grievance Commission; however, Bar Counsel apparently would prefer to supervise the procedure.

Mr. Herrmann asked what other agency there was except the Attorney Grievance Commission that could supervise the activity.

Mr. Wilner stated that whatever the vehicle, he believed there should be a screening panel and an informal adjustment procedure. He acknowledged, however, that the Attorney Grievance Commission does have responsibility under Canon 6.

Mr. McManus stated that the emphasis should be placed on assisting attorneys for the good of the public. He does not favor sanctions, other than a referral to the Attorney Grievance Commission. However, he decried as outmoded the idea that once an attorney has passed the bar examination he was forever competent.

Mr. Herrmann spoke against giving the responsibility for

enforcing attorney competency to the Attorney Grievance Commission. He stated that it appeared that approximately 40% of all grievance complaints are that the attorneys fail to communicate with their clients. Thus such a rule would not make any impression on incompetent lawyers, who also won't attend CLE courses. The only protection to the public lies in coming to grips with the shibboleth that once admitted, an attorney remains competent.

Mr. Niemeyer suggested that perhaps incompetent attorneys might be sent to the CLE Institute. Mr. Herrmann asked what sanctions would there be if an attorney were to refuse.

Mr. Brault stated that not only would attorneys not attend CLE courses, but client's won't complain. He favors an educationally-oriented approach, with referral by both the bench and the bar, stating that most grievance complaints were dismissed anyway.

Dean Kelly stated that other problems were attorney laziness and lack of motivation, which could be as serious as the obvious problems caused by alcoholism and senility. He felt the reasons for incompetence should be researched. He stated that Mr. Pittman had acknowledged that the Attorney Grievance Commission was not really concerned with incompetency on the part of lawyers.

A futher discussion ensued on the applicability of malpractice suits; the problems of confidentiality; and the admissibility of any finding of incompetency in Grievance proceedings.

The Chairman thereupon called for a vote on the policy question as to whether the Committee should approve the concept of a separate agency, resulting in a vote of 17 in favor and 3 (Messrs. Jones, Corderman and Rodowsky) opposed.

Mr. Niemeyer recommended that the suggested three-tier

structure be abolished, and that a more educationally-oriented emphasis be built in.

Mr. Wilner stated that the Attorney Grievance Commission must be recognized as the ultimate enforcement agency.

Dean Kelly reiterated, however, that the Attorney Grievance Commission already regarded lawyer incompetence as a minor matter, and resolution of the problem would merely be delayed if a complaint were referred to them.

Judge McAuliffe suggested that sanctions be avoided initially, and that voluntary assistance and counseling be stressed until a track record could be developed. He stated that he foresaw opposition from the bar, and that the issue was highly political. He suggested the possibility of the Attorney Grievance Commission referring incompetency complaints to the Attorney Competency Commission for consideration, counseling and a report, yet retaining its enforcement jurisdiction.

Mr. Brault suggested that the proposed Commission might make recommendations to the attorney, such as abstaining from a certain field or area of practice, attending CLE courses, or associating himself with another attorney.

Chief Judge Murpy asked whether that would not prove a long and tedious process, and that he has trouble with the "apprenticeship" concept. Moreover, he questioned whether lawyers would devote the time such a solution would require.

Mr. Jones, perhaps half-humorously, suggested a rehabilitation approach; that referral of a complaint to the Attorney Grievance Commission might be avoided if the attorney gets a "B" in a course, say on Wills, or whatever area he was deficient in.

The Chairman remarked that he had just finished presiding over a four-day trial in which the plaintiff's attorney had failed to prove damages, and that he was concerned that that was not just an isolated case.

Mr. Wilner stated that the problem still would be getting the attorney to learn.

Chief Judge Murphy alluded to another problem, that of funding the Commission. He stated that lawyers already grumble over a $40.00 assessment, and that if a Competency Commission were to be funded in the same way, the assessment would become, say $100.00. This would surely compound criticism and bar opposition. He disagreed with Mr. Niemeyer's earlier comment during the discussion of admissibility of findings, saying that he felt due process would require that a transcript of proceedings would have to be prepared. He urged the Committee to think out all the problems before proposing any rule to the Court.

Judge Ross observed that one of the problems was an absence of empirical data. He agreed with Dean Kelly that the dimensions of the underlying reasons for lawyer incompetency should be explored. He advised against sanctions (to encourage the reporting of violations), and stressed counseling and assistance, and perhaps CLE courses.

Mr. Brault suggested that a procedure modelled on medical peer review be adopted, with ultimate referral of recalcitrants to the Attorney Grievance Commission.

Mr. Jones expressed doubt as to the "lawyer image" concern on the part of the public, and his opinion that the average

disaffected client wanted either a settlement from or revenge against the lawyer complained about.

A motion was made and seconded, that the draft BX rules be referred back to the Subcommittee for redrafting the rules to (1) eliminate the three-tier structure provided for by the draft rules; (2) to establish an informal body to provide voluntary assistance and counseling to lawyers against whom a complaint has been filed and to make recommendations that they improve their competence, with emphasis on their continuing their legal education by attending MICPEL or other continuing legal education courses and programs; and (3) that the only sanction be the Commission's right to refer, in the case of an uncooperative lawyer, a complaint to the Attorney Grievance Commission.

The motion carried unanimously on a show of hands vote of 18 in favor, with three abstentions.

GBG:pr
27Mar.78

MARYLAND RULES

CHAPTER 1100

SPECIAL PROCEEDINGS

SUBTITLE BX. ATTORNEYS' COMMISSION ON PROFESSIONAL COMPETENCY

SUBTITLE TABLE OF CONTENTS

Rule BX1. DEFINITIONS.

In this Subtitle, the following terms have the following meanings, except as expressly otherwise provided, or as may result from necessary implication:

a. Administrator.

"Administrator" means the practicing lawyer appointed by the Commission to serve part time as the principal executive officer of the Commission.

b. Charges.

"Charges" mean the initial pleading filed in the Court of Appeals against an attorney alleging that he has failed to act competently.

c. Commission.

"Commission" means the Attorneys' Commission on Professional Competency (Attorney Review Commission) (Attorneys' Peer Review Commission).

d. Competently.

"Competently" means the practice of law in conformity with the standards required by Canon 6 of the Code of Professional Responsibility, Appendix F of the Maryland Rules of Procedure. An attorney should represent a client competently. An attorney should act with competence and proper care in representing clients. He should strive to become and remain proficient in his practice and should accept employment only in matters which he is or intends to become competent to handle. An attorney is prohibited from accepting a case where he knows or has reason to know that he is not competent to properly attend to the client's interest in that case.

e. Attorney, Bar Association, Court, District, Judicial

Tribunal, Office for the Practice of Law.

"Attorney", "Bar Association", "Court", "District", "Judicial Tribunal", "Office for the Practice of Law" are each defined in BV 1.

Rule BX2. ATTORNEYS' COMMISSION ON PROFESSIONAL COMPETENCY.

a. Creation and Purpose.

The Attorneys' Commission on Professional Competency is hereby authorized and created. The Commission shall assist attorneys to improve the quality of legal services to the public. The Commission shall analyze, in depth, the causes of failure to practice law competently; and shall at least once annually report its findings to the Court of Appeals. The Commission shall receive, process, hear and act on complaints alleging that an attorney has failed to practice law competently in accordance with this subtitle. The Complaints may be filed directly with the Commission and may consist of referrals from the Grievance Commission.

b. Composition.

The Commission consists of seven attorneys appointed by the Court of Appeals. One member shall be designated by the Court of Appeals as chairman of the Commission. The term of each member is four years, except that the initial terms of four of those appointed to the Commission shall be one year, two years, three years, three years, respectively. No member is eligible for reappointment for a term immediately following the expiration of the member's service for one full term of four years. A member of the Commission may be removed by the Court of Appeals at any time.

Rep. Judicial Comm.

c. Compensation.

A member of the Commission may not receive compensation for serving in that capacity, but is entitled to reimbursement for his expenses reasonably incurred in the performance of his duties, including but not limited to transportation costs.

Rule BX3. COMMISSION PROCEDURES AND POWERS.

a. Quorum.

Four members of the Commission constitute a quorum for the transaction for business. The concurrence of four members is required for all action taken by the Commission.

b. Powers and Duties.

The Commission has powers and duties to:

(i) Recommend to the Court of Appeals for its adoption procedural and administrative rules relating to (a) assisting and improving the competency of attorneys against whom complaints have been filed in writing with the Administrator alleging that the named attorneys are in derogation of their duties under Canon 6 of the Code of Professional Responsibility; (b) the enforcement of Canon 6 against attorneys who persist in failing to meet the standards required by Canon 6; and (c) determine the causes of failure to practice law competently and advise the Court of Appeals of its recommendations as how to improve the quality of legal services to the public.

(ii) Appoint and supervise the activities of the Administrator;

(iii) Authorize the Administrator to employ attorneys, counselors and clerical personnel and to prescribe their compensation;

(iv) Appoint these attorneys selected as provided in Rule BX5 c 1 (Canon 6 Counseling Committee) to serve as members of the Counseling Committee and remove any member for cause;

(v) Appoint counsel from time to time to assist the Administrator in the performance of his duties;

(vi) Submit an annual report to the Court of Appeals, not later than September 1, evaluating the effectiveness of the Attorneys' Commission on Professional Competency and recommending any desirable changes. The report should include statistical data and opinions of the Commission. The report shall be published at least annually by the Commission, subject to the provisions of Rule BX7 (Confidentiality); and

(vii) Submit annually to the State Court Administrator a proposed budget for the commission. The budget is subject to review and approval by the Court of Appeals.

Rule BX4. ADMINISTRATOR.

a. Appointment.

The Commission shall appoint, subject to approval of the Court of Appeals, a practicing attorney to serve part-time, at the pleasure of the Commission, as Administrator of the Attorneys' Commission on Professional Competency. The Administrator is the principal executive officer of the Commission, and shall receive compensation as authorized from time to time in the budget of the Commission.

b. Powers and Duties.

Subject to the supervision of the Commission, the Administrator shall:

(i) Receive, process and act on complaints to the effect that attorneys have failed to comply with the standards required of Canon 6 of the Code of Professional Responsibility, Appendix F, Maryland Rules of Procedure;

(ii) Develop such programs to assist attorneys who cooperate to improve their competency in the practice of law, such as, but not limited to, the following: Voluntary restriction of practice from an area or areas of the law in which the respective attorney or attorneys have failed to act competently; follow a prescribed course of continuing legal education; serve a part-time prescribed internship-like period with a designated Peer-Attorney; accompany a designated, experienced Peer Trial Attorney in actual Court trials, or such other methods of helping the Attorney improve his competency as may be approved by the Commission.

(iii) Process cases against attorneys who fail to comply with (ii) and enforce compliance with all Orders of the Court

of Appeals with respect to such cases.

(iv) Employ, at the compensation authorized by the Commission, investigative, clerical and legal personnel necessary for the efficient conduct of his office; and

~~(v)~~ Discharge any person whose performance is unsatisfactory to him; and

(vi) Maintain records, make reports and perform other duties prescribed by the Commission from time to time or required by these Rules.

Rule BX5. CANON 6 COUNSELING COMMITTEE.

a. Creation.

A Canon 6 Counseling Committee is authorized and created.

b. Compensation.

A member of the Canon 6 Counseling Committee may not receive compensation for serving in that capacity, but is entitled to reimbursement for his expenses reasonably incurred in the perforance of his duties, including but not limited to transportation costs.

c. Canon 6 Counseling Committee.

1. Composition.

All members of the Canon 6 Counseling Committee shall be fifteen (15) attorneys who are not judges. The members of this Committee shall be selected by the Board of Governors of the Maryland State Bar Association, Inc. The Commission shall appoint each attorney selected unless he would be subject to removal for cause. In each of the Appellate Judicial Circuits, there are the following number of members of the Canon 6 Counseling Committee, each of whom has his principal office for the practice of law in that Appellate Judicial Circuit:

Appellate Judicial Circuit	*Number of Members*
First	2
Second	2
Third	2
Fourth	2
Fifth	2
Sixth	5

The term of each member is three years, except that, of those first appointed, one-third shall be appointed initially for a one-year and one-third shall be appointed initially for a two-year term. No member is eligible for reappointment for a term immediately following

the expiration of the member's service for one full term of three years. The Commission shall designate one member as Chairman of the Canon 6 Counseling Committee and one or more members as Vice-Chairmen.

2. Terms.

The Commission shall set the term of membership of each member of the Canon 6 Counseling Committee. Terms of the initial appointees need not be uniform. Terms may not exceed three years except that the Commission may extend the term of any member who is assigned to a panel until the completion of a pending inquiry. Any member of the Canon 6 Counseling Committee is eligible for successive terms.

Rule BX6. COMPLAINTS AND INITIAL EXAMINATION OF CIRCUMSTANCES.

a. Examination of Circumstances.

Every complaint alleging an attorney's incompetency and every referral from the Grievance Commission (both of which shall hereinafter be referred to as complaint) shall be filed with and recorded by the Administrator. The Administrator shall examine the circumstances upon which each complaint arose. If the Administrator finds that the complaint is without merit, he may dismiss the complaint, subject to approval by the Chairman of the Canon 6 Counseling Committee or a Vice Chairman designated by the Chairman. The Administrator shall send the attorney and the person who made the complaint written notice that the complaint has been dismissed, and he may send either or both any additional information and comments which the Chairman or a Vice Chairman designated by the Chairman shall approve. Unless a complaint is found to be without merit, the Administrator shall refer the complaint to a Canon 6 Counseling Panel and give notice of the complaint to the attorney against whom the complaint has been made. The notice shall inform the attorney of the nature of the complaint made.

Committee Note: Comments by the Administrator whether under this section or at the direction of a Canon 6 Counseling Panel pursuant to Rule BX6 c., are not a reprimand or discipline of any kind.

b. Selection of Canon 6 Counseling Panel.

The Chairman of the Canon 6 Counseling Committee or a Vice Chairman designated by the Chairman shall appoint at least three members of the Canon 6 Counseling Committee to serve on each Canon 6 Counseling Panel and shall designate one Panel member to serve as Panel Chairman. At least two-thirds of the Panel to which a

complaint is assigned shall consist of members from the District in which the attorney against whom the complaint has been made has an office for the practice of law, unless the Chairman of the Canon 6 Counseling Committee finds this requirement to be impracticable.

c. Canon 6 Couseling Panel Proceedings.

1. Generally.

An attorney alleged to have practiced incompetenly shall be afforded an opportunity, if he elects, to explain, refute or justify his conduct before the Canon 6 Counseling Panel.

2. Quorum.

The Chairman of the Canon 6 Couseling Committee shall determine the number of members of the Canon 6 Counseling Committee to constitute a quorum for panel proceedings under this subtitle, but in no event may a quorum consist of less than three members.

3. Witnesses--Testimony.

Oaths; Testimony--A Canon 6 Couseling Panel may administer oaths to and take the testimony of witnesses.

4. Disposition.

(a) Action by Canon 6 Counseling Panel.

The Canon 6 Counseling Panel may dismiss the complaint without a hearing. Otherwise, the Panel shall conduct a hearing and shall either:

(i) dismiss the complaint; or

(ii) assist the attorney complained against by one or more methods approved by the Commission; or

(iii) recommend that the attorney take specifically described steps to correct the incompetency; or

(iv) recommend restriction in the attorney's practice; or

(v) refer the complaint against the attorney if the attorney arbitrarily or unreasonably or improperly refuses to consent to the assistance afforded by the Canon 6 Counseling Panel to the Grievance Commission.

Rule BX7. CONFIDENTIALITY.

a. General Rule.

There may be no public proceedings by the Canon 6 Counseling Committee. Unless otherwise ordered by the Commission, the record of any complaint, investigation, proceeding of the Canon 6 Counseling Committee and of any disposition shall be private and confidential, unless and until charges arising out of the proceedings shall be filed in the Court of Appeals, except as provided in this Rule.

b. Exceptions.

The following exceptions to privacy and confidentiality are hereby established:

(i) A judicial tribunal may request and receive any information that is relevant to the business of the tribunal.

(ii) If an attorney is seeking admission to the practice of law before the bar of any judicial tribunal, or is under consideration for judicial office or for employment in legal work by federal, state or local government, a judicial tribunal, the appropriate committee of a Bar Association, the National Conference of Bar Examiners, a judicial nominating commission acting through its chairman or the appointing or hiring authority acting through its duly appointed representatives may receive information concerning reprimands and charges not having resulted in dismissal.

(iii) The fact that a complaint is pending may be revealed to a person authorized under this section. However, the nature of the pending complaint, the facts surrounding it, and the results of any initial examination or proceeding before the Counseling Committee or the Canon 6 Board completed to the date

of the inquiry may be revealed only pursuant to a waiver by the attorney involved.

(iv) The Administrator may from time to time prepare and publish summaries of complaints without revealing identities of complainants, attorneys or witnesses where in his judgment the publication would tend to improve the administration of justice.

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EXTRACT FROM THE DRAFT MINUTES
OF THE 6/15 CONTINUED MEETING
OF THE RULES COMMITTEE

19. Remarks by Chief Judge Murphy in support of suggested Draft Rules 1058 to 1064 and Forms Relating to a Prehearing Conference Procedure in the Court of Special Appeals.

The Chairman next called on Chief Judge Murphy.

Chief Judge Murphy stated that he had asked the Reporter to distribute copies of draft Rules 1058 to 1064 and certain forms relating to a Court of Special Appeals Prehearing Conference Procedure which had been drafted by Chief Judge Gilbert, so that the Committee might discuss the concept and rules at this meeting.

Judge Murphy stated that Chief Judge Gilbert had learned about the concept at an American Bar Association Seminar for Appellate Judges held at Tucson, Arizona from April 16 to 22, 1977, which Chief Judge Gilbert and Judge Liss had attended. The procedure has been adopted by California, Illinois, Minnesota, Missouri, Washington and Wisconsin, and by the Federal Circuit Court of Appeals for the 2nd Circuit. Implementation of the suggested rules in California has resulted in prehearing settlement of 55% of the intermediate appeals pending; and in Minnesota a 38% settlement rate has been achieved.

Chief Judge Murphy stated that the purpose of the suggested procedure was three-fold: (1) to explore the possibility of settlement; (2) to narrow the issues; and (3) to promote stipulations designed to limit the record extract, thereby minimizing and expediting transcription of the record.

He stated further that the reactions of the Maryland appellate bench to the suggested procedure had ranged from horror to

enthusiasm, and acknowledged that some of the Judges of the Court of Appeals saw some problems with the suggested procedure. He also mentioned other ways being considered by the Court of Special Appeals to handle their caseload problems, such as the British practice of announcing judgments from the bench after an adjournment following argument, but reported the consensus that neither the Maryland bench nor bar appeared to ready for such an innovation here. He stated that at first, he had not thought the prehearing conference procedure would work, but that now he was more optimistic. The purpose of his attending today was to encourage a discussion and pro and con debate by the Rules Committee with a view towards adoption of the procedure on a one-year trial or experimental basis. He stated that the subject and suggested rules and forms had also been referred to the Maryland State Bar Association for consideration as he did not believe it proper for the Court of Appeals to force such a procedure upon an unwilling bar. He thereupon concluded his remarks by stating that he understood that the subject might possibly be scheduled for consideration at the Joint Midwinter Meeting of the Maryland Judicial Conference/Maryland State Bar Association.

The Chairman then called for discussion on the suggested rules which had been distributed by the Reporter in the form annexed to these minutes.

Mr. McManus pointed out that section a of suggested Rule 1060 (Prehearing Conference) referred to "voluntary settlement or voluntary limitation of the issues", but that section c of the Rule made it mandatory for an attorney to attend the conference scheduled by the Court of Special Appeals under the penaltv of sanctions being imposed.

Chief Judge Murphy remarked that the conference would be in the geographic area from which the appeal had been noted, and that it was conceivable that the hearing could be scheduled in the courtroom of the circuit court from which the case had been appealed, before a judge designated to conduct the hearing.

Mr. Walsh stated that even so, an attorney would still have to spend a day or more preparing for and attending the hearing even though the case involved only a modest amount; and that in his view, settlement could be prompted over the telephone if the court felt that desirable.

Mr. Niemeyer stated that the suggested procedure would tend to protract appellate proceedings, and that appealing parties wish cases to be decided by a court. He admitted, however, that the settlement statistics mentioned were impressive.

Mr. Reno stated that in some cases the suggested procedure would save a lot of time writing a brief.

Judge McAuliffe inquired whether the procedure would not increase the number of appeals?

Mr. Rodowsky stated that one thing was clear, that the suggested procedure would postpone the day that the transcript had to be paid for.

Mr. Brault stated that his firm had had considerable experience with pretrial settlement conferences scheduled by federal and District of Columbia courts, and that as a matter of principle, they declined to attend such conferences.

Chief Judge Murphy acknowledged that the Tuscon conference had noted that adoption of the procedure tended to result in an initial flurry of more appeals, but that this tended to subside.

The Court of Special Appeals principal concern was with the number of frivolous appeals lacking in substance or merit; and with the advantages to be gained under the procedure from the standpoint of saving the court's time and the clients' money.

A discussion ensued as to whether an adamant client would be prejudiced if he insisted upon appealing a case even his attorney conceded was frivolous; it seemed the sense of the meeting however, that an attorney should not undertake a frivolous appeal.

Chief Judge Murphy acknowledged one drawback to the rules as drafted was that they tended to eliminate the local appellate judge from subsequently participating in hearing argument, and suggested that possibly a retired judge might be designated to conduct the prehearing conference. Also, he acknowledged as unrealistic the five day limitation imposed by suggested Rule 1058 on the time for filing with the clerk of the Court of Special Appeals of a copy of the notice of appeal and the Information report required by suggested Rule 1059.

Discussion ensued as to whether the Information Report requirement did not in effect create an additional brief requirement. It was suggested, however, that at that point in time an attorney remembered and knew his case better than he would later, when getting around to drafting a brief. Mr. Rodowsky questioned whether that was so.

Mr. Dunn stated that he would be opposed to a judge of the Court of Special Appeals participating in both a prehearing conference and on the panel subsequently hearing argument.

Mr. Brault stated his fear that the suggested procedure would do little more than ensure the creation of an administrative

bureaucracy, with a retired judge acting as an examiner, referee or Master.

Mr. Rodowsky stated that adoption of the procedure would put pressure on attorneys to stipulate early before fully researching the issues and that he felt the bar would be wary of any such a rule.

Mr. Wilner stated that it was his impression that appeals often raise many extraneous issues which are then not pressed, and that the suggested procedure would at least tend to eliminate these.

Mr. Bouse reminded the meeting of the Bar's initial resistance to present Rule 504 (Pre-Trial Conference) when it was first proposed by Judge Niles.

Mr. McManus raised the question of the ramifications that the suggested procedure would have with respect to lawyer competency.

The Chairman inquired whether it might not be possible for theCourt of Special Appeals Staff Attorneys to analyze the appeals in the September, 1976, Term, and classify those which had subsequently been found to be frivolous, insubstantial or without merit.

Judge McAuliffe inquired whether anything had appeared in writing in legal periodicals about the success of the procedure in eliminating frivolous appeals. Chief Judge Murphy stated that he would have Michael Miller the Director of the Maryland State Library check into that.

Mr. Brault inquired whether the court might not be satisfied with an experimental voluntary procedure, say in 10 prototype cases.

Mr. Reno expressed the opinion that the suggested procedure had merit. He said that probably 40% of all appeals should not have been taken, citing the appealing attorney's frequent ignorance of ruling decisions.

The Chairman inquired how it was possible to designate a record when it had not yet been transcribed.

Mr. Niemeyer said that he would like to see the procedure tried out on a deformalized basis, without disclosure. Lawyers are concerned about straightjacketing orders.

Judge McAuliffe observed that it was difficult to narrow issues without going through the entire exercise, ie. writing a brief.

Mr. Bouse reiterated his question: wouldn't the Bar resist the idea of a settlement judge?

Mr. Niemeyer stated that you can't pre-try an appeal without first re-reading the evidence and reseraching; you simply aren't ready that early. He would be strongly opposed to the suggested procedure if it were to be used for pretrial purposes. However, he believed the settlement aspect of the procedure was meritorious.

Judge Ross inquired how many cases were involved potentially?

Chief Judge Murphy stated that there were many submissions on the brief, perhaps two thirds, but that he didn't really know. The appeal process has been cheapened, and that has resulted in many frivolous appeals. Moreover, it is the courts' impression that many attorneys simply don't talk to each other.

Judge Carter stated that he liked the notice requirement; that would necessitate reviewing the case with the client and examining the issues, in order to put down on paper what he's got

and what he hasn't got. He is convinced implementing the procedure would curtail appeals.

Judge McAuliffe said that he believed a trial experiment was warranted, to relieve the congested docket. He said he was impressed by the reported concurrence of all the judges of the Court of Special Appeals in support of the concept. Frivolous appeals evidently do result from a cheapened appeal process. However, he believed that the procedure would prove more useful in getting the parties together than in limiting the issues, and he believed it especially important to test the reaction of the Bar.

Mr. McManus expressed the opinion that implementation of the procedure would further cheapen appeals. He stated that you don't know until you are writing a brief what the important aspects of the issues really are, and therefore he would be opposed. If lawyers don't talk to each other, however, he recognized that in low value cases a settlement conference might eliminate frivolous appeals, and on balance, he would be in favor of a procedure limited to that.

Mr. Herrmann cited the saying, "The opinions won't write". You need to study the transcript in depth before deciding the issues and the points to be raised on appeal. Some issues raise other issues. He also mentioned the expense factor; the suggested procedure will result in more time spent by the lawyer. He did not believe that a direct analogy could be made to Judge Liss' cost assessment in "trash" cases. He believes that most lawyers do talk settlement, and that the procedure would in effect require another brief, resulting in additional time and cost, and in effect

an additional appellate lawyer. He mentioned that it's only the appellant who wants a "second bite at the apple"; the procedure would put the appellee under pressure to settle, though he won the case below.

Mr. Tabor stated that his initial reaction was that the procedure was ridiculous, although he is impressed with the statistics in those states that have introduced the concept. He questioned, however, whether they were comparable to Maryland. He was not worried about limiting issues; what concerns him is whether the procedure's purpose was worth the time and effort that would have to be expended. He questioned whether settling, say 200 cases under the suggested procedure wouldn't have the effect of penalizing competent lawyers in all other cases. The concept may be worthwhile to the court, but is it overall, in the whole picture of the administration of justice?

Mr. Rodowsky agreed in principle with what had been said. He stated that the only justification for adoption of the rules could be that lawyers don't talk settlement, and that a large number of appeals would be settled if attorneys were forced to argue them. This is contrary to his experience, and he mistrusts statistics.

Mr. Herrmann remarked that the Bar's reaction could be tested by putting the question to the Maryland State Bar Association.

Mr. Wilner suggested that it would be helpful to know what experience courts had had with the procedure in those states which had adopted it, providing they are comparable to Maryland. If a track record exists, let's take advantage of it. He also felt that the reaction from the bench and bar was most important.

Mr. Dunn said that administrative rules benefit the courts,

not attorneys, and that most of them are not applied in moderation. He cited scheduling conferences in the United State District Court as an example; you sit and wait too much. Also, there's too much overscheduling. These require a lot of non-billable time on the part of lawyers. He predicted that implementing the procedure will be at the lawyers' expense, and that the effect of the rules will tend to eliminate lawyers as advocates. He is opposed to the suggested procedure.

Judge Ross said that he would favor implementing the procedure on a trial basis; that something must be done to unclog the Court of Special Appeals, citing the significant number of per curiam decisions that the public never sees. He stated however that empirical data was needed; would most of those 55% of appeals have settled anyway?

Chief Judge Murphy agreed that more data was needed.

Mr. Bouse remained sceptical, but said he favored trying out the procedure on a trial basis.

Mr. Lombardi said that adoption of the procedure would result in frontloading appeals by $300/400 of additional costs. He doubted that any sort of pretrial brief could be prepared without a transcript, and that the Information Report was akin to a brief. He stated that there must be other ways of reducing the docket, and doubts that it can be done on any sort of a trial basis. What is needed are statistics on how many attorneys utilize agreed statements of the cases, etc.

Mr. Walsh expressed the opinion that it was unfortunate that the Committee had to consider the suggested procedure, and his concern over the additional time and effort that preparing the

Information Report and attending a prehearing conference would entail. He acknowledged, however, that it is regretable if 40/50% of appeals are frivolous.

Judge Carter asked whether the suggested procedure wouldn't actually save a client the cost of preparing a brief if an appeal were dismissed following a conference.

The Chairman stated that there had been enough discussion; and that he had been impressed with the remarks of Messrs. Lombardi and Herrmann. The Bar has been asked to give time and again; the Court of Appeals should apply greater pressure on the Court of Special Appeals to do more to solve their problems by writing more short opinions and fewer law review articles; by handling frivolous appeals on a per curiam basis; and perhaps by adopting the British practice of announcing their decision from the bench following a recess after argument has been heard. This has been done effectively in Britain for years.

Chief Judge Murphy mentioned the New Jersey rule permitting the affirmance of the judgment below without opinion. The Chairman said the United State Supreme Court does the same thing.

Mr. Brault inquired whether appellate rules might not be adopted similar to Rule 604 b (Costs--Bad Faith--Unjustified Proceeding--Delay), which permits the court to include attorneys' fees in assessing costs, if the court felt that an appeal was frivolous, or without merit. Mr. McManus agreed, stating it would be preferable to punish the offenders, rather than to burden the entire bar.

Judge Invernizzi stated that in New Jersey, the courts pret[illegible] well reach a tentative decision before hearing argument.

Chief Judge Murphy stated, in closing, that he felt it was important for lawyers to realize that the courts exist for the litigants, and not just for the lawyers, some of whom have been abusing the system for years. The problem is further complicated by the fact that every lawyer thinks that his case is special, and it's always the other lawyers whose cases are frivolous.

The meeting terminated at 12:20 P.M.

APPENDIX C.2

Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 2-20 (Md. Mar. 15, 1996).

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee, held in Room 1100A, People's Resource Center, 100 Community Place, Crownsville, Maryland, on March 15, 1996.

Members present:

Hon. Alan M. Wilner, Chairman
Albert D. Brault, Esq.
Robert L. Dean, Esq.
Bayard Z. Hochberg, Esq.
H. Thomas Howell, Esq.
Hon. G. R. Hovey Johnson
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Joyce H. Knox, Esq.
James J. Lombardi, Esq.
Hon. John F. McAuliffe
Anne C. Ogletree, Esq.
Hon. Mary Ellen T. Rinehardt
Linda M. Schuett, Esq.
Larry W. Shipley, Clerk
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Joanne Finegan, Esq.
Ernest C. Trimble, Esq.
P. Dennis Belman, Esq., M.S.B.A.
Robert H. Dyer, Jr., Esq., MICPEL
Cleaveland D. Miller, Esq., M.S.B.A.
Daniel Clements, Esq., Maryland Trial Lawyers Association
Janet Eveleth, Esq., M.S.B.A.
Melvin Hirshman, Esq., Bar Counsel
Randall Rolls, Esq.
Paul V. Carlin, Esq., M.S.B.A.
John Debelius, Esq., Montgomery County Bar Association
Richard Rosenblatt, Esq.

The Chairman convened the meeting. He said that he had an update on the 132nd Report to the Court of Appeals. The Court had considered Titles 9 and 10 at the hearing on February 6, 1996. Another hearing was held on March 5, 1996, and it was very lengthy, beginning at 10.00 a.m. and ending at 5:15 p.m. The Court went through all of the rules which were on the agenda.

This included the issue of moving the position of the Juvenile Rules, and Titles 12, 13, and one-half of Title 15. The last hearing will take place on April 11, 1996. Between 50 and 60 comments have been received on the rules in the 132nd Report. Approximately 10 people testified at both the February and March hearings. The Court deferred consideration of the Standby Guardian Rules until the 1997 legislature deals with the issue. One of the biggest issues presented to the Court was notice in mortgage foreclosures. The Court rejected the Rules Committee's recommendation that notice to junior lienholders be given ten days before the sale, and opted to provide thirty-day notice to junior lienholders. The Court is proposing an effective date of January 1, 1997 for the rules in the 132nd Report. Because the Report is so massive, this date would allow six months for the bench and bar to become familiar with the new rules.

Agenda Item 1. Consideration of a proposal of the Maryland State Bar Association regarding Minimum Continuing Legal Education. (See Appendix 1.)

The Chairman explained that the issue of minimum continuing legal education (MCLE) was before the Rules Committee in June of 1995. In June, the Attorneys Subcommittee had met with members of the Maryland State Bar Association (MSBA) discussing the same issue. Because of the lack of information as to what other states were doing, what kind of continuing legal education attorneys have been participating in, and what qualifies as continuing legal education, the Subcommittee decided that the best way to find out this information would be by conducting a

survey among lawyers in Maryland. At its June, 1995 meeting the Rules Committee approved the recommendation of the Subcommittee. Although it took some time, the Subcommittee eventually prepared a survey which was sent to the Court of Appeals for its approval. When funding for the costs of mailing the survey was not available from either the MSBA or the Court budget, members of the MSBA asked for the opportunity to come before the Rules Committee to make a presentation on the need for MCLE and to respond to questions.

Dennis Belman, Esq., was the first speaker. He thanked the Rules Committee for inviting the MSBA to provide information pertaining to MCLE. He explained that some of the bar leaders such as Robert Gonzales, Esq., the Honorable Barbara Kerr Howe, and Paul Bekman, Esq., who are in favor of MCLE could not attend today's meeting, because they are at a leadership conference. Mr. Belman noted that all of these bar leaders wanted him to convey to the Rules Committee their continued support and intention to seek MCLE. He said that this is not the first time that MCLE has been requested. In 1976, the initial request was rejected. A 1995 report by the MSBA on the topic of MCLE which is before the Rules Committee today is the culmination of a two-year study which resulted in a favorable report. Cleaveland Miller, Esq. was the chairperson of the committee that conducted the study. The approval of the Board of Governors of the MSBA was almost unanimous. A bill is pending before the legislature to require the education of all licensed professionals, but the MSBA lobbied against the bill, because of its pending MCLE proposal. Mr. Belman urged the Rules Committee to show the same

leadership the State Bar showed about MCLE, because it is in the best interest of the legal profession and the public.

Mr. Miller was the next speaker. He expressed his appreciation to the Rules Committee for their attention to the presentation. He said that he last appeared before the Committee on the issue of legal advertising, which resulted in a change to the ethical rules, and he was hopeful that the issue of MCLE would be advanced today. He told the Committee that Mr. Gonzales and Judge Howe are active supporters of MCLE, but he reiterated that they were unable to attend today. He pointed out that MCLE is a very important issue, and there is too much uncertainty about it. Its effect on the Maryland Institute for the Professional Education of Lawyers (MICPEL) will be addressed by Robert Dyer, Esq. He noted that the time it took to prepare the survey did slow down the effort to promote MCLE. He had participated in the summer meetings, and he acknowledged that the MSBA had agreed to the concept of a survey. He explained that his feelings changed when he saw that the survey had included a referendum on the issue of how the person taking the survey would vote for MCLE. He said that he feels strongly that no vote should be included in the survey, not just because the bar of the District of Columbia voted down MCLE eight to one, but because certain issues, such as constitutional matters or separate trust accounts, are not the kind of issues appropriate for referendum. He observed that a study published by the New York State Bar Association shows that 41 or 42 other states have MCLE.

Mr. Miller noted that there are two kinds of objections to MCLE. One is philosophical -- in which people agree that there

should be CLE, but they feel that attorneys should do this on their own. This works in a perfect world, but in the imperfect world, there are a large number of attorneys in Maryland and the District of Columbia who do not engage in CLE. Two letters from the Deans of the University of Baltimore and University of Maryland law schools were handed out today. The letter from University of Maryland Dean Donald Gifford addresses the philosophical problem and points out that law school education is mandated, even though successful lawyers such as Abraham Lincoln only read the law and never attended law school. The basis of the philosophical objection is that lawyers are conscientious, and therefore a CLE requirement is unnecessary. Mr. Miller's response to this statement is that sanctions are still needed to maintain the profession's educational standards. Dean John A. Sebert of the University of Baltimore Law School points out the advantages of a mandatory system. He notes that it reaches out to the attorneys with good intentions who put off CLE due to busy schedules. With the practice of law changing to a more competitive, specialized one, the need for CLE is increased.

The second type of objection is specific to the proposal. The MSBA committee which drafted the recommendations did an excellent job, but the recommendations may not be perfect, and the MSBA is willing to work on them to improve the system. One of the aspects of the recommended system is that there be no exemption for any attorney, whether the attorney is a judge, inactive, or a law professor. This issue is up for debate. Another aspect is the weight given to self-study, and people have differing opinions as to this. The MSBA committee compromised on

the weight given to in-house programs. Mr. Miller said that he had no pride of authorship, and he would he pleased and eager to work with members of the Rules Committee to revise the plan. It would be helpful to have someone from the law schools working on this (both deans have offered their help) as well as someone from the Judicial Conference. The judges of Maryland have continuing education, and attorneys think of judges as the acme of the legal profession. Other professions require continuing education, and Mr. Miller said that he did not know how to explain to the legislature why the legal profession does not have this.

Robert Dyer, Esq., who administers the MICPEL program, said he would explain the facts and trends his organization is seeing in registrations. There may be an underlying assumption that attorneys are attending the educational programs they need, but this past fall, even before the winter snows fell, the attendance at programs was disastrous. The people working at MICPEL had to take a critical look at their operation. Originally the assumption was that MICPEL would give as many courses as possible, and those that were very popular would support the less popular ones. One of the conclusions drawn after a review of MICPEL programs was that young attorneys do not attend the courses. A number of programs were aimed at attorneys admitted in the last six years, and out of 35,000 mailings, there were 100 responses. There was a special mailing with an explanation of MICPEL and an offer of a discount on the first programs. Out of 6000 of these mailed, there were 19 responses. Only one-third of those admitted in the last five years attended programs. Part of this is a problem resulting from the state of the economy. When

the economy slips, CLE gets cut from law firm budgets. The big law firms admit to this. Another problem is that some attorneys are holding back on taking CLE courses, because they are waiting for a mandatory program to be instituted, so they can earn credits. MICPEL is tracking three to five telephone calls a week on this issue. MICPEL tried to expand across the state, but seven out of eight programs had to be cancelled on the Eastern Shore, due to lack of registrations. The expenses of offering CLE are going up because the return is so small. There is a disincentive to offer broad programs, and a growing resistance of attorneys to participate as faculty. Because of pressure on attorneys to bill in law firms, CLE is not rewarded. MICPEL is rapidly going through its financial reserves. One of the courses at risk is the nine-day trial practice program which is no longer paying for itself. It is not possible to offer attorneys who are out of work free programs, and there has been serious restructuring with fewer programs held in fewer locations, instead of programs being developed in new technology such as television and the Internet. The amount of hours attorneys are attending courses is going down, and the numbers in attendance are dropping, also. Mr. Dyer thanked the Rules Committee for the opportunity to speak.

Paul V. Carlin, Esq., Executive Director of the Maryland State Bar Association, said that since 1975 when Minnesota became the first state to require CLE, there has been a pattern of acceptance. Despite a small vocal minority in opposition, after the implementation of MCLE systems, there has been widespread support. In at least six states which have it, the statistics

show that 75 to 91% of attorneys are in support of MCLE. Attorneys in those states that do not have it are resistant, so asking attorneys if they want MCLE is foolish. The most persistent objection is that no one can prove that MCLE makes attorneys better. A 1990 study by the Baltimore City Young Lawyers showed that this is not susceptible to statistical quantification. The best assessment is the opinion of those who already participate in MCLE, and 70 to 90% of those support it. In Pennsylvania, the experience was that no one became a worse lawyer after taking CLE courses, and in Arizona the feeling has been that it is arrogant to believe that MCLE is not necessary for attorneys.

Daniel M. Clements, Esq. spoke next. He represents the Maryland Trial Lawyers Association (MTLA) who have unanimously agreed to support MCLE. The MTLA had trouble sustaining CLE programs and had to stop offering a mock trial program. They also found a decline in the attendance of lawyers in their programs, and found that the same people attend the programs over and over. He noted that some 45,000 people with infertility problems were not surveyed about changes in adoption law, and commented that similarly lawyers do not have to be surveyed as to whether they wish to have MCLE. He said that he is opposed to surveys. His father had a marketing research business, and surveys have been shown to be faulty. Society is not run based on surveys. He pointed out that the legal profession is one of the top five industries in the State, but that the fraternity that used to exist within the profession is gone. CLE serves to bring people together. As a former president of the MTLA, he

found that he received many questions from lawyers about the practice of law, and he feels that MCLE is needed due to the lack of knowledge among lawyers

Joanne Finegan, Esq., a lawyer who practices in Towson, expressed her concern that if MCLE were instituted, those who participated as instructors would not get credit for multiple course teaching. Mr. Miller explained that for three hours of self-study to prepare for one hour of teaching, a lawyer would get one hour of participatory credit, but Ms. Finegan noted that constantly changing teachers might not assure quality and consistency in courses. Mr. Dyer responded that MICPEL tries to work in new faculty with experienced faculty. More attorneys are needed to be brought in to teach to avoid burnout. The Chairman cautioned that the purpose of today's discussion was not to get into the details of the MCLE program. Ms. Finegan pointed out that the advertising of MICPEL courses includes information that credits are given. Mr. Dyer explained that many Maryland attorneys are admitted in Pennsylvania or Virginia which have MCLE programs, and many of the MICPEL programs are offered to accountants and real estate agents who have mandatory education requirements.

Ernest Trimble, Esq., said that he was in favor of MCLE, but that he felt that there should be a total exemption of older members of the bar. He commented that he had not realized how difficult requests for exemption can be. He questioned whether retired judges are required to take judicial educational courses, and Judge Rinehardt replied that they are not. Mr. Trimble asked the Committee to consider having three categories of exemptions

for older lawyers. The first is an exemption for those lawyers who are "of counsel" to law firms. The second is for those lawyers whose only practice is to represent their families, and the third is for those older attorneys who only do pro bono work.

The next speaker was Randall Rolls, Esq., who said that he is an attorney licensed in both Maryland and Pennsylvania and that he had real world experiences about CLE to relate. He explained that Pennsylvania instituted its MCLE program in 1992. From an initial requirement of six hours, then nine hours, it is now up to 12 hours. Compliance has been a challenge. Course availability and costs have been a problem. Many of the courses are only available during working hours. The MICPEL courses have been offered during some evenings and weekends. The proposed requirement in Maryland is 15 hours of MCLE per year. An all-day course would offer six hours of credit. This would mean two-and-a-half days out of the office. Mr. Rolls questioned whether self-study will continue as an option. He noted that in Pennsylvania a government agency keeps track of whether attorneys are in compliance, so this may have to be instituted in Maryland. If every attorney has to be out of the office for two and a half days, this would impact on agencies such as the Offices of the State's Attorney, Public Defender, and Legal Aid Bureau. Mr. Rolls' final question was what will be the benefit of MCLE to attorneys.

John Debelius, Esq., a practicing attorney who was present to represent the Montgomery County Bar Association, was the next speaker. He said he was not certain that a majority of attorneys oppose MCLE, and he did not agree with the assumption that

attorneys in Maryland are not availing themselves of various means of CLE. Over the past 18 years, the education of attorneys has changed. MICPEL is no longer the primary provider because of programs sponsored by minority and specialty bar associations as well as mentoring and inns of court programs. Mr. Debelius suggested that valid learning can take place outside of the classroom. Inns of court provide intensive legal education, but under the proposal this would only be recognized as self-study. The Montgomery County Bar Association position is in favor of CLE. It offers various programs, and with the field broadened, it is not fair to assume that attorneys are not availing themselves of opportunities for education. There has been support among the MSBA Board of Governors for MCLE, but no agreement as to the form it should take. The format should be liberalized to allow participation in a broad variety of educational processes. Mr. Debelius thanked the Committee for the opportunity to speak.

Mr. Lombardi said that he was in favor of CLE, and he pointed out that attorneys are doing many educational activities such as using the Internet, Lexis, and Westlaw. The philosophy of mandatory CLE is troubling because as the MSBA concedes, the majority of attorneys are competent and conducting their own CLE. He inquired why the Board of Governors is requiring <u>mandatory</u> CLE. The programs are expensive, and many young attorneys may not be able to afford them. Mr. Belman responded that many other licensed professions require mandatory continuing education, and the legal profession stands alone without it. Mr. Miller commented that the overall competence of the legal profession can

be improved. Even with electronics and self-help, there is still room for classroom activity. The proposal by the MSBA recognizes a balance. Other objections expressed are legitimate concerns. The MSBA is prepared to talk about costs and other methods of education. Working attorneys can take classes in the evenings and on weekends.

Ms. Schuett remarked that she did not fall within either of Mr. Miller's two categories of objections. She noted that the MCLE proposal would cost her more time from the office and her family, and she already puts in more than two business weeks a year with her various activities. Mr. Miller commented that Rules Committee attorneys are not typical of other members of the bar. Ms. Schuett referred to Mr. Debelius' point about time spent by attorneys on legal education, and she said that if the time spent on Rules Committee activities, Code revision, or law clubs does not count toward MCLE time, this could be burdensome. Mr. Miller compared MCLE to the issue of an attorney asking why regulation of trust accounts is needed. He noted that the time that would be spent on MCLE under the proposed plan is only one-and-a-quarter days per year.

Mr. Belman said that the Rules Committee needs to understand that the proposal is being brought to the Court of Appeals through the Committee and that it is the best effort of the CLE Committee. The MSBA is recognizing the political issues that need to be dealt with. Issues such as easy compliance, one-half time self-study, and credit for teaching were the result of compromise. The MSBA strongly believes in the concept of MCLE. If anyone has specific recommendations, members of the MSBA would

be happy to get together to discuss them. Judge Wilner can appoint a working committee of Rules Committee members to work with Mr. Miller's committee to draft another proposal. It is important to get over the hurdle of the specifics. It is clear that attorneys are not taking the CLE opportunities offered to them. The statistics show that the numbers are down. Mr. Dyer pointed out the providers submit the list of people who attended, and these numbers are entered into the computer.

Mr. Brault commented that there have been problems with physicians and the nature of continuing medical education. Just because physicians have mandatory continuing education does not make it a panacea. If an attorney loses one full week of billing due to attendance at CLE, this is a big loss. The Attorneys Subcommittee had discussed the problems in Pennsylvania. Thirty hours of CLE for a Maryland attorney is a great imposition. This could create a tremendous cost for young female attorneys who are also raising children.

The Chairman noted that the 1995 study by the New York State Bar Association is new. It includes a comparison of programs. A variety of issues has been discussed today. The self-study portion of MCLE suggested by the MSBA does not include independent viewing of videos or independent listening to audio tapes. There should be some leeway for choice. Mr. Miller said that he recognized the burden on the independent practitioner, but this is not the heart of the issue. Whether attorneys are paid for CLE does not detract from the need to take education. Mr. Brault remarked that an experiment was conducted about five or six years ago which attempted to identify the quality of

practice in the federal system. Educational programs were outlined for the bar to take. Five years later the level of competence had not improved, and possibly had slipped. Mr. Brault noted that there is a problem with the concept that continuing education improves attorneys. Mr. Belman commented that the bar has doubled in growth in eight years, and with the economic squeeze on attorneys, there is pressure not to go to formal education programs.

Mr. Johnson said that he had three observations. The first was that the Rules Committee approved a professionalism course for young lawyers to take before joining the bar. Even if the course was a burden, it has turned out to be a positive step. Secondly, members of the State bar committee represent a variety of groups including Legal Aid, the judiciary, in-house counsel, and various practitioners. His third observation was that he is in favor of CLE. MICPEL's attendance is clearly down. He explained that he attends out-of-state programs put on by national providers such as DRI (Defense Research Institute). If MCLE is implemented, national providers will put on various types of continuing educational programs.

Mr. Howell commented that he is a member of the Attorneys Subcommittee. No other CLE proposals are before the Rules Committee except for the one presented by the MSBA. The studies done by the New York State Bar Association in its book, Comparison of the Features of Mandatory Continuing Legal Education Rules in Effect as of August 1995, have some hard data on CLE. It has been reported that 41 or 42 jurisdictions have mandatory CLE, but the 1995 book provides that 12 jurisdictions

including Maryland do not impose MCLE. The other jurisdictions are Alaska, Connecticut, District of Columbia, Hawaii, Illinois, Massachusetts, Michigan, Nebraska, New Jersey, New York, and South Dakota. Mr. Carlin explained that some of the disparity may be that states such as Maryland are counted in because of the mandatory professionalism course. Mr. Howell stated that many of the twelve states without MCLE are important jurisdictions. Of the ten states with the largest number of attorneys, one-half do not impose mandatory CLE. Thirty-eight percent of all attorneys are in jurisdictions which do not have mandatory CLE. Michigan had a program instituted in 1991 which was repealed in 1994. The District of Columbia had a referendum on the issue which failed. Mr. Howell said that what troubles the Subcommittee and him is that there is no empirical study to prove that all the effort is worthwhile. The system would require more than simply providers and attorneys. It would be necessary to set up a body to administer the program, and there would have to be an administrator. The main issue is that there is no indication that mandatory CLE causes significant gain. When the issue was raised a few years ago, the Honorable Ellen Heller, a Baltimore City Circuit Court judge who chaired a committee studying MCLE, said in a 1987 Maryland Bar Journal Article that no studies had demonstrated a connection between mandatory continuing legal education and the competence of attorneys. If MCLE is to be required to benefit the public interest, evidence is needed. If attorneys are the beneficiaries, why not ask them for imput? It makes sense to get the input of the bar as to what they are doing for CLE and what is beneficial to them. The Rules Committee

agreed to the survey at its June 23, 1995 meeting. Mr. Howell said that at the August, 1995 Attorneys Subcommittee meeting he and Mr. Brault tried to design a survey based on the pro bono survey which had been sent out a few years ago. No representatives from the MSBA were present at that meeting. Both the Court of Appeals and the MSBA had no funding to send out the survey, but the funding needed for a survey pales in comparison to the funding needed for administrative costs if MCLE is adopted. Judge Heller's 1987 report said that a survey should be conducted. The D.C. Bar rejected mandatory CLE, although Maryland should not necessarily be guided by that decision. There has been no demonstrated need established. If the prediction is that attorneys do not want this, mandating it leaves a gap in fairness and logic. Mr. Howell said that he favors MICPEL participation, but there are other valid alternatives to MCLE such as self-study, research, reading, and keeping up with the developments in one's field. A course method is not the only way to approach this. He reiterated that a survey is essential.

Ms. Ogletree remarked that she has taught continuing real estate education courses, and her experience has been that the courses are taken cyclically, especially before license renewal time. Many of those taking the course simply sit there and do not even listen. She expressed the opinion that there is a benefit to self-study, and 30 hours of MCLE is a large amount of time. Judge McAuliffe pointed out that the issue of the lack of empirical data was raised at the Subcommittee meeting, and that was one of the reasons the Subcommittee decided a survey was

important. He referred to Mr. Miller's point that the survey was designed with a referendum on it, but he observed that the question was actually couched in terms of what the person filling out the questionnaire is doing currently for CLE. The estimate is that 30% of attorneys voluntarily participate in CLE, although the figures are higher in Montgomery and Prince George's counties. The Chairman explained that there were several drafts of the survey done, and the final one was designed to accommodate the ability to be read by a computer. He said that he has a copy of the survey, and it does not specifically ask if the person is in favor of mandatory CLE. The last question is how the person thinks the Court of Appeals can improve the level of competence of attorneys with four categories: voluntary participation in CLE, the minimum number of hours of CLE the attorney wishes to pursue, a course on professionalism and ethics, and a category of "other." The Court of Appeals was agreeable to the Administrative Office of the Courts preparing and printing the survey, including coding and reading it, but not paying for the mailing costs.

Judge McAuliffe commented that the plebescite could be removed from the survey. Mr. Belman said that he recalled that at the Subcommittee meeting last June the decision was made to remove the plebescite. He said that he wanted to respond to Mr. Howell's comments. The D.C. plan for mandatory CLE was voted down by the Board of Governors. The 1986 report in Maryland drew the conclusion that a voluntary system of CLE was working adequately because of organizations such as MICPEL and the Montgomery-Prince George's Joint Institute. Since that time the

numbers in attendance as CLE programs have been falling off. The situation in 1996 is different. If attorneys are competent, a mandatory CLE system will keep up that competence.

Mr. Titus commented that he had reservations about MCLE. Improving the image of the legal profession is not an acceptable reason to implement a mandatory system. If the concern is the competence of attorneys, is MCLE the best mechanism? Judges can be polled as to whether attorneys who have appeared before them are competent. This has no relationship to CLE. When there are incidents involving incompetent attorneys, there is no mechanism to address the problem. Mr. Titus expressed the view that attorney counseling programs would be very helpful. Mr. Belman responded that this has not been considered, but due process issues would be involved. He asked what can be done about non-courtroom attorneys who do a poor job, yet no judge can suggest an alternative for them. Mr. Titus questioned as to how one would know an attorney is taking a course that would benefit him or her. The Chairman pointed out that the purpose of the survey would be to find out not just what percentage of the bar is doing anything, but what courses they took and which ones provided a benefit to them. Mr. Belman noted that he had collected data from around the State as to various providers of CLE. Every provider said that the trend in attendance was downward, even with a growth in the number of attorneys.

Mr. Lombardi expressed his concern about getting material for courses approved under the suggested plan for MCLE. Mr. Belman responded that there are two mechanisms for approval. One is for the provider to go before the governing CLE body for

approval; the other is that once a provider has a good track record, courses would be approved automatically. He reiterated that the MSBA is not wedded to all the rules in the proposal. Mr. Sykes remarked that it is necessary to see the planned program before one can approve it. The concept details are not independent of the entire proposal. He expressed the view that reading newspapers, advance sheets, magazines, law reviews, etc. may be more helpful than classroom training. There is legal education from working on the Rules Committee. His concern was that certain types of educational methods would not be recognized under the MSBA proposal, and that school would be interfering with education. Mr. Sykes commented that the burden of the mandatory CLE on him would be significant, and something in his schedule would have to be cut out.

The Chairman suggested that the details of the plan be formulated, so that the Rules Committee would know what it is approving or disapproving. The concrete proposal of the MSBA is troublesome to the Attorneys Subcommittee and the Rules Committee. He asked the Committee if it would be worthwhile to initiate a new dialogue and if a survey should be made. Ms. Schuett said that her feeling was that she might be more receptive if the details of the plan did not seem so burdensome. Mr. Miller suggested that MSBA members could get together with members of the Rules Committee. The Chairman said that if the Rules Committee was receptive to the idea of continuing the dialogue on minimum continuing legal education, he would appoint a representative group to continue on with this.

Mr. Brault commented on the history of CLE. He said that

there had been a plan to have an Attorney Competence Commission which was similar to Mr. Titus' idea, but this was rejected by the MSBA. The Rules Committee had already rejected the idea of mandatory CLE, and the MSBA had rejected other proposals dealing with competence on a direct level. Mr. Carlin explained that the way the current CLE proposal was developed and delivered to members of the bar was that it was taken to every president of every local bar association and out to all jurisdictions and governing boards. The details were delivered in a democratic fashion. Judge Kaplan remarked that he does not see a tremendous lack of substantial competence in the attorneys who come before him, but he has seen a lack of professionalism among middle-aged and older members of the bar. This has been attempted to be cured in the younger attorneys through the course on professionalism. The real problem is that there is a crying need for a professionalism course requirement for the entire bar. Mr. Carlin responded that this is part of their proposal.

The Chairman asked if the Rules Committee is agreeable to continuing the dialogue with the MSBA on minimum continuing legal education. Mr. Brault moved that there be an ongoing dialogue between the Rules Committee and Mr. Miller and the MSBA. The motion was seconded, and it carried unanimously.

Agenda Item 2. Reconsideration of proposed revised rules pertaining to habeas corpus -- Title 15, Chapter 300.

After the lunch break, the Chairman said that there are two more substantive items for discussion. The first item is the revised Habeas Corpus Rules. Mr. Sykes explained that changes to

APPENDIX C.3

MD. JUD. TASK FORCE ON PRO., REPORT AND RECOMMENDATIONS, (Nov. 10, 2003) [hereinafter *2003 Md. Professionalism Report*].

THE MARYLAND JUDICIAL TASK FORCE

ON

PROFESSIONALISM

REPORT AND RECOMMENDATIONS

The Honorable Lynne A. Battaglia
Chairperson, designee

Norman L. Smith, Esq.
Reporter

November 10, 2003

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Acknowledgment

Members of the Professionalism Task Force are very grateful to the following people who contributed freely and generously of their time and effort: namely, Interns Tina Hixon and Meredith O'Connor, who devoted countless hours researching, analyzing and documenting the state-by-state comparisons, state-wide themes, and historical perspectives; Brigid McGonnigal, who provided invaluable editorial assistance, David Brummett, who formulated the data from the surveys into charts, and a special thanks to Jacqueline Lee, liaison to the Task Force, who was charged with orchestrating the administration of achieving the Task Force's mission.

EXECUTIVE SUMMARY

On April 25, 2002, in response to a recommendation by the Maryland State Bar Association that all licensed Maryland attorneys be required to complete a mandatory continuing legal education course on professionalism, Chief Judge Robert M. Bell of the Maryland Court of Appeals established the Maryland Judicial Task Force on Professionalism. The Task Force is composed of twenty-four Maryland lawyers, one from each Maryland jurisdiction, and a lawyer reporter.

After an initial organizational meeting, the Task Force, lead by Court of Appeals Judge Lynne A. Battaglia, embarked upon a state-wide "self study" of the concept of professionalism. This was accomplished through a series of town meetings held in each Maryland jurisdiction. The first meeting was held in September, 2002, in Howard County and the last in July, 2003, in Cecil County. Chief Judge Bell was present at each town meeting, along with Judge Battaglia, task force reporter Norman Smith, and Jacqueline Lee, assistant to Judge Battaglia. Along with local lawyers, many District, Circuit, and Appellate judges participated.

Chief Judge Bell greeted participants at each town meeting and explained the purpose of the Task Force -- to learn from lawyers about their perception of the state of professionalism among attorneys and to investigate the potential need for expansion of the professionalism course (mandatory for new bar admittees) to experienced attorneys. Judge Battaglia chaired each meeting and facilitated the discussion.

At each town meeting, attendees filled out questionnaires calculated to give the Task Force feedback on the subject of professionalism from the point of view of each individual participant. Although the questionnaires were anonymous, participants provided information about their jurisdiction of residence, and identified themselves by race, gender, and as an experienced or new attorney. After the questionnaires were completed, Judge Battaglia began each discussion by asking the group to define the concept and meaning of professionalism. Typically, participants identified professionalism with such traits as compliance with the Rules of Professional Conduct, civility, courtesy and respect for colleagues, trust among colleagues, competence as attorneys, dignity, punctuality, concern for client welfare, candor with the court, honesty, integrity, and fairness with both court and counsel.

To guide the discussions, Judge Battaglia asked the participants to keep in mind the indicia of professionalism identified, and by those standards, to contrast the state of professionalism in past years with today. In many jurisdictions, the group heard from lawyers with as many as fifty years experience at the bar. Without exception, these senior practitioners opined that professionalism has declined over the years. The decline is marked by rancorous discovery disputes; a loss of trust between lawyers (resulting in an increase in "defensive practices," for instance, the perceived need to memorialize every discussion with a confirmatory letter); a breakdown of the traditional mentoring of new lawyers; an increase in the unauthorized practice of law; a lack of civility in and out of the courtroom; the failure

of courtroom attorneys to treat witnesses and each other with respect; and an increase in lawyer advertising.

In addition, town meeting participants noted a decline in the number of attorneys participating in bar-related activities, observing that when attorneys do not see one another in these settings, the need to get along declines. In this respect, it is worth noting that almost all attendees in rural jurisdictions felt that, among their colleagues, professionalism is at a high level. This was attributed to the fact that in small towns, judges and lawyers know and interact with one another, professionally and socially. In these jurisdictions, there is a near unanimous perception that out of town lawyers lack the courtesy and civility that local practitioners accord each other and the judges. In sum, most lawyers agreed that the smaller the bar and the greater involvement of the judges, the greater the civility and professionalism among its members.

Clients' unrealistic expectations were another identified contributor to unprofessional behavior. Clients often expect that lawyers will prosecute their cases with the same degree of animus toward opposing counsel that the litigants feel for one another. As a result, lawyers often identify too closely with their clients' causes, losing the ability to act as problem solvers. Many town meeting participants who were experienced lawyers recalled that in an earlier time, lawyers were able to differentiate between their respective clients' feelings and their own relationship with opposing counsel. As a result, many cases were worked out in the early stages, for the benefit of all.

Judges also came under criticism oftentimes for high-handed, arrogant behavior toward lawyers. By way of illustration, lawyers cited seemingly small matters such as scheduling a docket to begin at a certain time and then taking the bench an hour later. Participants also felt that some judges themselves fail to adhere to the highest levels of professionalism in the courtroom and to hold attorneys practicing before them to the same high standard. Many participants expressed frustration with the reluctance of local judges to sanction bad behavior. On the other hand, participating judges noted that the State's appellate courts often reverse the imposition of sanctions, signaling to them a distaste for this type of discipline.

At the conclusion of all town meetings, Judge Battaglia convened the entire Task Force to consider the results of the town meetings and to formulate recommendations to the Court of Appeals. The Task Force agreed that professionalism is an important core value that must be advanced throughout the legal process. Toward this end, the Task Force recommends that a Professionalism Commission be established and that the Commission, drawing on the findings of the Professionalism Task Force, identify indicia of professionalism and develop standards of professional conduct to be published to the bench and bar throughout the State.

The Task Force strongly believes that judges must foster the expectation that lawyers will behave appropriately in the litigation of both criminal and civil actions and in non-litigation contexts, and must take firm action against unprofessional conduct. Realizing that

the judiciary is reluctant to act on ill defined standards, the Task Force also recommends the development and formal definition of appropriate sanctions for adoption by the judicial conference.

Notably, the Task Force does not recommend a mandatory course in professionalism for all licensed Maryland attorneys. The Task Force does, however, recommend that the Commission, in conjunction with the MSBA, develop an appropriate professionalism course to be used as a referral tool for judges who identify unprofessional behavior.

The Task Force recognizes the natural tension between our duty as lawyers to zealously represent our clients and the emerging duty to act in a professional and civil manner in our representation. But, as one participant put it, zealous representation does not mean that one must become a zealot. The Task Force is convinced that effective representation of our clients is not only compatible with a high level of professionalism, but that our clients are best served by a professional, problem solving approach to the practice of law.

RECOMMENDATIONS

The major premise underpinning the following recommendations is that professionalism is an important core value that has been prioritized by the Chief Judge and the Court of Appeals of Maryland in the appointment of a Professionalism Task Force and now must be manifested throughout the litigation process and its institutions. Professionalism is a joint concern of the Bench and Bar, and it is imperative that the Chief Judge be a highly visible actor in the process.

Recommendation 1:

A Professionalism Commission should be established made up of the following members: a lawyer representative from each Maryland County and Baltimore City; representatives from all levels of the Maryland judiciary; the president of the Maryland State Bar Association or the president's designee; a representative from the Attorney Grievance Commission; a representative from the Rules Committee; a representative from the Judicial Disabilities Commission, and a representative from the University of Maryland and the University of Baltimore Law Schools.

Recommendation 2:

Judges on all levels must become effective role models by adhering to the highest levels of professionalism in the courtroom and community and by holding all attorneys practicing before them to the same high standard. Judges' active participation with the Bar and as involved members of their respective communities will foster a better public image for the legal profession and alleviate unnecessary isolation and tension between the Bench and Bar.

Recommendation 3:

Drawing on the findings of the Professionalism Task Force, the Professionalism Commission should, as its first task, identify indicia of professionalism and develop standards of professional

conduct to guide its work in the areas that it will explore and shall publish these standards to the Bench and Bar throughout the State.

Recommendation 4:

The Professionalism Commission shall develop professionalism guidelines and sanctions for adoption by the judiciary, reflecting the expectation that lawyers will behave appropriately in the litigation of both criminal and civil actions and in non-litigation contexts.

Recommendation 5:

The Professionalism Commission shall submit its findings and recommendations, for comment and suggestion, to the Rules Committee, the Maryland State Bar Association, the Attorney Grievance Commission, the Judicial Disabilities Commission, and to any other entities that the Professionalism Commission deems appropriate.

Recommendation 6:

To raise the level of professionalism in the litigation process, the Professionalism Commission should consider and promulgate recommendations to alleviate what lawyers throughout the state identified as a major problem: discovery abuse. In this regard, the Professionalism Task Force believes that previously issued Discovery Guidelines publication should be updated and reissued throughout the State to guide the Bench and Bar and to encourage consistency in the resolution of disputes.

Recommendation 7:

The Professionalism Task Force also recommends the appointment of Discovery Masters, perhaps from the ranks of retired judges or lawyers, to address discovery disputes and to recommend solutions on a real-time basis. Judges, statewide, should also encourage lawyers in each case,

especially cases in Circuit Court, to confer early in the litigation process, to develop a pre-trial schedule, and to expedite and manage the litigation process.

Recommendation 8:

The Professionalism Task Force believes that unprofessional behavior should be sanctioned formally or by informal intervention. Realizing that the judiciary is reluctant to act on ill defined standards, the Task Force recommends the development and formal definition of appropriate sanctions for adoption by the judicial conference.

Recommendation 9:

The Task Force does not recommend a mandatory course in professionalism for all licensed Maryland attorneys. The Task Force does, however, recommend that the Professionalism Commission, in conjunction with the MSBA, develop an appropriate professionalism course to be used as a referral tool for judges who identify unprofessional behavior.

Recommendation 12:

Attorneys attending town meetings in every jurisdiction identified a rise in the unauthorized practice of law as a contributor to the decline in professionalism. Therefore, the Task Force recommends that the Professionalism Commission work with the legislature and Attorney Grievance Commission to better define the unauthorized practice of law in order to better enforce sanctions against it.

Recommendation 13:

In each town meeting, attorneys identified a breakdown of the traditional mentoring of new lawyers as another contributor to the decline in professionalism. The Task Force feels that there are many mentoring programs available that have been underutilized, perhaps because they are not well

known. The Task force recommends that information about these programs be given wider dissemination and that participation in existing programs for mentoring of inexperienced lawyers be encouraged by the Bench and Bar.

INTRODUCTION

In 1996, the American Bar Association's (hereinafter "ABA") Conference of Chief Justices adopted a resolution calling for a study of lawyer professionalism.[1] The Conference encouraged each state's highest court to take a leadership role in evaluating the contemporary need of the legal community with respect to lawyer professionalism.[2] On April 25, 2002, in response to this mandate and to recommendations of the Maryland State Bar Association (hereinafter MSBA) for a mandatory course on professionalism for experienced attorneys, Chief Judge Robert M. Bell of the Court of Appeals of Maryland established the Maryland Judicial Task Force on Professionalism (hereinafter "Task Force") to study and advance professionalism in Maryland's legal community.[3] The Task Force is composed of twenty-four Maryland lawyers, one from each county and one from Baltimore City. Each Task Force member was recommended by judges in his or her representative jurisdiction.

The Task Force's purpose was to explore perceptions of professionalism among Maryland lawyers through a "self study" of the concept, which was explored in a series of town hall meetings in each of Maryland's twenty-four jurisdictions. The goal of these town meetings was to develop a consensus about the meaning of professionalism. Specifically, the town hall meetings were set up

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[1] CONFERENCE OF CHIEF JUSTICES' NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM REP. OF THE WORKING GROUP ON LAWYER CONDUCT AND PROFESSIONALISM 7. (1999).

[2] A draft of the ABA's National Action Plan on Lawyer Conduct and Professionalism began to circulate among legal and judicial organizations in 1998. This plan was finalized during 1999 and urged each state's highest court to take a leadership role in evaluating and meeting the following contemporary needs of the legal community:

- Establishing a Commission on Professionalism or other agency under the direct authority of the appellate court of the highest jurisdiction;
- Ensuring that judicial and legal education makes reference to broader social issues and their impact on professionalism and legal ethics;
- Increasing the dialogue among law schools, the courts, and the practicing Bar through periodic meetings; and
- Correlating the needs of the legal profession – Bench, Bar, and law schools - to identify issues, assess trends and set a coherent and coordinated direction for the profession. *Id.*

[3] Press Release, Sally W. Rankin and Maria Smiroldo, *Maryland Judiciary Creates Professionalism Task Force* (Apr 26, 2003), *available at* http://www.courts.state.md.us/pr4-26-02b.html.

to address "attorney concerns about ethics and professionalism"[4] and to encourage attorneys throughout the State to participate in discussions regarding the current state of professionalism among Maryland lawyers and to suggest ways to address any perceived problems in this area. At each town hall meeting, attorneys were given anonymous questionnaires requesting demographic information and information regarding their personal experiences with professionalism.[5] The last town hall meeting was held in July of 2003, and the Task Force met in September and October to develop recommendations for the final report presented to the Court of Appeals before a convocation of judges and lawyers on November 10, 2003.

[4] Administrative Order Creating Professionalism Task Force, Court of Appeals of Maryland (Apr 25, 2002).
[5] *See* App. B.

DISCUSSION

I. PROFESSIONALISM DEFINED

In 1986, the ABA noted that despite a rise in lawyers' observance of the rules of ethics governing their profession, their attention to professionalism was sharply declining:

> Lawyers have tended to take the rules more seriously because of an increased fear of disciplinary prosecutions and malpractice suits. However, lawyers have also tended to look at nothing but the rules; if conduct meets the minimum standard, lawyers tend to ignore exhortations to set their standards at a higher level.[6]

The ABA also reported a crucial distinction: while the model rules of professional ethics reflects what is *minimally* expected of lawyers, "professionalism" encompasses what is more *broadly* expected of lawyers – both by the public and by the finest traditions of the legal profession itself.[7]

A. General Distinction Between Ethics and Professionalism

Chief Justice Clarke best explained the distinction between ethics and professionalism in an interview in May of 1990 as follows: "ethics is a minimum standard which is *required* of all lawyers while professionalism is a higher standard *expected* of all lawyers."[8]

"Ethics" is commonly interpreted to mean "the law of lawyering" – the rules by which lawyers must abide in order to remain in good standing before the Bar.[9] While ethics tends to focus on misconduct – the negative dimensions of "lawyering" – professionalism focuses on helping, caring, protecting, counseling, and setting a good example.[10] While ethical boundaries in client

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[6] ABA COMMISSION ON PROFESSIONALISM, *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*, 112 F.R.D. 243, 259 (1986).
[7] CHIEF JUSTICES' COMMISSION ON PROFESSIONALISM TO THE SUPREME COURT OF GEORGIA, § 1, at 1 (1996).
[8] *Id*. at § 10, at 4.
[9] *Id*.
[10] *Id*.

relationships and prohibitions of wrongful actions by attorneys remain within the scope of the Maryland Rules of Professional Responsibility, professionalism addresses the aspirations of lawyers to civil and collegial behavior.[11]

B. The Meaning of Professionalism

The word "profession" comes from the Latin "professus," meaning to have affirmed publicly.[12] The term evolved to describe occupations such as law, medicine, and ministry, that required new entrants to take an oath professing their decision to the ideals and practices associated with a learned calling.[13]

The MSBA's course on professionalism for new admittees to the Maryland Bar refers to the most common recitation by the late Dean Roscoe Pound of Harvard Law School on "professionalism:"

> The term refers to a group ... pursuing a learned art as a common calling in the spirit of public service – no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of public service is the primary purpose.[14]

The 1996 Report of the Professionalism Committee of the ABA Section of Legal Education and Admissions to the Bar expands Pound's definition and particularizes it for lawyers:

> A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.[15]

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[11] *Id*.
[12] *Id*.
[13] CHIEF JUSTICES' COMMISSION ON PROFESSIONALISM , *supra* note 7, at § 10, at 4 (citing DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY A PERVASIVE METHOD 4 (1994)).
[14] MSBA PROFESSIONALISM PROGRAM FOR NEW ADMITTEES 11 (Fall 2002).
[15] ABA PROFESSIONALISM COMMITTEE REP., TEACHING AND LEARNING PROFESSIONALISM 6 (1996).

Sandra Day O'Connor of the United States Supreme Court has defined "professionalism" as:

> A commitment to develop one's skills to the fullest and to apply that responsibility to the problems at hand. Professionalism requires adherence to the highest ethical standards of conduct and a willingness to subordinate narrow self-interest in pursuit of a more fundamental goal of public service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. At the same time, lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all.[16]

Professionalism encompasses many values such as competence; civility; ethics; integrity; respect for the rule of law; respect for the legal profession; respect for other lawyers and the courts; the obligation to provide pro bono legal representation and community and public service, to work for improvement of the law and the legal system, and to assure access to that system.[17]

II. THE HISTORY OF LAWYER PROFESSIONALISM IN MARYLAND

A. Early History

As early as 1898, at the third annual meeting of the MSBA, Maryland attorneys pondered the importance of professionalism as was recorded in the "Preservation of Influence of Legal Profession."[18] The MSBA recognized that lawyers extend their influence beyond the profession and throughout the community, projects, development, and assistance: "it is not alone from the Bench and at the Bar that our profession has achieved its prominence and influence."[19]

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[16] CHIEF JUSTICES' COMMISSION ON PROFESSIONALISM, *supra* note 7, at § 10, at 5.
[17] *Id*. at § 4, at 5.
[18] 3 MSBA ANN. REP. 45-70 (1898).
[19] *Id*. at 49.

On August 27, 1908, the ABA originally adopted the *Canons of Ethics*, which were subsequently adopted by Maryland in 1922, as the *Maryland Canons of Ethics*.[20] In 1958, the ABA issued the *Model Code of Professional Responsibility*, which evolved from both *ABA Canons* and ethical considerations.[21]

Media coverage of lawyer participation in the Watergate scandal of the early 1970s focused public attention on unprofessional and unethical conduct by attorneys.[22] Richard W. Bourne, a professor at the University of Baltimore School of Law since 1979, recalls "the post-Watergate surge in interest in professional responsibility arose in part out of a sense of shame; everyone was shocked when John Dean, on national television, was asked what the checkmarks were next to the names on a long list of White House officials and he replied simply, 'they're the lawyers who got indicted.'"[23] Bourne adds, "in part it was public relations; we needed to clean up the Bar's image."[24] In response to these concerns, Chief Justice Warren E. Burger addressed the Opening Session of the American Law Institute ("ALI"):

> [I]t is curious that there has been no comparably definitive code of personal behavior to insure civility in courts. More serious perhaps is the lack of effective enforcement mechanisms of even basic standards of general acceptance... Judges have blamed Bar associations and Bar associations blamed judges and until recently law teachers have abstained. This area--the regulation of the legal profession--is one of the large pieces of unfinished business and the longer we wait to deal with it the more difficult the problem will become.[25]

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[20] *See Maryland Canons of Ethics* (1922).
[21] JOINT CONFERENCE REP. ON PROFESSIONAL RESPONSIBILITY, 44 A.B.A.J. 1159, 1159 (1958).
[22] Bill Wernz, *Professionalism Lite: Aspiring to Civility, Idealizing the Past*, BENCH AND BAR OF MN (Apr. 2001), *available at* http://www2.mnbar.org/benchandbar/2001/aor01/essay.htm (last visited Aug. 12, 2003).
[23] Email from Richard W. Bourne, Professor, University of Baltimore School of Law (July 29, 2003) (on file with author).
[24] *Id.*
[25] Warren E. Burger, *The Necessity for Civility*, 52 F.R.D. 211, 217 (1971).

On August 2, 1983, the ABA created the *Model Rules of Professional Conduct*.[26] Subsequently, the Maryland Select Committee to Study ABA Model Rules of Professional Conduct recommended the earliest version of the required Rules of Professional Conduct for Maryland. On January 1, 1987, it was adopted by the Court of Appeals.[27]

B. Special Committee on Law Practice Quality

The lawyer professionalism effort in Maryland gathered momentum in late 1981, when, in response to concerns voiced by Chief Judge Robert C. Murphy and members of the Bar, the Special Committee on Law Practice Quality of the Maryland State Bar Association (hereinafter "Committee") was created to study and report on solutions to problems in the legal profession.[28] The Committee gathered feedback about law practice quality from its members and considered several different alternatives, including a full peer review process among Maryland lawyers patterned after "A Model Peer Review System (1980)," the formal peer review recommended by the *American Law Institute* and the ABA. (hereinafter "ALI-ABA").[29] The Committee concluded, however, that full peer review was unfeasible, because "the concepts of confidentiality, individuality, and virtuosity inherent in a law practice cannot tolerate,... intrusive and potentially disruptive formalized peer review." The Committee decided, instead, upon a self-assessment program.[30]

The self-assessment program began with the 1985 Committee-produced publication, "Law Practice Quality Guidelines, A Guidebook for Self-Assessment By Practicing Lawyers," (hereinafter

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[26] MODEL RULES OF PROF'L CONDUCT, *available at* http://www.jenkinslaw.org/collection/researchguides/prorespons/aba.shtml.
[27] MD LAWYER'S RULES OF PROF'L CONDUCT AND ATTY TRUST ACCOUNTS, *reprinted* in the MD RULES ANNOTATED 2 (amended Jan. 2002).
[28] MSBA SPECIAL COMMITTEE ON LAW PRACTICE QUALITY REP. 2 (1988).
[29] *Id*.
[30] MSBA SPECIAL COMMITTEE ON LAW PRACTICE QUALITY, LAW PRACTICE QUALITY GUIDELINES: A GUIDEBOOK FOR SELF-ASSESSMENT BY PRACTICING LAWYERS 8 (1985).

"Self-Assessment Guide").[31] The Self-Assessment Guide was published as a result of the concerted effort of the MSBA, several Maryland law firms, and ALI-ABA[32] and was "designed to stimulate lawyers to think about, and create mechanisms for improving, the quality of their practice methods."[33] These concepts evolved from four basic principles of design, responsibility, accountability, and efficiency.[34] General topics included: management, governance, and planning; the client; professional development; professional responsibility; professional relationships; work management and review; documentation; practice resources and systems; recruiting; work assignment; supervision; consultation; evaluation; compensation; and billing.[35]

After having developed the Self-Assessment Guide, the Committee continued to explore concerns and apparent dissatisfaction within the profession,[36] and in 1986, James M. Kramon, the Committee's chairman, authored *Lawyers Look at the Practice of Law: Some Disquieting Observations*.[37] Kramon's article summarized the Committee's findings that the practice of law had become inhospitable and unrewarding in recent years.[38] In addition, Kramon noted that the "general manner in which attorneys deal with one another, with the clients and with the courts and agencies was grossly unsatisfactory."[39] According to Kramon, Committee discussions highlighted the "excessively adversarial dimension to the relationships among attorneys, the loss of trust in lawyers and the legal profession as responsible and honorable, and the general lack of manners and amenities

[31] *Id*.
[32] SPECIAL COMMITTEE ON LAW PRACTICE QUALITY, *supra* note 30, at 1.
[33] LAW PRACTICE QUALITY GUIDELINES, *supra* note 32, at 6.
[34] *Id*. at 9.
[35] *Id*.
[36] SPECIAL COMMITTEE ON LAW PRACTICE QUALITY, *supra* note 30, at 1.
[37] 19 MD. B.J. No. 11,at 7 (1986).
[38] *Id*.
[39] *Id*.

in dealings involving attorneys."[40] Kramon suggested that the following conditions contributed to the problem: (i) lack of mentoring and training of young attorneys; (ii) over-specialization and segregation with the profession due to a necessary measure by lawyers given the areas of law that were expanding rapidly and extensively; (iii) increased focus on the business, rather than the profession of law; and (iv) excessive starting salaries and required billing hours for young attorneys, which do not result in greater value to the clients.[41]

Subsequently, the Committee decided to undertake a pilot research study through a professional survey of practicing lawyers in urban areas[42] – the first of its kind anywhere in the country.[43] In December of 1987, the Committee retained the services of a psychological research firm, PsyCor, Inc., to perform a study, at a cost of $43,000.[44] The study group comprised 207 lawyers from large, medium, and small-sized law laws firms in the Greater Baltimore metropolitan area.[45] Corporate and government lawyers were excluded from the survey.[46]

The purpose of the study was to provide a "substantial qualitative and quantitative description of the current views that law associates and partners in Maryland's major urban areas [had] regarding the present and future quality of their professional lives."[47] The study covered three major phases, which consisted of:

- Explanatory work to delineate the issues to be addressed and to develop relevant hypotheses to be investigated;

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[40] *Id*.
[41] *Id*.
[42] SPECIAL COMMITTEE ON LAW PRACTICE QUALITY, *supra* note 30, at 2.
[43] J.B. Pierpoint, *Survey Reveals Widespread Discontent Among Area Lawyers*, BALT. BUS. J. 10 (Feb. 6, 1989).
[44] J.S. Bainbridge, Jr., *MSBA Survey Dissatisfaction?*, 22 MD. B.J. No. 2, at 28 (Mar/Apr 1989).
[45] PSYCOR, INC., PILOT RESEARCH STUDY OF HOW ATTORNEYS IN LAW FIRMS IN MARYLAND'S MAJOR URBAN AREAS VIEW THE QUALITY OF THEIR PROFESSIONAL LIVES AND ISSUES FACING THE PROFESSION 4 (1988).
[46] *Id*. at 3.
[47] *Id.* at 1.

- In-depth-face-to-face interviews with a sample of lawyers carefully selected to represent the major categories of partners, senior associates, and junior associates, in large, medium-size, and small firms; and,
- Qualitative and quantitative analysis of the research results and preparation of a full interpretive report of the findings and their implications.[48]

Twenty-one students from the University of Maryland School of Social Work and Community Planning conducted the 207 interviews, each of which lasted for approximately 75 minutes.[49] The study revealed that approximately one-half of those interviewed were "quite satisfied" with their professional lives, less than one-tenth were "completely satisfied," and only one-third definitely wanted to remain in the practice of law for the rest of their careers.[50]

Most all of the attorneys agreed that:

- The pressure to specialize was increasing;
- The practice of law was becoming less of a profession and more of a business;
- Partners and associates were becoming less loyal to their firms and moving to other firms quite readily;
- The public view of lawyers was becoming more unfavorable;
- Clients retained counsel more frequently on a project rather than on a continuing basis; and,
- New lawyers coming into law firms were paid excessive salaries.[51]

Furthermore, over one-half of the attorneys indicated that the increase in adversarial relationships between lawyers and the fact that the practice of law had become more of a business had a negative effect on their lives and careers.[52] In fact, it was believed that many of the deteriorating relationships were the result of excessively adversarial encounters, a loss of trust in lawyers and the legal profession, and a general lack of good manners and amenities.[53]

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[48] *Id*.
[49] *Id*. at 8.
[50] *Id*. at 8-9.
[51] PSYCOR, INC., *supra* note 45, at 9.
[52] *Id.*
[53] MSBA COMMITTEE ON LAW PRACTICE QUALITY REP. AND RECOMMENDATIONS OF THE COLUMBIA CONFERENCE, THE QUALITY OF LAW PRACTICE IN THE 1990'S: A SEARCH FOR SOLUTIONS 3 (1989).

A majority of the interviewees believed that discrimination in the profession continued on the basis of race, gender, religion, disability, and national origin, both within law firms and in the courtroom.[54] Female attorneys, junior associates (of both sexes), and lawyers in smaller law firms were most conscious of discrimination.[55] Notably, of the 207 attorneys interviewed, 27% were female, while 7% were minorities.[56]

Most of the interviewees worked at least 50 hours per week and many worked in excess of 60 hours on a regular basis.[57] Participating attorneys worked an average of 1800 billable hours per year, and over one-third reported working in excess of 2000 billable hours per year.[58] Most of the interviewees reported that their work-related stress had an adverse effect on their significant relationships, in that they were often:

- irritable, short-tempered, argumentative, and verbally abusive, or
- Detached, withdrawn, preoccupied, or distracted.[59]

Other factors contributing to dissatisfaction in the legal profession were the advertising of legal services and the escalating numbers of legal malpractice claims.[60] Of the 207 lawyers interviewed, the experienced, senior lawyers were less satisfied with their lives than their younger counterparts.[61] Overall, the major problems that the participants conveyed were: negative public image; high cost of legal services; personal stress – case overloads leaving no time for personal life; and the increasing attention of law firms to the business of law.[62]

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[54] PSYCOR, INC., *supra* note 47, at 10.
[55] *Id.*
[56] *Id.*
[57] *Id*. at 11.
[58] *Id*.
[59] *Id*.
[60] PSYCOR, INC., *supra* note 47, at 13.
[61] *Id.*
[62] *Id*. at 11.

The Committee decided that the data from the report should be used as "a doorway into an intensive effort by the Bench and Bar to find and fix what may be broken in [the legal] profession and to build upon those things we find to be of value."[63] On March 17th and 18th of 1989, a "Solutions Committee" Conference, composed of 85 Maryland attorneys and judges, convened to focus on five principles for resolving dissatisfaction with the profession.[64] Among the topics discussed by the Solutions Committee was the decline of lawyer professionalism.[65] Many of the conferees confirmed that the December 1988 pilot survey results reflected an increase in hostility between attorneys and between attorneys and clients.[66] Conferees observed that attorneys, whether negotiating or litigating, had abandoned the elementary rules of courteous behavior and resorted to the use of intimidation and abusive language, seeking to "win at all costs."[67] The Solutions Committee agreed that this behavior needed to be addressed and eliminated,[68] and subsequently devised the following recommendations that were considered by the conferees:

- The MSBA should encourage the formulation of guidelines for professional courtesy, which should be widely disseminated. These guidelines should address personal dignity and professional integrity.
- The Judiciary, at the Circuit Court level, should be requested to establish meaningful status conferences at an early stage of litigation to hopefully resolve open disputes and encourage possible settlement. Further, the Court should limit discovery within the state system and explore implementing pre-trial orders and settlement conferences based on the federal system.
- The Court of Appeals should institute, and judges should more readily have access to sanctions for frivolous/excessive damage claims. The Judiciary should be encouraged to set and enforce standards of conduct, which include professional courtesy for trial lawyers.
- The damage clause should be eliminated from pleadings and a reasonable alternative

[63] Bainbridge, *supra* note 46, at 31 (quoting Roger W. Titus, former president, MSBA).
[64] COMMITTEE ON LAW PRACTICE QUALITY AND RECOMMENDATIONS OF THE COLUMBIA CONFERENCE, *supra* note 57, at 10.
[65] *Id.* at 13.
[66] *Id.*
[67] *Id*. at 14.
[68] *Id.*

should be fashioned.

- The public and private sectors should each establish an "ombudsman type" person to whom complaints registered against the legal profession regarding honesty, candor, fairness and courtesy may be heard.•
- A course on professional integrity and dignity should be taken in law school or within the first two years of practice.[69]

Of these five recommendations, the Committee decided to implement three: (1) the establishment of a Professionalism Committee to address the instances of inappropriate conduct of attorneys and judges, (2) a professionalism course for new admittees to the Maryland Bar, and (3) the creation of courtesy guidelines for attorneys (which includes litigation and damage standards).[70]

C. The Establishment and Contributions of the Professionalism Committee

A Professionalism Committee was established by the MSBA as a result of the Solutions Committee's recommendations and is comprised of "seasoned and experienced" attorneys, tasked with addressing instances of inappropriate conduct of attorneys and judges.[71] Several contributions by the Professionalism Committee have altered legal dynamics in Maryland

1. Creation of a Code of Civility

The formulation of courtesy guidelines came to fruition in May of 1997, when, in response to the Solutions Committee recommendations, encouragement of the ABA, and efforts by the MSBA Professionalism Committee, the MSBA Board of Governors approved a code of civility for both lawyers and judges.[72] The resulting *Maryland Code of Civility* incorporated the ABA House of Delegates' *Lawyer's Creed of Professionalism*, and referred to the Dallas Bar Association's *Guidelines of Professional Courtesy*, for particular instructions on lawyer behavior.[73] The *Maryland*

[69] *Id*.
[70] COMMITTEE ON LAW PRACTICE QUALITY AND RECOMMENDATIONS OF THE COLUMBIA CONFERENCE, *supra* note 57, at 14.
[71] *Id*.
[72] MSBA CODE OF CIVILITY, *available at* http://www.msba.org/departments/commpubl/publications/code.htm.
[73] *A Lawyer's Creed of Professionalism*, ABA HOUSE OF DELEGATES 1 (Aug. 1988).

Code of Civility remains in effect; it is posted on the MSBA website and is printed in the preamble to the *Maryland Rules of Professional Conduct*. [74]

2. Professionalism Course for New Admittees

A professionalism course, "designed for the novice attorney to develop suggestions for professional development," was launched in May of 1992 in response to the Solutions Committee's recommendations after the Court of Appeals adopted the course requirement for admission to the Bar.[75] In 1997, the Professionalism Committee, in conjunction with the 1997 Professionalism Task Force, devised the new-admittee professionalism course in Maryland.[76] At the end of the fourth quarter in 2002, over 18,000 Maryland attorneys had participated in the professionalism course.[77] The mandatory one-day course under Rule 11 encompasses the lawyer's relationship to the client, the lawyer's relationship to the court, the lawyer's relationship to other lawyers, and the lawyer's relationship to the law practice and to the community.[78] The course has been updated twice in the past decade, and remains a requirement for all new admittees to the Maryland Bar.

3. Continuing Efforts of the Professionalism Committee

Since the creation of the mandatory new admittee course, the Professionalism Committee has discussed recommending a mandatory course for experienced attorneys in Maryland to the Court of Appeals of Maryland.[79] On June 10, 1999, the Maryland State Bar Association Board of Governors approved and adopted the Professionalism Committee's proposal for an experienced attorney course,

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[74] MD LAWYER'S RULES, *supra* note 29.
[75] Janet Stidman Eveleth, *Professionalism Focus of Court Study*, MSBA (Dec. 20, 2002), *available at* http://www.msba.org/departments/compubl/press_ctr/articles/2002/12-20.html.
[76] MSBA COMMITTEE AND PROFESSIONALISM TASK FORCE REP. AND RECOMMENDATIONS, PROFESSIONALISM AND EFFECTIVE LAW PRACTICE MANAGEMENT 3 (1997).
[77] *Id.*
[78] MSBA STANDING COMMITTEE ON PROFESSIONALISM, PROFESSIONALISM FACULTY GUIDE: RULE 11 MANDATORY PROFESSIONALISM COURSE FOR NEW ADMITEES TO THE MARYLAND BAR 8 (2001).
[79] Janet Stidman Eveleth, *Professionalism - Still a Legal Tradition?*, 22 MD B. J. No. 11, at 6 (1988).

Professionalism and Ethics Course, to address issues related to competency, integrity, civility, independence, and public service.[80]

On April 17, 2001, the Court of Appeals approved the concept of a mandatory course on professionalism and ethics for experienced lawyers and directed the Professionalism Committee to develop a strategy for implementation of the mandatory course.[85] Various judges expressed concern about the sanction provisions of the proposal and requested in-depth information about exemptions, administration, aspects of requiring the course, the availability of the course dates, compliance verification, and locations.[86] Discussions of these issues and questions regarding the problems being addressed led, in part, to the creation of the Task Force.

D. Efforts by Local Bar Associations

After the MSBA adopted the *Maryland Code of Civility*, several local Maryland Bars established codes of professionalism or creeds of civility that serve as a guide for attorneys as to how they should conduct themselves in the profession.[87] Of those local Bar associations that have not established separate codes, some use informal mechanisms such as recognition awards to encourage civility among members. For example, the Charles County Bar Association has not adopted a formal code, but every year one member is presented with a "good guy award" for exemplifying professionalism.[88]

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[80] MSBA STANDING COMMITTEE ON PROFESSIONALISM REP. AND CURRICULUM FOR THE PROFESSIONALISM COURSE FOR EXPERIENCED LAWYERS 2 (1999).
[85] MSBA STANDING COMMITTEE ON PROFESSIONALISM REP. ON PROFESSIONALISM AND ETHICS COURSE FOR EXPERIENCED LAWYERS 2 (2001).
[86] *Id.*
[87] *See* App. D. Out of Maryland's 24 local Bar associations, only four established codes of civility for its members. The four largest counties in Maryland with civility codes are as follows: Baltimore City, Baltimore County, Montgomery County and Prince George's County.
[88] Telephone interview with Danny Seidman, President, Charles County Bar Association (July 9, 2003).

E. Judicial Encouragement of Professionalism

Judges receive training in ethics and areas of professionalism through "New Judge Orientation" provided by the Judicial Institute of Maryland.[89] Although the orientation for judges does not include a specific course on professionalism, related professionalism issues are addressed in other courses such as Case Management, Courtroom Management, Judicial Demeanor, and Recognizing and Coping with stress.[90]

With regard to lawyer professionalism in the courtroom, some judges set forth formal procedures to ensure adherence to professional ideals. For example, Howard County Circuit Judge Dennis M. Sweeney published *Guidelines for Lawyer Courtroom Conduct*,[91] which set forth general guidelines for attorney conduct. Judge Sweeney writes:

> [M]ost rules like these are simply what our mothers…would say a polite and well-raised man or woman should do. Since, given their other important responsibilities, our mothers (and yours) can not be in every courtroom in the State, I offer these "rules" for the guidance of practitioners and further debate and discussion.[92]

F. Efforts by Law Schools to Encourage Professionalism

The State of Maryland has two law schools in which students are required to complete a course on professionalism: the University of Maryland School of Law, and the University of Baltimore School of Law. Although the ABA has never required a specific course on professionalism, it requires that a professionalism component be inserted into other studies in the curriculum.[93] Law school administrators debated whether to include aspects of professionalism in

[89] Telephone interview with Ellen DeChant, Program Director, Judicial Institute of Maryland (July 25, 2003).
[90] *Id.*
[91] Dennis M. Sweeney, *Guidelines for Lawyer Courtroom Conduct* (1998)(on file with author).
[92] *Id.*
[93] Telephone interview with Professor Abraham A. Dash, *supra* note 23.

every law school course, so that "Wills students would think about the problems that an estate lawyer would encounter, Torts students would consider the difficulties of litigators, etc,"[94] but instead, decided to devote a two-credit course towards professionalism separate from other course curriculum.[95]

After the ABA adopted the *Canons of Ethics* in 1908, the University of Maryland School of Law required all its students to attend a related lecture.[96] In 1922, when Maryland adopted a state version of the ABA's *Canons*, both law schools adapted the *Maryland Canons of Ethics* into their independent curriculums.[97] After 1958, both law schools adopted courses related to the ABA Model Code of Professional Responsibility.[98] The course increased from two credits to three during the 1980s, in part because of an increased awareness of the substance abuse problems affecting lawyers. Moreover, there was a sense that professionalism should have been taught through a problem-solving method within the law school curriculum.[99]

Currently, the components of the professional responsibility course taught at the University of Maryland are:

> the activities and responsibilities of the lawyer and the lawyer's relationship with clients, the legal profession, the courts, and the public. The course treats the lawyer's fiduciary duty to clients, the provision of adequate legal services, and the reconciliation of the lawyer's obligation to clients, in and out of court, with the demands of the proper administration of justice and the public interest. The course, therefore, provides essential preparation for the practice of law.[100]

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[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] JOINT CONFERENCE, *supra* note 22, at 1159.
[99] *Id.*
[100] The course is entitled "Legal Profession." *See Course Handbook*, *available at* http://www.law.umaryland.edu/pdf_files/osa_course.pdf, at 68 (last visited June 30, 2003).

The University of Baltimore's course "Professional Responsibility," is described as:

> [The] study of the ethics and law of lawyering, approaching attorney problems from multiple perspectives. Topics include: professionalism, the organization of the Bar, attorney discipline and disability, the delivery of legal services, the attorney client relationship, the duties of loyalty and confidentiality, fees, and various issues, including conflict of interest and substance abuse.[101]

Since the 1983 adoption of the *ABA Model Rules of Professional Conduct* and the 1987 adoption of the *Maryland Rules of Professional Conduct*, both law schools now focus their required professionalism courses on the most current ABA's Model Rules of Professional Conduct and Maryland Rules of Professional Conduct.[102]

III. TASK FORCE FINDINGS

From September of 2002 to July of 2003, the Task Force conducted a series of 22 town hall meetings across the State of Maryland as a self-study of professionalism in the legal community. Twenty-two meetings were held throughout the State encompassing each county; Charles and St. Mary's counties held a joint meeting, as did Kent and Queen Anne's counties. The goal of the meetings was to stimulate dialogue about the meaning of professionalism and to explore what steps might be taken, if necessary, to enhance and/or better promote professionalism within the Maryland legal community.

Although each town hall meeting clearly demonstrated that practitioners in different locations across the State had opinions and experiences that were unique to their communities, certain themes

[101] University of Baltimore School of Law Course Handbook, *available at* http://www.law.ubalt.edu/courses/professional.html (last visited June 30, 2003).
[102] Telephone interview with Professor Abraham A. Dash, *supra* note 23.

emerged, regardless of the lawyers' geographic location. Perspectives of the participants on the subject of professionalism were clearly correlated to whether they practiced in an urban, suburban, or rural county, and the participant's years of experience.[103] This section sets forth the findings derived from the dialogue during the town hall meetings and the written responses to the questionnaires.

A. The Town Hall Meetings

All attorneys registered with the Client Protection Fund were sent letters inviting them to attend a town hall meeting in their respective counties to discuss the topic of professionalism. In addition, a separate letter was sent to all judges inviting them to attend and participate in the meeting in their jurisdiction. Many of the Administrative Judges, on their own initiative, penned a separate letter of invitation to members of the Bar in their individual jurisdictions encouraging participation at the town hall meeting. The Task Force's invitation also described its mission and the purpose of each meeting.[104] The letter targeted those issues to be discussed at the meeting, namely: (a) changes in the legal profession; (b) probable sources of decline in professionalism; (c) economic pressures of practicing law; (d) professional satisfaction and professional expectations; (e) the role of continuing ethical education in the profession; (f) whether to have a mandatory course(s) in professionalism for experienced attorneys; and (g) remedies for the problems identified.[105] In total, 1,239 of those invited attended one of the town hall meetings.

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[103] The Maryland Department of Planning classifies the Maryland counties as follows: Urban: Anne Arundel, Baltimore City, Montgomery, Prince George's; Suburban: Baltimore County, Frederick, Carroll, Harford, Cecil, Queen Anne's, Calvert, Charles, St. Mary's, Howard; Rural: Allegany, Garrett, Washington, Kent, Talbot, Caroline, Dorchester, Wicomico, Somerset, and Worcester. Telephone interview with Jesse Ashe, Maryland Department of Planning (June 16, 2003).

[104] *See* Letter from the Honorable Lynne A. Battaglia, Court of Appeals of Maryland, to all attorneys registered with the client protection fund in Maryland (on file with author).

[105] *Id.*

At the beginning of each meeting, Chief Judge Robert M. Bell[106] welcomed all attendees, discussed the issue of professionalism, and provided a brief history of the events leading up to the self-study. Judge Lynne Battaglia of the Court of Appeals was responsible for facilitating the discussion at each meeting and did so by initially describing the Task Force's mission, which was to define and understand the concept of professionalism; to understand how this may differ from and expand upon the ethical requirements contained in the Maryland Rules of Professional Conduct; to learn about problems observed by the Bar pertaining to professional behavior; and to set goals for the improvement of professionalism of attorneys. After this brief introduction, attendees were asked to complete a voluntary and anonymous questionnaire to provide the Task Force with feedback on the subject of lawyer professionalism and what, if anything, should be done to enhance or promote professionalism in the future.[107]

After the lawyers and judges had completed the questionnaire, Judge Battaglia posed a series of questions designed to elicit frank discussion among the attendees. The discussion involved definitions of professionalism, changes in the practice of law in general, and attorney professionalism in particular, over time, and what attempts, if any, should be made to increase the level of professionalism among Maryland lawyers. The Task Force Reporter, Norman Smith, Esq., took the minutes of each meeting.

At the conclusion of each meeting, Judge Battaglia acknowledged the local Task Force representative and thanked the attendees for participating and expressing their thoughts on the issue of professionalism. Attendees were told that they would be invited to attend the convocation at the

[106] Chief Judge Robert Bell attended all but one town hall meeting.
[107] *See* App. B.

Court of Appeals at which time the findings and recommendations of the Task Force would be presented.

1. Practitioner Perspectives on The Meaning of Professionalism

When asked to define professionalism, practitioners in the different geographic areas identified a number of similar qualities:

a. Urban Counties

Practitioners in urban counties most commonly identified the following attributes of professionalism: common courtesy to others; honesty; integrity; competence; a sustained level of excellence, an effort to bring respect to the profession; dedication to community service; commitment to pro bono work; being prepared for court; high ethical behavior; dignity; collegiality with other attorneys; respect for the Bench and Bar; compassion; objectivity; impartiality; tolerance of others; moral behavior; civil mindedness; mentoring; and respect for clients.

b. Suburban Counties

Practitioners in suburban counties most commonly identified the following attributes to define professionalism: dignity; preparedness; civility before the court; competence; civility; truthfulness; responsibility; dedication; ethics; courtesy; punctuality; honesty; fairness; compassion; zealous representation of the client; candor; cooperation among counsel; integrity; pro bono work; service to community; good manners; diligence; and treating one another with respect.

c. Rural Counties

Practitioners in rural counties most commonly identified the following attributes to define professionalism: competence; courtesy; integrity; honesty; fair-dealing; trust; professionalism as more than ethical behavior; professional responsibility as a standard to which attorneys should

strive; commitment to one's client; treatment of others in a civil and polite manner; adherence to high standards of competency; respect for the community and giving back to the community; self-regulation; credibility; skill in counseling client; being truthful and keeping one's word.

2. Practitioner Perspectives in Changes in the Legal Profession Over Time

During each town hall meeting, participants were asked to share their perspectives of how the profession had changed over time by comparing professionalism in the past to the present state of professionalism. As a result of the participant responses to these questions, several themes emerged, which gave a clear impression of the significant issues facing practitioners in each demographic category.

a. Urban Counties

In urban counties, the following themes regarding changes over time in the state of professionalism:

- Attorney Interaction: Years ago, the Bar was much smaller. There were fewer lawyers and the atmosphere was more collegial. All lawyers and judges knew each other personally and could rely upon their word. Today, a greater number of lawyers makes it difficult to know everyone. As a result, the camaraderie of the small Bar is gone and there is a lack of involvement in Bar association activities.

- Attorney Practices: In the past, cases were resolved civilly and without "cut throat" tactics. Lawyers communicated directly in managing a case and rarely had to follow up conversations with a confirmatory letter. Business was done on a handshake. Likewise, discovery was freely given and disputes were more likely to be worked out with a phone call between attorneys. There was also less emphasis on driving an opponent into the ground and "winning at all costs." Now lawyers often argue frivolous positions and file lawsuits immediately with no real effort to settle cases. In particular, discovery disputes are a real concern which often lead to negative and uncivil behavior.
- Diversity: At one time there were virtually no minority lawyers in the urban counties. Discrimination was widespread. There were fewer women and greater gender bias. Now, the Bar is much more diverse. Clients have also become more diverse.

- Economic Pressures: As a lawyer years ago, there were fewer monetary pressures. A lawyer could charge clients less, while maintaining a successful practice. There are too few clients for the number of lawyers in the market, which causes economic pressure in addition to higher competition.

- Technology: In the 1960s and 1970s, technology did not exist for the most part. Lawyers communicated verbally instead of through electronic communication. Because of technology, the pace of attorney practice has increased, leaving no time for face to face communication. Electronic communication allows more room for uncivil tendencies and less room for reflection. Technology is an additional expense which increases the pressure of operating a practice.

- Media/Advertising: Participants explained that lawyers used to be perceived in a positive light by the community. There was less advertising and colleagues gave referrals for potential clients. Today, television gives a skewed view of the profession and raises unrealistic expectations.

- Clients: Participants agreed that clients have unrealistic expectations. There was a time when the client identified a problem and lawyers pursued litigation as a last resort. In recent times, clients expect lawyers to use "rambo tactics" to win a case and want lawyers to litigate their case even if the case has no merit.

- The Judicial Process: Courts had more flexibility with scheduling in the past as there were fewer cases in the judicial system. It was easier to get a postponement. Judges would meet individually with attorneys in chambers to deliver criticisms or expectations. Judges were more accessible and provided mentoring to new attorneys. Today, the Bench is less tolerant of postponements. Judges are removed from the mainstream and appear more interested in moving the docket than dealing with each individual case. Now, there is alternative dispute resolution. In addition, there are too many pro se litigants, who do not understand the practice of law.

b. Suburban Counties

In suburban counties, the following themes appeared regarding changes over time in the state of professionalism:

- Attorney Interaction: Many years ago, the Bar was smaller, stronger and more collegial. All lawyers knew one another and there was more concern for fellow lawyers. There was also greater respect among lawyers and more social interaction. Attorneys would meet for lunch regularly and participate in Bar activities. Judges provided mentoring and were a part of the lawyer community. In addition, lawyers were able to call upon each other for advice. Litigation was handled by local counsel.

In recent times, the increase in Bar size has translated into a loss in camaraderie among attorneys. As a result, professionalism has suffered. There has also been a decline in participation in Bar related activities. Attorneys still seem to be more collegial and less formal in the smaller counties than in the larger counties. [It should be noted that not all attorneys in suburban areas thought that professionalism has declined.]

- Attorney Practices: In the past, attorney practice was slower and more civil. Usually a handshake could settle an issue. There was no need for confirmatory letters because attorneys would honor their word. An attorney's word was his/her bond. Participants agreed that most disputes were handled by calling opposing counsel instead of filing pleadings. Lawyers thought more of solving the client's problems than simply winning cases. Likewise, disputes were worked out informally. There were fewer rules of procedure and no formal discovery. Each attorney also had a broader range of expertise and handled a wide variety of legal matters. Now, the legal profession has changed to a business. Everything must be documented and in writing. Discovery disputes are overwhelming, and yet there is no real effort to resolve discovery disputes among lawyers, without the intervention of a judge. In general, lawyers are better educated, but lack professional intervention.

- Diversity: The Bar lacked race and gender diversity earlier in the legal profession. The Bar was primarily white and male. The "good old days" were only good for those that fit this description.

- Economic Pressures: The law has evolved from a profession to a business. Economic pressures are greater due to billable hours and a diminishing client base. Attorneys are experiencing economic pressure to spend fewer hours on projects and keep nonbillable hours to a minimum. Because attorneys must work to maintain a successful practice there is little time for family or social activities.

- Outside Counsel: Locally, problems are worked out among the attorneys. Unprofessional conduct is mostly a problem with out-of-county lawyers. Outside practitioners have no stake in the community. Participants opined that the larger firms produce "rude" attorneys. Out-of-county lawyers will not call opposing counsel. Rather, they engage in confirmatory letters, requiring local lawyers to take extra time to answer.

- Technology: Participants agreed that technology has a negative impact upon the practice. Demands for an immediate response hurts the quality of work. Technology makes law practice hectic and less professional. Clients and lawyers alike want immediate responses.

- Media/Advertising: In the past, lawyers were not permitted to solicit clients. Today, lawyer advertising is liberally displayed on billboards, television, via direct mailings and in the Yellow Pages. This fosters a negative public image. Television programs raise unrealistic client expectations and advance an unrealistic image of lawyers.

- The Judicial Process: Today, there is a lack of civility within the courtroom. Judges and lawyers are routinely late for court. The efficiency of the judicial process is undermined because there is no observed courtroom decorum. Because of the large number of cases before the Bench, the overcrowded docket does not allow for many postponements.

- Pro Se Litigants: Participants agreed that litigation is often difficult when it involves a pro se litigant. There are too many non-lawyers trying to handle their own cases. Pro se litigants think they do not need attorneys. An attorney's work is undervalued because of the increasing number of pro se litigants. Participants also complained that judges are more lenient with pro se litigants with regard to procedural issues, deadlines, and courtroom decorum.

- Client issues: Lawyers were more respected within the community in the past. Lawyers did not pursue frivolous claims. Now, practice is more client-directed. Clients today have unrealistic expectations and demand lawyers that engage in unprofessional conduct to win their cases.

c. Rural Counties

In rural counties, the following themes appeared regarding changes over time in the state of professionalism:

- Lawyer interaction: In earlier years, the Bar was smaller and less formal. Lawyers met informally and formed friendships that promoted a greater sense of collegiality. Local Bar associations sponsored many activities, such as lunches, dinners, and seminars. Today, there is less camaraderie in the profession. Lawyers do not attempt to foster interpersonal relationships with each other and there is no willingness for lawyers to interact socially. However, participants strongly agreed that there remains a sense of community and collegiality among the smaller Bars. People live in rural areas because they want a certain quality of life. Some rural participants expressed the view that professionalism is better today than it was in the past because there are more rules in place.

- Lawyer practices: In the past, lawyers would openly discuss cases and assess the strengths and weaknesses of a case in order to settle quickly. Disputes were settled privately and most attorneys handled discovery in a courteous manner. Discovery

disputes were rare and motions for sanctions were never filed. Attorneys worked out their disputes with a phone conversation. The practice has changed over time. Now, attorneys must have a confirmatory letter for everything. A motion to dismiss on any technicality is expected. Discovery is viewed as a weapon and disputes are overwhelming. However, participants noted that discovery is not as formal in smaller counties in comparison to discovery in larger counties.

- Diversity: In the past, there was little diversity. The Bar was white-male dominated. Over time, the legal community in rural areas has become more diversified.

- Mentoring: 20-30 years ago, the experienced attorneys helped mentor newer attorneys. Today, it is difficult to provide mentoring because of the high demands of practicing law. Generally, however, lawyers can ask other colleagues for help when needed. Lawyers in the rural counties tend to be active in the community.

- Economic pressures: Participants agreed that the profession used to be more pleasurable, less demanding and slower paced. In some rural counties, lawyers did not focus on billing time and there were not as many sole practitioners. Most attorneys worked for banks or real estate companies. In some rural counties, all attorneys were sole practitioners and practiced in a wide range of areas. All participants agreed that now, attorneys face greater economic pressures. Lawyers are competing for a diminishing client base. As a result, lawyers are becoming increasingly uncivil and more competitive with one another. There was also the sentiment that while lawyers today are better trained in lawyering skills, they are less dedicated to the profession.

- Outside Counsel: Most problems today stem from out-of-county lawyers who do not understand local practice and congeniality. Out-of-county attorneys are less civil toward the local attorneys. Civility is more present among the local attorneys because they know each other. There was a time when no outside lawyer would handle a case without the assistance of local counsel. There is a sense that many clients seek out of town counsel because the local lawyers get along almost "too well." There remains, however, a high degree of trust among local attorneys.

- Technology: Participants agreed that technology is a problem particularly for small firms and sole practitioners because technology is expensive and constantly evolving. The pace of practice makes it difficult to pause and resolve matters in a civil way. The legal profession should rely less on technology and more on human interaction.

- Media/Advertising: Media and advertising portray the legal profession as one wrought with unprofessional behavior. Because of this, clients expect their lawyers to "win at all costs." Clients often have unrealistic expectations based upon the

media's skewed misrepresentation of the litigation process. There was a time when lawyers were respected as leaders in the community. Public perception of attorneys has declined due to negative media and advertising. Clients seek out lawyers to produce a specific result. As such, the attorney's role as a counselor is undervalued.

3. Practitioner Perspectives on How to Improve Professionalism

Participants of the town hall meetings discussed what, if anything, the Court of Appeals should do to improve the state of professionalism. Several themes emerged from those discussions.

a. Urban Counties

Some of the opinions expressed by practitioners in urban counties on how to improve professionalism are as follows:

- Sanctions: Judges should use their sanction authority to enforce the rules. The Court should enforce Rule 1-341[108] in particular, and sanction those attorneys who act in bad faith. In addition, Judges should set the tone for professionalism and civility and stop rewarding rude behavior. A forum should be established to publish names of all disbarred lawyers and/or those who are sanctioned.

- Dispute Resolution: The Court should establish a forum to resolve attorney problems outside of the courtroom. The Court should encourage mediation, especially for discovery disputes. Judges should be more involved in discovery disputes through telephone conferences among the attorneys and the court.

- Mentoring: The Court should promote mentoring programs. Each new attorney should be assigned a mentor. New lawyers need training on how to evaluate cases and clients more carefully, and to weed out frivolous suits. In addition, the Court should impress upon lawyers the importance of an earned reputation.

- Localized Approach to Professionalism: Avoid a "one size fits all" approach. Problems of unprofessional behavior must be handled on a local level.

- Limit Technology: Limit the impact of technology on the profession by not requiring attorneys to file documents electronically.

- Professionalism Course: Urban participants were divided over whether the Court should institute a course for experienced attorneys. Two-thirds of members in the urban community expressed a need to have the professionalism course, while one-

[108] MD. RULE 1-341.

third of the community conveyed the sentiment that one cannot teach civility. Other urban participants did not address this issue**.**

b. Suburban Counties

Some of the opinions expressed by practitioners in suburban counties on how to improve professionalism are as follows:

- Self-regulation: Lawyers should self-regulate and report breaches. The Court should establish a committee to field complaints and reach informal resolutions.

- Judicial leadership: Judges must set boundaries and lead by example. The Bench has a responsibility to maintain professionalism in their courtrooms.

- Sanctions: The Court of Appeals should empower local judges to sanction lawyers. The Court should also enforce Rule 1-341[109] and sanction those attorneys who act in bad faith. In the courtroom and during discovery, judges should not tolerate unprofessional behavior, and should sanction those attorneys who behave as such.

- Standardized discovery: The Court should publish standardized guidelines on discovery. The Bench must supervise and enforce the guidelines.

- Rules for Pro se litigants: The rules that apply to attorneys should consistently apply to pro se litigants.

- Professionalism Course: A mandatory professionalism course is not the solution to remedy unprofessional behavior. There was a general sentiment among participants that a mandatory course would be ineffective because professionalism cannot be taught. If there is a course on civility, then it should be taught in the law schools. Participants also noted that the smaller the Bar, the less the need for a mandatory professionalism course.

c. Rural Counties

Some of the opinions expressed by practitioners in rural counties on how to improve professionalism are as follows:

- Mentoring: The Court should establish a mentoring program for new attorneys.

[109] *Supra*, note 108.

- Dispute resolution: Mediation is important because most clients cannot afford to pay litigation costs. The Court should take a pragmatic approach to dispute resolution.

- Sanctions: Bad behavior should be sanctioned. The Court of Appeals should target specific types of bad behavior. Courts should enforce sanctions against attorneys who abuse the discovery process.

- Litigation: Litigation has unique problems and perhaps there should be a focus on professionalism within the litigation area.

- Localized Approach to Professionalism: The Court of Appeals should not apply a "one size fits all approach." The Court should promote professionalism on a local level.

- Discovery: The Court should establish a uniform system for discovery. Judges should take responsibility for resolving discovery disputes and should be clear about what is expected.

- Professionalism Course: Many participants voiced reservations about having a professionalism course due to the time constraints of practicing law. Some believe there are too many rules and mandatory courses, which place a heavy burden on practitioners. Participants agreed, however, that something should be done to foster professionalism. There is a general sentiment that the professionalism course for new admittees does not help to promote professionalism. Civility should be addressed by law schools.

B. Questionnaire Responses

In each of the Town Hall meetings, a questionnaire was given to all participants. The participants completed their questionnaires anonymously. The questionnaire asked for the participant's age, gender, race, the area of the law in which they practiced, and their years in practice.

In addition to demographic information, the questionnaire asked for each participant's perspective on seven distinct areas relating to professionalism. Topics ranged from apparent symptoms of decline in professionalism to whether a Professionalism Commission should be established and, if so, what its objectives should be. The questionnaires also provided a perspective on the participant's individual measurements of success and what disappointments they had

encountered in their profession. The information and responses were collected, collated, and analyzed for this report.

1. Common Themes Among All Practitioners

Through the questionnaire responses,[110] certain themes were unique to respondents in urban, suburban and rural counties. But several themes emerged as statewide topics of concern in the area of attorney professionalism:

a. Public Image[111]

Participants repeatedly indicated that a bad public image of lawyers is one of the most evident reflections of a decline in the profession. A negative public image consistently ranked in the top three symptoms of decline among all groups. Participants also expressed their concern for lawyers' public image by citing respect accorded to the profession by the public as one of the least realized expectations. Representative concerns included: public contempt for attorneys; lack of respect from the public; and lawyers not caring about their own image.

b. Economic Pressures of Practicing Law [112]

Participants overwhelmingly cited increased economic pressures in modern practice as another prevalent symptom of professionalism decline in the community. Participants indicated that the economic pressures of responding to increased billable hour requirements and billing clients on a "time spent" basis contribute to the decline of professionalism. Likewise, participants in each group expressed frustration with having to spend an excessive amount of time running a business rather than practicing law. Participants also expressed strong discontent over the expectation of long

[110] *See* App. C, figure 1.1 (providing an overall tabulation of participant's responses to the questionnaire).
[111] *See* App. C, figure 1.2.
[112] *See* App. C, figure 1.3.

hours and the sacrifice of quality of life for fulfillment of financial goals. When asked what changes in the profession should be fostered, participants chose "face the issues of economic pressures" as an important possibility.

In addition, participants did not identify financial security as a realized expectation of legal practice during their careers. In fact, participants ranked financial security as one of the least realized expectations. In particular, minorities among all demographics cited financial security next to last as a realized expectation and expressed disappointment in the lack of financial reward in the law practice. Finally, participants from all groups expressed a desire to develop ways to deal with the economics of practicing law.

c. Responses Regarding the Satisfaction Derived from Practicing Law[113]

In general, participants expressed a unique pride in and satisfaction with the practice of law and their responsibility for the welfare of their clients, other lawyers, and their staff. Nearly three fourths of all participants cited the social utility of practicing law (i.e. helping people and society) as an expectation that they have fully realized. Females were most satisfied with this aspect of practicing law, ranking social utility second among realized expectations. Likewise, a majority of participants expressed definite satisfaction with the intellectual challenges of their work, as well as camaraderie with their colleagues as an expectation that was realized during their careers. Also among top choices of realized expectations was the opportunity for career advancement and growth. However, two concerns that all participants expressed was the lack of recognition of one's accomplishment, and equality of opportunity (lack of discrimination and sexual harassment), both of which ranked in the bottom four as realized expectations.

[113] *See* App. C, figure 1.4.

d. Commission Objectives[114]

There were several objectives common among all counties that appeared to be of significant concern regarding the establishment of a professionalism commission and its proposed objectives.

- Establishment of a Professionalism Commission: Participants were asked whether there should be a Professionalism Commission and if so, what issues should it address. Most participants did not respond to the first component of the question asking about the establishment of a commission. In total, 153 participants (15%) actually responded to the question. Those participants who answered the question, did so in three different ways: (1) 106 participants (10%) who answered the question indicated that they did not want a commission; (2) 38 participants (.4%) who responded to the question answered no to a commission, but listed objectives to address related to professionalism; and (3) 747 (73%) of those who answered the question responded by only listing the objectives. Only 9 participants (less than 1%) out of all demographic groups specifically said "yes" to the establishment of a commission. Participants were also asked what changes they would like to see fostered in the profession. Among the choices was the proposal to establish a Professionalism Commission. Participants among all demographic groups ranked the establishment of a commission in the lower third of choices.
- Establishment of a Professionalism Course for Experienced Attorneys: The participants were given the opportunity to rank their choices of proposed objectives, should a commission be established. A majority of participants indicated that some

[114] *See* App. C, figure 1.5.

type of professional program should be developed as the first priority for the proposed commission. Males, females and minorities among all demographic groups also ranked this objective in the top three. Although participants wanted to establish some form of program to encourage professionalism among experienced attorneys, they did not highly rank a professionalism course for experienced attorneys as an objective to accomplish. In fact, this objective ranked second to last by participants in all demographic groups .

- Keep the Bench Involved in the Conversation: Involving the Bench and emphasizing judicial professionalism ranked high as top objectives to be addressed should a commission be established. Many participants focused on the need to address issues with the Bench by ranking this objective in the top three among urban, suburban and rural counties.

2. Urban Practitioner Questionnaire Themes

Participants who practiced in urban areas expressed concerns unique to them through their questionnaire responses. As a result, several themes emerged relating their views on professionalism in counties categorized as urban. Attorneys participating in the town hall meetings in Anne Arundel, Baltimore City, Montgomery and Prince George's county are classified as urban participants.[115]

a. Demographic Breakdown of Urban Participants[116]

- 365 (29%) of all participants who attended a town hall meeting worked in urban counties.

[115] Telephone interview with. Jesse Ashe, *supra* note 104.
[116] *See* App. C, figure 1.

- 266 (73%) of all urban participants who attended a meeting answered the questionnaire.
- 162 (61%) urban participants who answered the questionnaire were male.
- 104 (39%) urban participants who answered the questionnaire were female.
- 67 (25%) urban participants who answered the questionnaire were members of a minority group.
- 203 (76%) urban participants who answered the questionnaire were over age 37 and had more than 5 years of experience**.**
- 20 (8%) urban participants who answered the questionnaire were under age 37 and had less than 5 years of experience.

b. Incivility Among Lawyers in Urban Counties[117]

In urban areas, participants noted a clear presence of incivility in the legal profession. Participants in urban areas ranked incivility as a prevalent symptom of professionalism decline. Notably, this behavior was more commonly reported by females and minority group members than by males, who ranked incivility lower as a symptom of decline. Furthermore, rude and biased behavior by opposing counsel or the court ranked third by participants practicing in urban counties as a symptom of decline in the legal profession. In particular, females and minorities cited rude and biased behavior by opposing counsel or the court among their top three symptoms of decline. Likewise, with regard to participants realized expectations in the practice of law, civility and mutual respect in the profession ranked fourth to last. All urban participants emphasized that contentiousness and "rambo tactics" were not good for the client. Cutting across all demographic

[117] *See* App. C, figure 2.

groups in urban counties, incivility was the most commonly cited disappointment in the practice of law. Representative comments include:

- Uncivil behavior by opposing counsel and judges.
- Lawyers not returning phone calls and rudeness.
- Judges yelling at attorneys.
- Unprofessional conduct by lawyers.

As a result of the perceived civility problem, many urban participants wanted to see an increase in the profession's awareness of unprofessional conduct.

c. Urban Responses Relating to Diversity in the Profession[118]

Though minorities represented only a small portion of urban participants responding to the questionnaire, those participants expressed major concerns about diversity in the profession. Minorities in urban counties consistently ranked diversity issues at the top of their concerns. When answering questions related to measurements of success and commission objectives, minorities ranked diversity issues first. By contrast, females practicing in urban counties ranked issues of diversity in the bottom three measurements of success, and ranked almost last a focus on diversity as a proposed commission objective. Both minority and female urban participants, however, indicated that equality of opportunity (lack of discrimination and gender bias) were not realized expectations during their practice of law. Diversity did not appear to be a strong focus for female urban participants with regard to the multiple choice ranking questions. However, when given the opportunity to express their greatest disappointments in essay form, concerns regarding diversity

[118] *See* App. C, figure 2.1.

were more prevalent among female urban participants. Common responses to the issues of diversity included:

- No support for female Bar members.
- Patronizing behavior toward female attorneys.
- Exclusion from the "good ole' boy's network."

Likewise, minority urban participants cited instances of discrimination and exclusionary tactics by certain members of the community as common disappointments in the legal profession.

The majority of participants in urban counties did not share the same sentiments about issues of diversity. However, it should be noted that minority and female participants in urban counties accounted for only 25% and 39%, respectively. In general, participants indicated that diversity was not a strong measurement of success. Only one-fifth of all urban participants ranked diversity as a measurement. Likewise, when choosing what issues should be addressed, a focus on diversity ranked last in overall responses to this question. However, urban participants overall did agree that equal opportunity (lack of discrimination and sexual harassment) was not a realized expectation in the legal profession.

d. Provide a mechanism for mediation[119]

To handle the increase in discovery disputes, nearly one-half of all urban participants indicated that a local mechanism for mediating disputes (e.g. discovery disputes) between lawyers would be helpful.[120] In particular, a significant number of female and minority urban participants agreed that a mediation mechanism should be fostered. Each demographic group ranked this change to foster within their respective top three choices. In addition, urban participants wanted to see an

[119] *See* App. C, figure 2.2.
[120] The questionnaire did not indicate what type of mechanism should be used to mediate disputes.

increased interest in problem solving and "Alternative Dispute Resolution" (ADR). Nearly one-half of all urban participants ranked problem solving and ADR as a measurement of success.

e. Mentoring[121]

"Increase interest in mentoring" ranked high as a measurement of success among urban participants. In addition, many participants in urban counties felt that increasing the availability or number of apprenticeships for newer lawyers would be a desirable change to foster in the profession. Focusing on mentoring was also a commonly cited objective among all demographic groups in urban counties. Urban participants' concern about mentoring was evident in their response to their greatest disappointments in the law practice. Representative responses included:

- Lack of mentoring for new attorneys.
- New attorneys not having as many opportunities to learn and teach.
- Lack of mentoring from the Bench.

3. Suburban Practitioner Questionnaire Themes

Practitioners in suburban counties indicated similar trends in professionalism as those in urban counties. However, their responses demonstrated that suburban practitioners face some of their own unique problems regarding professionalism. Those who participated in the town hall meetings in Baltimore, Calvert, Carroll, Charles, Frederick, Harford, Howard, and St. Mary's county are classified as suburban participants.[122]

a. Demographic Breakdown of Suburban Practitioners[123]

[121] *See* App. C, figure 2.3.
[122] Telephone interview with Jesse Ashe, *supra* note 104.
[123] *See* App. C, figure 1.

- 580 (47%) of all participants who attended a town hall meeting worked in suburban counties.
- 493 (85%) of all suburban participants who attended a meeting, answered the questionnaire.
- 320 (65%) suburban participants who answered the questionnaire were male.
- 171 (35%) suburban participants who answered the questionnaire were female.
- 20 (4%) suburban participants who answered the questionnaire were members of a minority group.
- 362 (73%) suburban participants who answered the questionnaire were over age 37 and had less than 5 years of experience**.**
- 56 (11%) suburban participants who answered the questionnaire were under age 37 and had more than 5 years of experience.

b. Incivility in the Community[124]

Suburban practitioners cited increasing incivility among lawyers as one of the top three symptoms of decline in the legal profession. All suburban participants agreed that civility is a problem. The surveys gave the participants an opportunity to indicate which changes in the profession they would like to see fostered in the future. One change to foster indicated above all others by suburban participants directly addressed the incivility issue. Over one-half of all suburban participants emphasized their view that contentiousness and "rambo" tactics were good for neither the client nor the profession. Likewise, two-thirds of women indicated that they would like to see fewer "rambo" tactics employed in the profession, and over one-half of minority group participants

[124] *See* App. C, figure 3.

agreed that contentiousness is not beneficial to the client or the profession as a whole. Many participants also wanted to see an increased awareness of unprofessional conduct as a change to foster. Also commonly cited by participants as disappointments in legal practice were:

- Rudeness and incivility being more important than solving problems;
- A decline of civility between lawyers;
- Attorneys unprofessional conduct in the courtroom; and
- Increasingly contentious behavior by attorneys.

c. Loss of Community Within the Bar[125]

Suburban participants reported a general presence of symptoms of decline in professionalism in their communities. According to those surveyed, the decline was evidenced by diminution in the sense of community experienced by suburban lawyers. One-third of all suburban participants cited a loss of a sense of community as a symptom of decline in professionalism. Minority group members felt this shift more than any other group, ranking loss of community as the number one symptom of decline. While most participants were of the opinion that camaraderie with colleagues was a realized expectation, loss of community and lack of mentoring for new lawyers was commonly cited as a disappointment in suburban counties. Unique to suburban practitioners was a specific concern about the increasing number of lawyers in the Bar.

d. Balance Between Home and Work[126]

Although suburban practitioners cited overwhelming satisfaction with the intellectual challenge of their work, intellectual satisfaction appears to have its price. Not everyone was content

[125] *See* App. C, figure 3.1.
[126] *See* App. C. figure 3.2.

with their ability to balance home life or outside interests with the time demands of the profession. Overall, more than three fourths of those surveyed felt that their work was intellectually challenging.

On the other hand, fewer than half of participants reported that they were able to achieve a balance of career and outside interests (e.g. home, family, social, or spiritual activities). Participants' satisfaction in the balance they have achieved is clearly correlated to gender. A large number of men reported that their expectations of balance between their personal and their professional life was realized. In stark contrast, only one-third of females reported satisfaction with the balance in their lives. Among females, a commonly cited disappointment was the lack of time to complete work-related tasks and spending time with family.

e. Diversity and Discrimination[127]

Suburban participants showed similar patterns about their views on diversity and discrimination as those of urban participants. Diversity in the profession was a high priority for minority participants. Addressing issues related to diversity consistently ranked first among minorities when answering questions of measurements of success and commission objectives. Again, issues of diversity ranked in the bottom three measurements of success and commission objectives for females in urban and suburban counties. However, females had some complaints about discrimination. When allowed to express their greatest disappointments in essay form, female suburban participants presented clear concerns regarding discrimination. Representative responses included:

- The persistence of gender bias in the profession;
- Females are still treated differently then men inside and outside of court; and

[127] *See* App. C, figure 3.3.

- Exclusion from the "good ole' boy's network."

These common disappointments were evidence that discrimination and diversity were overriding concerns of female participants. Minorities also cited as disappointments instances of discrimination and exclusionary tactics by certain members of the community. In addition, both minorities and females cited equality of opportunity (lack of discrimination and gender bias) last as a realized expectation.

Most participants in suburban counties did not share the same sentiments about issues of diversity and discrimination as were specifically noted by females and minorities. In general, participants indicated that diversity was not a strong measurement of success and less than half of all participants in suburban counties ranked diversity as such. Likewise, when choosing what objectives should be accomplished by the proposed committee, a focus on diversity ranked last in overall responses to this question. However, participants also agreed that lack of discrimination and sexual harassment) was not a realized expectation in the legal profession.

4. Rural Practitioner Questionnaire Themes

Although the attendance at rural meetings was numerically smaller than that of urban or suburban meetings, participants in rural counties had the highest ratio of town hall meeting attendance to the number of participants invited. Rural participants also had the highest rate of return of the questionnaires handed out during the town hall meetings. Eleven meetings were held in counties classified as rural, including: Allegheny, Caroline, Cecil, Dorchester, Garrett, Kent, Queen Anne's, Somerset, Talbot, Washington, Wicomico, and Worcester.[128]

a. Demographic Breakdown of Rural Participants[129]

[128] Telephone interview with Jesse Ashe, *supra* note 104.
[129] *See* App. C, figure 1.

- 294 (24%) of all participants who attended a town hall meeting worked in rural counties.
- 267 (91%) of all rural participants who attended a meeting, answered the questionnaire.
- 202 (76%) rural participants who answered the questionnaire were male.
- 65 (24%) rural participants who answered the questionnaire were female.
- 5 (2%) rural participants who answered the questionnaire were members of a minority group.
- 206 (77%) rural participants who answered the questionnaire were over age 37 and had more than 5 years of experience**.**
- 26 (10%) rural participants who answered the questionnaire were under age 37 and had less than 5 years of experience.

b. Incivility Among Attorneys Practicing in Rural Counties[130]

The most striking theme that emerged from the responses of rural practitioners was their overall feeling that their communities do not have a significant problem with professionalism. Only one-fourth of participants ranked incivility as a symptom of decline in the profession, as compared to higher rates of incivility cited by participants in urban and suburban counties. Rude and biased behavior by opposing counsel also ranked low overall by participants. In particular, female participants did not express strong concerns related to incivility as a symptom of decline. That is not to say that rural practitioners did not express concerns about trends in the profession or worries about other aspects of their careers. When asked what changes to foster in the profession, a large

[130] *See* App. C, figure 4.

majority of participants wanted to emphasize that contentiousness and "rambo tactics" are not good for the profession, by ranking this third as a change to foster. Finally, about one-third of all rural participants wanted to see an increase in awareness about unprofessional conduct.

c. Balancing Work and Family Life[131]

In rural counties, the difficulty of balancing home life with the increasing demands of the profession was evident. Less than half of all rural participants reported that they were able to achieve balance of career and outside interests (e.g. home, family, social, spiritual activities or community service). This also correlates to participants ranking the development of valuable community services as a measurement of success. Similar to suburban counties, being satisfied with balancing work and home life differed among male and female participants. Almost one-half of men reported that their expectations of balance between their personal and professional life was a realized expectation while only one-third of females expressed content with balancing their lives at home and work. Like females in suburban counties, rural women in the profession commonly cited as a disappointment the lack of time to complete work-related tasks and to spend with family.

d. Loss of Community Among the Bar[132]

According to those surveyed, a loss of a sense of community among the legal community ranked second as a symptom of decline in the profession. All demographic groups ranked this symptom in the their top three choices. All rural participants agreed that an increase in the specialization of practice by many lawyers did not isolate members of the Bar.

[131] *See* App. C, figure 4.1.
[132] *See* App. C, figure 4.2.

Most participants also agreed that camaraderie with colleagues was a realized expectation. Although, when asked to list their greatest disappointments, many participants cited loss of community, a lack of mentoring for new lawyers, and no integration of the Bar.

e. Mentoring[133]

The first priority suggested by rural participants as an issue to be addressed was to focus on mentoring. No other geographic group rated this priority in the top three. Demonstrating an increased interest in mentoring among the Bar also ranked high as a measurement of success for participants in rural counties. In addition, many participants in rural counties indicated that increasing the availability or number of apprenticeships for newer lawyers would be a desirable change in the profession to foster. In particular, minorities wanted to see apprenticeships fostered with over half of those surveyed ranking this change. Likewise, males and females also highly ranked apprenticeships as a change to foster. When asked about greatest disappointments many participants expressed concern about the lack of mentoring by the more experienced attorneys.

IV. NATIONAL PROFESSIONALISM UNDERTAKINGS

A. National Symptoms of Lawyer Professionalism Decline

Recent national efforts toward a comprehensive commitment to lawyer professionalism began in the late 1980s and early 1990s when public respect for lawyers was reportedly in crisis.[134] The ABA Commission on Evaluation of Professional Standards, having produced the Model Rules of Professional Conduct, and having attempted to prevent legal malpractice, created a Commission

[133] *See* App. C, figure 4.3.
[134] ABA PROFESSIONALISM COMMITTEE REP., TEACHING AND LEARNING PROFESSIONALISM 2-3, n. 5-7 (1996).

on Professionalism in 1985.[135] Specifically, the Commission examined and reported on issues of advertising and other forms of solicitation, fee structures, commercialization of the profession, competence, and the duty of the lawyer to the client and the court.[136] The Commission presented a report entitled, *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* in August 1986.[137]

Within a decade, in 1994, only 17% of Americans gave lawyers high ratings for honesty and ethical standards as compared to 27% in 1985.[138] A Seventh Circuit study conducted in 1991 revealed that 42% of lawyers and 45% of judges in that jurisdiction believe that civility is a profession-wide problem.[139] A 1996 survey of the District of Columbia Bar Association reported that 69% of attorneys identified civility as a problem.[140] In August of 1996, the ABA initiated the *National Study and Action Plan On Lawyer Conduct and Professionalism*, to respond to the decline in public confidence in the profession and the justice system in general.[141] The National Action Plan noted:

> [T]he Bar had become larger, more spread out geographically, more diverse, and more highly specialized, traditional informal mechanisms had become inadequate in and of themselves to educate lawyers about professional expectations and to encourage lawyers to

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[135] Leonard W. Schroeter, *The Jurisprudence of Ethics: Should Legal Professionalism be in Accordance with Public Justice?*,WASH.ST. ACCESS TO JUSTICE 13, *available at* http://www.wsba.org/atj/committees/jurisprudence/jurisethics.html (last visited Aug. 12, 2003).

[136] *Id.*

[137] ABA COMMISSION ON PROFESSIONALISM, *supra* note 6.

[138] Allen K. Harris, *The Professionalism Crisis - The "z' Words and Other Rambo Tactics: The Conference of Chief Justices' Solution*, 53 S.C. L. REV. 549, 544 (2002).

[139] Sandra Day O'Connor, *Professionalism*, 76 WASH. U. L.Q. 5, 15 (Spring 1998) (citing the SEVENTH FEDERAL JUD. CIR. COMMITTEE ON CIVILITY INTERIM REPORT 9 (1991)).

[140] Sandra Day O'Connor, *Professionalism*, *supra* note39, at 16 (citing the DC TASK FORCE ON CIVILITY IN THE PROFESSION FINAL REP. 10 (1996)).

[141] CONFERENCE OF CHIEF JUSTICES' NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM: INITIATING ACTION, COORDINATING EFFORTS AND MAINTAINING MOMENTUM 1 (2001).

strive to achieve the highest professionalism ideals.[142]

The National Action Plan urged the highest court in each state to undertake a professionalism study and improve lawyer conduct.[143] Implementation of the National Action Plan was encouraged by the ABA through two reports.[144] In addition to the National Action Plan, other efforts were undertaken to address the public's declining perception of lawyer professionalism. From the *National Conference on Public Trust and Confidence in the Justice System*, poor relations with the public and the Bar's role, compensation, and behavior ranked in the top ten of "Top Priority National Agenda Issues" affecting public trust and confidence in the justice system.[145] The Conference also focused on lawyer behavior and regulations of conduct.[146]

Bar associations in each state began to focus on creating individual task forces on professionalism to understand the symptoms of decline, if any, within their legal communities. For example, the State Bar Association of Utah noted that there were three most often cited factors for the decline in professionalism: (i) the competitive demands of increasing commercialism; (ii) reflection of corresponding movements in general societal ethics and culture; and (iii) the current structure and organization of the legal profession.[147]

Other state Bar associations explored similar declines in professionalism. Virginia conducted a study similar to that of Maryland, with town meetings and surveys.[148] Approximately 86% of

[142] ABA STANDING COMMITTEE ON PROFESSIONALISM, A GUIDE TO PROFESSIONALISM COMMISSIONS 1, 9 (2001), *available at* http://www.aba.net.org/cpr/scop_commission_guide.html.
[143] CONFERENCE OF CHIEF JUSTICE'S NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM, *supra* note 1, at 2.
[144] *See supra* notes 141-42.
[145] NATIONAL CONFERENCE ON PUBLIC TRUST AND CONFIDENCE IN THE JUSTICE SYSTEM, NATIONAL ACTION PLAN: A GUIDE FOR STATE AND NATIONAL ORGANIZATIONS 16 (1999).
[146] *Id.*
[147] Jeffrey M. Vincent, *Aspirational Morality: The Ideals of Professionalism – Part II*, UTAH B.J. 12 (2002), *available at* http://www.utahbarjournal.com/html/april_2002_0.html (last visited Jul. 29, 2003).
[148] Thomas E. Spahn, *Professionalism & Civility: Lawyer Behavior in State and Federal Courts: Is There a Difference?*, 26 VA. B. ASSOC. ELEC. J. No. 6, *at* 117 (2000) *at* http://www.vba.org/journal/sept00.htm3.

Virginia's lawyers indicated that there is a serious problem with the professionalism and courtesy of Virginia lawyers and a majority indicated that the problem had grown worse over the years.[149] There was a notable distinction between the responses gleaned from the urban and rural regions regarding the decline in professionalism over the years.[150] Overall, Virginia lawyers ranked judges as being moderately responsible for the decline in professionalism while a majority cited lawyers as significantly responsible.[151] When questioned whether the increasing problems in professionalism and civility were attributable to a "few bad apples," or a widespread problem, the lawyers overwhelmingly indicated the increase was due to a widespread problem.[152]

The California State Bar Board of Governors noted that the win-at-all costs mentality had made the profession seem less honorable to both practitioners and the public.[153] In Florida, many lawyers that were surveyed by the Bar association about professionalism decline reported that there was "a 'substantial minority' of lawyers that were money grabbing; too clever, tricky, sneaky, and not trustworthy; who had little regard for the truth or fairness, willing to distort, manipulate, and conceal to win; arrogant, condescending, abusive; they were also pompous and obnoxious.[154]

B. Resolutions to Lawyer Professionalism Decline

Many state Bar associations initiated professionalism committees or task forces through the guidance of the 2001 National Action Plan reports. Task forces conducted questionnaires and town hall meetings to gain insight into the extent of lawyer professionalism decline.[155] The following are

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[149] *Id.*
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] David Fetterman, *State Bar Board of Governors Calls for Higher Standards of 'Professionalism and Civility to be Promoted*, METROPOLITAN NEWS ENTERPRISE (Jan. 28, 1997).
[154] FL. B. ASSOC., *History of the Florida Commission on Professionalism*, *at* http://www/fla.bar.com (last visited Aug. 10, 2003).
[155] A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 16.

representative of many of the initiatives from the state and local Bars to address the decline in professionalism in the legal community.[156]

1. **Studies**

Several states conducted studies to determine professionalism issues confronting attorneys.[157] The studies focused on monitoring professionalism, in accordance with historical projects reflecting the changing views of professionalism.[158] For example, the Joint Bar/Bench Task Force on Professionalism and Civility recently reported survey findings and a plan to evaluate the level of legal professionalism in Colorado.[159] In the study, "professionalism observers" ("POs") were assigned to courtrooms to observe attorneys presenting motions and conducting trials.[160] Each PO completed a checklist for every attorney and judge participating in the proceedings.[161] Depositions, mediation and arbitration sessions were also observed.[162]

In Nebraska, a task force created by the Nebraska Bar Association studied whether state CLE requirements for lawyers and judges should be mandatory.[163] The Task Force sent out surveys to judges, in which a majority of judges indicated a strong support for the concept of a mandatory CLE in Nebraska.[164] Over half of the general legal population, however, felt that a mandatory CLE

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[156] *Id.*
[157] *Id.* at 5.
[158] *Id.*
[159] Craig Eley, *Alert: Civility Monitors Recommended: New Rule Would Have Retired Attorneys Evaluate Legal Profession*, DENV. B. ASSOC., THE DOCKET 1 (Apr. 2002).
[160] Participants sat in the spectator section of the courtroom to remain as unobtrusive as possible. *Id*. at 6.
[161] A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 6.
[162] *Id.*
[163] Jane L. Schoenike, *Recent Member Survey Shows Lack of Support for Mandatory Continuing Legal Education*, THE NEB. LAWYER 19 (Mar. 2001).
[164] *Id.*

requirement was not necessary.[165] Additionally, most lawyers and judges in Nebraska felt that the current level of ethics and professionalism was adequate.[166]

The New York State Judicial Institute on Professionalism in the Law appointed a working group that studied "core values," and examined barriers faced by lawyers seeking to enter the profession, lawyers seeking mobility within the profession, and clients seeking affordable legal assistance.[167] Moreover, the Institute also assessed the current professionalism disciplinary system, suggested possible alternatives and recommendations for the improvement of lawyers' image through education or publicity.[168] Other states such as North Carolina, Florida, Texas and Georgia, have undertaken projects that identify varying views of professionalism among members of their respective state Bar associations.[169] The resources included videotaped interviews with pre-eminent lawyers and judges regarding their views on professionalism and the practice of law.[170]

2. Convocations

Some state Bar associations initiated periodic convocations that bring together representatives from the practicing Bar, the judiciary, and law schools to discuss issues of professionalism.[171] Wisconsin attorneys addressed civility through discussion groups from various segments of the Bar,[172] and have, in the past, included law students in such convocations.[173] Since 1988, Georgia's Commission on Professionalism has conducted statewide convocations on

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[165] *Id.*
[166] *Id.*
[167] A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 4.
[168] *Id.*
[169] *Id.* at 16.
[170] *Id.*
[171] *Id.* at 11.
[172] WISCONSIN STATE BAR COMMISSION ON LEGAL EDUCATION REP. 7 (1996).
[173] *Id*. at 8 (referring to the SEVENTH FEDERAL JUD. CIR. COMMITTEE ON CIVILITY FINAL REP. (1992)).

professionalism to address the concerns of professionalism, and to define the ideals of professionalism.[174]

The New Jersey Bar Association has an annual symposium that focuses on professionalism, in addition to an outreach program that meets with individuals and groups from throughout the legal community, including federal and state judges, and managing partners from major law firms, to discuss pertinent concerns of professionalism.[175]

The New York State Judicial Institute on Professionalism in the Law, has held convocations designed to explore the transition from law school to legal practice and the roles that law schools and legal employers play in shaping the professional values of new lawyers.[176] The convocations brought together leaders of the practicing Bar and select representatives of the State's law schools to examine the profile of students accepted into law school, the socialization of law students in the profession, and law students graduating and stating employment.[177] These convocations included breakout sessions in which groups of lawyers, judges, and academics discussed how to improve the relationship between the practicing Bar and the academy.[178]

3. Town Hall Meetings

Town hall meetings are another forum, similar to convocations, to bring together lawyers, judges, law professors and deans, and members of the public to discuss matters of professionalism.[179]

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[174] A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 11.
[175] NEW JERSEY COMMISSION ON PROFESSIONALISM, *at* http://www.nsba.com.commission_on_prof/index.cfm?fuseaction=njcop (last visited July 24, 2003).
[176] A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 11.
[177] *Id.*
[178] *Id.*
[179] *Id.*

The Georgia State Bar Association conducted two successful town hall meetings in which approximately 2,000 lawyers and judges participated from across the State.[180] The first meeting, conducted from 1992 to 1994, covered twelve communities and focused on "Attorney Concerns about Ethics and Professionalism."[181] The recommendations from these town hall meetings led to the establishment of two programs in the state: law school orientation on professionalism, in addition to the existing professionalism curriculum, and the law practice management program.[182]

The second survey in Georgia, conducted from 1994 - 1996, revolved around "Professionalism in Client Relations."[183] In these town hall meetings, clients and members of the community were invited to participate in order to better explore client concerns about representation, client relationships with lawyers, public access to the justice system, public perceptions of the justice system, and effective communication between clients and lawyers.[184] Recommendations from these meetings helped create the Consumer Assistance Program, whose purpose is to resolve non-disciplinary complaints through conciliation, negotiation, and education.[185] Additionally, the Committee on the Standards of the Profession was created in order to investigate the Bar's responsibility to train new lawyers in competent and professional client representation.[186]

4. New Admittees Courses

Several state Bar associations and organized professionalism committees focus on the development of courses for lawyers newly admitted to the state Bars and law students. The Georgia

[180] *Id.*
[181] *Id.*
[182] A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 12 .
[183] *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.*

Bar Association has a new-admittee professionalism course, "Professionalism in Client Relations," that stemmed from the recommendations of a 1996 report.[187]

The Georgia State Bar Association also developed "Orientations on Professionalism" for law schools in the state, which received the ABA/Information America Client Relations Project Award in 1994.[188] The programs are presented to law students on behalf of the law schools, the organized Bar, the practicing Bar, and the judiciary.[189] One aspect of the program is a series of hypothetical questions focusing solely on professionalism in the law school experience to re-enforce the notion that lawyer professionalism begins with their experiences as law students.[190] While many of these programs are directed at first year students, the Georgia State Bar Association also created professionalism programs for second and third year law students to expand the professionalism programs.[191]

Law schools in Florida conduct an orientation on professionalism program that consists of judge participants, breakout groups of students and lawyers, and a reception where the students can mingle with faculty, judges, and lawyers to discuss some of the issues addressed in the program.[192] In addition, every year the Florida State Bar Standing Committee on Professionalism, in conjunction with the Supreme Court of Florida's Commission on Professionalism, sponsors a law student essay contest on professionalism.[193]

5. Professionalism Awards

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[187] *Id*. at 13.
[188] A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 13.
[189] *Id.*
[190] *Id.*
[191] *Id.*
[192] *Id.*
[193] FL. B. ASSOC., *supra* note 155, at 5.

Several state Bar associations sponsor annual professionalism awards that are given to lawyers who best exemplify the standards of professionalism.[194] The Washington State Bar Association sponsors the "Random Acts of Professionalism Program," where attorneys and judges honors those in the profession who have conducted themselves in a highly professional manner and exemplify the state's *Creed of Professionalism*.[195] The New Jersey Bar Association presents a "Professional Lawyer of the Year Award" to deserving lawyers across the state.[196] The Center of Professionalism in Texas, in conjunction with the local Bar associations, presents an award at local Bar events for lawyers that are admired by the local Bar and believed to be exemplars of professionalism.[197]

6. Ethics and Professionalism Hotlines

The Washington State Bar Association initiated a hotline where lawyers may call and speak with professional responsibility counsel to discuss their individual situations for clarification of ethical and professional issues.[198] Most lawyers seek help for issues such as avoiding client conflicts, problems caused by termination of a lawyer's services, transference of client files, lawyer advertising, maintaining client confidences and secrets, and handling trust accounts.[199]

7. Mentoring Programs

Many state Bar associations, subcommittees and commissions on professionalism focus on mentoring programs to help alleviate some of the problems with lawyer professionalism. These

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[194] *Id.*
[195] *Professionalism Committee News of the Wash. St. B. Assoc., available at* http://www.wsba.org/lawyers/groups/professionalism/default.htm (last visited Apr 24, 2003).
[196] NEW JERSEY COMMISSION ON PROFESSIONALISM, *supra* note 175.
[197] A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 13.
[198] WASH. STATE B. ASSOC. ETHICS/PROFESSIONAL RESPONSIBILITY PROGRAM, *available at* http://wsba.org/lawyers/ethics/default1.htm (last visited Aug. 10, 2003).
[199] *Id.*

mentoring programs are administered by the state Bar associations, local Bar associations, or subcommittees thereof, and are intended for new attorneys and/or law students to help smooth the transition from law school to legal practice.[200] Through mentoring, new lawyers and law students learn about different practice areas and the profession in general. Mentors serve to provide new lawyers and law students with character references, answers for questions they may face in their work or studies, and a role model for their professional development.[201] Mentoring programs serve as a good contact between experienced attorneys and novice attorneys, who may have little professional experience or direction on their job. For example, Georgia's Commission on Professionalism oversees a law student mentoring program that puts lawyers and law students together for the duration of their law school careers.[202] The Commission hosts an orientation program for mentors, provides materials for the program, plans events to bring together mentors and students, and also serves as a resource for questions and suggestions from both mentors and law students.[203] Recently, Georgia's Commission has also initiated a program for new attorneys during their first two years after admission to practice.[204]

8. Conciliation Programs

Many state and local Bar associations have facilitated programs that serve as a forum for addressing lawyers' complaints about the conduct of other lawyers without forcing the parties to go through formal disciplinary procedures.[205] Additionally, the Seventh Federal Circuit recommends lawyers of those respective states to participate in civility, professionalism, and/or mentoring

[200] A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 14.
[201] *Id.*
[202] *Id.*
[203] *Id.*
[204] *Id.*
[205] *Id.*

programs in the professional legal associations and Bar associations as well as participation in one of the American Inns of Court.[206]

9. Publications and Websites

The judiciaries in some states, state Bar associations, and state professionalism commissions and committees have prepared a variety of materials concerning important issues of professionalism and have distributed them directly to the legal community or by way of published articles in Bar journals.[207] In addition, articles focused on professionalism and civility may be found in various law journal and law review articles.[208] Moreover, the ABA has prepared a list of selected biographies on professionalism and civility that is posted on their public website.[209]

Several websites are dedicated to professionalism - one of the most notable being the Nelson Mullins Riley, and Scarborough Center on Professionalism at the University of South Carolina School of Law.[210] Several state Bar associations such as those of Washington, New Jersey, New Mexico, Tennessee, Florida, Texas, Georgia, Wisconsin and others, have professionalism issues, publications and committees/commissions on the website of their state and local Bars.

C. State-By-State Requirements Managing Lawyer Professional Conduct[211]

Attorney law practice requirements differ by state and are regulated by the Bar of each state. These specific requirements may include a law school professional responsibility course; incorporation of professional responsibility on the state Bar exam, a passing score on the Multistate

[206] SEVENTH FEDERAL JUD. CIR. COMMITTEE ON CIVILITY, *supra* note 139, at 12.
[207] A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 15.
[208] *See* App. F.
[209] Christine Godsil Cooper, *Selected Biography: Professionalism and Civility, at* http://www.bna.combooks/abana/annual/98/T43AM98.doc (last visited Aug. 10, 2003).
[210] Nelson Mullins Riley and Scarborough Center on Professionalism, University of South Carolina School of Law, *Resources to Improve the Competence and Conduct of the Legal Profession, at* http://www.professionalism.law.sc.edu/initiatives.cfm (last visited Aug. 10, 2003).
[211] *See* App. C, figure 5.

Bar Exam; a proscribed minimum passing score on the Multistate Professional Responsibility Exam; Continuing Legal Education (CLE) requirements; and CLE requirements on professionalism and/or civility. Additionally, many states have issued reports on professionalism and have institutionalized codes of professionalism at the state and local Bar level.

Bar examiners in all fifty states require that each Bar applicant fulfill a professional responsibility course.[212] Professional responsibility and/or ethics is tested on the Bar exam twenty-six states.[213] Moreover, the Multistate Bar Exam is a required component of the Bar exam in every state with the exception of Louisiana and Wisconsin.[214] In addition to the Bar exam requirements and law school curriculum, all but three states require the Multistate Professional Responsibility Exam.[215] The three states that do not require the Multistate Professional Responsibility Exam are Maryland, Washington, and Wisconsin.[216]

In an effort to increase lawyer professionalism and civility, several state Bar associations and judiciaries have initiated task forces, commissions, committees and reports to study and develop this issue. There are twenty-three states that have produced professionalism reports created by the task forces, commission, committees, etc.[217] Moreover, professionalism codes have been established by state Bar associations in all but four states.[218]

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[212] ABA, *at* http://www.abanet.org/legaled/miscellaneous/faqs.html (last visited Aug. 10, 2003); *see also* App. C, figure 5.
[213] *Alabama State Bar Admissions Office List of Bar Exam Requirements by State* (2003), *at* http://www.mbe.pli.edu/statebars/ (last visited Aug. 10, 2003); *see also* App. C, figure 5.
[214] *Multistate Examination Use*, *at* http://www.ncbex.org/tests/use.htm (last visited Aug. 10, 2003); *see also* App. C, figure 5.
[215] *Id.* at App. C, figure 5.
[216] *Id.*
[217] CENTER FOR PROFESSIONAL RESPONSIBILITY: PROFESSIONALISM REP., *at* http://www.abanet.org.cpr.profreports.html (last visited Aug. 10, 2003); *see also* App. C, figure 5.
[218] ABA, *available at* http://www.abanet.org., (last updated Dec 3, 2002); *see also* App. C, figure 5.

APPENDIX C.4

MD. JUD. COMM'N ON PRO., REVISED FINAL REPORT AND RECOMMENDATIONS (May 30, 2007) [hereinafter *2007 Md. Revised Professionalism Report*].

THE MARYLAND JUDICIAL COMMISSION

ON

PROFESSIONALISM

REVISED

FINAL REPORT

AND

RECOMMENDATIONS

The Honorable Lynne A. Battaglia
Chair

Norman L. Smith, Esq.
Reporter

May 30, 2007

PROFESSIONALISM COMMISSION

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The Hon. Dennis M. Sweeney, Circuit Courts of Maryland
The Hon. Jeannie Hong, District Courts of Maryland
The Hon. Benson E. Legg, U.S. District Court
The Hon. Richard D. Bennett, U.S. District Court
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Professor Byron Warnken, University of Baltimore Law School
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Linda H. Lamone, Attorney Grievance Commission
Deborah Lynne Potter, Rules Committee
Norman L. Smith, Reporter
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Rignal W. Baldwin, Jr., Anne Arundel County
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William P. Young, Jr., Washington County
James L. Otway, Wicomico County
William Hudson, Worcester County
Steven P. Lemmey, Judicial Disabilities Commission

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Standards of Professional Conduct, Including Identifying Indicia of Professionalism

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Karen Federman-Henry
Mike Preston
William P. Young, Jr.

Professionalism Guidelines and Sanctions for Use by Judges

C. Daniel Saunders, Chair
The Hon. Richard D. Bennett
Prof. Abraham Dash
Robert L. Ferguson, Jr.
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Master Cornelius Helfrich
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Development of a Professionalism Course for Lawyers Who Exhibit Unprofessional Behavior

Norman L. Smith, Chair
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The Hon. Jeannie Hong

Defining the Unauthorized Practice of Law

Linda H. Lamone, Chair
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Judges' Role in the Bar and With Communities

The Hon. Jeannie Hong, Chair
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William Hudson
Randy Jackson
Steven P. Lemmey
James Otway
Danny R. Seidman

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Note: Both this Revised Final Report and the initial Final Report dated May 31, 2006, with its Appendices, can be found on-line at http://mdcourts.gov/professionalism/index.html.

Acknowledgment

Members of the Professionalism Commission would like to recognize the following individuals who contributed freely and generously of their time and effort: Judge Battaglia's Law Clerks Amanda Olear, Nowelle Ghahhari, and Tina Saunders, who provided support for the Commission's meetings, and her Interns Lee Carpenter, Sharon Wilkes, Jim Carroll, Sam Protokowicz, Margaret Huh Lipstein, Lauren Smedley, Scott Rockwell, David Moore, and Danielle Sartwell, who devoted countless hours researching and compiling critical data for the Professionalism Commission Subcommittees. A special thanks goes to Judge Battaglia's Interns Nancy Chung and Ricky Davis, whose dedication and diligent efforts were instrumental in the compilation of the Final Report of the Professionalism Commission, and to Jacqueline Lee and Laura Glasgow, Administrative Aides to Judge Battaglia and liaisons to the Professionalism Commission, who were charged with orchestrating all administrative functions in achieving the Commission's mission. With respect to the Revised Report, the Professionalism Commission also acknowledges Rebecca Phillips, another intern for Judge Battaglia, who supported the efforts of the Subcommittees recommending various revisions.

REVISED EXECUTIVE SUMMARY

On April 25, 2002, in response to a recommendation by the Maryland State Bar Association that all licensed Maryland attorneys be required to complete a mandatory continuing legal education course on professionalism, Chief Judge Robert M. Bell of the Maryland Court of Appeals established the Maryland Judicial Task Force on Professionalism. The Task Force was composed of twenty-four Maryland lawyers: one from each Maryland jurisdiction and a lawyer reporter.

After an initial organizational meeting, the Task Force, led by Court of Appeals Judge Lynne A. Battaglia, embarked upon a state-wide "self study" of the concept of professionalism. This was accomplished through a series of town meetings held in each Maryland jurisdiction. The first meeting was held in September 2002 in Howard County, and the last in July 2003 in Cecil County. Chief Judge Bell was present at each meeting, along with Judge Battaglia, Task Force reporter Norman Smith, and Jacqueline Lee, Assistant to Judge Battaglia. Participants included many District, Circuit, and Appellate judges, as well as practicing lawyers.

The Task Force found a near unanimous perception that professionalism in our profession has declined over the years. In order to further professionalism as an important core value, the Task Force recommended that a Professionalism Commission be established and that the Commission, drawing on the findings of the Professionalism Task Force, identify indicia of professionalism, develop standards of professional conduct to be published to the bench and Bar, and study specific ways to improve professionalism throughout the State.

On November 10, 2003, the Maryland Court of Appeals adopted the Professionalism Task Force's recommendation to establish a Professionalism Commission. Meeting for the first time in March 2004, the Professionalism Commission, through eight subcommittees, has acted upon the recommendations of the Professionalism Task Force. Judge Battaglia chairs the Commission and Norman Smith is the lawyer-reporter.

The Commission's charge is to act on the findings of the Task Force: professionalism is more than ethics; there is a higher standard to be achieved by lawyers; specific indicia of professionalism must be identified. The Commission studied all facets of professional conduct and formulated methods to raise professionalism standards in the legal community. In considering courses of action, the Commission examined the work of other states in the area of professionalism and evaluated the effectiveness of their policies.

The Commission divided its members into eight subcommittees to focus on areas of concern that were identified by the Professionalism Task Force:

- Standards and Ideals of Professionalism
- Professionalism Guidelines and Sanctions for Use by Judges
- Discovery Abuse
- Mentoring
- Update Existing Professionalism Course for New Admittees

- Development of a Professionalism Course for Lawyers Who Exhibit Unprofessional Behavior
- Defining the Unauthorized Practice of Law
- The Judge's Role in the Bar and in the Community

The Subcommittee on Standards and Ideals of Professionalism examined the Rules of Professional Conduct in Maryland, the Model Rules, and Rules in other states. The Subcommittee also researched other states' professionalism guidelines and produced recommended Standards of Professionalism.

The Subcommittee on Professionalism Guidelines and Sanctions for Use by Judges determined that judges do not use existing tools effectively and do not have other necessary tools with which to sanction unprofessional behavior. To remedy the situation, the Subcommittee recommended specific changes to the Rules of Professional Conduct, the Maryland Rules of Procedure, and the Judicial Canons.

The Subcommittee on Discovery Abuse evaluated existing methods of resolving discovery disputes and addressing discovery abuse. After studying discovery problems in all jurisdictions, the Subcommittee made certain recommendations, including the use of special masters (lawyers or retired judges) to become involved in the process of promptly resolving discovery disputes.

The Subcommittee on Mentoring recommended exposure to professionalism concerns as early as possible, beginning at the law school level. The Subcommittee evaluated current mentoring programs in the State and noted that, while existing programs are in place, these programs are underutilized by new attorneys. The subcommittee recommended ways to increase awareness that such programs exist as well as to create opportunities for young attorneys to list their questions on professionalism and ethics and have them answered by competent attorneys. The Subcommittee also recommended that mentors be teamed up with new lawyers by means of a questionnaire handed out at the required professionalism course for new admittees.

The Subcommittee to Update the Existing Professionalism Course for New Admittees evaluated the current professionalism course for new admittees who pass the Bar and debated the effectiveness of postponing the course until attorneys have practiced for at least one year. Although there is much to be said for allowing attorneys to gain some experience before taking the course, the Subcommittee determined that the change is not workable at this time.

The Subcommittee on the Development of a Professionalism Course for Lawyers Who Exhibit Unprofessional Behavior examined fourteen other jurisdictions, as well as existing policies in Maryland, to determine a course of action that would work to correct the behavior of errant attorneys within the State. After identifying numerous problem areas with a comprehensive course, the Subcommittee recommended that a counseling program for lawyers offers a more workable solution.

The Subcommittee to Define the Unauthorized Practice of Law examined the scope of known occurrences of unauthorized practice of law (UPL) and the generally expressed concern that some in the real estate field, banking, accountancy, and other non-legal professions may be engaging in the unauthorized practice of law. After a study of treatment of these issues in other states and consultation with Bar Counsel of the Attorney Grievance Commission and attorneys from the Office of the Attorney General, the Subcommittee determined that it is neither necessary nor wise to change the statutory definition of the practice of law. The Subcommittee also cautioned that the profession risks the appearance of "turf protection" if aggressive enforcement is not perceived as protection of the public. The Subcommittee made other specific recommendations for monitoring the unauthorized practice of law and stimulating increased awareness and recourse for the public, the courts and members of the Bar, including public relations efforts, establishment of a clearing house for complaints, mechanisms for review of complaints and, where appropriate, prosecution of the unauthorized practice of law.

The Subcommittee on the Judges' Role in the Bar and with the Community studied ways to integrate judges into the legal community while maintaining judicial integrity and independence. The Subcommittee determined that the age-old practice in which judges are isolated from practicing lawyers in the legal community is no longer a desired ideal. The Subcommittee examined the canons and rules for judges and evaluated activities currently permitted for judges, such as serving on boards, commissions, participating in Bar activities and teaching.

After submitting its original Report to the Court in June of 2006, members of the Commission set up town meetings inviting judges and practicing lawyers representing 24 jurisdictions to attend and to give feedback regarding the Report. Judge Battaglia explained at each meeting that, although the Report was filed with the Court of Appeals, it would not become final until the Commission considered the comments, criticisms, and proposed changes to the Report by members of the Bench and Bar throughout the State. Attached to this Report are the comments made by the attendees, broken down by Subcommittee subject matter, as well as the minutes of each of the 22 town hall meetings, which included attorneys from all of the 24 jurisdictions.

Specifically, the Subcommittees focused their reconsideration on the following suggestions, proffered during the Town Hall meetings:

- Revise the Standards of Professionalism into sharper, crisper, mandatory rubrics that a violation of the Standards might fairly be subject to sanctions; provide procedural due process guidelines to complement proposed sanctions for violations of the Standards; better define the words "repeated" and "egregious" in the language of the Sanctions;

- Specify the means and process for bringing discovery disputes to a speedy resolution; recommend that hearings not be required to resolve all discovery motions and, where necessary, that a hearing be held quickly;

- Consider again a Professionalism Course for experienced attorneys;

- Provide more specific recommendations regarding the proposed counseling program for errant attorneys at the County Bar Association level to include a procedure for referral to counseling and reconsider the confidentiality of records after counseling in order to identify repeat offenders;

- Encourage cooperation with Judge Greene's Commission on pro se litigants;

- Consider the imposition of professionalism standards for judges and clarify the rules regarding participation of the judiciary in community organizations that raise donated funds, and

- Address the perception that the Report has a litigation orientation and bias.

When the Town Meetings were completed, the Subcommittees met and reported their recommendations at two meetings of the Commission, one on January 10, 2007 and another on March 21, 2007. At the first of the two meetings, the Commission requested that the Subcommittee on Standards of Professionalism draft a Civility Code, separate from the Standards, the violation of which could be subject to sanctions. The Commission also asked that the Sanctions Subcommittee draft a comment to proposed new Rule 1-342. In addition, the Commission determined that the report of the Subcommittee on the Judges' Role in the Community should address professionalism concerns regarding judges.

On March 21, 2007, the Commission considered and voted on draft language related to all of these changes, the final text of which was adopted on May 16, 2007. The revised language is now included in the Sections of the Report where it is applicable. The Commission also included in an Appendix the Judicial Professionalism Self-Assessment Tool, provided by the Judicial Administration Section Council of the Maryland State Bar Association, and drafted by the Honorable Robert C. Nalley of the Circuit Court for Charles County, and Masters Catherine T. Beck and Mary M. Kramer.

RECOMMENDATIONS

I. STANDARDS OF PROFESSIONALISM

The Commission recommends that the Court adopt the Standards of Professionalism as an Appendix to the Rules of Professional Conduct.

Standards of Professionalism

Professionalism is the combination of the core values of personal integrity, competency, civility, independence, and public service that distinguish lawyers as the caretakers of the rule of law.

Preamble

When we, as lawyers, are entrusted with the privilege of practicing law, we take a firm vow or oath to uphold the Constitution and laws of the United States. Lawyers enjoy a distinct position of trust and confidence which, concomitantly, carries the significant responsibility and obligation to be caretakers for the system of justice that is essential to the continuing existence of a civilized society. Each lawyer, therefore, as a custodian of the system of justice, must be conscious of this responsibility and exhibit traits that reflect a personal responsibility to recognize, honor and enhance the rule of law in this society. The standards and characteristics set forth below are representative of a value system that we must demand of ourselves as professionals in order to maintain and enhance the role of legal professionals as the protectors of the rule of law.

A. Ideals of Professionalism[1]

As a lawyer, I will aspire to:

- Put fidelity to clients before self-interest.
- Model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.
- Avoid all forms of wrongful discrimination in all of my activities, including discrimination on the basis of race, religion, sex, age, handicap or national origin. Equality and fairness will be goals for me.
- Preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.

1 Based upon the model from the State of Georgia.

- Make the law, the legal system, and other dispute resolution processes available to all.
- Practice law with a personal commitment to the rules governing our profession and to encourage others to do the same.
- Preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.
- Achieve the excellence of our craft, especially those that permit me to be the moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling. Good lawyering should be a moral achievement for both the lawyer and the client.
- Practice law not as a business, but as a calling in the spirit of public service.

R	Responsibility
E	Excellence
S	Service
P	Promotion of fairness
E	Education
C	Civility/Courtesy
T	Trustworthiness

Responsibility and Trustworthiness (integrity, honesty, trust)

A lawyer should understand that:

1. Punctuality promotes the credibility of a lawyer. Tardiness and neglect denigrate the individual as well as the legal profession.
2. Personal integrity is essential to the honorable practice of law. Each lawyer should ensure that clients, opposing counsel, and the court can trust that the lawyer will keep all commitments and perform the tasks promised.
3. Honesty and candid communications promote credibility with the court, with opposing counsel and with clients.
4. External monetary pressures that may cloud professional judgment should be resisted.

Education and Excellence

A lawyer should:

1. Make constant efforts to expand his/her legal knowledge and to ensure familiarity with

changes in the law that affect a client's interests.

2. Willingly take on the responsibility of promoting the image of the legal profession by educating each client and the public regarding the principles underlying the justice system, and, as a practitioner of a learned art, by conveying to everyone the importance of professionalism.

3. Attend continuing legal education programs to demonstrate a commitment to keeping abreast of changes in the law.

4. As a senior lawyer, accept the role of mentor and teacher, whether through formal education programs or individual mentoring of newer attorneys.

5. Understand that mentoring includes the responsibility for setting a good example for another lawyer as well as an obligation to ensure that each mentee learns the principles enunciated in these standards and adheres to them in practice.

Service

A lawyer should:

1. Serve the public interest by clearly communicating with clients, opposing counsel, judges, and members of the public.

2. Give consideration to the impact on others when scheduling events. Reasonable requests for schedule changes should be accommodated if it does not impact the merits of the case.

3. Maintain an open dialogue with clients and opposing counsel.

4 Respond to all communications promptly, even if more time is needed to locate a complete answer. Delays in returning telephone calls may leave the impression that the call was unimportant or that the message was lost and leads to an elevation in tension and frustration and less effective communication.

5. Keep a client apprised of the status of important matters affecting the client and inform the the client of the frequency with which information will be provided (some matters will require regular contact, while others will require only occasional communication).

6. Always explain a client's options or choices with sufficient detail to help the client make an informed decision.

7. Reflect a spirit of cooperation and compromise in all interactions with opposing counsel, parties, staff, and the court. This requires a reduction in the win/loss approach to issues and an increase in mediation and achieving success for all involved.

8. Accept the responsibility personally to ensure that justice is available to all citizens of this country and not only to those with financial means.

Promotion of fairness

A lawyer should:

1. Act fairly in all dealings as a means of promoting the system of justice established in this country.

2. Understand that an excess of zeal may undermine a client's cause and hamper the administration of justice. A lawyer can zealously advocate the client's cause in a manner that remains fair and civil.

3. Know that zeal requires only that the client's interests are paramount and therefore utilizes negotiation and compromise to achieve a beneficial outcome. Yelling, intimidating, and issuing ultimatums, and using an "all or nothing" approach amounts to nothing more than bullying, not zealous advocacy.

4. Seek to maintain sympathetic objectivity when advising a client so that the client receives a comprehensive view of the legal aspects of the situation presented to the lawyer.

5. Not allow any action or decision to be governed by a client's improper motive and challenge a client whose wishes are unethical or ill advised. This becomes especially important when deciding whether to consent to an extension of time requested by an opponent. The attorney makes that choice based on the effect, if any, on the outcome of the client's case and not based on the acrimony that may exist between the parties.

6. Negotiate in good faith in an effort to avoid litigation and suggest alternative dispute resolution when appropriate.

7. Use litigation tools to strengthen the client's case and avoid using litigation tactics in a manner solely to harass, intimidate, or overburden an opposing party.

8. Explicitly note any changes made to documents submitted for review by opposing counsel. Fairness is undermined by attempts to insert or delete language without notifying the other party or his attorney.

Civility and Courtesy

A lawyer should understand that:

1. Professionalism requires civility in all dealings, showing respect for differing points of view, and demonstrating empathy for others.

2. Courtesy does not reflect weakness, but promotes effective advocacy by ensuring that parties have the opportunity to participate in the process without personal attacks or intimidation.

3. Maintaining decorum in the courtroom is neither a relic of the past nor a sign of weakness, but is an essential component of the judicial process.

4. It is essential to prepare scrupulously for meetings and court appearances and show respect for the court, opposing counsel, and the parties through courteous behavior and respectful attire.

5. Courtesy and respect should be demonstrated in all contexts, not just with clients and colleagues, or in the courtroom, but with support staff and court personnel.

6. Hostility between clients should not become grounds for an attorney showing hostility or disrespect to a party, opposing counsel, or the court.

7. Patience enables a lawyer to exercise restraint in volatile situations and to diffuse anger rather than to elevate the tension and animosity between parties or attorneys.

B. Rules of Professionalism

1. A lawyer shall treat all persons with courtesy and respect and at all times abstain from rude, disruptive and disrespectful behavior, even when confronted with rude, disruptive, and disrespectful behavior.

2. A lawyer shall speak and write civilly and respectfully and without intentional distortion or falsehood in all communications with the court, public bodies and agencies, clients, and colleagues.

3. A lawyer shall refrain from manifesting bias or prejudice by words or conduct. .

4. A lawyer shall be punctual and prepared for all court appearances and meetings, so that hearings, conferences, depositions, trials, and negotiations may commence on time.

5. A lawyer shall comply with schedules or deadlines set by the court. In non-litigation settings, a lawyer shall respond timely to inquiries from opposing counsel or negotiate a reasonable time in which to respond.

6. Agreement to a date for a meeting or conference represents a commitment that shall be honored, absent compelling circumstances. When compelled to cancel such a date, a lawyer shall notify all concerned as early as possible.

7. A lawyer shall show respect for the legal system through appearance, conduct, dress,

and manner.

8. A lawyer shall neither intentionally ascribe to an adversary or opposing party a position he or she has not taken, nor create a "record" of events that in fact have not occurred.

9. A lawyer shall not engage in any improper conduct, intentionally bring disorder or disruption to a hearing, a courtroom, or to any other legal proceeding or transaction.

10. A lawyer shall advise his or her clients and witnesses of the proper conduct expected of them and endeavor to prevent clients and witnesses from creating disorder and disruption in court or any other setting.

11. A lawyer shall act and speak respectfully to all public officials, court personnel, parties, attorneys, and clients with an awareness that they are an integral part of the legal system. A lawyer shall avoid displays of temper toward public bodies, the court, court personnel, parties, attorneys, and clients in all settings.

12. A lawyer shall not seek extensions or continuances for the purpose of harassment or prolonging litigation.

13. A lawyer shall not unreasonably refuse to consent to a reasonable time extension requested by opposing counsel.

14. A lawyer shall not knowingly misrepresent, mischaracterize, misquote, or mis-cite facts or authorities in any written or oral communication in any context, nor rely on facts that are not properly a part of the information available to the parties or placed in a court record.

15. A lawyer shall not disparage the intelligence, ethics, morals, integrity, or personal behavior of opposing counsel in written submissions or oral representations, unless these matters are directly and necessarily in issue.

16. A lawyer shall not seek sanctions against or disqualification of another lawyer for any improper purpose.

17. A lawyer shall adhere to express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances.

18. When committing oral understandings to writing, a lawyer shall do so accurately and completely. A lawyer shall provide other counsel with a copy for review, and never include substantive matters upon which there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers shall bring to the attention of other counsel changes from prior drafts.

19. When permitted or required by court rule or otherwise, a lawyer shall draft orders that accurately and completely reflect the court's ruling. A lawyer shall promptly prepare and submit proposed orders to other counsel and attempt to reconcile any differences before the proposed orders and any objections are presented to the court.

20. A lawyer shall not use or oppose discovery for the purpose of harassment or to burden and opponent with increased litigation expense. A lawyer shall not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information.

II. PROFESSIONALISM GUIDELINES AND SANCTIONS FOR USE BY JUDGES

In order that judges are provided with uniform professionalism standards and sanctions, the Commission recommends that the Court adopt the following:

A. New Maryland Rule 1-342:

If the court finds that the conduct of any counsel violates the Standards of Professionalism, the Court may impose sanctions as the Court deems appropriate, including the assessment of a monetary civil penalty, a monetary award, or both.

B. A Comment to Rule 1-342:

Rule 1-342 provides the discretion to sanction attorneys who violate the Rules of Professionalism, which are reprinted in the appendix to these rules. Before imposing sanctions, the Court must adhere to procedural due process principles consistent with those required under Rule 1-341. The sanctions that a court may impose are in addition to the Court's contempt powers.

C. Rule 8.4 (h) to the Maryland Rule of Professional Conduct:

Rule 8.4. Misconduct.

It is professional misconduct to:

(h) Repeatedly or egregiously violate the Standards of Professionalism.

D. A Comment to Rule 8.4(h):

Rule 8.4 (h) recognizes professionalism as a core value of the legal profession. It is an essential component in fostering respect for and confidence in the legal process. The fundamental responsibilities of an attorney are set forth in the Standards of Professionalism, which are reprinted as an appendix to these Rules.

E. An addition to Judicial Canon 3:

(3) A judge shall require order and decorum in proceedings and shall report egregious or repeated violations of the Standards of Professionalism to the Attorney Grievance Commission.

III. DISCOVERY ABUSE

To address problems stemming from discovery abuse and unprofessional conduct during discovery, the Commission recommends:

A. The Maryland State Bar Association revise and expand the *Maryland Discovery Guidelines* to address the concerns reflected in this Report and submit the revised Guidelines to the Rules Committee and to the Court.

B. The Maryland Judiciary web site be expanded to include discovery opinions from trial courts, in the same manner that the site now publishes opinions from the trial courts in the business and technology case management system.

C. The Rules Committee expand and annotate the standard discovery forms now found in the Appendix to the Maryland Rules and add a comment that the standard forms are presumptively proper.

D. The Conference of Circuit Court Judges formulate a uniform discovery protocol designed to ensure that discovery is completed and disputes resolved in a timely fashion, and that the protocol include:

1. At the request of either party in a case, the Court may schedule a discovery conference within 30 days of the filing of an answer. The conference may result in a discovery plan and scheduling order.

2. In Anne Arundel County, Baltimore City, Baltimore County, Montgomery County, and Prince George's County the Administrative Judge appoint a specific judge (consideration to be given to use of retired judges) to handle all discovery disputes and that the discovery judge have authority to assign a discovery master, as necessary, for first-level dispute resolution.

3. In all other counties the Administrative Judge appoint a standing discovery master or assign, as necessary, a special discovery master to the specific case.

E. Changes in the Maryland Rules to accomplish the following:

1. Facilitate the process for bringing discovery disputes before the Court, including shortening the deadline for filing responses to motions seeking relief in such disputes.

2. After the deadline for a response to motions for discovery relief has passed, provide for prompt referral to the designated judge or discovery master for resolution.

3. Provide procedures for the judge's prompt resolution of exceptions to the discovery master's recommendations.

4. Add to the Rule or Comment that, in resolving discovery disputes, a discovery master or judge may take into consideration any violations of Maryland Discovery Guidelines.

IV. MENTORING

In order to encourage mentoring of new lawyers to promote the ideals of professionalism, the Commission recommends:

A. The Maryland State Bar Association mentoring program should be revamped so that new admittees who desire mentoring will be assigned a specific mentor.

B. New admittees may sign up for mentoring at the Professionalism Course held semi-annually.

C. The Young Lawyers Section of the Maryland State Bar Association should match the mentors and mentees.

D. A Judicial Experience Program should be established to promote the goals of professionalism.

1. Students at the two Maryland law schools who enter the Program will attend court with members of the Maryland Judiciary - ALJs, masters, and judges- and learn from the mentor/judge what is expected of a professional.

2. Students who enter the Judicial Experience Program will do so on a voluntary basis and commit to a 40-hour program.

3. The Judicial Experience Program will be open to all second and third-year law students at the two Maryland law schools.

V. NEW ADMITTEE COURSE ON PROFESSIONALISM

After reviewing the presentation, timing and substance of the Maryland Professionalism Course for New Bar Admittees, the Commission makes the following recommendations:

A. The existing timeline for the Professionalism Course should be maintained, although the Commission recognizes that taking the course within one year of admittance to the Bar would allow new attorneys to bring some of their first-hand experience to the course, thus making the course more useful.

B. The Maryland Professionalism Course should include mentoring initiatives, which could be viewed as the first step in mentoring new attorneys. The Maryland State Bar Association mentoring list should be made available at the course so that the new admittees would have a contact from the start.

C. The Standards of Professionalism should be incorporated and explained as an integral part of the course.

D. The course should be made more relevant to attendees by using "breakout" sessions so that material can be directed appropriately to each lawyer's intended area of practice. Instructors at these sections should represent those specific areas of practice.

E. To further engage attendees and encourage thought and recognition of the day's discussions, a writing requirement should be added to round out the course activities. Possible topics include: "What will you do to promote professionalism?" or, "What action will you take in your daily practice to promote professionalism?"

F. The video vignettes, if used, should be updated.

G. More emphasis should be placed on the real concerns of legal malpractice and client complaints by including speakers from the Attorney Grievance Commission and representatives from legal liability insurance providers.

H. The pervasive problem of discovery abuse warrants a discussion in the New Admittee Course. Participants should be encouraged to read *Discovery Problems and Their Solutions,* by the Hon. Paul W. Grimm with Paul Mark Sandler.

VI. COUNSELING FOR LAWYERS DEMONSTRATING REPEATED UNPROFESSIONAL BEHAVIOR

To address the problem posed by lawyers who repeatedly exhibit unprofessional behavior, the Commission recommends:

A. The Court of Appeals should implement a program to provide counseling for experienced attorneys who exhibit unprofessional conduct. The program should include the following elements:

1. Local Bar associations throughout the State should form professionalism committees, comprised of experienced and well-respected local lawyers and judges who will receive complaints from the bench and Bar concerning unprofessional behavior by attorneys that do not rise to the level of a violation of the Rules of Professional Conduct.

2. Each local Bar association should establish its own procedures for the processing of complaints. Complaints deemed serious should become the subject of counseling by a panel of attorneys and at least one judge from the professionalism committee.

B. No lawyer should be required to participate in counseling, which should be educational and mentoring in nature. No record of counseling should be kept by attorney name, but a statistical record should be kept and submitted annually to the Professionalism Commission concerning the number of attorneys counseled, whether the counseling effected change on the part of the attorney, and other feedback.

C. Members of the local Bar association professionalism committees should be highly regarded and experienced members of the Bar with reputations for competence, integrity and civility. Judges, both sitting and retired, are encouraged to participate and should exhibit the same qualities.

VII. UNAUTHORIZED PRACTICE OF LAW

To address professionalism concerns arising from the unauthorized practice of law, the Commission recommends:

A. No changes (additions or deletions) should be made to the current statutory definition of the practice of law.

B. Mechanisms and procedures should be established by which the alleged unauthorized practice of law is monitored and, if found, prosecuted.

C. The Professionalism Commission, if ongoing, should have an Unauthorized Practice of Law Committee to act as a clearinghouse for complaints concerning the unauthorized practice of law and to monitor the unauthorized practice of law.

D. The Maryland State Bar Association and possibly local and specialty Bar associations should be encouraged to develop means to refer unauthorized practice of law complainants to the appropriate resource and possibly, if necessary, to fund any enforcement proceedings.

E. The Maryland State Bar Association should maintain the committee on unauthorized practice of law, however named. The committee should be

patterned after the Association's Ethics Committee to provide a resource to lawyers and their clients who are seeking advice on whether specific practices constitute the unauthorized practice of law.

F. The Attorney Grievance Commission and the Office of the Attorney General should coordinate efforts to review and cross-refer any complaints for the purpose of determining which of their offices are best suited to deal with a particular complaint.

G. The Office of the Attorney General should, in the appropriate case(s), be asked to provide formal opinions on whether specific practices constitute the unauthorized practice of law.

H. The Professionalism Commission should encourage the Attorney Grievance Commission and/or the Office of the Attorney General to pursue a test case or cases in areas of repeated concern.

I. The Judiciary, the Bar and the public should be educated about the value of legal representation, the practice of law, and the problems arising from the unauthorized practice of law. Judges and lawyers should be made aware that victims of the unauthorized practice of law can be referred to the Attorney Grievance Commission or the Office of the Attorney General for investigation.

J. The Attorney Grievance Commission and the Office of the Attorney General should report the nature of all investigated allegations of the unauthorized practice of law and any outcome to the Court of Appeals and the Maryland State Bar Association.

VIII. ROLE OF THE JUDGE WITH THE BAR AND IN THE COMMUNITY

In order to clarify and increase the participation of judges within the Bar and in the community, the Commission recommends:

A. A Rule change or a comment to Maryland Rule 16-813 and Canon 4 making more explicit the intent of the Court and the Commission that judges be encouraged to engage in greater interaction among the bench, the Bar and the community.

B. Additional training for judges regarding recusal rules, and updating of sitting judges on any recusal rule changes.

C. Continued inclusion of professionalism in all judicial training sessions.

D. A system by which to obtain advisory opinions from the Judicial Ethics Committee and a polling of the Judiciary on the adequacy of the present system.

E. Judges be encouraged to write and provide for advance review of any proposed public speech by the Court Information Office.

F. All judges receive a hard copy of each Judicial Ethics report.

G. Investigative Counsel to the Maryland Judicial Disabilities Commission write a column in "Justice Matters."

IX. CONTINUATION OF THE PROFESSIONALISM COMMISSION

The Commission recommends that the Professionalism Commission be continued with its mission defined in an Administrative Order of the Chief Judge fashioned after the draft Order provided, with funding derived from an annual assessment imposed on each attorney admitted to practice in Maryland.

ADDENDUM TO THE REVISED FINAL REPORT RECOMMENDATIONS
STANDARDS OF PROFESSIONALISM
July 18, 2007

Add Item 8 under **Civility and Courtesy**:

8. The Standards of Professionalism are to be observed in all manner of communication. A lawyer should resist the impulse to respond uncivilly to electronic communications in the same manner as he or she would resist such impulses in other forms of communication.

Add Number 21 to **B. Rules of Professionalism**:

21. A lawyer shall observe these Rules of Professionalism in all manner of communication, including being vigilant to recognize and resist impulses to respond uncivilly to electronic communications.

IN THE COURT OF APPEALS OF MARYLAND
ADMINISTRATIVE ORDER CONTINUING PROFESSIONALISM COMMISSION

WHEREAS, Throughout the 1990s, members of the Maryland Bench and Bar had become increasingly aware of issues and repercussions of unprofessional behavior by lawyers, which spurred adoption of civility codes and, since 1992, a mandatory course in professionalism for all new admittees to the Maryland Bar; and

WHEREAS, The Conference of Chief Justices in 1996 adopted a resolution which called for a study of lawyer professionalism and encouraged the appellate court of highest jurisdiction in each state to take a leadership role in evaluating the contemporary needs of the legal community with respect to lawyer professionalism and coordinating the activities of the bench and Bar by establishing a Commission on Professionalism; and

WHEREAS, By Order dated April 25, 2002, a Professionalism Task Force was established to study the concept of professionalism within the Maryland bench and Bar and to identify the qualities of, and a consensus as to, professionalism; and

WHEREAS, The Task Force completed its work and, among other proposals, recommended the establishment of a Professionalism Commission; and

WHEREAS, On November 10, 2003, the Court of Appeals adopted the recommendation to establish a Professionalism Commission which occurred on February 17, 2004; and

WHEREAS, The Professionalism Commission, over a two-year period, explored the recommendations of the Professionalism Task Force and on May 10, 2006 adopted its first report.

NOW, THEREFORE, I, Robert M. Bell, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 of the Constitution, do hereby order this___ day of _____, 2007, effective immediately:

1. Creation. The Court Commission on Professionalism shall continue for a period of _____ years.

2. Members.

   a. Commission. The Commission shall consist of the following members:

      i. The Chief Judge of the Court of Appeals or a designee of the Chief Judge, as the Chair;
      ii. The Chief Judge of the Court of Special Appeals or a designee of the Chief Judge;
      iii. The Chair of the Conference of Circuit Judges or a designee of the Chair;
      iv. The Chief Judge of the District Court or a designee of the Chief Judge;
      v. A judge from the United States District Court for Maryland, designated by that Court;

vi. The Dean of each of the accredited law schools in Maryland or a designee of the Dean;
vii. A lawyer representative from each Maryland County and Baltimore City, appointed by the Chief Judge of the Court of Appeals;
viii. The president of the Maryland State Bar Association, Inc. or the president's designee;
ix. A representative from the Attorney Grievance Commission, appointed by the Chief Judge of the Court of Appeals;
x. A representative from the Standing Committee on Rules of Practice and Procedure, appointed by the Chief Judge of the Court of Appeals;
xi. A representative from the Judicial Disabilities Commission, appointed by the Chief Judge of the Court of Appeals; and
xii. A reporter, appointed by the Chief Judge of the Court of Appeals.

b. Advisors. To the extent provided in the Judiciary's budget or other source of funds, the Commission may invite others to provide advice to, or otherwise participate in, the Commission's work, through invitations to the public for, appointment to subcommittees or assignment of specific tasks such as statistical and academic research.

c. Compensation. The members and advisors are not entitled to compensation but, to the extent provided in the Judiciary's budget, may be reimbursed for expenses in connection with travel related to the work of the Commission.

3. Meetings.

a. Scheduling. The Commission shall meet at the call of the Chair.

b. Quorum. A majority of the authorized membership of the Commission shall constitute a quorum for the transaction of business.

4. Forums.

a. Purposes. The primary tasks of the Commission are to explore, as well as monitor, the implementation of the professionalism policies adopted by the Court of Appeals, examine ways to promote professionalism among Maryland lawyers, and provide sustained attention and assistance to the task of ensuring that the practice of law remains a high calling that is focused on serving clients and promoting the public good.

b. Mission. The mission of the Commission is to support and encourage members of the Judiciary to exhibit the highest levels of professionalism and to support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts, and the public to fulfill their obligations to improve the law and the legal system and to ensure access to that system.

c. Duties. To carry out its purposes, the Commission shall:

i. Plan, implement, monitor and coordinate professionalism efforts in the Bar, courts, law schools and law firms;
ii. Continue to develop mechanisms to advance professionalism as an important core value of the legal profession and the legal process;
iii. Gather and maintain information to serve as a resource on professionalism for lawyers, judges, court personnel and members of the public;
iv. Serve as a catalyst for positive change;
v. Cultivate the professional community of the Bar;
vi. Consider efforts by lawyers and judges to improve the administration of justice;
vii. Monitor professionalism efforts in jurisdictions outside Maryland;
viii. Promote and sponsor state and local activities that emphasize and enhance professionalism to include a yearly Convocation on Professionalism and promote regional and county convocations on professionalism;
ix. Make recommendations to the Court of Appeals, the Maryland State Bar Association, and local and specialty Bars concerning additional means by which professionalism can be enhanced;
x. Receive and administer gifts and grants and to make such expenditures therefrom as the Commission shall deem prudent in the discharge of its responsibilities;
xi. Monitor the efforts of the Maryland State Bar Association and other associations and committees in carrying out the mandate of this Court with respect to advancement of professionalism and submit periodic reports to this Court on those efforts.

5. Staff. The Commission shall have the staff assistance assigned by the Chief Judge of the Court of Appeals.

6. Source of Funding. The Commission shall be funded by an annual assessment imposed upon every attorney admitted to practice in Maryland.

7. Authority. The Commission on Professionalism has no authority to receive complaints within the province of the Attorney General's Office, the Attorney Grievance Commission or the Commission on Judicial Disabilities and shall refer any such complaints received to the appropriate Commission.

8. Rescission of Prior Order. The Order dated February 27, 2004 is rescinded.

Robert M. Bell
Chief Judge
Court of Appeals of Maryland

Filed:

Clerk
Court of Appeals of Maryland

SUMMARY OF COMMENTS FROM THE COUNTIES, BY SUBCOMMITTEE SUBJECT AREA

Standards of Professional Conduct, Including Identifying Indicia of Professionalism

A participant observed that there is a higher degree of professionalism and civility in rural areas, and expressed concern that too high a degree of civility may compromise the interest of the client. This participant further observed that clients sometimes believe lawyers have more loyalty to each other than to their clients. Judge Battaglia observed that advocacy and loyalty to one's client do not equate to a lack of civility, and that civility does not equate to a compromise of the client's interests. Judge Bell observed that there is an assumption that the lawyer is competent, that civility and professionalism are superimposed on that assumption, and that it is not expected that the client's interests will be sacrificed. (Allegany)

A participant expressed concern regarding the proposed link between violations of the standards of professionalism and the Maryland Lawyers Rules of Professional Conduct. (Allegany) (also placed under Sanctions breakout).

One area of unprofessional behavior has to do with the economics of law. Scheduling conferences and other ministerial tasks offer the opportunity to bill hours. This is part of the larger problem of churning cases for hourly billings. An example is found in the Court of Appeals opinion in *Piper Rudnick LLP v. Hartz*, 386 Md. 201 (2005), where one law firm charged $1 Million in a case having to do with the attempted removal of a personal representative. (Anne Arundel)

The Standards of Professionalism should include the duty to give clients a realistic estimate of prospective legal fees as well as a realistic prediction of the likely result, in order that a client can make a cost/benefit decision before the fees are out of hand. Judges should also look at the history of settlement negotiations before awarding attorney's fees in domestic matters. (Anne Arundel)

The Commission's recommendations should include mandatory fee arbitration. (Anne Arundel)

An important comment and recommendation was that the Commission view the proposed Standards of Professionalism as a "work in progress." In the opinion of one participant, the Standards, as presently drafted, are incomplete and disorganized. Specifically, the Standards must focus on core values such as competence, integrity and civility as important to the advancement of the rule of law. The Baltimore City Guidelines on Civility (appended to these minutes) were recommended to the Commission as a better exposition of professionalism. (Baltimore City)

It was also suggested that the Commission revisit the MSBA professionalism guidelines in place of the now proposed Standards of Professionalism. (Baltimore City)

Several participants expressed the concern that the Commission's recommendations with regard to sanctions will cause the aspirational standards to become hard and fast rules. Also, the Standards of Professionalism are not clear as to their mandatory or aspirational content. For example, does "should" (as used in the Standards) mean "shall"? (Baltimore County) (also placed under Sanctions)

Will the Standards of Professionalism be reworked to avoid prosecution of trivial matters? (Baltimore County)

The Standards of Professionalism require a lawyer to "cooperate and compromise" – is this in conflict with the duty to zealously represent our clients? (Baltimore County)

Litigation is too expensive. Large firms churn cases to generate fees, prejudicing litigants with fewer resources. (Baltimore County)

Other participants pointed out the difference between large, urban jurisdictions and smaller counties, where uncivil and rude lawyers immediately develop an unfavorable reputation. Another problem in smaller counties is that clients sometimes interpret the collegial atmosphere as a failure of lawyers to act sufficiently adversarial to one another. As a result, clients often hire out of county lawyers who, they feel, will be more aggressive. This implicates the larger question of whether unprofessional behavior is, in part, client-driven and raises the question of how we, as lawyers, can educate the public away from this perception. (Calvert/St. Mary's)

Several participants mentioned the public's poor perception of lawyers and asked if some public relations type program would help. In this regard, there were also questions concerning the possibility that some degree of unprofessional conduct on the part of lawyers may be the product of a client's desire that lawyers be unpleasant to the representative of a hated adversary. (Carroll)

An attendee commented that they believed unprofessional behavior was less of a problem in smaller jurisdictions because attorneys were more familiar with one another. Professionalism Committee member, Danny R. Seidman, responded that the same point was made by members of the Professional Committee at Committee meetings. (Charles)

One member of the Bar noted that if civility and the settling of litigation are related, such concepts may be inhibited by a local rule that exists (not in Dorchester County) that imposes substantial fines on attorneys involved in cases that settle within ten days of trial. (Dorchester)

Finally, one Bar member commented on the behavior of some members of internet "listservs", where attorneys can pose practical questions to other attorneys and engage in discussions. Some

of those members apparently take pleasure in engaging in hostile and demeaning conduct toward others in a somewhat public way. The member noted that perhaps this type of conduct would be considered to be of the more egregious nature as discussed earlier. (Dorchester) (also placed under Sanctions)

Professionalism Guidelines and Sanctions for Use By Judges

A participant questioned the operation of proposed Rule 1-342, specifically as it pertains to the references to a *"monetary award."* (Allegany)

A participant expressed concern regarding the proposed link between violations of the standards of professionalism and the Maryland Lawyers Rules of Professional Conduct. (also placed under Standards breakout) (Allegany)

With regard to the proposed changes to Judicial Canon 3 – will judicial referrals be anonymous? Will there be sanctions for judges who do not report? What is a "repeated and egregious" violation? How will we know? (Anne Arundel)

The Court of Appeals has made it nearly impossible to successfully hold an attorney in contempt, even in the most egregious cases. The proposed new sanctions will fall victim to the same jurisprudence. The problems with enforcement that have plagued Rule 1-341 are likely also to render proposed new rule 1-342 impotent without some change. A model might be the federal system, which has a zero tolerance for unprofessional behavior. (Anne Arundel)

Several participants questioned the Commission's recommendations regarding sanctions for unprofessional behavior. Specifically participants wanted to know if the proposed Standards of Professionalism will be mandatory and, if so, whether motions for sanctions under proposed new Rule 1-342 will be an opportunity for abuse. In addition, the group was concerned with the due process implications accompanying the administration of sanctions. (Baltimore City)

On the one hand, it was pointed out, the Commission has recommended counseling for errant lawyers; but at the same time the report recommends sanctions. This is confusing. (also placed under Errant Attorney breakout) (Baltimore City)

Because the trigger for sanctions is the "repeated or egregious" violation of the Standards of Professionalism, one participant expressed concern that an attorney demonstrating repeated behavior but in different jurisdictions would possibly escape notice and referral to counseling. (Baltimore City)

A number of comments were made concerning difficulty judges have imposing sanctions under existing rules and whether this will become easier under the proposed new rules 1-342 and Canon 3. In addition, proposed new Rule of Professional Responsibility 8.4(h) may become just an "add on" in every AGC complaint. (Baltimore City)

Several participants expressed the concern that the commission's recommendations with regard to sanctions will cause the aspirational standards to become hard and fast rules. (also placed under Standards breakout) (Baltimore County)

Does proposed new rule 8.4(h) overlap existing 8.4, which prohibits behavior prejudicial to the administration of justice? (Baltimore County)

Proposed new Rule 8.4(h) and 1-342 put too much power in the hands of judges who may abuse it. (Baltimore County)

We should look at the federal example - zero tolerance for unprofessional behavior. (Baltimore County)

The terms "egregious" and "repeated" need to be clarified. (Baltimore County)

A Bar Member then commented that compared to other areas and states, he has found that Cecil County professionalism is very high and sanctions are not necessarily needed.

- Judge Battaglia responded that the issue of sanctions depends on enforcement at the Bar level and that they could explore expansion of sanctions at a later time. (Cecil County)

A Bar Member stated that sanctions for errant attorneys should be made stiffer and use the fines to fund the Commission instead of all attorneys bearing the cost. (also placed under "Funding of the Commission")

- Judge Battaglia responded by stating that such funds are in the general fund and cannot be specified at this time
- Judge Battaglia further stated that all these issues must be worked out and that they are not mandating specific ways to address the issues, as the culture is different in all counties (Cecil County)

A Bar member replied that the issues also include errant Judges.

- Judge Battaglia replied that errant Judges will be addressed and that issues about judicial disabilities have been raised. (Cecil County)

A Bar member commented regarding the Committee's finding on Discovery problems and that Judges are reluctant to impose sanctions on attorneys

- Judge Battaglia responded that it may be because a Judge wants to ensure that the client is not penalized.
- Bar Members then commented that often it is not the attorney's fault; rather the clients fail to respond to requests or are slow to produce the discovery.
- Judge Battaglia responded that there must be due process in all of this.

(Cecil County) (This comment has also been placed under the Discovery Abuse breakout)

A different Bar member stated that he understood the need to put teeth into sanctions and wondered if "egregious" and "repeated" would be more defined or expounded upon.

- Judge Battaglia stated that these findings must go before the Rules Committee or must go to the appropriate Committee.
- Judge Battaglia also stated that the Attorney Grievance Commission must have a role in the process.

- Judge Battaglia agreed that misconduct must be defined.

(Cecil County)

An attendee commented that most incidents of unprofessional behavior are observed by other lawyers, not judge, and other lawyers are unlikely to report unprofessional behavior. Judge Battaglia responded that Rule 8.3 of the Maryland Rules of Professional Conduct already provides that lawyers have an ethical obligation to report violations. Judge Battaglia also commented that a similar issue was raised by a transactional attorney at another Town Hall meeting. (Charles)

An attendee commented that Rule 8.3 is only triggered in a situation where a lawyer has knowledge that another lawyer had violated rules, and that judges did not have the same reporting requirement under Rule 8.3. (Charles)

An attendee suggested that the reason that the rule only applied to a lawyer's observation is because judges rarely see the same behavior that the lawyer sees since lawyers generally behave better when they are before a judge. Judge Battaglia commented that Rule 8.3 could potentially be abused by attorneys. (Charles)

An attendee commented that he couldn't imagine that "all this" was necessary regarding the need for a Professionalism Commission, and that he couldn't see the need to have Mel Hirschman intruding any further into our personal and/or professional lives. (Charles)

An attendee voiced concern that they couldn't see expanding the Court's jurisdiction into another area, and that they didn't believe that it was the role of judges to report attorneys for unprofessional conduct to anyone other than Bar Counsel. The attendee said that if they were inclined to report inappropriate behavior to anyone it would be the Attorney Grievance Commission. (Charles)

An attendee commented that they didn't believe unprofessional behavior was as much of a problem for judges because the offending party could be pulled aside by the judge and reprimanded, and that would be sufficient to curb any inappropriate behavior. (Charles)

Procedural issues were raised as well. One member questioned whether the Rules of Evidence would apply at any proceedings that may result from the work of the Commission. The question of whether confidentiality would exist for those reporting unprofessional conduct was also raised. Judge Battaglia noted that more informal mechanisms may be more effective in small areas. (Dorchester)

Finally, one Bar member commented on the behavior of some members of internet "listservs," where attorneys can pose practical questions to other attorneys and engage in discussions. Some of those members apparently take pleasure in engaging in hostile and demeaning conduct toward others in a somewhat public way. The member noted that perhaps this type of conduct would be considered to be of the more egregious nature as discussed earlier. (Dorchester) (also placed under Standards)

One participant commented that Masters should be empowered to impose sanctions, since lawyers, realizing the Master's limited authority, often misbehave in that forum. A judge pointed out that regardless of the potential sanction, judges must know of the wrongful behavior. Motions for sanctions must describe explicitly what happened and the surrounding events. (Frederick County)

A participant suggested that proposed new Rule 1-342 be strengthened to function like Federal Rule 11. (Frederick County)

A participant was concerned that proposed new Judicial Canon 3 seems to take discretion from a judge, stating instead that a judge *shall* report repeated or egregious conduct to the Attorney Grievance Commission. (Frederick County)

One judge pointed out that in a child custody case, it is difficult to impose sanctions of any sort, since the purpose of the case is to effect the child's best interests. (Frederick County)

One participant commented that lawyers do not want sanctions for discovery violations – most lawyers just want the documents. Perhaps mandatory production as in the Federal Rules is an option. (Frederick County) (this comment has also been placed under the Discovery Abuse breakout)

Proposed change to Judicial Canon 3, which states that judges "shall" report repeated or egregious violations of the Standards of Professionalism, is problematic. Will judges be sanctioned for failure to report? (Garrett)

Judges may use the proposed new rules to harass lawyers. (Garrett)

Clearly noted was the fact that repeated and/or egregious conduct was sanctionable. (Harford)

One of the first areas of discussion involved the Commission's recommendations concerning sanctions for unprofessional behavior among attorneys, namely proposed new Rule 1-342, new Rule of Professional Conduct 8.4 (h) and additions to Judicial Canon 3. Several participants felt that these provisions might simply escalate disputes, spawning complaints and cross-complaints in every case. There was some feeling that there should be a way to address these issues short of a resort to sanctions. This possibility was later addressed in the presentation of the Commission's proposal of counseling for errant attorneys. (Howard)

Attorney misconduct is often caused by judicial misconduct, specifically the failure of judges to enforce the rules fairly and impartially. (MD Law School) (also placed under Errant Attorney) Can judges be sanctioned for failing to report those who may have violated the Standards? (Montgomery)

Will the new sanctions empower judges to harass lawyers? (Montgomery)

What quantum of evidence to sustain sanctions? Preponderance? Clear and convincing? (Montgomery)

The sanctions recommendations as now written do not adequately address due process issues for those accused. (Montgomery)
Existing law is sufficient for sanctions. (Montgomery)

Proposed new Rule 1-342 and Rule 8.4 (h) may have a chilling effect on zealous advocacy. There should be graduated sanctions. (Prince George's)

If, under the proposed changes to Judicial Canon 3, a judge does not report "repeated and egregious" violations of the Code of Professional Responsibility to the Attorney Grievance Commission, can that Judge be sanctioned for failing to report? (Prince George's)

Proposed new Rule 8.4 (e) could be a comment. (Prince George's)

Participants asked for clarification of the relationship between Rule 1-341 and proposed new Rule 1-342. In addition, a judge suggested that the Report make clear that proposed Rule 1-342 does not effect the doctrine of contempt – that the two are separate. (Queen Anne's/Kent)

The recommendation that "repeated and egregious" conduct be sanctioned drew questions such as how any unprofessional conduct cannot be "egregious." Sanctions, some worried, will become a sword rather than a shield, with unprofessional lawyers filing 1-342 motions with the same frequency as federal Rule 11 motions. (Queen Anne's/Kent)

Several participants were concerned about the due process rights to be afforded any lawyer sanctioned under proposed new Rule 1-342. This, Judge Battaglia explained, will be fleshed out before the Rules Committee, if it acts upon the recommendation. (Queen Anne's/Kent)

In discovery disputes, the Master should assess costs to a misbehaving party. (Talbot/Caroline) (also placed under Discovery Abuse breakout)

Several participants reacted to the proposed Rule 1-342 (h):

- One attorney's visceral reaction was that this would be an "eyes on" review by a judge, not a report to a judge. If behavior is outside of the courtroom, the duty falls to other lawyers to report (i.e., unprofessional behavior by transactional attorneys.)
- Rule 1-342(h) will be a controversial rule. There is a distinction between aspirational guidelines and codification; codification may be a problem. Gradations in definition of abuse can be a tough issue for enforcement. How do you balance the codification of abuses against the rights of attorneys?
- The proposed rule departs from mediation effort that is being encouraged by the Attorney Grievance Commission.
- The gradation of response is subjective rather than objective. This concerns one participant who worried about how sanctions will be applied

(Washington County)

A judge commented that he was happy to see the proposed addition to Judicial Canon 3, especially the directive "shall". (Washington)

The monetary awards are modeled on Rule 11. (Washington)
Has the Commission thought about how a complaint of unprofessional behavior will be initiated? What standards will be employed? For example, with discovery disputes, there are more critical ramifications to the delay in criminal cases than in civil cases. (Washington) (also placed under Errant Attorney breakout)

Several participants were concerned about what due process rights would be afforded any lawyer sanctioned under proposed new Rule 1-342. This, Judge Battaglia explained, will be fleshed out before the Rules Committee, if it is asked to act upon the recommendation by the Court. (Wicomico/Somerset)

Several attendees asked how judges will decide what behavior is unprofessional enough to warrant sanctions. Judge Battaglia explained that the inclusion of the terms "repeated or egregious" is a first step in defining actionable conduct from isolated incidents. (Wicomico/Somerset)

Does proposed new Rule 1-342 preempt contempt? (Worcester)

What due process protections will accompany the proposed sanctions? Is there an inherent conflict between the proposed new rules and the existing Rule of Professional Conduct requiring zealous representation of clients? (Worcester)

There is a concern that monetary sanctions may be passed on to and be borne by the client, a potential injustice. (Worcester)

Several participants worried that the proposed new rules and sanctions will create another level of discipline, in addition to the Attorney Grievance Commission. (Worcester)

Discovery Abuse Issues, Including The Use of Discovery Masters

A participant questioned the source of funding for discovery masters. Judge Bell explained that these specifics have not yet been worked out. (Allegany)

The main problem in the discovery abuse area is delay. Why not more decisions without a hearing? (Baltimore County)

In discovery matters, judges must have the power to fashion flexible remedies with all deliberate speed in order to cut the cost of litigation by these disputes. (Baltimore County)

Discovery abuse, identified by the Commission as a significant problem, is also ill-defined. (Calvert/St. Mary's)

A Bar member commented regarding the Committee's finding on Discovery problems and that judges are reluctant to impose sanctions on attorneys.

- Judge Battaglia responded that it may be because a judge wants to ensure that the client is not penalized.
- Bar members then commented that often it is not the attorney's fault; rather the clients fail to respond to requests or are slow to produce the discovery.
- Judge Battaglia responded that there must be due process in all of this.

(Cecil)

A Bar Member questioned the problems between deadlines and the court calendar, specifically that there is friction between the judges and attorneys because even if both sides agree, the judges still deny postponement.

- Judge Battaglia responded that this issue has been previously raised.

(Cecil)

A Bar member further commented on Discovery Issues and that an attorney should document if it was the client's fault and not the attorney's fault. (Cecil)

One participant commented that lawyers do not want sanctions for discovery violations. Most lawyers just want the documents. Perhaps mandatory production as in the Federal Rules is an option. (Frederick) (also listed in Sanctions breakout)

Discovery abuse may be the result of ignorance rather than misbehavior. Mentoring is important in the progress of new lawyers who learn the process. (Garrett) (also placed under Mentoring)

The problem of discovery abuse could be addressed, in part, by the use of certain types of discovery tailored to the specific needs of certain cases, such as domestic relations actions. (Garrett)

It is anticipated that Discovery disputes will be dealt with by Discovery judges in larger counties and Discovery Masters in smaller counties. (Harford)

There was general consensus that the greater use of discovery masters would be of great help in easing tensions, particularly in the domestic law area. (Howard)

Many lawyers embroiled in discovery disputes cite the discovery opinions that the Commission has recommended be made public. (Montgomery)

The Discovery Abuse Subcommittee should focus on ways to effect immediate resolution of disputes – the main problem. (Prince George's)

Recommendations with regard to discovery abuse seemed to be a "one size fits all" solution that is less necessary in small counties. (Queen Anne's/Kent)

Discovery solutions in different counties may lead to inconsistent results state-wide. (Queen Anne's/Kent)

In discovery disputes, the Master should assess costs to a misbehaving party. (Talbot/Caroline) (also placed under Sanctions breakout)

District court judges do not have the time to sift through discovery disputes and motions. These should be diverted to another tribunal or decision maker to keep the district court docket moving. (Talbot/Caroline)

Mentoring

The Commission was urged to avoid placing the burden of any mentoring program on the Young Lawyers Subcommittee of the Bar, a group that is already overburdened. (Baltimore City)

Mentoring should be not only for new admittees but also for experienced attorneys who might profit from advice when moving into different areas of practice. (Carroll)

Discovery abuse may be the result of ignorance rather than misbehavior. Mentoring is important in the progress of new lawyers who learn the process. (Garrett) (also placed under discovery abuse)

A better system of mentoring, certification of skills, or a barrister system would go a long way toward addressing the problem. (Montgomery)

Large firms generally have a more professional practice, because there is more opportunity for mentoring. (Montgomery)

We can learn from the medical profession – need internships and more mentoring. (Montgomery)

The responsibility for mentoring young lawyers along the path to professionalism should be with partners in large firms, who otherwise pressure associates simply to bill hours. (Worcester)

Update Existing Professionalism Course for New Attendees

It was suggested that, if new admittees were allowed to take the professionalism course after a period of practice, the course requirement could be enforced by denying those who failed to take the course the ability to register for the client protection fund. (Carroll)

A Bar member asked Judge Battaglia whether a course on Professionalism is going to be a requirement.

- Judge Battaglia responded not at the present time; however, that option is still on the table and that the Task Force did not recommend the course.
- Further, such a course is not a precursor to CLE requirements.

(Cecil)

As a follow-up question, a Bar Member asked whether such a course would be for all Bar Members of the Bar or just for new Members.

- Judge Battaglia responded that the course is still on the table and has not been recommended by the Task Force to be mandatory for all attorneys.
- Judge Battaglia further commented that the course could be mandatory for all attorneys or could be tailored for errant attorneys

(Cecil)

A Bar member asked Judge Battaglia if the Professionalism course could be used for pro bono hours. (Cecil)

A Bar member then stated that the Maryland Professionalism requirements are relatively simple compared to Pennsylvania and that it is not an overwhelming request to take a Professionalism course. (Cecil)

An attendee asked whether or not there was any empirical data to support the claim that there were fewer problems of unprofessional behavior with newer attorneys than with more experienced attorneys, and the relationship of continuing legal education classes (CLE) to any such data. Judge Battaglia responded that she has received comments that Pennsylvania, which requires CLE, has fewer problems compared to Maryland, but that there was no empirical data available. (Charles)

Someone asked what attorneys seemed to want from proposed enhancements that are designed to improve professionalism. Judge Battaglia noted that requiring continuing legal education had been a disfavored concept, and that a required professionalism course was disfavored as well, partially because of the impact on solo and small firm practitioners. (Dorchester)

One Bar member questioned whether "Professionalism" can really be taught, and was concerned that this work may lead to more formal referrals to the Attorney Grievance Commission. Perhaps anything that results in a formal Attorney Grievance Commission referral should be

conduct of a more egregious nature, and that the persons involved in such conduct, whether it be of an egregious nature or not, will probably find themselves before the Attorney Grievance Commission anyway. (Dorchester)

An attendee noted that law school is very competitive and does not train one to be collegial and/or professional. Another noted that Law School does a poor job of distinguishing between the roles of the lawyer-advocate and the lawyer-counselor. (Harford)

One participant suggested that the professionalism course for new admittees might be given after several years of practice, rather than right away. Judge Battaglia explained the Commission's consideration and ultimate rejection of that proposal. (Howard)

We might want to consider certification of lawyers as competent and experienced in different areas. (MD Law School)

Mandatory CLE would be helpful. (Montgomery)

Mandatory CLE would be a simpler and more effective way to deal with the problem of unprofessional behavior at the Bar. (Prince George's)

Professionalism could be improved by requiring lawyers to be certified as practitioners in specific areas of the law. Problems can arise because lawyers practice in areas where they do not have sufficient knowledge or comfort. (Prince George's)

Out of State lawyers who pass the MD Bar and intend to practice here should take the professionalism course along with new admittees. (Prince George's)

The Court should consider a voluntary professionalism course for experienced lawyers. (Queen Anne's/Kent)

A participant wondered what percentage of current attorneys practicing in Maryland have taken the Professionalism Course since it was instituted in 1992. [Chief Judge Bell estimated that about 2/3 of approximately 30,000 current attorneys have taken the course.]

Developing a Course for Lawyers Who Exhibit Unprofessional Behavior

One participant questioned how local jurisdictions will receive funding for the training of those persons who ultimately will be appointed to counsel errant attorneys. (Allegany)

Complaints and referrals to counseling should be tracked from county to county so that judges will know what behavior is "repeated." (Anne Arundel)

On the other hand, it was pointed out, the Commission has recommended counseling for errant lawyers; but at the same time the Report recommends sanctions. This is confusing. (Baltimore City) (also placed under Sanctions breakout)

The first question was how to define "bad lawyers." Several participants felt that this is a subjective issue which might lead to an abuse of power. This problem is inherent in defining unprofessional behavior in an adversarial arena. Obviously there must be breathing room for speech in this regard. (Calvert/St. Mary's).

The long term solution, said one participant, is to deal with less obvious and less egregious behavior before it gets out of hand. In this regard, several participants endorsed the Commission's recommendation of counseling. Counseling will be difficult, however, in smaller counties. One idea was to institute a lawyer alter-ego program similar to that already in place for judges. (Calvert/St. Mary's)

A Bar Member questioned whether before a formal filing, an attorney can go to counseling before being reprimanded. (Cecil)

It was further noted that the "process" contemplated referral to a local Bar group for voluntary counseling. Continued unprofessional conduct would move up the disciplinary chain. One participant noted that when you hear "That's just (fill in the name)"! you know that person is professionally challenged and, further, that most people in the Bar know who those persons are. (Harford)

Some participants questioned one of the basic premises for the Report: whether the behavior of habitual unprofessional lawyers can be changed. First, some observed, we must find the reasons for bad behavior. Has the nature of the profession changed its members, resulting in bad behavior? To address this, one participant suggested, in a seminar context, a demonstration of bad behavior in a way that might embarrass those who recognize themselves. Public education is also very important. Prospective clients should be educated to seek good lawyers who will present the client's case in the best way possible, but who will not escalate disputes unnecessarily. In other words, uncivil behavior should not be client driven. (Howard)

Data from local Bar counseling should be kept to identify repeat offenders. (MD Law School)

Attorney misconduct is often caused by judicial misconduct, specifically the failure of judges to enforce the rules fairly and impartially. (MD Law School) (also placed under Sanctions)

The alter ego program – now disbanded – was useful. Something should replace it. (Montgomery)

Misbehaving lawyers could be required to allow videotaping of their conversations and presentations. (Montgomery)

The Commission's recommendations with regard to lawyer-counseling were questioned because of the Commission's recommendation that the results not be made public. There was some concern that "bad apples" should not be hidden. There was also the suggestion that counseling be mandatory. Records should be kept, one participant suggested, and made public after several occurrences. There was also the worry that local Bar associations – particularly in small counties – may have trouble counseling their own. (Queen Anne's/Kent)

Has the Commission thought about how a complaint of unprofessional behavior will be initiated? What standards will be employed? For example, with discovery disputes, there are more critical ramifications to the delay in criminal cases than in civil cases. (Washington) (also placed under Discovery Abuse)

A related question concerned the potential problem with the Commission's proposed counseling program in the smaller counties, where a lawyer being counseled might be uncomfortable with close associates. Judge Bell pointed out that years ago, the local Bar associations once were charged with the responsibility of prosecuting violations of the Rules of Professional Conduct. The Attorney Grievance Commission was instituted primarily because of the perception that local Bar associations were too lenient with their members. These counseling sessions should be non-confrontational and collegial. (Wicomico/Somerset)

Defining the Unauthorized Practice of Law

A participant questioned how the unauthorized practice of law would be enforced if a person or entity is engaged in the unauthorized practice of law, but the consumer has not been harmed or has not complained. It was explained that enforcement of UPL is complaint driven, and that enforcement needs to be carried out by or on behalf of the consumer so as to avoid accusations of turf protections and also to avoid restraint of trade issues. The rule prohibiting persons not admitted to the bar from practicing law was cited as the fundamental basis for enforcement. (Allegany)

One problem area highlighted was that the Commission's recommendations regarding the unauthorized practice of law are inconsistent with the treatment of pro se litigants. (Anne Arundel)

Who can be a complainant for suspected unauthorized practice of law? (Baltimore County)

Pro se litigants in the family law arena is an area that must be addressed (Baltimore County)

Several questions were asked about the unauthorized practice of law, namely, if enforcement should be geared toward protection of the profession as well as protection of the public. Mike Preston, who served on the Commission's Subcommittee on UPL, explained that enforcement cannot be construed as a restraint of trade, and for that and other reasons, enforcement must be designed for the purpose of protecting the public. (Carroll)

There were additional questions regarding the role of the Commission in pursuing the UPL test cases mentioned in the Report. Mike Preston explained that the complainant in such cases can be the local Bar or the MSBA. Bar Counsel will accept such complaints. (Carroll)

On the question of the unauthorized practice of law, some wondered what procedures may be in place to address such claims. (Dorchester)

Several attendees remarked that attorneys lodge few complaints about the unauthorized practice of law because of the perception that such complaints are pointless and go nowhere. (Frederick)

Professionalism includes *pro bono* work. This will also help limit the number of *pro se* litigants. In this respect, there was discussion recent "Civil Gideon" decision of the Court of Appeals. (Frederick)

Pro se litigants add to the problem, since they are not constrained as lawyers are. (Montgomery)

Did the Commission discuss pro se litigants? [Chief Judge Bell reported that Judge Green is heading up a group studying policy toward pro se litigants and how judges deal with them.] (Washington)

Judges' Role in the Bar and With Communities

Mandatory judicial evaluations should be instituted in every jurisdiction. Problems such as the possibility the evaluations will be used against incumbents in an election can be overcome. The alter ego program is not working. Another idea would be for the Bar Association to appoint a panel of lawyers to accept complaints about judges. (Anne Arundel)

One attendee commented that judges may act rude and unprofessional and questioned the applicability of the Commission's recommendations to the judiciary. (Baltimore City)

All agreed with the Commission's observation that the greater the participation by the bench in Bar activities, the higher the degree of professionalism. Judges, many thought, are less accessible now than in previous times. Some courthouses encourage judges to be cordoned off from the public. Judge Bell pointed out that this is entirely a local decision. (Calvert/St. Mary's)

One participant noted that the Report fails to take Administrative Law Judges into account as participants in the legal process. The participant explained that often ALJs do not adhere to the same standards of decorum and professionalism as do circuit and district court judges. (Carroll)

A Bar member replied that the issues also include errant Judges.

- Judge Battaglia replied that errant Judges will be addressed and that issues about judicial disabilities have been raised. (Cecil)

Commenting on the notion that judges should be more involved in the community, one member noted that historically judges had been more aloof, and that such aloofness helped insulate judges from claims of bias or prejudice. Judge Battaglia responded that such distance is a somewhat recent phenomenon, and that there exists now a belief that bringing judges into more active roles in the community helps raise the level of respect for the legal profession. (Dorchester)

The participation of judges in community organizations, particularly charitable organizations which are involved in fund raising activities, puts judges' involvement in potential conflict with judicial canons. (Garrett)

Judicial ethics rulings have kept judges from community participation. The Professionalism Commission's recommendations will help. (Montgomery)

In smaller counties, the Commission's recommendation for a larger judge's role increases the chances for recusal. (Talbot/Caroline).

The Standards do not sufficiently address the leadership role of the judiciary. The judge sets the tone of dignity and civility in his or her courtroom – the most important role. Accordingly, the Standards should also impose specific standards upon the judiciary. One attendee forwarded additional materials which are attached to these minutes. (Talbot/Caroline)

Perhaps in larger jurisdictions there is a lack of communication between the Bar and the judges that is a contributing factor in the lack of professionalism. (Washington)

Several judicial participants questioned the need for submission of speeches to the court information office. Judge Battaglia clarified this by explaining that the Commission does not propose that submission be mandatory. It is simply a resource for any judge who might want to have someone look at a proposed speech before it is given. (Worcester)

Several judges discussed the issue of a judge's participation in community organizations, particularly political organizations and charitable groups who solicit contributions from the Bar or from the public. Judges should be more involved, and a change in the Canons is welcome to clarify what is allowed. (Worcester)

Monetary Assessments/ Continuation of the Professionalism Commission

Several participants asked what sort of assessment would be considered to fund the proposed continuation of the Commission, and what resources would be needed. Judge Battaglia explained that the Commission would need office space, an Executive Director and a budget. Its ongoing work would be to spearhead efforts regarding the Commission's recommendations, with the Rules Committee and others, and to act as a clearinghouse for professionalism concerns. Many states already have full time staff for their professionalism commission. (Carroll)

The suggestion was made that fines levied under proposed new Rule 1-342 be used to fund the Professionalism Commission's work. (Carroll)

In light of the Commission's recommendation of a greater role for the MSBA in professionalism matters, several participants asked if the MSBA will become a mandatory Bar association. Judge Battaglia explained that the Commission has not considered this, because it is a matter beyond its charge. (Carroll)

A Bar member stated that sanctions for errant attorneys should be made stiffer and have the sanction funds used to fund the Commission instead of all attorneys bearing the cost.

- Judge Battaglia responded by stating that such funds are in the general fund and cannot be specified at this time.
- Judge Battaglia further stated that all these issues must be worked out and that they are not mandating specific ways to address the issues, as the culture is different in all counties. (Cecil) (also listed under sanctions breakout)

A Bar member asked about the potential assessment fee and suggested placing a cap on the amount of the assessment.

- Judge Battaglia responded that Maryland ranks as one of the states that requires the least amount for attorneys to pay in assessments; such an assessment may be added to the existing assessment, probably for approximately an additional $5.00. (Cecil)

An additional bar member followed up and asked if the court calendar and issues regarding postponement was established by the Court of Appeals. (Cecil)

A Bar member stated that the assessment sounds minor; could it be linked to the attorney trust fund?

- Judge Battaglia responded yes, and they want to limit the amount of assessment mailings to attorneys and just have one assessment a year.

(Cecil)

One participant suggested that the proposed annual assessment for lawyers be higher for urban lawyers than for rural lawyers. (Washington)

Miscellaneous

Several participants questioned the Commission's failure to address the issue of court security in light of recent acts of violence. What responsibility do lawyers have for their clients, when violent behavior can be anticipated? Do lawyers have a right to be outraged when required to pass through metal detectors; or to turn off cell phones in court? (Baltimore City)

Participants also opined that the Commission should take on the issue of "local rules." Although such are not allowed, they persist and are used against "non-locals." (Baltimore City)

One participant opined that he had not experienced unprofessional behavior over many years of practice. (Baltimore County)

The Report has a litigation bias. It needs more attention to the transactional side of the practice. (Baltimore County)

Law may be a calling, said one participant, but failure to pay attention to the business end of the profession is what gets many lawyers in trouble. (Frederick)

Finally there was a comment that an attorney's appearance should be stricken as a matter of course when a jury trial is prayed in District Court. Chief Judge Bell noted that this comment would be passed on to the Rules Committee. (Harford)

Several participants expressed the concern that the Commission's recommendations do not adequately take transactional practice into consideration. (MD Law School)

The quality and temperament of trial judges varies throughout the State, as do local procedures. Lawyers should have some fair notice of what is expected in different jurisdictions. (MD Law School)

One-half of all civil disputes are filed in domestic causes, which validates the Commission's focus on domestic law as one of the most litigious areas. It may be worthwhile to consider separate guidelines in this area. (MD Law School)

The Commission should specifically address problems with e-filing and e-discovery. (MD Law School)

The Commission's report seems to focus almost entirely on litigation, while many problems exist in the transactional arena. (Prince George's)

The public should be educated about the legal process – what we do and how we do it. (Talbot/Caroline)

One attorney commented that perhaps much of the perceived lack of professionalism can be driven by lawyers who are less than successful economically. Attorneys need to know how to run a business. (Washington)

Not to practice law as a business is in the spirit of public service. (Justice Pound's statement.) Nonetheless, lawyers need to know how to run their practice as a business, but very few do. (Washington)

There is probably more economic pressure on younger, new lawyers because of education expenses and business start-up costs than on older lawyers, and these economic pressures may lead to unprofessional behavior. (Washington)

The group was concerned with the manner in which the Commission's recommendations would be implemented. Judge Battaglia pointed out that the Commission would spearhead the recommendations before the Rules Committee, the Court and in presentations before other groups. (Wicomico/Somerset)

MINUTES OF THE TOWN HALL MEETINGS IN ALPHABETICAL ORDER

PROFESSIONALISM COMMISSION
ALLEGANY COUNTY PRESENTATION MEETING
OCTOBER 24, 2006

On October 24, 2006, at the Cumberland Country Club located in Cumberland, Allegany County, Maryland, the Professionalism Commission presented its final report to the Allegany County Bar. Nicholas J. Monteleone, Esquire, representative to the Professionalism Commission from Allegany County, arranged the meeting. Chief Judge Robert M. Bell was present. Judge Lynn A. Battaglia led the meeting and delivered the presentation.

In opening comments, Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the professionalism task force, to define and set forth specific standards of professionalism, and to direct and recommend to the Court ways to promote those standards. Judge Battaglia noted the unanimous sense of the Commission and the Bar that the area of Family Law generates the most complaints about unprofessional behavior. In addition, she highlighted the fact that discovery disputes constitute a major problem area addressed by the report. She also observed that smaller jurisdictions generally enjoy a greater sense of professionalism among practitioners than do urban areas, and that there appears to be a higher sense of professionalism in jurisdictions where judges are more involved in the community.

Judge Battaglia told the group that, although the Commission's report had been submitted to the Court, it has not yet been presented in open court and has not yet been acted upon. The Commission will meet to decide whether, in light of the comments from the Bar, the report should be modified.

Judge Battaglia summarized the Commission report, as set forth in handouts to the group, giving a brief synopsis of each subcommittee's work and recommendations. Judge Battaglia called upon Mr. Monteleone to help summarize and explain the work of the Commission subcommittee on the unauthorized practice of law. Judge Battaglia then opened the floor for comments and discussion.

One participant questioned how local jurisdictions will receive funding for the training of those persons who ultimately will be appointed to counsel errant attorneys. Another participant questioned the source of funding for discovery masters. Judge Bell explained that these specifics have not yet been worked out.

A participant observed that there is a higher degree of professionalism and civility in rural areas, and expressed concern that too high a degree of civility may compromise the interest of the client. This participant further observed that clients sometimes believe lawyers have more loyalty to each other than to their clients. Judge Battaglia observed that advocacy and loyalty to one's client do not equate to a lack of civility, and that civility does not equate to a compromise of the client's interests. Judge Bell observed that there is an assumption that the

lawyer is competent, that civility and professionalism are superimposed on that assumption, and that it is not expected that the client's interests will be sacrificed.

A participant questioned the operation of proposed Rule 1-342, specifically as it pertains to the reference to a "*monetary award*."

A participant expressed concern regarding the proposed link between violations of the standards of professionalism and the Maryland Lawyers Rules of Professional Conduct.

A participant questioned how the unauthorized practice of law would be enforced if a person or entity is engaged in the unauthorized practice of law, but the consumer has not been harmed or has not complained. It was explained that enforcement of UPL is complaint driven, and that enforcement needs to be carried out by or on behalf of the consumer so as to avoid accusations of turf protection and also to avoid restraint of trade issues. The rule prohibiting persons not admitted to the bar from practicing law was cited as the fundamental basis for enforcement.

There being no further comments, Judge Battaglia invited further comment by way of email or letter directed to her office.

Judge Bell then made some closing comments stressing the importance of the issues addressed in the Commission's report, noting that a decline in professionalism is not a new issue, citing the well known attacks on judicial independence and the reputation of lawyers. He commended Judge Battaglia for her devotion to these matters over the last four or five years and expressed his confidence that the end result will make life better for lawyers.

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Nicholas J. Monteleone,
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
ANNE ARUNDEL COUNTY PRESENTATION MEETING
NOVEMBER 9, 2006

On November 9, 2006, at the Anne Arundel Circuit Court, the Court of Appeals Professionalism Commission held a meeting of the bench and Bar of Anne Arundel County to present the Report of the Professionalism Commission.

Rignal W. Baldwin, Jr., Esquire, representative to the Professionalism Commission from Anne Arundel County, introduced Judge Lynne A. Battaglia, Chair of the Court of Appeals Commission on Professionalism. Mr. Baldwin solicited comments and input – as blunt as it needs to be – in order to help the Commission in deciding the final form of recommendation to the Court of Appeals. Judge Battaglia acknowledged the work of Mr. Baldwin and of Linda H. Lamone, Esq., representative to the Professionalism Commission from the Attorney Grievance Commission. Accordingly, Judge Battaglia called upon them to review for the group the work of their respective subcommittees. Mr. Baldwin discussed the Commission's recommendations with regard to Mentoring; Ms. Lamone reviewed the work of the subcommittee on the Unauthorized Practice of Law. Norman Smith reviewed the work of the subcommittee on Lawyers Who Exhibit Unprofessional Behavior.

Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Judge Bell, accompanied by Commission Reporter Norman Smith, will travel again to every jurisdiction to receive comments from Bar on the Report. Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia then opened the floor for comments and discussion.

With regard to the proposed changes to Judicial Canon 3 – will judicial referrals be anonymous? Will there be sanctions for judges who do not report? What is a "repeated and egregious" violation? How will we know?

Mandatory judicial evaluations should be instituted in every jurisdiction. Problems such as the possibility the evaluations will be used against incumbents in an election can be overcome. The alter ego program is not working. Another idea would be for the Bar Association to appoint a panel of lawyers to accept complaints about judges.

One problem area highlighted was that the Commission's recommendations regarding the unauthorized practice of law are inconsistent with the treatment of pro se litigants.

The Court of Appeals has made it nearly impossible to successfully hold an attorney in contempt, even in the most egregious cases. The proposed new sanctions will fall victim to the same jurisprudence. The problems with enforcement that have plagued Rule 1-341 are likely also to render proposed new Rule 1-342 impotent without some change. A model might be the federal system, which has a zero tolerance for unprofessional behavior.

One area of unprofessional behavior has to do with the economics of law. Scheduling conferences and other ministerial tasks offer the opportunity to bill hours. This is part of the larger problem of churning cases for hourly billings. An example is found in the Court of Appeals opinion in *Piper Rudnick LLP v. Hartz,* 386 Md. 201 (2005), where one law firm charged over a $1 Million in a case having to do with the attempted removal of a personal representative.

The Standards of Professionalism should include the duty to give clients a realistic estimate of prospective legal fees as well as a realistic prediction of the likely result, in order that a client can make a cost/benefit decision before the fees are out of hand. Judges should also look at the history of settlement negotiations before awarding attorney's fees in domestic matters.

The Commission's recommendations should include mandatory fee arbitration.

Complaints and referrals to counseling should be tracked from county to county so that judges will know what behavior is "repeated."

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
BALTIMORE CITY PRESENTATION MEETING
OCTOBER 17, 2006

On October 17, 2006, at the Baltimore War Memorial, the Court of Appeals Professionalism Commission held a meeting of the bench and bar to present the Report of the Professionalism Commission.

Dwight W. Stone, Esquire, Baltimore City representative to the Professionalism Commission introduced Court of Appeal Chief Judge Robert M. Bell, who reviewed the history of the Professionalism Commission and its predecessor, the Court of Appeals Task Force on Professionalism. In September, 2002, the Task Force began a series of Town Meetings to learn from the Bar, statewide, about its perception of the state of professionalism within its ranks. The report of the Task Force led, in turn, to the formation of the Professionalism Commission, whose Report to the Court of Appeals will now be reviewed in every jurisdiction. With that, Judge Bell introduced Judge Battaglia, to lead the meeting.

Judge Battglia thanked Judge Bell for his extraordinary involvement with the Bar and in the community. She also acknowledged and thanked Dwight Stone, Professor Byron Warnken, and Judge Jeannie J. Hong, for their work on the Commission Subcommittees on Mentoring and the Judge's Role in the Community. Judge Battaglia then asked these Commission members to review the work of their respective subcommittees for the group.

Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Judge Bell, accompanied by Commission Reporter Norman Smith, will travel again to every jurisdiction to receive comments from the Bar on the Report. Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia summarized the Commission Report, as set forth in handouts to the group, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the area of family law generates the most complaints about unprofessional behavior. In addition, Judge Battaglia highlighted the area of discovery disputes as a significant problem area addressed by the Report. Also, she said, smaller, rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. However, everyone seems to agree that in jurisdictions where judges are involved in Bar activities there is a higher degree of professionalism.

Judge Battaglia then opened the floor for comments and discussion.

Several participants questioned the Commission's recommendations regarding sanctions for unprofessional behavior. Specifically, participants wanted to know if the proposed Standards

of Professionalism will be mandatory, and if so, whether motions for sanctions under proposed new Rule 1-342 will be an opportunity for abuse. In addition, the group was concerned with the due process implications accompanying the administration of sanctions.

On the one hand, it was pointed out, the Commission has recommended counseling for errant lawyers; but at the same time the Report recommends sanctions. This is confusing.

Because the trigger for sanctions is the "*repeated or egregious*" violation of the Standards of Professionalism, one participant expressed concern that an attorney demonstrating repeated behavior but in different jurisdictions would possibly escape notice and referral to counseling.

A number of comments were made concerning the difficulty judges have imposing sanctions under existing rules and whether this will become easier under the proposed new Rule 1-342 and Canon 3. In addition, proposed new Rule of Professional Responsibility 8.4 (h) may become just an "add on" in every AGC complaint.

One attendee commented that judges may act rude and unprofessional and questioned the applicability of the Commission's recommendations to the judiciary.

The Commission was urged to avoid placing the burden of any mentoring program on the Young Lawyers Subcommittee of the Bar, a group that is already overburdened..

An important comment and recommendation was that the Commission view the proposed Standards of Professionalism as a "work in progress." In the opinion of one participant, the Standards, as presently drafted, are incomplete and disorganized. Specifically, the Standards must focus on core values such as competence, integrity, and civility as important to the advancement of the rule of law. The Baltimore City Guidelines on Civility (appended to these minutes) were recommended to the Commission as a better exposition of professionalism.

It was also suggested that the Commission revisit the MSBA professionalism guidelines in place of the now proposed Standards of Professionalism.

Several participants questioned the Commission's failure to address the issue of court security in light of recent acts of violence. What responsibility do lawyers have for their clients, when violent behavior can be anticipated? Do lawyers have a right to be outraged when required to pass through metal detectors; or to turn off cell phones in court?

Participants also opined that the Commission should take on the issue of "local rules." Although such are not now allowed, they persist and are used against "non-locals."

Judge Bell thanked everyone for attending, addressed the group and stressed the importance of professionalism as a core value of the profession. He pointed out that the purpose

of these meetings is not to impose ideas upon the Bar but rather to seek input in order that we may present a final report to the Court of Appeals that is a consensus document. With that, Judge Bell thanked Judge Battaglia and the Commission for its work thus far.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
BALTIMORE COUNTY PRESENTATION MEETING
NOVEMBER 15, 2006

On November 15, 2006, the Baltimore County Bar Association hosted a dinner and meeting for the Court of Appeals Professionalism Commission to present and review its Report to the Court of Appeals with the Bench and Bar of Baltimore County.

Dana Williams, Esquire, representative to the Professionalism Commission from Baltimore County and Chair of the Commission's Subcommittee on Discovery Abuse, introduced Judge Lynne Battaglia, who acknowledged Dana's work on the Commission's Subcommittee on Discovery Abuse and called upon him to summarize and discuss his Subcommittee's deliberations.

Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Chief Judge Bell, accompanied by Commission Reporter Norman Smith, will travel again to every jurisdiction to receive comments from Bar on the Report. Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia acknowledged the impressive Baltimore County attendance, including a number of judges and retired judges. She then summarized the Commission Report, as set forth in handouts to the group, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the areas of family law and discovery generate the most complaints about unprofessional behavior. Also, she said, smaller, rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. However, everyone seems to agree that in jurisdictions where judges are involved in Bar activities, there is a higher degree of professionalism. Judge Battaglia then opened the floor for comments and discussion.

Several participants expressed the concern that the Commission's recommendations with regard to sanctions will cause the aspirational standards to become hard and fast rules. Also, the Standards of Professionalism are not clear as to their mandatory or aspirational content. For example, does "should" (as used in the Standards) mean "shall"?

Does proposed new rule 8.4 (h) overlap existing Rule 8.4, which prohibits behavior prejudicial to the administration of justice?

Who can be a complainant for suspected unauthorized practice of law?

Will the Standards of Professionalism be reworked to avoid prosecution of trivial matters?

Pro se litigants in the family law arena is an area that must be addressed.

The main problem in the discovery abuse area is delay. Why not more decisions without a hearing?

Proposed new Rule 8.4(h) and 1-342 put too much power in the hands of judges who may abuse it.

In discovery matters, Judges must have the power to fashion flexible remedies with all deliberate speed in order to cut the cost of litigation caused by these disputes.

One participant opined that he had not experienced unprofessional behavior over many years of practice.

The Report has a litigation bias. It needs more attention to the transactional side of the practice.

The Standards of Professionalism require a lawyer to "cooperate and compromise." Is this in conflict with the duty to zealously represent our clients?

Litigation is too expensive. Large firms churn cases to generate fees, prejudicing litigants with fewer resources.

We should look at the federal example – zero tolerance for unprofessional behavior.

The terms "egregious" and "repeated" need to be clarified.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
CALVERT/ST. MARY'S COUNTY PRESENTATION MEETING
SEPTEMBER 13, 2006

On September 13, 2006, at the Calvert County Circuit Court, the Court of Appeals Professionalism Commission held the second of a series of meetings to present the Report of the Professionalism Commission to the Bar.

Mark Davis, Esquire, Commission representative from Calvert County, introduced Judge Lynne A. Battaglia, who acknowledged the work of Mark Davis and former Commission member Larry Cumberland of Calvert County**,** present Commission member David Densford of St. Mary's County as well as the technical assistance of Dan Clark from the Court of Appeals media department. Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Chief Judge Bell, accompanied by Commission Reporter Norman Smith, will travel to every jurisdiction to receive comments from the Bar on the Report. Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia summarized the Commission's Final Report, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the area of family law generates the most complaints about unprofessional behavior. In addition, Judge Battaglia highlighted the area of discovery disputes as a significant problem area addressed in the Report. Also, she said, smaller, rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. Everyone, however, agreed that in jurisdictions where judges are involved in Bar activities, there is a higher degree of professionalism. Judge Battaglia then opened the floor for comments and discussion.

Judge Battaglia started the discussion by asking the participants, for purposes of discussion, to accept the findings of the Commission and premise that there is a professionalism issue to be addressed. The first question was how to define "bad lawyers." Several participants felt that this is a subjective issue which might lead to an abuse of power. This problem is inherent in defining unprofessional behavior in an adversarial arena. Obviously, there must be breathing room for speech in this regard.

Other participants pointed out the difference between large, urban jurisdictions and smaller counties, where uncivil and rude lawyers immediately develop an unfavorable reputation. Another problem in smaller counties is that clients sometimes interpret the collegial

atmosphere as a failure of lawyers to act sufficiently adversarial to one another. As a result, clients often hire out of county lawyers who, they feel, will be more aggressive. This implicates the larger question of whether unprofessional behavior is, in part, client-driven and raises the question of how we, as lawyers, can educate the public away from this perception.

The long term solution, said one participant, is to deal with less obvious and less egregious behavior before it gets out of hand. In this regard, several participants endorsed the Commission's recommendation of counseling. Counseling will be difficult, however, in smaller counties. One idea was to institute a lawyer alter-ego program similar to that already in place for judges.

All agreed with the Commission's observation that the greater the participation by the bench in Bar activities, the higher the degree of professionalism. Judges, many thought, are less accessible now than in previous times. Some courthouses encourage judges to be cordoned off from the public. Judge Bell pointed out that this is entirely a local decision.

Discovery abuse, identified by the Commission as a significant problem, is also ill-defined.

Judge Battaglia then introduced Chief Judge Bell, who thanked Judge Battaglia for her extensive work on the Commission, which, as Judge Bell pointed out, is above and beyond the call of duty. Judge Bell reminded the group that it was the MSBA's 2001 suggestion of a professionalism course for experienced lawyers that led to the Court of Appeals' formation of the Professionalism Task Force. First the Task Force, and now the Commission, is continuing to grapple with this important issue. The judiciary has no power beyond that given by the trust and confidence of the people, said Judge Bell. Judges are not advocates. They only decide what has been brought before them by the people, through lawyers. And the manner in which those cases are brought is the job of attorneys who must lead by an example of professionalism.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
CECIL COUNTY PRESENTATION MEETING
NOVEMBER 18, 2006

The meeting began at the Cecil County Circuit Courthouse with a brief introduction by Judge Battaglia regarding the findings of the Professionalism Commission with the aid of a Power Point Presentation and handouts to the Bar Members.

During the Power Point Presentation, Victor R. Jackson, representative to the Professionalism Commission, spoke of the work of the subcommittee on the Judges' Role in the Bar and With Communities..

Following the Power Point Presentation by Judge Battaglia of the Report of the Professionalism Commission, the Members of the Cecil County Bar Association had the following comments, concerns and questions regarding the recommendations and report of the Professionalism Commission:

- A Bar Member asked Judge Battaglia whether a course on Professionalism is going to be a requirement.
    - Judge Battaglia responded not at the present time; however, that option is still on the table and that the Task Force did not recommend the course.
    - Further, such a course is not a precursor to CLE requirements.

- As a follow-up question, a Bar Member asked whether such a course would be for all Bar Members of the Bar or just for new Members.
    - Judge Battaglia responded that the course is still on the table and has not been recommended by the Task Force to be mandatory for all attorneys.
    - Judge Battaglia further commented that the course could be mandatory for all attorneys or could be tailored for errant attorneys.

- A Bar Member then commented that compared to other areas and states, he has found that Cecil County professionalism is very high and sanctions are not necessarily needed.
    - Judge Battaglia responded that the issue of sanctions depends on enforcement at the Bar level and that they could explore expansion of sanctions at a later time.

- Another Bar Member stated that sanctions for errant attorneys should be made stiffer use the fines to fund the Commission instead of all attorneys bearing the cost.
    - Judge Battaglia responded by stating that such funds are in the general fund and cannot be specified at this time.
    - Judge Battaglia further stated that all these issues must be worked out and that they are not mandating specific ways to address the issues, as the culture is different in all counties.

- Another Bar Member replied that the issues also include errant Judges.
    - Judge Battaglia replied that errant Judges will be addressed and that issues about judicial disabilities have been raised.

- A Bar Member asked about the potential assessment fee and suggested placing a cap on the amount of the assessment.
    - Judge Battaglia responded that Maryland ranks as one of the states that requires the least amount for attorneys to pay in assessments; such an assessment may be added to the existing assessment, probably for approximately an additional $5.00.

- Another Bar Member commented regarding the Committee's finding on Discovery problems and that Judges are reluctant to impose sanctions on attorneys.
    - Judge Battaglia responded that it may be because a Judge wants to ensure that the client is not penalized.
    - Bar Members then commented that often it is not the attorney's fault; rather the clients fail to respond to requests or are slow to produce the discovery.
    - Judge Battaglia responded that there must be due process in all of this.

- A Bar Member questioned the problems between deadlines and the court calendar, specifically that there is friction between the Judges and attorneys because even if both sides agree, the Judges still deny postponement.
    - Judge Battaglia responded that this issue has been previously raised.

- An additional Bar Member followed up and asked if the court calendar and issues regarding postponement was established by the Court of Appeals.

- A Bar Member stated that the assessment sounds minor; could it be linked to the attorney trust fund?
    - Judge Battaglia responded yes, and they want to limit the amount of assessment mailings to attorneys and just have one assessment a year.

- A different Bar Member stated that he understood the need to put teeth into sanctions and wondered if the terms "egregious" and "repeated" would be more defined or expounded upon.
    - Judge Battaglia stated that these findings must go before the Rules Committee or must go to the appropriate Committee.
    - Judge Battaglia also stated that the Attorney Grievance Commission must have a role in the process.
    - Judge Battaglia agreed that misconduct must be defined.

- A Bar Member questioned whether before a formal filing, an attorney can go to counseling before being reprimanded.

- A Bar Member further commented on Discovery Issues and that an attorney should document if it was the client's fault and not the attorney's fault.

- A Bar Member asked Judge Battaglia if the Professionalism course could be used for Pro Bono hours.

- Another Bar Member then stated that the Maryland Professionalism requirements are relatively simple compared to Pennsylvania and that it is not an overwhelming request to take a Professionalism course.

Judge Battaglia then concluded the meeting and all the attending members were invited to enjoy refreshments following the meeting.

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Victor R. Jackson, Esquire
Member, Maryland Judicial
Commission on Professionalism

PROFESSIONALISM COMMISSION
CHARLES COUNTY PRESENTATION MEETING
OCTOBER 26, 2006

On October 26, 2006, the Charles County Bar Association hosted a dinner and meeting for the Court of Appeals Professionalism Commission to present and review its Report to the Court of Appeals with the Bench and Bar of Charles County.

Danny R. Seidman, Esquire, representative to the Professionalism Commission from Charles County, introduced Chief Judge of the Court of Appeals, Robert M. Bell. Chief Judge Bell opened the meeting by reviewing the history of the Professionalism Commission. Judge Bell then introduced Judge Lynne A. Battaglia, Chair of the Professionalism Commission.

Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism and to recommend to the Court ways to promote the standards. Judge Battaglia told the group that, although the Commission's Report has been submitted to the Court, it has not be presented in open Court and acted upon. The group was further informed that Judge Battaglia and Chief Judge Bell had traveled to many other Bar Associations already, and would travel to every jurisdiction in the State to present the Commission's report and recommendations and to receive comments from the Bar Associations. After receiving comments from the Bar, the group was informed the report may be modified before being presented in open Court.

Following the opening comments, Judge Battaglia presented the recommendations of the Commission with the aid of a Power Point Presentation and handouts to everyone in attendance. At Judge Battaglia's request, Danny R. Seidman presented the work of two of the subcommittees, the Subcommittee on Discovery Abuse Including the Use of Discovery Masters, and the Subcommittee on Judge's Role in the Bar and with Communities.

Following the Power Point Presentation, Judge Battaglia solicited comments and questions from the attendees.

An attendee commented that most incidents of unprofessional behavior are observed by other lawyers, not judges, and other lawyers are unlikely to report unprofessional behavior. Judge Battaglia responded that Rule 8.3 of the Maryland Rules of Professional Conduct already provides that lawyers have an ethical obligation to report violations. Judge Battaglia also commented that a similar issue was raised by a transactional attorney at another Town Hall meeting.

Another attendee commented that Rule 8.3 is only triggered in a situation where a lawyer has knowledge that another lawyer had violated rules, and that judges did not have the same reporting requirement under Rule 8.3.

Another attendee suggested that the reason that the rule only applied to a lawyer's observation is because judges rarely see the same behavior that the lawyer sees since lawyers generally behave better when they are before a judge. Judge Battaglia commented that Rule 8.3 could potentially be abused by attorneys.

Another attendee commented that he couldn't imagine that "all this" was necessary regarding the need for a Professionalism Commission, and that he couldn't see the need to have Mel Hirschman intruding any further into our personal and/or professional lives.

Another attendee voiced concern that they couldn't see expanding the Court's jurisdiction into another area, and that they didn't believe that it was the role of judges to report attorneys for unprofessional conduct to anyone other than Bar Counsel. The attendee said that if they were inclined to report inappropriate behavior to anyone it would be the Attorney Grievance Commission.

An attendee commented that they didn't believe unprofessional behavior was as much of a problem for judges because the offending party could be pulled aside by the Judge and reprimanded, and that would be sufficient to curb any inappropriate behavior.

An attendee commented that they believed unprofessional behavior was less of a problem in smaller jurisdictions because attorneys were more familiar with one another. Professionalism Committee member, Danny R. Seidman, responded that the same point was made by members of the Professionalism Committee at Committee meetings.

An attendee asked whether or not there was any empirical data to the support claim that there were fewer problems of unprofessional behavior with newer attorneys than with more experienced attorneys, and the relationship of continuing legal education classes (CLE) to any such data. Judge Battaglia responded that she has received comments that Pennsylvania, which requires CLE, has fewer problems compared to Maryland, but that there was no empirical data available.

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Danny R. Seidman, Esquire
Member, Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
DORCHESTER COUNTY PRESENTATION MEETING
NOVEMBER 22, 2006

On November 22, 2006 the Court of Appeals Professionalism Commission held a meeting in the Cambridge City Council Chambers in Dorchester County. At that time the Commission presented the Report of the Professionalism Commission to members of the Bar, as well as judges representing the local bench at all levels, including the Circuit, District, and Orphans' courts.

William H. Jones, Esquire, representative of the Professionalism Commission from Dorchester County, introduced Judge Lynne A. Battaglia, Chair of the Court of Appeals Commission on Professionalism. During that introduction, those present were reminded of the meetings held around the state earlier which led to the formation of the Commission. Judge Battaglia took the opportunity to discuss those issues which caused the Court of Appeals to initially study the matter of Professionalism in the legal profession.

Judge Battaglia explained the work of the Commission and reported that while the Report had been submitted to the Court of Appeals, it will not be presented in open Court and acted upon until early next year. Judge Battaglia discussed the Report with the assistance of a PowerPoint presentation. The presentation included a summary of the work of each sub-committee and each sub-committee's recommendations. Mr. Jones presented the work of the sub-committee that addressed the course for new admittees. Judge Battaglia noted during the presentation that family law and discovery disputes seemed to generate the most problems, and that practitioners in smaller or more rural areas felt a greater degree of satisfaction in that most issues that arose in these areas tended to be a bit self-correcting.

Judge Battaglia then turned the discussion over to the floor for comments and questions.

One Bar member questioned whether "Professionalism" can really be taught, and was concerned that this work may lead to more formal referrals to the Attorney Grievance Commission. Perhaps anything that results in a formal Attorney Grievance Commission referral should be conduct of a more egregious nature, and that the persons involved in such conduct, whether it be of an egregious nature or not, will probably find themselves before the Attorney Grievance Commission anyway.

Procedural issues were raised as well. One member questioned whether the Rules of Evidence would apply at any proceedings that may result from the work of the Commission. As well, the question of whether confidentiality would exist for those reporting unprofessional conduct was raised. Judge Battaglia noted that more informal mechanisms may be more effective in smaller areas.

On the question of the unauthorized practice of law, some wondered what procedures may be in place to address such claims.

Commenting on the notion that judges should be more involved in the community, one member noted that historically judges had been more aloof, and that such aloofness helped

insulate judges from claims of bias or prejudice. Judge Battaglia responded that such distance is a somewhat recent phenomenon, and that there exists now a belief that bringing judges into more active roles in the community helps raise the level of respect for the legal profession.

One member of the Bar noted that if civility and the settling of litigation are related, such concepts may be inhibited by a local rule that exists (not in Dorchester County) that imposes substantial fines on attorneys involved in cases that settle within ten days of trial.

Someone asked what attorneys seemed to want from proposed enhancements that are designed to improve professionalism. Judge Battaglia noted that requiring Continuing Legal Education had been a disfavored concept, and that a required professionalism course was disfavored as well, partially because of the impact on solo and small firm practitioners.

Finally, one Bar member commented on the behavior of some members of internet "listservs", where attorneys can pose practical questions to other attorneys and engage in discussions. Some of those members apparently take pleasure in engaging in hostile and demeaning conduct toward others in a somewhat public way. The member noted that perhaps this type of conduct would be considered to be of the more egregious nature as discussed earlier.

Judge Battaglia then adjourned the meeting and invited those present to enjoy a light lunch provided by the local Bar.

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William H. Jones, Esquire
Member
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
FREDERICK COUNTY PRESENTATION MEETING
SEPTEMBER 21, 2006

On September 21, 2006, at the Frederick County Circuit Court, the Court of Appeals Professionalism Commission held a meeting of the bench and Bar to present the Report of the Professionalism Commission.

Tom Lynch, Esquire, the Frederick County representative to the Professionalism Commission, introduced Judge Lynne Battaglia. Judge Battaglia acknowledged Tom's work as Chair of the Commission's Subcommittee on the Standards of Professionalism, which set the stage and tone for the Commission's Report. Accordingly, Judge Battaglia called upon Tom to summarize and explain the work of his Subcommittee. Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Judge Bell, accompanied by Commission Reporter Norman Smith, will travel to every jurisdiction to receive comments from the Bar on the Report. Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia summarized the Commission Report, as set forth in handouts to the group, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the area of family law generates the most complaints about unprofessional behavior. In addition, Judge Battaglia highlighted the area of discovery disputes as a significant problem addressed by the Report. Also, she said, smaller, rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. Everyone, however, seems to agree that in jurisdictions where judges are involved in Bar activities there is a higher degree of professionalism. Judge Battaglia then opened the floor for comments and discussion.

Tom Lynch started the discussion by asking the group for comments on the Commission's recommendations concerning imposing sanctions to enforce the Standards of Professionalism. This is an area that has drawn the most concern in meetings thus far. One participant commented that Masters should be empowered to impose sanctions, since lawyers, realizing the Master's limited authority, often misbehave in that forum. A judge pointed out that regardless of the potential sanction, judges must know of the wrongful behavior. Motions for sanctions must describe explicitly what has happened and the surrounding events. Another participant suggested that proposed new Rule 1-342 be strengthened to function like Federal Rule 11. Another participant was concerned that proposed new Judicial Canon 3 seems to take discretion from a judge, stating instead that a judge *shall* report repeated or egregious conduct to the Attorney Grievance Commission.

Several attendees remarked that attorneys lodge few complaints about the unauthorized practice of law because of the perception that such complaints are pointless and go nowhere.

Law may be a calling, said one participant, but failure to pay attention to the business end of the profession is what gets many lawyers in trouble.

One judge pointed out that in a child custody case, it is difficult to impose sanctions of any sort, since the purpose of the case is to effect the child's best interests.

Several attendees remarked that one aspect of professionalism not specifically addressed in the report has to do with attorneys refusing to communicate with one another. It is unprofessional and a disservice to clients for an attorney to refuse to talk about potential compromise and resolution of a matter or even about resolution of discovery problems.

One participant commented that lawyers do not want sanctions for discovery violations - Most lawyers just want the documents. Perhaps mandatory production as in the Federal Rules is an option.

Professionalism includes *pro bono* work. This will also help limit the number of *pro se* litigants. In this respect, there was discussion of the Court of Appeals recent "Civil Gideon" decision.

Chief Judge Bell thanked everyone for attending and stressed the importance of professionalism as a core value of the profession. He pointed out that the purpose of these meetings is not to impose ideas upon the Bar but to seek input in order that we may present a final report to the Court of Appeals that is a consensus document. With that, Judge Bell thanked Judge Battaglia, Laura Glasgow, Tom Lynch, Norman Smith, as well as the entire Commission for its work thus far.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
GARRETT COUNTY PRESENTATION MEETING
NOVEMBER 21, 2006

On November 21, 2006, at the Garrett County Circuit Court, the Court of Appeals Professionalism Commission held a meeting of the bench and Bar to present the Report of the Professionalism Commission.

Master Daryl T. Walters, Garrett County representative to the Professionalism Commission, introduced Court of Appeals Chief Judge Robert M. Bell, who reviewed the history of the Professionalism Commission and its predecessor, the Court of Appeals Task Force on Professionalism. The Task Force having conducted town meetings in every jurisdiction, the Commission is now in the process of holding meetings in all jurisdictions in order to present its Report and to receive input and comments on the Report before it is presented to the Court of Appeals. Judge Bell, in turn, introduced Judge Lynne A. Battaglia, Chair of the Professionalism Commission.

Judge Battglia thanked Judge Bell for his extraordinary involvement with the Bar and in the community. She also acknowledged and thanked Master Daryl Walters for his work on the Commission's Subcommittees on Discovery Abuse and asked Master Walters to review the work of his subcommittee for the group.

Judge Battaglia summarized the Commission Report, as set forth in handouts to the group, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the area of family law generates the most complaints about unprofessional behavior. In addition, Judge Battaglia highlighted discovery disputes as a significant problem area addressed by the Report. Also, she said, smaller, rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. However, everyone seems to agree that in jurisdictions where judges are involved in Bar activities, there is a higher degree of professionalism.

Judge Battaglia then opened the floor for comments and discussion.

The participation of judges in community organizations, particularly charitable organizations which are involved in fund raising activities, puts judges' activities in potential conflict with judicial canons.

Discovery abuse may be the result of ignorance rather than misbehavior.

Mentoring is important in the progress of new lawyers who learn the process.

Proposed change to Judicial Canon 3, which states that judges "shall" report repeated or egregious violations of the Standards of Professionalism, is problematic. Will judges be sanctioned for failure to report?

The problem of discovery abuse could be addressed, in part, by the use of certain types of discovery tailored to the specific needs of certain cases, such as domestic relations actions.

Some of the Standards of Professionalism are in conflict with the need to zealously represent one's clients. Can civility coexist with zealous advocacy? Will the Standards create a chilling effect on advocacy?

Judges may use the proposed new rules to harass lawyers.

The Standards must be reworked. The term "professionalism" is vague and the proposed Standards of Professionalism may be void due to the vagueness of its terminology.

Judge Bell thanked everyone for attending, addressed the group and stressed the importance of professionalism as a core value of the profession. With that, Judge Bell thanked Judge Battaglia and the Commission for its work thus far.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
HARFORD COUNTY PRESENTATION MEETING
OCTOBER 23, 2006

On October 23, 2006, at the Harford County Circuit Court, the Court of Appeals Professionalism Commission held a meeting to discuss the Report of the Professionalism Commission.

Chief Judge Robert M. Bell began the meeting by reminding the group that it was the MSBA's suggestion, in 2001, of a professionalism course for experienced lawyers that led to the Court of Appeals' formation of the Professionalism Task Force, led by Judge Battaglia. In September, 2002, the Task Force held the first of its Town Meetings in Howard County to learn from the Bar, state-wide, about its perception of the state of professionalism within its ranks. The report of the Task Force led, in turn, to the formation of the Professionalism Commission, whose Report to the Court of Appeals will now be reviewed in every jurisdiction. With that, after publicly thanking Judge Battaglia for her tireless effort, Judge Bell introduced Judge Battaglia to lead the meeting.

Judge Battaglia first described the Commission's mission, which was to act upon the findings of the Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards**.** Judge Battaglia noted that approximately two out of three Maryland attorneys have taken the Professionalism course and that we still find the concept of professionalism hard to define. It is more than just ethics. Perhaps "ethics plus, or even "ethics on steroids". Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Judge Bell, accompanied by Commission Reporter Norman Smith, will travel again to every jurisdiction to receive comments from the Bar on the Report. Then, before the report is officially presented, the Commission will meet to decide whether, in light of comments from the Bar, the report should be modified before presentation to the Court of Appeals.

Judge Battaglia summarized the Commission's Final Report, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the area of family law generates the most complaints about unprofessional behavior. In addition, Judge Battaglia highlighted the area of discovery disputes as a significant problem area addressed by the Report. Also, she said smaller rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. But everyone seems to agree that in jurisdictions where judges are involved in Bar activities, there is a higher degree of professionalism. Judge Battaglia then opened the floor for comments and discussion.

Stimulated by Judge Battaglia's presentation, there were a number of insightful comments by members of the enthusiastic audience. There was a lively discussion about the

question of whether the recommendations should be aspirational or mandatory. Clearly noted was the fact that repeated and/or egregious conduct was sanctionable. It was further noted that the "process" contemplated referral to a local Bar group for voluntary counseling. Continued unprofessional conduct would move up the disciplinary chain. One participant noted that when you hear "That's just (fill in the name)"! you know that person is professionally challenged . . . and, further, that most people in the Bar know who those persons are.

It is anticipated that Discovery disputes will be dealt with by Discovery Judges in larger counties and Discovery Masters in smaller counties. The relationship between advertising and professionalism was discussed. The consensus was that unprofessional advertisements should be controlled, or at least come within the parameters of this Commission's recommendations.

Several of the speakers noted that a collegial and professional joint decision by counsel to continue a case was frequently met by a less than cooperative Judge who, concerned with various time deadlines and statistics, denied the joint request.

Several members suggested that serious thought be given to requiring mandatory attendance at a continuing education Professionalism class and, additionally, mandatory attendance at required Continuing Legal Education courses. One member suggested that the Continuing Professionalism Course be situationally oriented in the same manner as it is for new admittees, i.e., the Lawyer and (the Community) (the Court) (the Client) (other Lawyers).

Another person noted that Law School is very competitive and does not train one to be collegial and/or professional. Another noted that Law School does a poor job of distinguishing between the roles of the lawyer-advocate and the lawyer-counselor.

Finally there was a comment that an attorney's appearance should be stricken as a matter of course when a jury trial is prayed in District Court. Chief Judge Bell noted that this comment would be passed on to the Rules Committee.

Overall, the Commission Report was well received. All participants seemed to have given it time and reflection.

Judge Bell closed the meeting by reaffirming the importance of the Commission's goals, stressing that we attorneys should be leaders in a broader public effort toward civility and professional conduct.

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Cornelius D. Helfrich
Substituting for Norman L. Smith, Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
HOWARD COUNTY PRESENTATION MEETING
SEPTEMBER 5, 2006

On September 5, 2006, at the Howard County Circuit Court, the Court of Appeals Professionalism Commission held the first of a series of meetings to present the Report of the Professionalism Commission to the Bar.

The Honorable Dennis M. Sweeney, Howard County, Commission representative from Howard County, introduced Chief Judge Robert M. Bell. Judge Bell reminded the group that it was the MSBA's suggestion, in 2001, of a professionalism course for experienced lawyers that led to the Court of Appeals' formation of the Professionalism Task Force, led by Judge Battaglia. In September, 2002, the Task Force held the first of its Town Meetings in Howard County to learn from the bar, statewide, about its perception of the state of professionalism within its ranks. The report of the Task Force led, in turn to the formation of the Professionalism Commission, whose Report to the Court of Appeals will now be reviewed in every jurisdiction. With that, Judge Bell introduced Judge Battaglia, to lead the meeting. Judge Battaglia first described the Commission's mission, which was to act upon the findings of the Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Judge Bell, accompanied by Commission Reporter Norman Smith, will travel again to every jurisdiction to receive comments from the Bar on the Report. Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia summarized the Commission's Final Report, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the area of family law generates the most complaints about unprofessional behavior. In addition, Judge Battaglia highlighted the area of discovery disputes as a significant problem area addressed by the Report. Also, she said, smaller, rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. But everyone seems to agree that in jurisdictions where judges are involved in Bar activities, there is a higher degree of professionalism. Judge Battaglia then opened the floor for comments and discussion.

One of the first areas of discussion involved the Commission's recommendations concerning sanctions for unprofessional behavior among attorneys, namely proposed new Rule 1-342, new Rule of Professional Conduct 8.4(h) and additions to Judicial Canon 3. Several participants felt that these provisions might simply escalate disputes, spawning complaints and cross-complaints in every case. There was some feeling that there should be a way to address this issues short of a resort to sanctions. This possibility was later addressed in the presentation of the Commission's proposal of counseling for errant attorneys.

Some participants questioned one of the basic premises for the Report: whether the behavior of habitual unprofessional lawyers can be changed. First, some observed, we must find

the reasons for bad behavior. Has the nature of the profession changed its members, resulting in bad behavior? To address this, one participant suggested, in a seminar context, a demonstration of bad behavior in a way that might embarrass those who recognize themselves. Public education is also very important. Prospective clients should be educated to seek good lawyers who will present the client's case is the best way possible, but who will not escalate disputes unnecessarily. In other words, uncivil behavior should not be client driven.

One participant suggested that the professionalism course for new admittees might be given after several years of practice, rather than right away. Judge Battaglia explained the Commission's consideration and ultimate rejection of that proposal.

There was general consensus that the greater use of discovery masters would be of great help in easing tensions, particularly in the domestic law area.

Overall, the Commission Report was well received. All participants seemed to have given it time and reflection.

Judge Bell closed the meeting by re-affirming the importance of the Commission's goals, stressing that we attorneys should be leaders in a broader public effort toward civility and professional conduct.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
UNIVERSITY OF MARYLAND LAW SCHOOL FACULTY
PRESENTATION MEETING
NOVEMBER 28, 2006

On November 28, 2006, the University of Maryland Law School hosted a luncheon and meeting for the Court of Appeals Professionalism Commission to present and review its Report to the Court of Appeals.

Professor Abraham A. Dash, representative to the Professionalism Commission from the Law School, introduced Judge Lynne Battaglia, who acknowledged Professor Dash's work on the Commission's Subcommittee on Professionalism Guidelines and Sanctions and called upon him to summarize and discuss his Subcommittee's deliberations and recommendations.

Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Commission Reporter Norman Smith, have traveled again to every jurisdiction to receive comments from Bar on the Report. Chief Judge Bell has attended as many meetings as possible, consistent with his duties as Chairperson of the Counsel of Chief Judges. As a result of the input gathered, the Commission has additional work to do by way of modifying the report to include certain often voiced concerns from the bench and Bar.

Judge Battaglia summarized the Commission's Report, as set forth in handouts to the group, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the areas of family law and discovery generate the most complaints about unprofessional behavior. Also, she said, smaller, rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. Everyone, however, seems to agree that in jurisdictions where judges are involved in Bar activities, there is a higher degree of professionalism. Judge Battaglia then opened the floor for comments and discussion.

Several participants expressed the concern that the Commission's recommendations do not adequately take transactional practice into consideration.

The quality and temperament of trial judges varies throughout the State, as do local procedures. Lawyers should have some fair notice of what is expected in different jurisdictions.

Attorney misconduct is often caused by judicial misconduct, specifically the failure of judges to enforce the rules fairly and impartially.

One half of all civil disputes are filed in domestic causes, which validates the Commission's focus on domestic law as one of the most litigious areas. It may be worthwhile to consider separate guidelines in this area.

We might want to consider certification of lawyers as competent and experienced in different areas.

The Standards of Professionalism should specifically include nondiscrimination on the basis of sexual orientation.

Data from local Bar counseling should be kept to identify repeat offenders.

The Commission should specifically address problems with e-filing and e-discovery.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
MONTGOMERY COUNTY PRESENTATION MEETING
NOVEMBER 28, 2006

On November 28, 2006, at the Montgomery County Circuit Court, the Court of Appeals Professionalism Commission held a meeting of the bench and Bar of Montgomery County to present the Report of the Professionalism Commission.

Karen Federman-Henry, Esq. Representative to the Commission from Montgomery County, introduced Judge Lynne A. Battaglia, Chair of the Court of Appeals Commission on Professionalism. Judge Battaglia acknowledged Karen's work on the Commission's Subcommittees on Standards of Professionalism and a Development of a Professionalism Course for Lawyers Exhibiting Unprofessional Behavior.

Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Judge Bell, accompanied by Commission Reporter Norman Smith, have traveled to every jurisdiction - Montgomery County being the last - to receive comments from the bench and Bar on the Report. In early January, the Commission will meet to review and revise the Report in the light of comments from the Bar.

Judge Battaglia called upon Karen Federman-Henry, who reviewed the work of the Commission's Subcommittees on Standards of Professionalism and a Development of a Professionalism Course for Lawyers Exhibiting Unprofessional Behavior.

Judge Battaglia presented the entire report and then opened the floor for comments and discussion.

Many lawyers embroiled in discovery disputes cite the discovery opinions that the Commission has recommended be made public.

The Standards of Professionalism are new and not well understood. The standards should be clear in order that lawyers have fair notice of what is required to avoid sanctions.

Can judges be sanctioned for failing to report those who may have violated the Standards?

Will the new sanctions empower judges to harass lawyers?

A better system of mentoring, certification of skills, or a barrister system would go a long way toward addressing the problem.

Judges and attorneys should show respect for one another by shaking hands in view of the jury and clients – using as a model the Fourth Circuit's tradition.

Pro se litigants add to the problem, since they are not constrained as lawyers are.

Judicial ethics rulings have kept judges from community participation. The Professionalism Commission's recommendations will help.

Mandatory CLE would be helpful.

Large firms generally have a more professional practice, because there is more opportunity for mentoring.

The alter ego program – now disbanded – was useful. Something should replace it.

What quantum of evidence to sustain sanctions? preponderance? clear and convincing?

The sanctions recommendations as now written do not adequately address due process issues for those accused.

Misbehaving lawyers could be required to allow videotaping of their conversations and presentations.

We can learn from the medical profession – need internships and more mentoring.

Standards should be aspirational. Existing law is sufficient for sanctions.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
PRINCE GEORGE'S COUNTY PRESENTATION MEETING
NOVEMBER 14, 2006

On November 14, 2006, at the Prince George's County Circuit Court, the Court of Appeals Professionalism Commission held a meeting of the bench and Bar of Prince George's County to present the Report of the Professionalism Commission.

After a buffet dinner, the group met in the jury assembly room. The Honorable William D. Missouri, County Administrative Judge, introduced all attending judges and other dignitaries, acknowledging Court of Appeals Chief Judge Bell's absence due to illness. Judge Missouri then introduced Judge Lynne A. Battaglia, Chair of the Court of Appeals Commission on Professionalism. Judge Battaglia acknowledged the work of Professionalism Commission members present, including Court of Special Appeals Judge James P. Salmon, Chair of the Commission's Subcommittee on Mentoring, Felicia Love Greer, Esq., Prince George's County Representative to the Commission and member of the Subcommittee on Mentoring, Deborah L. Potter, Esq., Chair of the Commission's Subcommittee on the Professionalism Course for New Admittees to the Bar, Steven P. Lemmey, Esq., Representative to the Commission from the Judicial Disabilities Commission and member of the Commission's Subcommittee on the Judge's Role in the Community, and Norman L. Smith, Esq., the Commission's Reporter and Chair of the Subcommittee on Development of a Professionalism Course for Lawyers Exhibiting Unprofessional Behavior.

Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Chief Judge Bell, accompanied by Commission Reporter Norman Smith, are in the process of traveling to every jurisdiction to receive comments from the Bench and Bar on the Report. Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia called upon Judge Salmon, who reviewed the work of the Commission's Subcommittee on Mentoring, Deborah Potter, who reviewed her Subcommittee's work on the existing Course for New Admittees, Steve Lemmey, who reported on his Subcommittee's deliberations and recommendations on the Role of Judges at the Bar and in the community, and Norman Smith, who discussed the work of the Subcommittee on Development of a Professionalism Course for Lawyers Exhibiting Unprofessional Behavior.

Judge Battaglia presented the entire report and then opened the floor for comments and discussion.

Mandatory CLE would be a simpler and more effective way to deal with the problem of unprofessional behavior at the Bar.

There may be an overlap and/or conflict between the Rules of Professional Conduct and the Standards of Professionalism as the Standards are now drafted. The Standards need to be more clear and better organized as to what is mandatory and what is aspirational.

Professionalism could be improved by requiring lawyers to be certified as practitioners in specific areas of the law. Problems arise because lawyers practice in areas where they do not have sufficient knowledge or comfort.

The Discovery Abuse Subcommittee should focus on ways to effect immediate resolution of disputes – the main problem.

One of the main aspects of unprofessional behavior is lawyers "churning" cases to maximize billable hours.

Proposed new Rule 1-342 and Rule 8.4 (h) may have a chilling effect on zealous advocacy. There should be graduated sanctions.

If, under the proposed changes to Judicial Canon 3, a judge does not report "repeated and egregious" violations of the Code of Professional Responsibility to the Attorney Grievance Commission, can that judge be sanctioned for failing to report?

The Commission's Report seems to focus almost entirely on litigation, while many problems exist in the transactional arena.

Out of State lawyers who pass the MD Bar and intend to practice here, should take the professionalism course along with new admittees.

Proposed new Rule 8.4 (e) could be a comment.

The Commission should give more attention to gender and race-based unprofessional behavior.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
QUEEN ANNE'S/KENT COUNTIES PRESENTATION MEETING
OCTOBER 3, 2006

On October 3, 2006, at the Queen Anne's County Circuit Court, the Court of Appeals Professionalism Commission held a meeting of the bench and Bar of Queen Anne's and Kent Counties to present the Report of the Professionalism Commission.

Donald Braden, Esquire, representative to the Professionalism Commission from Queen Anne's County, introduced Court of Appeals Chief Judge Robert M. Bell, who reviewed the history of the Professionalism Commission and its predecessor, the Court of Appeal Task Force on Professionalism. Judge Bell then introduced Judge Lynne A. Battaglia, Chair of the Professionalism Commission.

Judge Battaglia acknowledged the work of Don Braden and Dan Saunders, representatives to the Commission from Queen Anne's and Kent Counties respectively, and called upon them to review for the group the work of their subcommittees. Mr. Saunders discussed the Commission's recommendations with regard to sanctions and Mr. Braden reviewed the work of the subcommittee on the Role of Judges in the Community.

Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Judge Bell, accompanied by Commission Reporter Norman Smith, will travel again to every jurisdiction to receive comments from Bar on the Report. Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia summarized the Commission Report, as set forth in handouts to the group, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the area of family law generates the most complaints about unprofessional behavior. In addition, Judge Battaglia highlighted the area of discovery disputes as a significant problem addressed by the Report. Also, she said, smaller, rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. However, everyone seems to agree that in jurisdictions where judges are involved in Bar activities, there is a higher degree of professionalism. Judge Battaglia then opened the floor for comments and discussion.

Participants asked for clarification of the relationship between Rule 1-341 and proposed new Rule 1-342. In addition, a judge suggested that the Report make clear that proposed Rule 1-342 does not affect the doctrine of contempt – that the two are separate.

The Commission's recommendations with regard to lawyer-counseling were questioned because of the Commission's recommendation that the results not be made public. There was some concern that "bad apples" should not be hidden. There was also the suggestion that counseling be mandatory. Records should be kept, one participant suggested, and made public after several occurrences. There was also the worry that local Bar associations – particularly in small counties – may have trouble counseling their own.

Recommendations with regard to discovery abuse seemed to be a "one size fits all" solution that is less necessary in small counties.

The Court should consider a voluntary professionalism course for experienced lawyers.

The recommendation that "repeated and egregious" conduct be sanctioned drew questions such as how any unprofessional conduct cannot be "egregious." Sanctions, some worried, will become a sword rather than a shield, with unprofessional lawyers filing 1-342 motions with the same frequency as federal Rule 11 motions.

Several participants were concerned about the due process rights to be afforded any lawyer sanctioned under proposed new Rule 1-342. This, Judge Battaglia explained, will be fleshed out before the Rules Committee, if it acts upon the recommendation.

Discovery solutions in different counties may lead to inconsistent results state wide.

At the conclusion of the meeting, Judge Souse presented Judge Bell with a tie, on the occasion of Judge Bell's having been named Chair of the National Association of Chief Judges.

Chief Judge Bell addressed the group, noting that lawyers are, and should be, responsible for the maintenance of the rule of law. And we should make our services available to everyone, remembering that we are in a profession, not a business. Judge Bell then thanked everyone for participating and giving the Commission input toward the Professionalism Commission's eventual presentation to the Court of Appeals.

After the meeting, a participant wrote Judge Battaglia, commenting that the Commission has focused its work on litigation in Maryland Courts, overlooking problems in the representation of clients in administrative hearings and before regulatory commissions. Transactional law also seems to have been given short shrift.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
TALBOT/CAROLINE COUNTIES PRESENTATION MEETING
OCTOBER 31, 2006

On October 31, 2006, at the Talbot County Circuit Court, the Court of Appeals Professionalism Commission held a meeting of the bench and bar of Talbot and Caroline Counties to present the Report of the Professionalism Commission.

Chief Judge of the Court of Appeals, Robert M. Bell, opened the meeting by reviewing the history of the Professionalism Commission and its predecessor, the Court of Appeals Task Force on Professionalism. Judge Bell then introduced Judge Lynne A. Battaglia, Chair of the Professionalism Commission,, who.

Judge Battaglia acknowledged the work of Robert J. Greenleaf, Esq., representative to the Professionalism Commission from Caroline County and Michael O'Connor, Esq., representative to the Commission from Talbot County. Accordingly, Judge Battaglia called upon them to review for the group the work of their respective subcommittees. Mr. Greenleaf discussed the Commission's recommendations with regard to sanctions; Mr. O'Connor reviewed the work of the subcommittee on the Professionalism Course for New Admittees. Norman Smith reviewed the work of the subcommittee on Lawyers Who Exhibit Unprofessional Behavior.

Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Chief Judge Bell, accompanied by Commission Reporter Norman Smith, will travel again to every jurisdiction to receive comments from Bar on the Report. Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia summarized the Commission Report, as set forth in handouts to the group, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the area of family law generates the most complaints about unprofessional behavior. In addition, Judge Battaglia highlighted discovery disputes as a significant problem area addressed by the Report. Also, she said, smaller, rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. Everyone, however, seems to agree that in jurisdictions where judges are involved in Bar activities, there is a higher degree of professionalism.

Judge Battaglia then opened the floor for comments and discussion.

Participants expressed concern about the seemingly aspirational tone of the proposed Standards of Professionalism. Specifically, participants questioned whether the proposed duty to

cooperate and compromise is in conflict with the duty zealously to represent one's client. "Clients have a right to be uncompromising." is the way one attendee expressed the concern.

The Standards of Professionalism need to be reworked in order to clearly delineate between the aspirational and mandatory provisions.

The Standards of Professionalism should include the duty to make justice available to all and specifically, to seek out opportunities to provide pro bono representation.

The Standards do not sufficiently address the leadership role of the judiciary. The judge sets the tone of dignity and civility in his or her courtroom – the most important role. Accordingly, the Standards should also impose specific standards upon the judiciary. One attendee forwarded additional materials which are attached to these minutes.

In discovery disputes, the Master should assess costs to a misbehaving party.

District Court judges do not have the time to sift through discovery disputes and motions. These should be diverted to another tribunal or decision maker to keep the District Court docket moving.

In smaller Counties, the Commission's recommendation for a larger Judge's role increases the chances for recusal.

The public should be educated about the legal process – what we do and how we do it.

Judge Bell concluded the meeting by pointing out that, although courts are often under attack, they can only decide what is brought before them. This underscores the important role of lawyers in the administration of justice. The way we treat one another reflects the dignity and integrity of the profession.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
WASHINGTON COUNTY PRESENTATION MEETING
OCTOBER 25, 2006

On October 25, 2006, in Court Room 1 of the Washington County Circuit Court, the Court of Appeals Professionalism Commission held a meeting of the bench and the Washington County Bar Association to present the Report of the Professionalism Commission.

William P. Young, Jr., Esquire, the Washington County representative to the Professionalism Commission, introduced Judge Lynne Battaglia and noted that Chief Judge Bell would be joining the meeting shortly. Judge Battaglia acknowledged Bill's work as a Member of the Commission's Subcommittee on the Standards of Professionalism, which set the stage and tone for the Commission's Report. Accordingly, Judge Battaglia called upon Bill to summarize and explain the work of his Subcommittee. Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Chief Judge Bell, accompanied by Commission Reporter Norman Smith, are traveling to every jurisdiction to receive comments from the Bar on the Report. (Norman Smith, reporter for the Commission is vacationing in Hawaii and William P. Young, Jr., is acting as the reporter pro tem for this meeting.) Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia summarized the Commission Report, as set forth in handouts to the group, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the area of family law generates the most complaints about unprofessional behavior. In addition, Judge Battaglia highlighted the area of discovery disputes as a significant problem addressed by the Report. Also, she said, practitioners in smaller, rural jurisdictions generally believe that they enjoy a greater sense of professionalism among practitioners because they know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. Everyone, however, seems to agree that in jurisdictions where judges are involved in Bar activities there is a higher degree of professionalism. Judge Battaglia then opened the floor for comments and discussion.

There were numerous comments and suggestions:

- One participant suggested that the proposed annual assessment for lawyers be higher for urban lawyers than for rural lawyers.

- Another participant wondered what percentage of current attorneys practicing in Maryland have taken the Professionalism Course since it was instituted in 1992. [Chief Judge Bell estimated that about 2/3 of the approximately 30,000 current attorneys have taken the course.]

- Several participants reacted to the proposed Rule 1-342(h):

  (A) One attorney's visceral reaction was that this would be an "eyes on" review by a judge, not a report to a judge. If behavior is outside of courtroom, the duty falls to other lawyers to report (i.e., unprofessional behavior by transactional attorneys).

  (B) Rule 1-342(h) will be a controversial rule. There is a distinction between aspirational guidelines and codification; codification may be a problem. Gradations in definition of abuse can be a tough issue for enforcement. How do you balance the codification of abuses against the rights of attorneys?

  (C) The proposed rule departs from mediation effort that is being encouraged by the Attorney Grievance Commission.

  (D) The gradation of response is subjective rather than objective. This concerns one participant who worried about how sanctions will be applied.

- One attorney commented that perhaps much of the perceived lack of professionalism can be driven by lawyers who are less than successful economically. Attorneys need to know how to run a business.

- Not to practice law as a business is in the spirit of public service. (Justice Pound's statement.) Nonetheless, lawyers need to know how to run their practice as a business, but very few do.

- There is probably more economic pressure on younger, new lawyers because of education expenses and business start-up costs than on older lawyers, and these economic pressures may lead to unprofessional behavior.

- The monetary awards are modeled on Rule 11.

- Unauthorized Practice of Law. Bankers, accountants and Realtors are practicing law, but complaints fall on "deaf ears." An example of unfair competition: in estate proceedings, attorneys are required to obtain approval of their fees as the Personal Representative or as the attorney for the Personal Representative. Yet accountants do not have to have their fees approved.

- Advertising. Will this be dealt with specifically in the indicia of professionalism?

- One attorney commented that the culture of professionalism is quite good in Washington County. Perhaps the problems are more egregious in urban areas. Perhaps in larger jurisdictions there is a lack of communication between the Bar and the judges that is a contributing factor in the lack of professionalism. It is a concern that the adoption of standards might be used by one attorney to "get at" another attorney. There is that risk.

- Has the Commission thought about how a complaint of unprofessional behavior will be initiated? What standards will be employed? For example, with discovery disputes, there are more critical ramifications to the delay in criminal cases than in civil cases.

- To what degree was the issue of civility among lawyers considered? This appears to be more of an urban problem than a rural problem. There are standards of civility insisted upon in Pennsylvania that enhance the professional behavior of attorneys.

- Adopting standards and indicia may increase the stress on lawyers.

- Did the Commission discuss *pro se* litigants? [Chief Judge Bell reported that Judge Green is heading up a group studying policy toward *pro se* litigants and how judges deal with them.]

- Additional comments made by participants after the close of the meeting:

  (A) A judge commented that he was happy to see the proposed addition to Judicial Canon 3, especially the directive "shall".

  (B) An attorney commented that is a sad sign of the overall lowering of professional standards that only one attorney stood while addressing the judges during the meeting.

Chief Judge Bell thanked everyone for attending and stressed the importance of professionalism as a core value of the profession. He pointed out that the purpose of these meetings is not to impose ideas upon the Bar but to seek input in order that the Professionalism Commission we may present a final report to the Court of Appeals that is a consensus document. With that, Chief Judge Bell thanked Judge Battaglia for undertaking this effort, and noted the hard work of Jacqueline Lee, Laura Glasgow, Norman Smith, and William P. Young, Jr., as well as the entire Commission, for its work thus far.

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William P. Young, Jr.
Reporter Pro Tem
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
WICOMICO/SOMERSET COUNTY PRESENTATION MEETING
SEPTEMBER 26, 2006

On September 26, 2006, at the Wicomico County Circuit Court, the Court of Appeals Professionalism Commission held a meeting of the bench and Bar of Wicomico and Somerset Counties to present the Report of the Professionalism Commission.

Jim Otway, Esquire, representative to the Professionalism Commission from Wicomico County, introduced Judge Lynne Battaglia. Judge Battaglia acknowledged the work of Jim Otway and Kristy Hickman, representatives to the Commission from Wicomico and Somerset Counties, who were also members of the Commission's Subcommittee on the Role of Judges in the Community. Accordingly, Judge Battaglia also called upon Jim and Kristy to summarize and explain the work of their Subcommittee. Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Judge Bell, accompanied by Commission Reporter Norman Smith, will travel to every jurisdiction to receive comments from the Bar on the Report. Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia summarized the Commission Report, as set forth in handouts to the group, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the area of family law generates the most complaints about unprofessional behavior. In addition, Judge Battaglia highlighted the area of discovery disputes as a significant problem addressed by the Report. Also, she said, smaller, rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. Everyone, however, seems to agree that in jurisdictions where judges are involved in Bar activities, there is a higher degree of professionalism. Judge Battaglia then opened the floor for comments and discussion.

Several participants were concerned about what due process rights would be afforded any lawyer sanctioned under proposed new Rule 1-342. This, Judge Battaglia explained, will be fleshed out before the Rules Committee, if it is asked to act upon the recommendation by the Court. A related question concerned the potential problem with the Commission's proposed counseling program in the smaller counties, where a lawyer being counseled might be uncomfortable with close associates. Judge Bell pointed out that years ago, the local Bar associations once were charged with the responsibility of prosecuting violations of the Rules of Professional Conduct. The Attorney Grievance Commission was instituted primarily because of the perception that local Bar associations were too lenient with their members. These counseling sessions should be non-confrontational and collegial.

The group was concerned with the manner in which the Commission's recommendations would be implemented. Judge Battaglia pointed out that the Commission would spearhead the recommendations before the Rules Committee, the Court, and in presentations before other groups.

One participant asked if the Commission had considered the Delaware model of apprenticeship, which it had, as a result of suggestions made first by the Wicomico County Bar.

One participant expressed concern over lawyer advertising, and gave Judge Battaglia several examples of egregious advertising. Judge Battaglia promised that the Commission would refer the matter and materials to the Attorney Grievance Commission. Judge Bell pointed out that we must make our colleagues care that this sort of activity cheapens the profession.

Several attendees asked how judges will decide what behavior is unprofessional enough to warrant sanctions. Judge Battaglia explained that the inclusion of the terms "repeated or egregious" is a first step in distinguishing actionable conduct from isolated incidents.

One participant, a newly admitted attorney, observed that attorneys entering the profession will learn behavior from the Bar. The issue of professionalism can be addressed, in large part, by the example we set.

Chief Judge Bell addressed the group, noting that even in colonial times, lawyers were thought to be "the scourge of the colonies." And now, lawyers are often the targets of national political campaigns. But lawyers are, and should be, responsible for the maintenance of the rule of law. And we should make our services available to everyone, remembering that we are in a profession, not a business. Judge Bell then thanked everyone for participating and giving input toward the Professionalism Commission's eventual presentation to the Court of Appeals.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

PROFESSIONALISM COMMISSION
WORCESTER COUNTY PRESENTATION MEETING
OCTOBER 30, 2006

On September 26, 2006, at the Worcester County Circuit Court, the Court of Appeals Professionalism Commission held a meeting of the bench and Bar of Worcester County to present the Report of the Professionalism Commission.

Bill Hudson, Esquire, representative to the Professionalism Commission from Worcester County, introduced Judge Lynne Battaglia, who acknowledged Bill's work on the Commission's Subcommittee on the Role of Judges in the Community and called upon Bill to summarize and explain the work of his Subcommittee. Judge Battaglia recalled the Commission's mission, which was to act upon the findings of the Professionalism Task Force, to define and set forth specific Standards of Professionalism, and to recommend to the Court ways to promote those standards. Judge Battaglia then told the group that, although the Commission's Report has been submitted to the Court, it will not be presented in open Court and acted upon until early next year. Meanwhile, Judge Battaglia and Judge Bell, accompanied by Commission Reporter Norman Smith, will travel again to every jurisdiction to receive comments from Bar on the Report. Then, before the report is presented, the Commission will meet to decide whether, in the light of comments from the Bar, the report should be modified.

Judge Battaglia acknowledged the impressive turnout – nearly 100 percent of the Worcester County Bar, including all Judges -- District, Circuit and Appellate. She then summarized the Commission Report, as set forth in handouts to the group, giving a brief synopsis of each subcommittee's work and recommendations. Specifically, she noted the unanimous sense of the Commission and the Bar that the area of family law generates the most complaints about unprofessional behavior. In addition, Judge Battaglia highlighted the area of discovery disputes as a significant problem addressed by the Report. Also, she said, smaller, rural jurisdictions generally enjoy a greater sense of professionalism among practitioners who know and interact with one another regularly. By way of contrast, urban and suburban jurisdictions have more problems. However, everyone seems to agree that in jurisdictions where judges are involved in Bar activities, there is a higher degree of professionalism. Judge Battaglia then opened the floor for comments and discussion.

Several judicial participants questioned the need for submission of speeches to the Court Information Office. Judge Battaglia clarified this by explaining that the Commission does not propose that submission be mandatory. It is simply a resource for any judge who might want to have someone look at a proposed speech before it is given.

Several participants expressed concern that the Commission may have rushed to address a problem that is mostly one of perception. Furthermore, one participant expressed the sentiment that "we cannot resurrect Atticus Finch." Professionalism was doomed, opined another attendee, with the Supreme Court's decisions opening the door to extensive lawyer advertising.

The responsibility for mentoring young lawyers along the path to professionalism should be with partners in large firms, who otherwise pressure associates simply to bill hours.

The problems of professionalism are confined to the larger jurisdictions.

Several judges discussed the issue of a Judge's participation in community organizations, particularly political organizations and charitable groups who solicit contributions from the Bar or from the public. Judges should be more involved, and a change in the Canons is welcome to clarify what is allowed.

Does proposed new Rule 1-342 preempt contempt?

What due process protections will accompany the proposed sanctions? Is there an inherent conflict between the proposed new rules and the existing Rule of Professional Conduct requiring zealous representation of clients?

There is a concern that monetary sanctions may be passed on to and be borne by the client, a potential injustice.

Several participants worried that the proposed new rules and sanctions will create another level of discipline, in addition to the Attorney Grievance Commission.

Judge Cathell pointed out to the group that, when the Court of Appeals takes up the Commission's recommendations, it will act in a quasi-legislative capacity. All members of the Bar who wish to be heard on this subject should attend.

Judge Eschenburg thanked everyone for attending and announced that all were invited for lunch following the meeting.

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Norman L. Smith
Reporter
Maryland Judicial Commission
on Professionalism

SUPPLEMENTAL REPORTS OF THE SUBCOMMITTEES

Supplemental Report of the Subcommittee on Standards of Professional Conduct, Including Identifying Indicia of Professionalism

March 21, 2007

In response to comments that the Standards and Indicia of Professionalism (the "Standards") do not provide adequate notice of what conduct will incur sanctions from a court or the Attorney Grievance Commission, this subcommittee was asked to reconsider the Standards and make them more precise. Because the subcommittee remains comfortable that the overall Standards must remain aspirational and, therefore, must remain conceptual, we propose the following compromise.

The subcommittee recommends that the Commission present the Standards, as revised and clarified, to the Court of Appeals as the aspirational concepts that they represent, along with the following more precise rules of conduct, the violation of which could support imposition of sanctions if such violation is repeated or egregious. For example, no one would expect a failure to participate in public service to rise to the level of a "repeated or egregious" violation of the Standards, while circumstances that show chronic inability to appear on time or meet deadlines may warrant the imposition of sanctions or other appropriate disciplinary actions.

The rules of conduct that follow are based on the Bar Association of Baltimore City Guidelines on Civility. Rather than adopting these Guidelines in their entirety, the subcommittee has collected elements from the Guidelines that are sufficiently precise to be enforced and that address professionalism in both litigation and non-litigation contexts.

Proposed Rules of Professionalism

1. A lawyer shall treat all persons with courtesy and respect and at all times abstain from rude, disruptive and disrespectful behavior, even when confronted with rude, disruptive and disrespectful behavior.
2. A lawyer shall speak and write civilly and respectfully and without intentional distortion or falsehood in all communications with the court, public bodies and agencies, clients, and colleagues.
3. A lawyer shall refrain from manifesting, by words or conduct, bias or prejudice.
4. A lawyer shall be punctual and prepared for all court appearances and meetings, so that hearings, conferences, depositions, trials, and negotiations may commence on time.
5. A lawyer shall comply with schedules or deadlines set by the court. In non-litigation

settings, a lawyer shall respond timely to inquiries from opposing counsel or negotiate a reasonable time in which to respond.

6. Agreement to a date for a meeting or conference represents a commitment that shall be honored, absent compelling circumstances. When compelled to cancel such a date, a lawyer shall notify all concerned as early as possible.
7. A lawyer shall show respect for the legal system through appearance, conduct, dress, and manner.
8. A lawyer shall neither intentionally ascribe to an adversary or opposing party a position he or she has not taken, nor create a "record" of events that in fact have not occurred.
9. A lawyer shall not engage in any conduct that brings disorder or disruption to a hearing, a courtroom or to any other legal proceeding or transaction.
10. A lawyer shall advise his or her clients and witnesses of the proper conduct expected of them and endeavor to prevent clients and witnesses from creating disorder and disruption in court or any other setting.
11. A lawyer appearing in a public proceeding (primarily hearings or trials) shall be attired in a manner that connotes respect for the tribunal, and shall request that clients and witnesses be appropriately attired.
12. A lawyer shall stand when addressing the court, except when the court has granted permission to remain seated.
13. A lawyer shall act and speak respectfully to all public officials, court personnel, parties, attorneys, and clients with an awareness that they are an integral part of the legal system. A lawyer shall avoid displays of temper toward public bodies, the court, court personnel, parties, attorneys, and clients in all settings.
14. A lawyer shall not seek extensions or continuances for the purpose of harassment or prolonging litigation.
15. A lawyer shall not refuse to grant a reasonable time extension to opposing counsel solely for the sake of appearing "tough," and shall advise his or her clients against using this strategy.
16. A lawyer shall not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities in any written or oral communication in any context, nor rely on facts that are not properly a part of the information available to the parties or placed in a court record.
17. A lawyer shall not disparage the intelligence, ethics, morals, integrity or personal behavior of opposing counsel in written submissions or oral representations, unless these matters are directly and necessarily in issue.
18. A lawyer shall not lightly seek sanctions and shall not seek sanctions against or disqualification of another lawyer for any improper purpose.
19. A lawyer shall adhere to express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances or by local custom.
20. When committing oral understandings to writing, a lawyer shall do so accurately and

completely. A lawyer shall provide other counsel with a copy for review, and never include substantive matters upon which there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers shall bring to the attention of other counsel changes from prior drafts.

21. When permitted or required by court rule or otherwise, a lawyer shall draft orders that accurately and completely reflect the court's ruling. A lawyer shall promptly prepare and submit proposed orders to other counsel and attempt to reconcile any differences before the proposed orders and any objections are presented to the court.
22. A lawyer shall not use or oppose discovery for the purpose of harassment or to burden an opponent with increased litigation expense. A lawyer shall not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information.

Ideals of Professionalism

As a lawyer, I will aspire to:

- ► Put fidelity to clients before self-interest.
- ► Be a model of respect to those who resolve disputes and to those who participate in the process.
- ► Avoid all forms of wrongful discrimination in all of my activities, including discrimination on the basis of race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status. Equality and fairness will be goals for me.
- ► Preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.
- ► Make the law, the legal system, and other dispute resolution processes available to all.
- ► Practice law with a personal commitment to the rules governing our profession and to encourage others to do the same.
- ► Preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.
- ► Achieve excellence in our craft, so as to be the moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling. Good lawyering should be a moral achievement for both the lawyer and the client.
- ► Practice law not solely as a business but as a calling in the spirit of public service.

R	Responsibility
E	Excellence
S	Service
P	Promotion of fairness
E	Education
C	Civility/Courtesy
T	Trustworthiness

Responsibility and Trustworthiness (integrity, honest, trust)

A lawyer should understand that:

1. Punctuality in appearance and filing deadlines promotes the credibility of a lawyer. Tardiness and neglect denigrate the individual as well as the legal profession.

2. Personal integrity is essential to the honorable practice of law. Each lawyer should ensure that clients, opposing counsel, public bodies and agencies, and the courts can trust that the lawyer will keep all commitments and perform the tasks assigned.

3. Personal honesty, as well as candid and honest communications, promote credibility with clients, opposing counsel, public bodies and agencies, and the court.

4. External monetary pressures that may cloud professional judgment should be resisted.

Education and Excellence

A lawyer should:

1. Make constant efforts to expand his/her legal knowledge to ensure familiarity with changes in the law that affect a client's interests.

2. Willingly take on the responsibility to enhance public understanding of the legal system by educating each client and the public regarding the principles underlying the legal system, and, as practitioners of a learned art, by conveying to everyone the importance of professionalism.

3. Attend continuing legal education programs to demonstrate a commitment to keep abreast of changes in the law.

4. As an experienced lawyer, accept the role of mentor and teacher, whether through formal education programs or individual mentoring of less experienced attorneys.

5. Understand that mentoring includes the responsibility for setting a good example for another lawyer as well as an obligation to ensure that each mentee learns the principles enunciated in these standards and adheres to them in practice.

Service

A lawyer should:

1. Serve the public interest by clearly communicating with clients, opposing counsel, public bodies and agencies, judges, and members of the public.

2. Give consideration to the impact on others when scheduling events. Reasonable requests for schedule changes should be accommodated if such requests do not impact the merits of the case.

3. Maintain an open dialogue with clients and opposing counsel.

4. Respond to all communications promptly, even if more time is needed to locate a complete answer. Delays in returning telephone calls or responding to emails may leave the impression that the call or the email was not important or that the message was lost and leads to an elevation of tension, frustration and less effective communication.

5. Keep a client apprised of the status of important matters affecting the client and inform the client of the frequency with which information will be provided. (Some matters require regular contact and other matters require only occasional contact).

6. Always explain a client's options or choices with sufficient detail to help the client make an informed decision.

7. Reflect a spirit of cooperation and compromise consistent with a client's interest and position in all interactions with opposing counsel, parties, staff, and the court.

8. Accept responsibility for ensuring that access to the legal system is available to all citizens and not just to those with financial means.

Promotion of fairness

A lawyer should:

1. Act fairly in all dealings as a means of promoting justice and respect for the rule of law.

2. Understand that an excess of zeal may undermine a client's cause and hamper the administration of justice. A lawyer can zealously advocate the client's cause in a manner that remains respectful, fair and civil.

3. Know that zeal requires only that the client's interests are paramount and therefore a lawyer should consider the value of negotiation and compromise to achieve a beneficial outcome. Yelling, intimidating, issuing ultimatums and threats, and using an "all or nothing" approach is bullying, not zealous advocacy.

4. Seek to maintain objectivity and understanding when advising a client so that the client receives a comprehensive view of the legal aspect of the situation presented to the lawyer.

5. Not allow any action or decision to be governed by a client's improper motive and challenge a client whose wishes are unethical or ill advised.

6. Negotiate in good faith and avoid engaging in protracted negotiations that do not serve the client's best interest. A lawyer should be open to alternative solutions and recommend such solutions when appropriate and in the client's best interest.

7. Use negotiating tactics and litigation tools to strengthen a client's case and avoid using such tactics and tools solely to harass, intimidate, or overburden an opposing party.

8. Explicitly note any changes made to documents submitted for review by opposing counsel. Fairness is undermined by attempts to insert or delete language without notifying the other party or his attorney.

9. Conduct civil, honest and open negotiations; draft clear and precise documents consistent with the understanding of the parties; and disclose to the other party obvious drafting errors inconsistent with those understandings.

Civility and Courtesy

A lawyer should understand that:

1. Professionalism requires civility in all dealings, showing respect for those with differing points of view.

2. Courtesy does not reflect weakness, but promotes effective advocacy by ensuring that parties have the opportunity to participate in the process without personal attacks or intimidation.

3. Maintaining decorum before public bodies and agencies and in the courtroom is neither a relic of the past nor a sign of weakness, but is an essential component of professionalism.

4. It is essential to prepare scrupulously for meetings, hearings and court appearances and show respect for public bodies and agencies, the court, opposing counsel, and the parties by courteous behavior and appropriate attire.

5. In all contexts, courtesy and respect should be shown to clients, colleagues, public

tribunals, support staff, and court personnel.

6. Hostility between clients is not a basis for an attorney to express hostility or disrespect to a party, opposing counsel, public bodies and agencies, or the court.

7. Patience and objectivity enable a lawyer to exercise restraint in volatile situations and to diffuse anger rather than to elevate the tension and animosity between parties or attorneys.

Supplemental Report of the Subcommittee on Professionalism Guidelines and Sanctions for Use by Judges

COMMENT TO NEW RULE 1-342

Rule 1-341 is intended to prevent abuses of the judicial process by claims or defenses that are frivolous or posed in bad faith, (See *United States Health Inc. v. State*, 87 Md. App. 116 (1991).

Rule 1-342 authorizes the courts to enforce the standards of professionalism, which are reprinted in the appendix of these rules. The Due Process rights and procedures required under Rule 1-341, will also apply to Rule 1-342.

Due Process requires, at a minimum, before sanctions are imposed, notice and an opportunity to respond. *Zoravicovitch v. Bell Atlantic-Tricon Leasing Corp.*, 323 Md. 200, 209 (1991). The Court must make an evidentiary finding of a violation of the standards of professionalism before it imposes Rule 1-342 sanctions. See *Johnson v. Baker*, 84 Md. App. 521, (1990); *Legal Aid Bureau, Inc. v. Bishop's Garth Associates, Ltd.*, 75 Md. App. 214 (1988). See also *Hess v. Chalmers*, 33 Md. App. 541 (1976).

Rule 1-342 is intended to be an addition to those contempt powers that are within the existing authority of the courts.

REVISED FINAL REPORT OF THE SUBCOMMITTEE ON THE JUDGES' ROLE IN THE BAR AND WITH COMMUNITIES

Synopsis of Committee Work and Report

The Sub Committee began its work with an understanding from meetings with the bar that judges, who regularly participate in activities of the legal and general communities, demonstrate a higher level of professionalism. Our task was to foster that participation within the confines imposed upon judges by the Canons of the Maryland Code of Judicial Conduct (Maryland Rules 16-813 and 16-814) and other limitations of available time and resources.

The Sub Committee reviewed both state and federal canons as well as other information regarding judges' roles in institutional settings such as teaching or lecturing in law schools, continuing legal education seminars and Bar Association or Inns of Court membership or participation, as well as, non-legal community activity, including board membership, religious, political and social events and public speaking engagements in the community. The subcommittee completed its work and presented its recommendations to the Commission on June 1, 2005. On January 11, 2006 the Commission adopted the report and recommendations with only minor revisions.

The Sub Committee recommended initially that Maryland Rule 16-813 (Canon 4) be amended to explicitly state that judges are encouraged to engage in greater interaction with the bench, bar and legal and general communities.

The Sub Committee also perceived a need on the part of the judges for both initial and continuing education on where the lines of demarcation lay between permissible and impermissible activity when they move outside of their normal judicial role. To assist judges in that area the Sub Committee recommended that : (1) trial judges be provided recusal rules

and be regularly updated on changes in those rules; (2) issues of professionalism be a continuing and prominent part of all judicial training; (3) the judiciary be polled on the adequacy of the present system of responding to judicial inquiries involving ethical questions; (4) a system be established for a judge to obtain an advisory opinion from the Judicial Ethics Committee; (5) judges be encouraged to write and review their speeches in advance and to avail themselves of the resources of the Court Information office; and, finally, (6) that the awareness of the judges of judicial ethical issues and rules be increased by reinstating the former practice of forwarding a hard copy of each Judicial Ethics Report rather than the current electronic copy, which can easily be overlooked in the sea of emails received by each judge.

Introduction

Town hall meetings conducted throughout the state of Maryland revealed that attorneys felt a higher degree of professionalism from those judges that participated in the bar and the community. The Maryland Code of Judicial Conduct sets forth the guidelines for judges to uphold an appearance of dignity and respect in the community not only for themselves but the entire judicial system. The subcommittee was charged with the duty of analyzing judges' active participation with the bar and as involved members of their respective communities in light of any limitations on judicial behavior imposed by the Maryland Code of Judicial Conduct.

MARYLAND RULE 16-813 CJC Canon 1 (2006), addresses the honorability of a judge in society.[2] "An independent and honorable judiciary is indispensable to justice in our society. A judge shall observe high standards of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this code are to be construed and applied to

[2] See Maryland Rule 16-813, CJC Canon 1.

further that objective."[3] A judge must maintain these standards at all times, both on and off the bench, especially when participating in community activities.[4] The following discussion outlines specific community activities addressed by the Maryland Code of Judicial Conduct and the standards a judge should maintain when participating:

I. Extra-Judicial Activities

Canon 4(C) addresses judicial involvement in Charitable, Civic, and Government Activities, though some Canons 2 and 5 are also pertinent as well. Canon 4(C) reads:

(1) Except when acting in a matter that involves the judge or the judge's interests, when acting as to a matter that concerns the administration of justice, the legal system, or improvement of the law, or when acting as otherwise allowed under Canon 4, a judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official.
(2) Except as otherwise provided by law and subject to Canon 4(A), a judge may accept appointment to a governmental advisory commission, committee, or position.
(3) A judge may represent his country, a state, or a locality on ceremonial occasions or in connection with cultural, educational, or historical activities.
(4) (a) Subject to other provisions of this Code, a judge may be a director, member, non-legal adviser, officer, or trustee of a charitable, civic, educational, fraternal or sororal, law-related, or religious organization.
(b) A judge shall not be a director, adviser, officer, or trustee of an organization that is conducted for the economic or political advantage of its members.
(c) A judge shall not be a director, adviser, officer, or trustee of an organization if it is likely that the organization:
(i) will be engaged regularly in adversary proceedings in any court; or
(ii) deals with people who are referred to the organization by any court,
(d)(i) A judge may not participate personally in:
(A) solicitation of funds or other fund raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise appellate or supervisory jurisdiction; or
(B) a membership solicitation that reasonably might be perceived as coercive or, except as permitted in Canon 4C(4)(d)(i)(A), is essentially a fund-raising mechanism.
(ii) A judge shall not participate as a guest of honor or speaker at a fund-raising event.
(iii) Except as allowed by Canon 4C(4)(d), a judge shall not use or lend the prestige of judicial office for fundraising or membership solicitation.
(iv) A judge may:
(A) assist an organization in planning fund-raising;

[3] Id.
[4] Id.

(B) participate in the investment and management of an organization's funds; and
(C) make recommendations to private and public fund-granting organizations on programs and projects concerning the administration of justice, the legal system, or improvement of the law.

a. Boards

The Code permits judges to participate in community functions.[5] Canon 2 mandates that a judge avoid all appearances of impropriety and comply with the law at all times, both on and off the bench.[6] A judge who is a member of a board must not allow that activity to influence or appear to influence his/her decisions on the bench.[7] Specifically, MARYLAND RULE 16-813 Canon 4(C), permits judges to contribute to the legal system and the community through participation on boards dedicated to such a mission. A judge may participate as a director, member, non-legal adviser, officer, or trustee of the Board.[8] However, it prohibits board membership in organizations that regularly engage in adversarial proceedings in court or deal with people who are referred to the organization by any court.[9] MARYLAND RULE 16-813 Canon 2(C) prohibits a judge from holding membership in an organization that practices discrimination on the basis of national origin, race, religion or sex.[10] Therefore, a judge should not promote professionalism by appearing before Boards where a judge would be prohibited from joining the organization as a member or serving on the Board as prohibited by these canons. A judge participating in any capacity on a board must be sure to limit his/her participation so that it does not overlap with activities such as fundraising, which create the appearance of impropriety.[11] For his/her duties as a member of

[5] See id. at Canon 4.
[6] Id. at Canon 2.
[7] Id. at Canon 4.
[8] Id. at Canon 4(C)(4)(a).
[9] Id. at Canon 4(C)(4)(c)(i),(ii).
[10] Id. at Canon 2(C) cmt.
[11] Id.

a board, a judge may accept reimbursement when it does not give the appearance of impropriety and the compensation is reasonable.[12]

b. Governmental Advisory Commissions

Participation on governmental advisory commissions is also permitted by the Code.[13] A judge that participates on such commissions renders invaluable services to the government. The same rules and regulations described above apply to a judge participating on these commissions.[14] A judge participating on a governmental advisory commission must be careful not to create the appearance of impropriety or in any other way compromise the integrity of the judiciary.[15] The Code allows participation on an advisory commission that contributes to the administration of justice or in some other way improves the legal system.[16] As with board participation, a judge must ensure her participation does not influence his/her duties as a judge, and he/she may receive reasonable reimbursement for his/her participation.[17]

c. Bar Association Functions

Although there does not appear to be any specific language permitting judges to actively participate in Bar Association activities (other than socially, Bar Associations likely fall within the umbra of a "Law Related Organization"), by long standing tradition, members of the judiciary have participated in Bar activities.[18] A judge participating in bar association

[12] Id. at Canon 4(H)
[13] Id. at Canon 4(C)(2).
[14] Id.
[15] Id. at Canon 2.
[16] Id. at Canon 4(C)(2).
[17] Id. at Canon 4(H).
[18] Id. at Canon 4(C)(4)(a).

functions must do so while abiding by the other provisions of the Code regarding reimbursement, prohibited activities, and avoiding appearances of impropriety.[19]

Not all judges agree with that position. Shortly after being sworn in, those judges tend to retreat from all contact with lawyers, apparently on the theory that any contact with lawyers might possibly raise the appearance of impropriety. In striving for the purity of Caesar's wife, they eliminate the leavening effect of interacting with lawyers who actually practice law. Many observers feel that the cure is worse than the diseases, particularly as the number of years on the bench increase.

d. Education Endeavors in the Community

The Code permits judicial involvement in educational endeavors in the community. The rules advocate that a judge should not be isolated from the community.[20] A judge contributing to educational endeavors in the community may represent the country, a state, or a locality in ceremonial occasions in connection with that activity.[21] A judge's involvement in community functions must remain impartial.[22] For example, a judge participating in educational endeavors in the community must avoid the appearance of impropriety and must not make discriminatory jokes or any other comments that would question the impartiality of the judge or the judiciary as a whole. Finally, as with the other activities, a judge contributing to educational endeavors may receive appropriate reimbursement for her contribution.[23] There are at least six published opinions of the Judicial Ethics Committee

[19] *See supra* Part 1.a-b.
[20] Id at Canon 4 (A) cmt.
[21] Id. at Canon 4 (C)(3).
[22] MARYLAND RULE 16-813 Canon 2.
[23] MARYLAND RULE 16-813 Canon 4(E).

that touch upon a judge's activities in the Community that may be useful to any further analysis of this issue.[24]

e. Limitations on Extra-Judicial Activities

As a general rule, judges are permitted to participate in educational activities in the community both with regard to the law and other matters.[25] There are some important restrictions on judges that may affect their participation.

A judge must comply with the Canons in their conduct both in and out of court. In addition to the requirements of Canon 4, a judge must be certain that their outside educational activities do not cause them to comment upon active cases.[26] Teaching or other educational activities in the community are acceptable, provided that the judge's compensation for the activities is in compliance with both the Canons and the State Ethics Rules and the Financial Disclosure requirements.[27] The judge must also be sensitive to the non-political requirements of Canon 5. The most important limitation on a judge's teaching activities in the community is the language in the Canons that directs that the activity should not impinge upon either the judge's impartiality or interferes with the proper performance of judicial duties.[28]

If the Professionalism Commission wishes to encourage judges to take a more active role in the education of the public as to civility in the practice of law and the use of the court system, the current Code of Judicial Conduct permits such activities with some restrictions, as noted. There are at least six published opinions of the Judicial Ethics Committee that

[24] See, e.g., Maryland Judicial Ethics Op. Nos. 42, 45, 52, 100, 116 and 2003-26)
[25] See Canon 4 generally.
[26] See Id.at Canon 3(B)(8).
[27] See id.at 4(H).
[28] See Canon 4(A).

touch upon a judge's activities in the Community that may be useful to any further analysis of this issue.[29]

f. Political Events.

Canon 5(A) generally prohibits partisan political activities by a judge unless he/she is a candidate for election, re-election or retention to judicial office. It also requires that a judge resign when the judge becomes a candidate for a non-judicial office (Article 33 of the Maryland Declaration of Rights also prohibits a judge from holding a political office).[30] The only narrow exception is that a judge may continue to hold judicial office while a candidate for election to or delegate in a Maryland constitutional convention.[31]

Canon 5(B) authorizes a judge who is a candidate for election, re-election or retention to judicial office to engage in partisan political activity with respect to that candidacy, but while doing so, the judge: (1) must not act as a leader or hold an office in a political organization, (2) must not make a speech for a candidate or political organization or publicly endorse a candidate for non-judicial office, (3) must maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, independence and integrity of the judiciary, (4) must not allow any other person to do what the judge is prohibited from doing, (5) must not make pledges or promises of conduct in office other than the faithful and impartial performance of the adjudicative duties of the office and must not announce the judge's views on disputed legal or political issues, and (6) must not misrepresent the judge's identity or qualifications or other fact.[32]

[29] See n. 23, supra.
[30] Id. at Canon 5(A)(2).
[31] Id.
[32] See id. at 5(B).

Although the MODEL CODE OF JUDICIAL CONDUCT Canon 5(A)(1)(b) (2000) is broad enough even to prohibit a judge from endorsing another judge who also is a candidate, Maryland has long permitted a public endorsement by one judicial candidate of another judicial candidate.[33]

Further, MODEL CODE OF JUDICIAL CONDUCT Canon 5 (A) (1) (d) (2000), barring a judicial candidate from attending political gatherings was omitted in recognition of established ethics opinions and on grounds that because potential opponents will avail themselves of such opportunities for public exposure, judicial candidates should not be denied similar opportunity.[34] In making these recommendations, we are aware that there are first amendment issues raised herein that are being considered in courts around the country.[35] As a result, the Supreme Court expanded a judge's ability to speak in public.[36]

g. Community Events.

MARYLAND RULE 16-813 Canon 4 permits a judge to engage in avocational, extra-judicial activities subject to three basic restrictions set forth in Section A of the Canon. Section A provides that a judge must conduct those activities so that they do not (1) cause a substantial question as to the judge's capacity to act impartially as a judge; (2) demean the judicial office; or (3) interfere with the proper performance of judicial duties. [37]

The Canon is drafted such that it contains certain "permissive" sections and other "prohibitive" sections.[38] In other words, it instructs judges as to what they may and may not do. However, the Canon does not contain any language that can be interpreted to actively

[33] See Md. Judicial Ethics Op. No. 20 (1974).
[34] See Md. Judicial Ethics Op. No. 63 (1978).
[35] See Republican Party of Minnesota v. White, 536 U.S. 765 (2002).
[36] Id.
[37] See Maryland Rule 16-813 at Cannon 4(A).
[38] See id generally.

encourage judges to participate in community events (although the Comments to the Canon indicate a judge should not become isolated from the community).[39]

MARYLAND RULE 16-813 Canon 4 permits a judge to: (1) lecture, speak, teach and write, (2) accept an appointment to a governmental advisory commission, committee or position, (3) represent this country, a state or locality in connection with cultural, educational or historical activities, and (4) act as a director, member, etc. of a charitable, civic, educational, fraternal, sororal, law-related or religious organization. However, it prohibits a judge from serving in an organization that is conducted for the economic or political advantage of its members or will be engaged regularly in adversarial proceedings or deals with people who are referred to the organization by any court. It also prohibits a judge from soliciting funds or membership (subject to narrow exceptions), participating as a guest of honor or speaker at a fund-raising event, or using or lending the prestige of judicial office for fund-raising or soliciting membership.

h. Religious Gatherings.

MARYLAND RULE 16-813 Canon 4(C)(4)(a) permits a judge to act as a director, member, non-legal advisor, officer or trustee of a religious organization. Obviously, a judge's involvement in such an organization is subject to the same restrictions and limitations that apply to political, community and social activities.

i. Social Events.

MARYLAND RULE 16-813 Canon 4 permits a judge to engage in social and recreational activities. Once again, however, such activities are subject to a multitude of restrictions, all of which are aimed at preserving the integrity and independence of the judiciary and avoiding any appearance of impropriety, favoritism or prejudice.

[39] See id at Canon 4 (A) cmt.

For example, MARYLAND RULE 16-813 Canon 2 requires that a judge shall

(1) avoid impropriety and the appearance of impropriety and act at all times in a manner that promotes the public confidence of the integrity and impartiality of the judiciary,

(2) not hold membership in any organization that practices invidious discrimination on the basis of national origin, race, religion, or sex and

(3) not allow judicial conduct to be improperly influenced or appear to be improperly influenced by a family, political, social, or other relationship and shall not convey or permit others to convey the impression that they are in a special position to influence judicial conduct.

II. ABA Model Code Section 3.7

The ABA's proposed section 3.7 provides similar guidelines to Maryland's Canon 4C for judges with respect to involvement in civil and charitable activities. The ABA's guidelines, however, use affirmative language, as opposed to the prohibitive language used in Maryland's Canon 4C. Such affirmative language is more encouraging of judicial involvement in the community and clearly delineates activities in which a judge may participate. This would prevent a judge from having to speculate which activities are violative of the canon, and err too much on the side of caution, avoiding community involvement entirely. Effectively, adopting the ABA's Rule 3.7 would encourage greater judicial participation in the community. The ABA's Model Rule 3.7 reads:

> (A) Subject to the requirements of Rule 3.1[40] a judge may participate in activities
>
> sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, an those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations

[40] ABA Model Rule 3.1states that a judge may engage in extrajudicial activities except as prohibited by law and the code as long as the judge does not participate in activities that will interfere with judicial duties, lead to frequent disqualification, appear to undermine the judge's impartiality, or involve the use of court reseources.

not conducted for profit, including but not limited to the following activities:

1) Assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;
2) Soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge doesnot exercise supervisory or appellate authority;
3) Soliciting membership from such an organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;
4) Appearing or speaking at, receiving an award or other recognition at, being featured in the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fundraising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice.;
5) Making recommendations to such a public or private fundgranting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and
6) Serving as an officer, director, trustee, or nonlegal adivisor of such an organization or entity, unless it is likely that the organization or entity:
   a) Will be engaged in proceedings that would ordinarily come before the judge; or
   b) Will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appeallate jurisdiction of the court of which the judge is a member

(B) A judge may encourage lawyers to provide pro bono public legal services.

III. Contents of a Judge's Speech

a. Pending and Potential Cases.

Canon 3 deals with the judiciary's performance of judicial duties and the importance of maintaining impartiality.[41] Relative to pending and potential cases, judges are required to assure that every person who has a legal interest in the proceeding has the right to be heard and that during the proceeding,[42] the judge shall neither initiate nor permit *ex parte*

[41] Id.at Canon 3.
[42] Id at Canon 3(B)(6)(a).

communications on substantive matters without the knowledge and consent of all parties.[43] This prohibition does not extend to court personnel and to other judges whose function is to aid the judge in the exercise of his/her adjudicative responsibilities.[44] A judge is permitted to seek the advice of an outside expert so long as the parties are advised (1) the identity of the expert, (2) the substance of the advice and (3) afforded a reasonable opportunity to respond.[45] The most appropriate manner to obtain such advice would be an invitation for the expert to file a brief *amicus curiae*.[46]

A judge should abstain from public comment regarding a pending or potential proceeding in any court.[47] This restriction should be required on the part of the court personnel subject to the judge's direction and control.[48] This restriction on speech does not apply to situations where the judge is making public statements in the course of official duties or when they are explaining procedures of the court for the purpose of public information.[49]

MARYLAND RULE 16-813 Canon 3(A) mandates that a judge shall perform their judicial duties without bias or prejudice. This restriction includes, but it not limited to, bias and/or prejudice manifested through words or conduct based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.[50] Similarly, employees subject to the judge's direction and control are not permitted to manifest such bias and/or prejudice.[51] The comment expands this idea to include a restriction against the judge

[43] Id. at Canon 3(B)(6)(b).
[44] Id. at Canon 3(B)(6)(f).
[45] Id. at Canon 3(B)(6)(e).
[46] Id. Canon 3(B)(6) cmt.
[47] Id. at Canon 3 (B)(8).
[48] Id.
[49] Id.
[50] Id. at Canon 3(A).
[51] Id. at Canon (3)(C)(2).

engaging in conduct that could "reasonably be perceived" as sexual harassment.[52] Again, this standard must be required by the judge to apply to the conduct of those subject to the judge's direction and control.[53]

b. Judge's opinions regarding other legal matters.

Judges are permitted to speak about their opinions regarding legal matters, so long as it does not interfere with the proper performance of judicial duties, does not reflect adversely upon their impartiality and does not detract from the dignity of the office.[54] Subject to these restrictions, judges may also appear before and confer with public bodies or officials on matters concerning the judiciary and/or the administration of justice.[55] A judge can also serve on governmental advisory bodies that are devoted to improving the law, the legal system, and/or the administration of justice.[56] The rules also state that judges may represent their country, state or locality for ceremonies related to historical, educational or cultural activities.[57] However, the comments to the rule includes the committee's concerns that judges will overextend themselves and, thus, suggests that judge's participation before public bodies or officials should be strictly limited to the administration of justice.[58]

The Minnesota Supreme Court adopted a canon of judicial conduct that prohibits a candidate for a judicial office from announcing his or her views on disputed legal or political issues.[59] In White, supra, the Supreme Court held that the canon violated the First Amendment.

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[52] MARYLAND RULE 16-813 Canon 3(A) cmt.
[53] Id. at 3(C)(2).
[54] Id. at Canon 4 generally.
[55] ID.at Canon 4 (C)(1).
[56] Id. at 4(C)(2).
[57] Id. at 4(C)(3).
[58] Id. at 4(C) cmt.
[59] See Minn. Code of Judicial Conduct Canon 5(A)(3)(d)(i)(2000).

IV. Recusal

The following is a review of the Code of Conduct for Judicial Appointees, MARYLAND RULE 16-814 Canon 3(D) (2006) in regard to the circumstances under which a judge should or must recuse themselves from a case after speaking or appearing before a bar association or community group promoting professionalism and later having someone from that bar association or community group appear before them as a judicial officer.

The essence of the need for recusal of judicial appointees is to avoid situations in which the impartiality of any judicial officer may come into question. Specifically, Canon 3(D)(1) provides that a judicial appointee shall recuse himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.[60] MARYLAND RULE 16-814 Canon 3(D), has been expanded regarding situations in which a judge's impartiality might be questioned because a judge or a judge's family member has a significant financial interest in the subject matter of the controversy or is a party to the proceeding.[61] The terminology section of MARYLAND RULE 16-814 is very specific as to the minimum standard for determining what constitutes a "significant financial interest."[62] That standard was defined as "(1) Ownership of an interest as the result of which the owner has received within the past 3 years, is currently receiving, or in the future is entitled to receive, more than $1,000.00 per year; or (2) (i) ownership of more than 3% of a business entity; or (ii) ownership of securities of any kind that represent, or are convertible into, ownership of more than 3% of a business entity."[63] The current comment has expanded this specific minimum standard to further

[60] Canon 3(D)(1).
[61] Id. at 3(D)(1)(C).
[62] See Maryland Rule 16-814, Terminology (k).
[63] ID. at Terminology (k)(A)-(C).

encompass situations where, "…[t]here may be situations that involve a lesser financial interest but nonetheless require recusal because of the judge's own sense of propriety … [c]onversely, there are situations where participation may be appropriate even though the 'financial interest' threshold is present."[64] The rule provides that where a judge fails the "financial interest" threshold test, the judge must obtain an opinion from the Judicial Ethics Committee with regard to whether recusal is necessary, except in a situation where there is non-recusal by agreement, pursuant to MARYLAND RULE 16-814 Canon (E).

MARYLAND RULE 16-814 3(D)(1)(d)(i)-(iii) states that a judge must recuse himself or herself if the judge, the judge's spouse, an individual within the third degree of relationship to either of them, or the spouse of such an individual party is a party to the proceeding, or a director, officer or trustee of a party: is acting as a lawyer in the proceeding, is known by the judge to have a financial interest that could be substantially affected by the proceeding, or is likely to be a material witness in the proceeding.[65]

It should also be noted that MARYLAND RULE 16-814 (E) expands the situations in which recusal may be waived. Notwithstanding the basis for recusal, recusal may be waived if the parties and the lawyers agree, and the judge is willing to participate. Any such non-recusal agreement must be put on the record.[66]

The more we encourage judges to speak or appear before bar associations or community groups the greater the likelihood that circumstances will arise causing judges to recuse themselves. This may create greater issues in jurisdictions with few or only one judge. But, it may be in those very jurisdictions that a judge could have the greatest impact in promoting professionalism.

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[64] See Id. at Canon 3(D)(1)(c) cmt.
[65] Id. at Canon 3(D)(1)(d)(i)-(iii).
[66] Id. at 3(E).

V. Recommendations

- Provide either a Rules change or a comment to MARYLAND RULE 16-813 Canon 4 making more explicit the intent of the Court and the Commission that judges be encouraged to engage in greater interaction between the bench, the bar and the community.
- Maryland consider revising Canon 4 to conform to the new ABA Model Rule 3.7, which uses affirmative language setting forth extra-judicial activities in which a judge may participate.
- Train judges on recusal rules, and update sitting judges on any recusal rule changes.
- Continue to include issues of professionalism in all judicial training sessions, including promoting the use of a judicial self- assessment tool.[67]
- Provide a system to obtain advisory opinions from the Judicial Ethics Committee and have the Commission take a poll to assess the adequacy of the present system.
- Encourage judges to prepare what they are going to say by writing it down and reviewing it before any speaking engagement and utilize the services of the Court Information Office.
- Increase judges' awareness of the opinions of the Judicial Ethics Report (e.g. Reinstate mailing to each judge, a hard copy of each Judicial Ethics report.)
- Judicial Canons 1,3 and 4 adequately describe indicia of professionalism for judges. Formally adopting additional indicia is unnecessary.[68]
- Have Mel Hirshman write an article in "Justice Matters."

[67] see example of Judicial Self Assessment Tool attached
[68] The Subcommittee reviewed professionalism indicia from several states. A draft of possible indicia is attached.

Conclusion

The Maryland Code of Judicial Conduct recognizes the importance of the judiciary not only in the administration of justice but also in the community. It is important for the judiciary to assume an active role in community functions to promote justice, civility and professionalism, in addition to promoting and upholding the honor of the judiciary in the community. The Code provides the guidelines for judges to follow and assume an active role in the community without compromising the integrity of the bench. Community involvement in promoting professionalism is strongly encouraged and judges should seize any opportunity to become involved.

JUDICIAL PROFESSIONALISM
SELF-ASSESSMENT TOOL

TIME

1. Do I start my docket on time?
2. Do I allow each side sufficient time to present what they believe to be the factual basis of the case?
3. Am I available for conference calls and chambers conferences at the scheduled time?
4. Do I issue my opinions and memos in a timely fashion?
5. Do I complete the work that is requested of me each and every day?
6. Do I return large quantities of work assigned to me that is "not completed"?
7. Do I show respect for the time and schedule of others by setting appropriate deadlines for tiling of briefs, scheduling of follow up appointments, etc?

SCHOLARSHIP

1. Do I take time to keep to date with recent case law?
2. Do I attend continuing judicial education programs and pay attention while attending?
3. Do I offer my services as instructor/panel member for CLE programs for attorneys?
4. Do I mentor young attorneys who appear before me?

DEMEANOR

1. Do I conduct myself with the appropriate level of dignity in public settings?
2. Do I project dislike for one class of litigants such as Defendants in Med/Mal cases, or Defendants in criminal cases?
3. Do I suggest to counsel that the decision has been made prior to the conclusion of the presentation of the evidence?
4. Do I project dislike for particular areas of law, such as family law, estate, criminal, etc, that forms a regular part of the docket?
5. Do I maintain an appropriate level of sobriety in all public settings?
6. Do I explode in anger in public of in the courtroom when a case is not presented as I would like?
7. Do I use appropriate salutations and surnames when addressing attorneys and parties in the courtroom?
8. Am I courteous and respectful in my dealings with attorneys, litigants, and witnesses, both in and out of court?
9. Am I patient with unrepresented persons?
10. Am I patient with inexperienced attorneys?
11. Am I sensitive to persons from other cultures?
12. Am I sensitive to persons with disabilities?
13. Do I insist that attorneys and litigants and my staff show respect to others in my courtroom?
14. Do counsel that are regularly in my courtroom feel comfortable that I will abide by the standard rules of procedure or are they in fear of my inconsistent application of the rules?

DILIGENCE

1. Do I give each case the level of attention that is merited?
2. Do I research unfamiliar areas of law to assure that my opinion is well-reasoned?
3. DO I take time to study new statutes and case law?
4. Have I given each case my undivided attention throughout the presentation of the case?

INTEGRITY

1. Have I avoided the appearance of impropriety in my personal and professional life?
2. Do I publicly discuss cases that are before me?
3. Have I timely and accurately filed all ethics reports and financial disclosure forms?
4. Have I accepted invitations to events as a non-paying guest form specific attorneys who appear before me?
5. Have I accepted gifts from successful litigants or attorneys?
6. Have I accepted invitations to attend partisan political events when I am not currently allowed to campaign?
7. Have I maintained close personal relationships with attorneys who regularly appear in the courtroom?
8. Have I identified myself as a member of the judiciary in order to gain special considerations with police officers, and or commercial or other establishments?
9. Have I engaged in ex parte communications with one side/party to a case?
10. Before engaging in settlement discussions with counsel, have I gotten the permission from both sides, if the matter was to be heard in my courtroom?
11. Have I bullied either side into accepting a proposed settlement, regardless of its soundness or likelihood of the success of the claim?
12. Have I strenuously persuaded counsel who appear before me on a regular basis to participate in charitable donations?
13. Have I strived to not only be fair, but to give the appearance of being fair?
14. Have I maintained my neutrality throughout the entire case?
15. Did I listen to all parties, and did I let them know that I was listening?
16. Did my actions today demonstrate my aspirations to make the court I serve a place of truth and justice?

COLLEAGUES

1. Am I available to my fellow judges for consultation?
2. Do I share information and resources freely with other members of the bench?
3. Am I a resource for newer judges or for judges who are less familiar with an area of law than I?
4. Have I made it known that I am not interested in hearing or sharing gossip regarding other judges or employees of the court?
5. Have I spread gossip about colleagues?

6. Do I treat my colleagues with the level of respect that I am entitled to receive?
7. Do I speak of my colleagues in respectful ways to others?
8. Do I publicly show support for the court and its policies?
9. Do I refrain from publicly showing my support for any candidate for judicial election?
10. Do I privately bolster my fellow judges when I am aware they are suffering a personal crisis or loss?
11. Do I offer myself as a sounding board to other judges?
12. Do I actively participate in bench meetings to enhance the efficiency of my court?

EPILOGUE

Aside from going to work, what have I done to enhance the quality of justice in my courtroom?

APPENDIX D.

Compilation of CLE Provisions from Non-Maryland Jurisdictions

APPENDIX D.1

CONG. RSCH. SERV., CONTINUING LEGAL EDUCATION: WHAT'S REQUIRED AND OPPORTUNITIES FOR MEMBERS AND STAFF TO SATISFY THOSE REQUIREMENTS (updated Mar. 25, 2019), available at https://crsreports.congress.gov/product/pdf/LSB/LSB10278).

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Legal Sidebar

Continuing Legal Education: What's Required and Opportunities for Members and Staff to Satisfy Those Requirements

Updated March 25, 2019

As members of the self-regulated legal profession, attorneys are required, under the rules of their state bars, to maintain competence in their legal knowledge and skill. These rules apply to preserve the integrity of the profession and ensure that attorneys—who represent clients as officers of the legal system—uphold their "special responsibility for the quality of justice" under that system. To fulfill the duty of competence, most jurisdictions, though not all, have adopted mandatory continuing legal education (MCLE) requirements. This Sidebar provides an overview of the states' various MCLE requirements, discussing how each state varies in their approach to ensuring that attorneys maintain the requisite knowledge and skill to maintain professional competence. The Sidebar concludes by providing details on the **Federal Law Update** (FLU), a series of CRS legal seminars that will be held the **first two weeks of April 2019** and may be eligible for Continuing Legal Education credits.

The American Bar Association (ABA) has described the continuing education requirement as follows:

> To maintain public confidence in the legal profession and the rule of law, and to promote the fair administration of justice, it is essential that lawyers be competent regarding the law, legal and practice-oriented skills, the standards and ethical obligations of the legal profession, and the management of their practices.

In 2017, the ABA amended its Model Rule for MCLE credits, setting an example for licensing jurisdictions to use. The MCLE Model Rule requires an average of 15 credit hours per year over the course of the reporting period. Those credits must include three specific categories: (1) an average of one hour of ethics and professionalism credit per year; (2) an hour of mental health and substance abuse disorder credit every three years; and (3) an hour of diversity and inclusion credit every three years. The Model Rule provides various exemptions that would excuse attorneys from completing the MCLE requirements. Exemptions apply, for instance, for non-practicing attorneys with inactive licenses or those on retired status.

Licensing jurisdictions widely diverge from the Model Rule, resulting in MCLE requirements differing from each other in a number of ways, including, for example, the quantity of credit hours and the period

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over which those credits may accrue. Examples of MCLE requirements that the various U.S. jurisdictions have adopted illustrate the different ways that such requirements may apply to licensed attorneys working in Congress, including:

- **Out of State Attorneys**. Attorneys who are licensed by a state bar, but work outside of the geographic confines of that state generally are still required to comply with the MCLE requirements of that state. State bars may allow attorneys who are active members, but practice in another jurisdiction, to satisfy the state's MCLE requirements by demonstrating compliance with the MCLE requirements of the jurisdiction in which they reside and practice.
  - For example, Washington permits its active members who are also active members of certain other bars to comply with credit requirements in that jurisdiction. In so doing, the Washington Bar allows its members to "certify compliance with [its] rules in lieu of meeting the education requirement by paying a comity fee and filing a Comity Certificate of MCLE Compliance from a comity state certifying to the lawyer's subjection to and compliance with that state's MCLE requirements during the lawyer's most recent reporting period."
  - To take another example, Arizona permits active members of its bar who "reside[] in another MCLE jurisdiction, and who [are] subject to and complying with the MCLE requirements for that jurisdiction" to file an affidavit indicating compliance with the other jurisdiction's MCLE requirements, unless the attorney is not admitted in that jurisdiction or the jurisdiction has no MCLE requirement (in which case the attorney must comply with Arizona's MCLE requirements).
  - A few states do, however, wholly exempt attorneys practicing out of state from having to comply with the state's MCLE requirements. For example, members of the Wisconsin bar who do not practice law in the state during a reporting period are exempt from its MCLE requirements.
- **Status of Government Officials**. Some states may exempt government officials from having to comply with MCLE requirements, though these states may still require attorneys to report their exempt status. These exemptions can vary greatly between jurisdictions, from exemptions for discrete professionals like judges, legislators, or attorneys who are active duty in the military to broader exemptions for all federal government attorneys.
  - For example, North Carolina "exempt[s]" its "members of the United States Senate" and its "members of the United States House of Representatives" "from the requirements of [its MCLE] rules for any calendar year in which they serve some portion thereof in such capacity."
  - Similarly, Texas provides that "Members of the Texas Legislature or members of Congress may request a 15-hour allowance" from its MCLE requirements.
  - California exempts attorneys who are "employed full-time by the United States government as attorneys or administrative law judges on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law."

Failure to abide by a state's MCLE requirements can, depending on the state, result in a range of penalties from fines to suspensions. For reference purposes, **Table 1**, below, summarizes basic MCLE requirements that apply to active members of the bars of the states, District of Columbia, and U.S. territories. For each jurisdiction, a link is provided to either:

- the state bar or other body that administers or facilitates MCLE reporting in the jurisdiction if that page includes a link to the rules governing MCLE (which also often include other information on MCLE compliance and reporting), or
- the MCLE rules, rules of the state Supreme Court, or rules of professional conduct of the applicable jurisdiction.

It is important to note that MCLE rules will vary widely on a number of factors, including, among other issues, whether the attorney is newly admitted to a bar; whether the requirements necessitate in-person attendance; the minimum minutes per credit hour; or other course requirements. Accordingly, it is paramount that every attorney closely examine his or her jurisdiction's specific obligations to ensure compliance with its MCLE requirements.

CRS can assist attorneys working in Congress with their professional obligations for continuing education through the American Law Division's FLU, a semiannual series of seminars on highly topical legal issues of interest to the legislative agenda. Subject to the approval of the MCLE requirements of the various jurisdictions, the seminars may be eligible to satisfy attendees' MCLE requirements. In addition to general sessions, the FLU offers attendees two opportunities to satisfy their jurisdiction's ethics and professional responsibility requirements. Professional responsibility seminars are intended to satisfy attorney ethics requirements by basing discussion on the Model Rules of Professional Conduct and relevant rules from individual jurisdictions as they pertain to the discussion.

This year, the spring FLU seminars will be held **April 2-4 and 9-11** in the **Montpelier Room of the James Madison Memorial Building** in the Library of Congress. To register, click here.

Table 1. Summary of Basic MCLE Requirements Applicable to Active Members of the Bars of the States, the District of Columbia, and U.S. Territories

Jurisdiction	Reporting period	General MCLE requirements per reporting period	Rules available
Alabama	1 year	12 hours required, including 1 hour of ethics	MCLE, Alabama State Bar
Alaska	1 year	3 hours of ethics or other professionalism topics required; 9 additional hours of general voluntary CLE encouraged	MCLE Rule, Alaska Bar Association
American Samoa	N/A	No MCLE requirement at this time	High Court Rules, American Samoa Bar Association
Arizona	1 year	15 hours per year required, including 3 hours of ethics or other professional responsibility topics	Mandatory Continuing Legal Education, State Bar of Arizona
Arkansas	1 year	12 hours required, including 1 hour of ethics or other professionalism topics	Continuing Legal Education, Arkansas Judiciary
California	3 years	25 hours required, including 4 hours of ethics, 1 hour of substance abuse and other issues that impair competence, and 1 hour of elimination of bias	MCLE Rules, State Bar of California
Colorado	3 years	45 hours required, including 7 hours of ethics	CLE Rules, Regulations, and Forms, Office of Attorney Regulation Counsel, Colorado Supreme Court
Connecticut	1 year	12 hours required, including 2 hours of ethics/professionalism	Minimum Continuing Legal Education, State of Connecticut Judicial Branch

Jurisdiction	Reporting period	General MCLE requirements per reporting period	Rules available
Delaware	2 years	24 hours required, including 4 hours of ethics and professionalism	Revised Delaware Rules for Continuing Legal Education, Commission on Continuing Legal Education of the Delaware Supreme Court
District of Columbia	N/A	No MCLE requirement at this time	D.C. Rules of Professional Conduct
Florida	3 years	33 hours, including 5 hours of ethics, professionalism, bias elimination, substance abuse, or mental illness awareness and 3 hours in technology programs	CLER/BSCR Rules, Florida Bar
Georgia	1 year	12 hours required, including 1 hour of ethics and 1 hour of professionalism; 3 hours of trial practice also required for trial attorneys	State Bar Handbook Part VIII – Continuing Legal Education, State Bar of Georgia
Guam	1 year	10 hours required, including 2 hours of ethics or professionalism	CLE - Amended Rule Governing Mandatory Continuing Legal Education, Guam Bar Association
Hawaii	1 year	3 hours required; 1 hour of ethics or professional responsibility required every 3 years	Mandatory Continuing Legal Education, Hawaii State Bar Association
Idaho	3 years	30 hours required, including 3 hours of ethics or professional responsibility	MCLE Compliance, Idaho State Bar
Illinois	2 years	30 hours required, including 6 hours of professionalism, civility, legal ethics, diversity and inclusion, or mental health and substance abuse of which 1 hour must be diversity/inclusion and 1 hour mental health/substance abuse	Illinois MCLE Requirements and Fees, Minimum Continuing Legal Education Board of the Supreme Court of Illinois
Indiana	3 years, with minimum yearly requirements	36 hours required (6 hours minimum per year), including 3 hours of ethics or professional responsibility	Continuing Legal Education for Attorneys, Indiana Commission for Continuing Legal Education
Iowa	1 year	15 hours required; 3 hours of ethics are required every 2 years	Annual Reporting Requirements, Office of Professional Regulation, Iowa Supreme Court

Jurisdiction	Reporting period	General MCLE requirements per reporting period	Rules available
Kansas	1 year	12 hours required, including 2 hours of ethics and professionalism	Rules and Regulations, Kansas Continuing Legal Education Commission
Kentucky	1 year	12 hours required, including 2 hours of ethics, professional responsibility, and professionalism	Continuing Legal Education Rules, Kentucky Bar Association
Louisiana	1 year	12.5 hours required, including 1 hour of ethics and 1 hour of professionalism	Rules for Continuing Legal Education, Louisiana State Bar Association
Maine	1 year	12 hours required, including 1 hour of ethics or other professionalism topics and 1 hour of avoidance of harassment and discriminatory conduct	Continuing Legal Education, Board of Overseers of the Bar, State of Maine
Maryland	N/A	No MCLE requirement at this time	Maryland Attorneys' Rules of Professional Conduct and Attorney Trust Accounts, Attorney Grievance Commission and Office of Bar Counsel
Massachusetts	N/A	No MCLE requirement at this time	Massachusetts Rules of Professional Conduct, Supreme Judicial Court
Michigan	N/A	No MCLE requirement at this time	Michigan Rules of Professional Conduct, Michigan Supreme Court
Minnesota	3 years	45 hours required, including 3 hours of ethics or professional responsibility and 2 hours of elimination of bias	CLE Compliance, Minnesota State Board of Continuing Legal Education
Mississippi	1 year	12 hours required, including 1 hour of ethics, professional responsibility, professionalism, malpractice prevention, substance abuse or mental health	Continuing Legal Education General Information, Supreme Court of Mississippi
Missouri	1 year	15 hours required, including 2 hours of ethics, professionalism, substance abuse and mental health, or malpractice prevention	Frequently Asked Questions About MCLE, Missouri Bar
Montana	1 year	15 hours required, including 2 hours of ethics	Rules for Continuing Legal Education, Montana Commission of Continuing Legal Education

Jurisdiction	Reporting period	General MCLE requirements per reporting period	Rules available
Nebraska	1 year	10 hours required, including 2 hours of ethics or other professional responsibility topics	Mandatory Continuing Legal Education (MCLE), Nebraska Supreme Court
Nevada	1 year	13 hours required, including 2 hours of ethics and professional conduct and 1 hour of substance abuse	Supreme Court Rules, Supreme Court of Nevada (See Part III, § H)
New Hampshire	1 year	12 hours required, including 2 hours ethics, professionalism, or prevention of malpractice, substance abuse, or attorney-client disputes	Rule 53. New Hampshire Minimum Continuing Legal Education Requirement, Supreme Court of the State of New Hampshire
New Jersey	2 years	24 hours required, including 4 hours of ethics or professionalism	Continuing Legal Education, Supreme Court of New Jersey
New Mexico	1 year	12 hours required, including 2 hours of ethics or professionalism	Minimum Continuing Legal Education, State Bar of New Mexico
New York	2 years	24 hours required, including 4 hours of ethics and professionalism and 1 hour of diversity, inclusion, and elimination of bias	The Legal Profession – Continuing Legal Education, New York State Unified Court System
North Carolina	1 year	12 hours required, including 2 hours of professionalism or professional responsibility; 1 additional hour on substance abuse awareness or debilitating mental conditions required every 3 years	CLE Requirements in North Carolina for Lawyers, North Carolina State Bar
North Dakota	3 years	45 hours required, including 3 hours of ethics or professional responsibility	Continuing Legal Education Hours, State Bar Association of North Dakota
Northern Mariana Islands	2 years	20 hours required	Resources for Continuing Legal Education, CNMI Bar Association

Jurisdiction	Reporting period	General MCLE requirements per reporting period	Rules available
Ohio	2 years	24 hours required, including 2.5 hours of ethics or other professional conduct topics	Continuing Legal Education, Supreme Court of Ohio
Oklahoma	1 year	12 hours required, including 1 hour of ethics, professional responsibility, or malpractice prevention	Mandatory Continuing Legal Education Rules, Oklahoma Mandatory Continuing Legal Education Commission
Oregon	3 years	45 hours required, including 5 hours of ethics, 1 hour on attorneys' statutory duty to report child or elder abuse, and 1 hour on mental health, substance abuse, and cognitive impairment; in alternate reporting periods, 3 hours of access to justice are required	Minimum Continuing Legal Education, Oregon State Bar
Pennsylvania	1 year	12 hours required, including 2 hours of ethics, professionalism, or substance abuse	Rules and Regulations, Continuing Education Board
Puerto Rico	2 years	24 hours required, including 4 hours of ethics, and, for notaries, 6 hours of notarial law	Links Related to the Supreme Court, Supreme Court of Puerto Rico
Rhode Island	1 year	10 hours required, including 2 hours of ethics	Mandatory Continuing Legal Education, MCLE Commission
South Carolina	1 year	14 hours required, including 2 hours of legal ethics/professional responsibility; at least once every 3 annual reporting periods, 1 of those 2 hours must be on substance abuse, mental health or stress management	Commission on CLE and Specialization, Supreme Court of South Carolina
South Dakota	N/A	No MCLE requirement at this time	South Dakota Rules of Professional Conduct, South Dakota Legislature
Tennessee	1 year	15 hours required, including 3 hours of ethics/professionalism	Rule 21 and Regulations, Tennessee Commission on Continuing Legal Education
Texas	1 year	15 hours required, including 3 hours ethics/professional responsibility	MCLE Rules, State Bar of Texas

Jurisdiction	Reporting period	General MCLE requirements per reporting period	Rules available
Utah	2 years	24 hours required, including 3 hours of ethics or professional responsibility, of which 1 must be in professionalism and civility	MCLE Requirements, Utah State Bar
Vermont	2 years	20 hours required, including 2 hours of ethics	Mandatory Continuing Legal Education, Board of Mandatory Continuing Legal Education
Virginia	1 year	12 hours required, including 2 hours of ethics or professionalism	Mandatory Continuing Legal Education, Virginia State Bar
U.S. Virgin Islands	1 year	12 hours required, including 2 hours of ethics or professionalism	CLE Overview, Virgin Islands Bar Association
Washington	3 years	45 hours, including 6 hours of ethics and professional responsibility and 15 hours of law and legal procedure	MCLE for Lawyers, Washington State Bar Association
West Virginia	2 years	24 hours required, including 3 hours in ethics, office management, substance abuse, or elimination of bias in the legal profession	CLE Rules and Regulations, West Virginia State Bar
Wisconsin	2 years	30 hours required, including 3 hours ethics and professional responsibility	SCR Chapter 31, Supreme Court Rules, Wisconsin State Legislature
Wyoming	1 year	15 hours required, including 2 hours of ethics	Continuing Legal Education, Wyoming State Bar

Source: CRS

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Disclaimer

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APPENDIX D.2

Md. Jud. Comm'n on Pro., MLCE Requirements by State (2007).

MCLE Requirements in the United States

Forty-two states, along with Guam, Puerto Rico, and the US Virgin Islands, have Mandatory Continuing Legal Education ("MCLE"). Eight states (Connecticut, Hawaii, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, South Dakota) and Washington, D.C. do not have MCLE. Although MCLE jurisdictions vary in how they administer their MCLE requirement, there are some characteristics common to every jurisdiction.

(1) **MCLE Rules/Regulations**

Each MCLE jurisdiction has rules and/or regulations creating and regulating the MCLE requirement. We have a binder containing the pertinent rules/regulations for each MCLE jurisdiction. The chart below, which begins on page 6, sets forth some of the key features of each jurisdiction's MCLE program.

(2) **MCLE Boards/Committees**

All MCLE jurisdictions have a board or committee that supervises MCLE. The board/committee is composed of attorneys, judges, and (in a few cases) lawpersons. These board/committee members are selected by the high court of the jurisdiction, the state's bar committee, or some other authority. Often, the board/committee must be made up of members from different geographic areas of the jurisdiction. The chart below does not go into detail about the qualifications, tenure, duties, or powers of MCLE board/committee members. This information is available in our binder, however.

(3) **Minimum CLE Requirements In Each Jurisdiction**

Each MCLE jurisdiction requires attorneys to complete a minimum number of CLE hours during a specified "reporting period." Reporting periods range between one year and three years. For example, Idaho attorneys must complete 30 CLE hours during each three year period that they are admitted to practice law, while Georgia attorneys must complete 12 CLE hours each calendar year. In some jurisdictions, a CLE "hour" is 50 minutes, but in most a CLE hour is a 60 minute hour. In almost every jurisdiction, attorneys must complete a minimum number of their CLE hours in the topic of ethics, professional responsibility, professionalism, mental health awareness, and/or related topics. For example, Kansas attorneys must complete 12 CLE hours each year, and two of those twelve hours must be in the areas of legal ethics; Kansas attorneys are free to select any topics they choose to satisfy the remaining 10 hours of the CLE requirement. The chart below summarizes each jurisdiction's CLE requirements.

(4) **Attorneys Exempt From MCLE**

All MCLE jurisdictions have exemptions for certain categories of attorneys. These exemptions can apply to inactive attorneys, attorneys over a certain age, attorneys who are not in private practice, government attorneys, judges, legislators, law school faculty members, attorneys serving active duty in the Armed Forces, or other categories of attorneys. In many jurisdictions, an attorney is exempt from MCLE in the first year/reporting period following his or her admission to the bar. Such exemptions have withstood equal protection challenges by attorneys. (*See* discussion of MCLE cases beginning on page 3, below).

Some jurisdictions mandate a special CLE requirement for newly-admitted attorneys, such as a "bridge the gap" course, or a "legal skills" course. The chart below sets forth these general exemption categories. In addition, all MCLE jurisdictions have an individualized process for an attorney to secure a postponement of or an exemption from his or her MCLE requirement, due to mental or physical disability, or other extenuating circumstances. The chart does not go into detail about the differences among the jurisdictions in how they provide hardship exemptions, but this information is set forth in each MCLE jurisdiction's rules/regulations.

(5) **How Attorneys Can Satisfy the MCLE Requirement**

Each jurisdiction sets forth the kinds of activities that qualify for MCLE credit. In every jurisdiction, an attorney can earn MCLE credit by attending live, accredited classes. Many jurisdictions allow an attorney to complete some or all of his/her MCLE obligation through other activities, such as teaching (at a CLE course, or a law school), writing (CLE materials, or published articles/books), attending bar meetings/events, providing *pro bono* legal services, or serving as a bar examiner or ethics committee member. In some jurisdictions, there is a ceiling on the number of MCLE hours an attorney can satisfy through "other activities." Most jurisdictions allow an attorney to garner at least a portion of his/her CLE credits by (1) viewing videotaped or online CLE materials, which is sometimes referred to as "self study" or (2) by participating in "in-house" CLE conducted by the lawyer's firm or employer. The chart below lists generally the activities each jurisdiction recognizes as qualifying for CLE credit. The chart does not go into detail about how CLE courses/materials are accredited. Each jurisdiction has an accreditation process and maintains a list of approved courses – the accreditation standards are contained in the pertinent rules and regulations, which we have in our binder. Courts in California and Minnesota have considered and rejected attorney challenges to the content of certain MCLE courses. (*See* discussion of MCLE, below)

(6) **MCLE Reporting Requirements an Sanctions for Noncompliance with MCLE**

Each jurisdiction has a means of requiring attorneys to report on their CLE obligations. For MCLE jurisdictions that have two year or three year reporting periods, every attorney in the jurisdiction is assigned to a "reporting group." For example, in Ohio, attorneys with last names that begin with the letters "A" through "L" shall report compliance with MCLE on or before January 31 of even-numbered years, for the two preceding calendar years; attorneys with last names beginning with a letter "M" through Z" shall report on or before January 31 of odd-numbered years. In some jurisdictions, an attorney is required to file a report every time he or she completes an MCLE course – the Board/Committee keeps track of these reports, and notifies attorneys, at the close of each reporting period, whether or not they have complied with the MCLE requirement.

A majority of jurisdictions allow an attorney who completes more CLE hours than are required to "carry forward" at least some the excess credits into the next reporting period.

If an attorney fails to promptly report on his or her MCLE status, that attorney may be fined or otherwise sanctioned. An attorney who fails to complete the MCLE requirement within the mandated reporting period can get an extension of time, in some jurisdictions. But an attorney's noncompliance with can eventually lead to a disciplinary hearing and summary suspension of that attorney's license to practice law. The chart below does not detail these disciplinary procedures, which are set forth in each jurisdiction's MCLE rules/regs.

Cases that have considered challenges to Mandatory CLE

- ***Warden v. State Bar of Calif.*, 982 P.2d 154 (Cal. 1999)**
  - Plaintiff, an attorney and CA Bar member, was involuntarily placed on inactive status by the bar, as Plaintiff had failed to comply with CA's MCLE requirement
  - Plaintiff challenged, on equal protection grounds, the Bar's exemption from MCLE of retired judges, officers and elected officials of CA, and other categories of attorneys
  - Applying rational basis review, the CA Supreme Court rejected Plaintiff's equal protection challenge, and upheld the Bar's rule exempting certain categories of attorneys from MCLE

- "As we shall explain, there are at least two "plausible reasons" that rationally support each of the exemptions in question. First, it would not have been irrational to conclude that the attorneys in each of the exempted categories, as a general matter, are less likely than other attorneys to represent clients on a fulltime basis, thus rendering the need for a continuing education requirement less vital, as a matter of consumer protection, for these classes than for other attorneys. Second, it would not have been irrational to conclude that, in view of their particular professional roles and experience, the attorneys in each of the exempt classes (again, as a general matter) are less likely than lawyers in general to need continuing education courses in order to be familiar with recent legal developments or to remain competent practitioners."

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- ***In re Smith*, 989 P.2d 422 (Ariz. 1997)**
  - State Bar moved to summarily suspend Smith for failure to comply with MCLE. Smith responded by challenging the legality of MCLE
  - 1) Smith contended that the AZ Supreme Court's enactment of the MCLE rules transcended the court's judicial authority.
    - The Court rejected this challenge – determination of who shall practice law, and under what condition, is a matter within the judiciary's exclusive authority under the AZ Constitution
  - 2) Smith raised a due process challenging, arguing that the MCLE rules failed to provide a procedure to avoid his summary suspension
    - The Court disagreed, noting that the State Bar sent notice of non-compliance to Smith thirty days before moving for summary suspension. Smith could have avoided suspension by filing an affidavit of delinquent compliance, but he failed to do so.
  - 3) Smith alleged the MCLE rules violated due process because they provided no opportunity to be excused b/c of ill health

        - The Court rejected this challenge – noting that the MCLE rules contain a hardship exemption, but that Smith was not in ill health

- ***Verner v. Colorado*, 533 F. Supp. 1109 (D. Colo. 1982)**
    - Plaintiff was suspended for failure to comply with MCLE. He filed an action in federal court under 42 U.S.C. 1983, seeking damages, and alleging various constitutional claims. The Court rejected them all:
        - Substantive Due Process: Plaintiff alleged that the MCLE requirement was arbitrary, and had little to do with an attorney's proficiency in the practice of law.
            - The Court disagreed. Restrictions on the right/privilege to practice law are subject to rational basis scrutiny. The Tenth Circuit had upheld state requirements for individuals seeking bar admission – consequently, states "may also set proficiency related requirements for continuing legal practice."
        - Procedural Due Process
            - The Court noted that the MCLE Rules provide for notice and a full hearing before an attorney can be disciplined
        - Equal Protection
            - Court: The MCLE exemption for senior citizen attorneys does not affect a "suspect class"
        - First Amendment
            - The Court rejected Plaintiff's claim that the first amendment gives him the right "not to be forced to hear speeches"
        - Sixth Amendment
            - Court: No right of jury trial for suspension of law license proceeding
        - Eighth Amendment
            - Court: Eighth Amendment does not apply where only "punishment" is loss of a license
        - Thirteenth Amendment

        - Court: Even if CLE is "servitude," no involuntary servitude exists where, as here, claimant has option not to serve (i.e. Plaintiff has the right not to be an attorney)
- ***Verner v. Colorado*, 716 F.2d 1352 (10th Cir. 1983)**
    - Upheld the District Court's *Verner* decision

- ***In re Rothenberg***, 676 N.W.2d 283 (Minn. 2004)
    - Plaintiff chose not to submit an affidavit showing he had completed at least two hours of CLE on elimination of bias in the legal profession
        - Plaintiff claimed the requirement was unconstitutional under the First Amendment
    - Plaintiff argued that he was forced to pay for a course discussing ideas that he oppose. The Court rejected this claim, noting that Plaintiff only identified a few courses unacceptable to him, while there were hundreds of other courses he could take on bias elimination
        - Plaintiff and the Court agreed that the elimination of bias requirement is germane to the goals of regulating the legal profession
        - The Court also reasoned that the elimination of bias requirement "does not force Minnesota lawyers to say 'I believe in X' or manifest agreement with anything. It only requires that Minnesota lawyers be passively exposed to certain ideas by attending courses[.]"
        - Court: Plaintiff presented no evidence the elimination of bias requirement was designed on an ideological basis
    - The Court also rejected Plaintiff's claim that CLE classes on understanding Islam and working with Muslim clients violated the Establishment Clause
        - The Court concluded that the CLE Board's approval of the courses does not have the primary effect of advancing religion, due to the valid secular purpose of eliminating bias

- ***Greenberg v. State Bar of Calif*, 92 Cal. Rptr.2d 493 (2000)**
    - CA attorneys sought declaratory and injunctive relief from the MCLE requirement, on equal protection and First Amendment grounds
        - Court: The plaintiffs' equal protection challenge, which is based on the existence of exemptions from MCLE for certain attorneys, fails because of the *Warden* decision
        - Court: Plaintiffs' First Amendment claim, that being required to attend MCLE classes on substance abuse, emotional distress, and elimination of bias violates their freedom of speech, is meritless
            - Plaintiffs are merely "passively exposed" to certain ideas and speech

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MCLE in the United States – Chart Showing MCLE Programs By Jurisdiction

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
AL	12 hrs/yr 1 of which must be ethics or professionalism.	**Exemptions**: (1) attorney over 65 or over 62 and receiving Soc. Sec. benefits; (2) an new attorney in the year he/she was first admitted; (3) persons prohibited from private practice; (4) state legislators; (5) Congresspersons; (6) members of the Armed Forces; (7) law clerks, (8) hardship cases HOWEVER, assistant and deputy AGs, dist. attys, pub. defenders are NOT exempt	(1) taking courses; (2) teaching CLE or law school; (3) serving as bar examiner; (4) postgraduate law school classes	CLE year ends 12/31, atty must file report by 1/31 of the following year showing (a) compliance or (b) a plan for complying by 3/1 Hrs. can be carried only into the next year Any member earning 50 or more credits in 1 year gets a CLE recognition award	Rules and Regulations of AL Bar Comm'n on MCLE
AK	3 hrs./yr of ethics (MECLE) 9 more hours of voluntary CLE (VCLE) encouraged	"All active members"	(1) attending CLE, (2) bar programs/meetings, (3) preparing, teaching legal education (4)	CLE year ends 12/31, atty must report MECLE and VCLE by 2/1 of following	AK Bar Rule 65, AK Bar Ass'n Regs. AK Bar Ass'n

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
			studying audio or videotapes, (5) attending Inns, bar sections	year carry-forward is allowed	
AZ	15 hours/ calendar year including 3 of ethics, Prof. resp., professionalism, substance abuse, or ADR.	All active members must comply, including members living in a state with no CLE requirement [if an active AZ attorney lives in a state with MCLE, the attorney need only comply with his resident state's requirement] Exemptions: Over 70 or member longer than 45 years, judges, court personnel, inactive members, new admittees sworn between Jan., June of year Admittees sworn	(1) interactive CLE; (2) Teaching (max 10 hours); (3) writing (max 10 hrs.); (4) self-study (max 5 hrs.); (5) law school courses (max 10 hrs.); (6) bar review/refresher (max 5 hrs.); (7) other educ. activities subject to approval by MCLE Committee	CLE year ends 6/ 30, atty must report by 9/15 carry-forward is allowed but limited to subsequent year	S.Ct. Rule 45 State Bar of AZ Regs. for MCLE MCLE Committee

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
		between July and December only need 10 hours of CLE with 2 hours in ethics for that year.			
AR	12 hrs/year including 1 hour of legal ethics.	Every member of bar, including judiciary **Exemptions**: (1) attorneys 70 and older, or who complete 40 years of licensure during an AR lawyer; (2) AR attorneys in another state (they must comply with that state's requirements); (3) inactive attorneys; (4) attorneys under extreme hardship b/c of mental or physical disability If an atty. returns to practice in AR, from a state with no MCLE, that attorney must complete 36 hrs of CLE in his/her first	Courses conducted by sponsors approved by Board hearing, suspension for failure to comply	CLE year ends 6/30, atty must report by Atty can carry forward into next period only atty can report anytime, but on 7/31 of each year, the Board sends reports to attys showing how many CLE hours they have for the preceding period –atty can update it	Rules for MCLE AR CLE Board

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
		year in AR			
CA	25 hrs. over 3-year period including 4 hours of legal ethics; 1 hour substance abuse and 1 hour elimination of bias in the profession.	**Exemptions**: (1) Officers, elected officials of State of CA; (2) full time professors at law schools; (3) those employed full-time by State of CA as attorneys or ALJs on permanent or probationary basis, who do not otherwise practice; (4) those employed full time by US gov't as attorneys or ALJs, hardship exceptions A member may reduce the required 25 hours if he/she was inactive or exempt during the 36 months. --Exempt members may still provide pro bono services	(1) attending activity (lecture, panel discussion, law school class) in person or by tech. means; (2) speaking or being a panelist; (3) teaching law school; (4) self study, writing, or taking a test and submitting it for a grade (atty can only fulfill up to half the required hours by doing these	Atty. is assigned to one of 3 compliance groups based on member's name. CLE period is 36 months beginning Feb. 1 ending Jan. 31. Staggered for each of the 3 groups. Atty must report by day after end of 36 months No carry-forward provision	Rules of State Bar, Division 4 State Bar of CA

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
CO	45 hrs over 3-year period including 7 hours of ethics, professionalism.	Every attorney and judge must comply Exemptions: (1) inactive attys; (2) attys over 65 years old	(1) Live programs; (2) graduate legal study; (3) homestudy; (4) teaching; (5) published research; (6) research for bar; (7) self study; (8) other activity that contributes to attorney's area of practice Up to 9 units of credit can be fulfilled with pro bono work	Attys divided into 3 reporting groups. CLE period ends 12/31, atty shall report by 1/31 of the year following completion of the reporting period 1 CLE hour = 50 mins.	CO Rules of Civ. P., Rule 260 Bd. of CLE
CT	No MCLE requirement				
DE	24 hours over 2-year period including 4 hours Enhanced Ethics, New admittees must complete 3-day fundamentals series within 4 years of admission	Exemptions: (1) retired attys; (2) atty holding elected pubic office who certifies he is not engaged in practice; (4) atty who becomes inactive, other than member of DE judiciary; (5) members of fed. judiciary; (6) out of state atty whose principal office is in	(1) live programs in person or through a simultaneous broadcast; (2) videotaped (capped at 12 hrs); (3) in-house programs (capped at 12 hrs.); (4) self-study (capped at 12 hrs.); (5) writing, research, bar exam work (capped at 12 hrs.)	Attys are split into 2 groups. Some report in even years, some in odd years. CLE period ends 12/31. Atty has until 2/1 to report Up to 20 hrs may be carried	DE Rules for CLE

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
		another state with MCLE; (7) an attorney who has been admitted for 40 years need only complete 12 hrs, 2 of which are Enhanced ethics		forward to next period (but no ethics credit can be carried forward)	
FL	30 hrs over 3 yrs. including 5 hrs of ethics legal ethics, professionalism, substance abuse, or mental illness awareness; basic skills course for newly admitted attorneys. Reporting date: assigned month every 3 years.	Exemptions: (1) active military service; (2) undue hardship; (3) non-res. members not delivering services/advise on FL law; (4) members of full time fed. judiciary; (5) FL judges and justices; (6) inactive members	(1) attending courses; (2) lecturing at CLE program; (3) serving as workshop leader or panel member; (4) writing in journal or publication; (5) teaching graduate or law school; (6) attending graduate law or law school courses	CLE year ends on different months for different attys. reporting is ongoing BUT 3 months prior to the end of the cycle, attys who have not completed their requirement get a notice of how many hours they've completed	FL Bar Rule 6-10.1 Board of Legal Specialization and Education
GA	12hrs/year including 1	Exemptions: (1)	(1) distance learning	CLE year ends	State Bar of GA

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
	hr of ethics, 1 hr. of professionalism, and 3 trial hrs (for trial attys only) Newly-admitted attys must complete a Basic Skills program within their first 2 years	inactive members; (2) out of state members who don't practice in GA; (3) out of state members who comply w/ their resident state's CLE requirements; (4) members over 70; (5) judges prohibited from practicing law; (6) designated statewide elected officials; (7) hardship cases	(up to 6 hrs); (2) writing (up to 6 hrs); (3) teaching; (4) taking law school courses	12/31, att Reporting date: January 31. carry-forward into subsequent year only	Handbook, Part VIII Comm'n on Continuing Lawyer Competency
GM	10 hrs/yr including 2 hrs ethics or professionalism.	**exemptions**: (1) new member in year atty first admitted; (2) anyone who gets a waiver	(1) CLE Courses; (2) in office CLE; (3) self-study; (4) teaching/lecturing; (5) service on Bar ass'n committee, Supreme Court of GM committees	CLE year ends 12/31, atty must report by 1/31 6 hrs can be carried into the next year	S.Ct. of Guam, Rules Governing Admission to the Practice of Law, Part G Guam Bar Ass'n
HI	No MCLE requirement				
ID	30 hours over 3-year period including 2 hours	Exemptions: (1) unique hardship; (2)	(1) approved courses; (2) teaching;	Reporting date: every 3rd year	ID Bar Comm'n Rules

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
	legal ethics basic skills course for new admittees with less than 5 yrs of being admitted to another state's bar.	an active atty over 72 years old upon a finding of good faith reasons why the atty can't comply with the CLE requirement; (3) an atty principally located in another state who complies with MCLE requirements of ID, OR, UT, or WA		depending on date and year of admission.	ID State Bar
IL	20 hrs during initial 2-year reporting period (2008-09) 4 ethics/professionalism, diversity/addiction 24 hrs during each subsequent 2-year reporting period, 4 of ethics, professionalism, diversity, addiction new attys must complete a 15 hr Skills course	Exemptions: (1) inactive/retired attys; (2) judges/ magistrates; (3) attys who b/c of office or employment in state/fed judiciary are prohibited from actively practicing law; (4) attys on active duty in Armed Forces until their release; (5) atty who is a member of another state's bar that has MCLE, who has complied with that state's MCLE.	(1) CLE courses; (2) in-house programs; (3) law school courses; (4) bar meetings; (5) cross-discipline programs; (6) teaching CLE; (7) writing, CLE materials, capped at 10 hrs per period; (8) teaching law courses in law school or at college; (9) writing law books, law review articles capped at half the max. hours required per period	CLE period ends 6/30, attys are divided into 2 reporting groups by name. up to 10 hrs may be carried forward into next period, except professionalism hrs	IL Rules, Rule 790, et seq. MCLE Bd. of S.Ct. of IL
IN	36 hours over 3 yr period	Every atty and every	(1) taking CLE courses;	CLE year ends	IN Rules of

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
	(at least 3 of ethics) and at least 6 hrs in each of the 3 years .	judge of a city, town, or small claims court must comply Exemptions: (1) federal judges; (2) hardships; (3) retired and inactive attys; (4) attys in the General Assembly have a reduced CLE obligation; (5) trial judges of circuit, superior, probate, county courts shall attend a judicial	(2) taking law school courses (credits capped at 24 hrs for single activity); (3) bar review course (capped at 24 hrs); (4) mediation training (24 hrs); (5) teaching CLE or writing for a CLE; (6) in-house programs; (7) distance education (up to 6 hrs)	12/31. on or before 10/1, CLE comm'n shall send each atty or judge a statement showing how many hours he/she has completed. The atty has until 12/31 to meet the obligation no carry-forward	Court, Rules for Admission to the Bar and the Discipline of Attys, Rule 29 IN Comm'n for CLE
IA	15 hrs/year including 2 hours legal ethics every 2 years.	Exemptions: (1) inactive attys; (2) hardship cases; (3) IA-licensed attys who don't practice in IA	(1) in person CLE; (2) computer-based CLE (up to 6 hrs); (3)	CLE year ends 12/31, atty must report CLE online by 3/1 of following year atty can carry forward credit into two subsequent years	Court Rules Governing Admission and Practice, Chapter 41 Comm'n on CLE
KS	12 hours per year including 2 hours legal ethics.	All active attorneys must comply	(1) CLE courses; (2) Postgraduate law school courses; (3)	CLE year ends June 30, CLE comm'n	KS S.Ct. Rules 801-809

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
			teaching an approved program; (4) research that leads to published findings, or contributes to CLE; (5) online or teleconference seminars, capped at 5 hrs/year	sends annual report of compliance, atty has 30 days to amend report CLE hr = 50 minutes (carryover of 10 non-ethics hours to the next year is permitted	Rules Adopted by the KS CLE Comm'n
KY	12.50 hours per year including 2 hours legal ethics, new lawyer skills training (12.5 hours) within 12 months of admission.	Exemptions: (1) Members who served as US or KY judges during any portion of the year; (2) new members [but they must complete the legal skills program]; (3) members at least 75 or with > 50 years in the bar; (4) On application, hardship cases, active duty military, inactive members	(1) CLE courses; (2) accredited in-house CLE; (3) law school classes; (4) teaching CLE; (5) researching, writing CLE material; (6) legal writing; (7) law-related education, public speaking	CLE year ends 6/30, atty has until 8/10 to certify completion of requirement Atty may carry forward 25 credits (including ethics) into the two successive years	KY Rules of the S.Ct. Rule 3.600, et seq. CLE Comm'n
LA	12.50 hours per year including 1 hour ethics	Exemptions: (1) Members not residing	(1) CLE courses; (2) self-study capped at 4	CLE year ends 12/31, attys must	Rule XXX, Rules of S.Ct. of LA

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
	and 1 hour professionalism. Newly admitted attorneys need 12.50 hours including 8 hours ethics, professionalism or law practice management.	or practicing in LA; (2) hardships; (3) active duty Armed Forces; (4) Congresspersons; (5) members 65 and over; (6) federal judges, magistrates; (7) inactive members [but not law clerks]	hrs; (3) teaching CLE; (4) teaching at law school; (5) authoring book or law review article; (6) serving as bar examiner; (7) law school course; (8) LA Law Institute meetings	report by 1/31 carryforward of 8 non-ethics hours to another year	 MCLE Committee
ME	11 hours per year including 1 hour ethics/prof. resp.	Exemptions: (1) Inactive attys; (2) Full-time judges; (3) full-time law faculty; (4) active duty armed forces; (5) residents of another country, unless they practice in ME; (6) attys who have practiced 40+ years, are 65 or older, and are engaged in less than full time practice; (7) hardship; (8) legislators, Congresspersons; (9) judicial law clerks	(1) CLE courses; (2) in-house or self-study [capped at 1/2 the required hours]; (3) teaching law-related post-secondary course (capped at 6 hrs); (4) teaching CLE; (5) writing	CLE year ends 12/31. Atty must report by 8/31 Atty may carry forward 10 hours, not the ethics hour	ME Bar Rules, Rule 12 CLE Committee of Bd. of Overseers of the Bar
MD	No MCLE				
MA	No MCLE				

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
MI	No MCLE				
MN	45 hrs over 3 yrs (3 hrs ethics, 2 hrs elimination required)	All active lawyers must comply	(1) CLE Courses (atty can't take more than 6 hrs on law office management); (2) In-house courses; (3) Pro bono representation; (4) teaching CLE; (5) teaching at university (not law school), capped at 15 hrs;	Attys are divided into 3 staggered compliance periods. Reporting date: August 30 no carry-forward	MN State Bd. of CLE Rules MN State Bd. of CLE
MS	12 hrs/yr [1 of ethics, prof. resp. or malpractice prevention]	Exemptions: (1) First-year attys; (2) attys residing outside MS and not practicing law there; (3) Attys in MS but not practicing; (4) full-time members of Armed Forces; (5) Judges, justices of US and MS courts; (6) Governor, Congresspersons; (7) attys over 70	(1) in person CLE courses; (2) online, electronic seminars (capped at 6 hrs); (3) teaching CLE; (4) writing law review articles; (5) service as bar examiner; (6) services on Ethics or other Committee; (7) Law school credits (max of 12); (8) Bar review; (9) Service in Legislature; (10) law school course; (11) Gov't department/agency CLEs [for gov't	CLE year ends 7/31, atty must report by 8/15 12 hrs may be carried forward into next year – but ethics hour must be done every year	Comm'n on CLE State of MS Rules and Regs. for MCLE

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
			employees]		
MO	15 hrs/ year including 3 ethics hrs every 3 yrs, New admittees 3 hrs prof., legal/judicial ethics within 12 mos.	Exemption: (1) First-year attys; (2) retired attys; (3) lawyers residing in MO but not practicing	(1) in person CLE; (2) self-study (capped at 6 hours); (3) teaching/writing for CLE	CLE year ends 6/30, atty must report by 7/31 carryforward into next year of up to 15 hrs of non-self-study CLE 50 minute hour	S.Ct. Rule 15
MT	15 hrs/yr including 5 hrs of ethics every 3 yrs	Exemptions: (1) Emeritus members; (2) Governor, legislators; (3) full time judge; (4) inactive members; (5) hardships	(1) In person CLE; (2) teaching/writing for CLE (capped at 5 hrs); (3) in-house or self-study (capped at 5 hours); (4) writing law review article (capped at 5 hrs)	CLE year ends 3/31. Affidavit mailed 3/1, due 4/1 Attys have 1 month grace period w/o penalty 30 "live" credits may be carried over	Rules for CLE in the S.Ct. of the State of MT. MT Commission of CLE
NE	No MCLE				

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
NV	12 hrs/yr, 2 must be in ethics.	Exemptions: (1) First year atty [must complete Bridge the Gap program]; (2) federal judiciary; (3) inactive members; (4) members over 70	(1) In person CLE; (2) teaching CLE; (3) writing, editing articles or works (capped for certain kinds of work); (4) teaching CLE; (5) video/online /"alternate format" courses	CLE year ends 12/31, atty shall report by 3/1 15 hours can be carried forward into following 2 years	S.Ct. Rules 205-215 Bd. of CLE Regs. Board of CLE (5 members, all active members of bar, including one judge) selected by Board of Governors
NH	12 hrs/year including 2 hrs ethics/prof'ism, or substance abuse	Exemptions: (1) First-year lawyers; (2) lawyers on active military duty outside NH for > 3 months of year; (3) inactive lawyers; (4) US, NH judges, magistrates; (5) Elected state or federal officials not engaged in practice of law; (6) hardship	(1) live, out of office CLE courses (must be at least 50% of an atty's hours); (2) teaching, in office CLE, self-study, writing articles, books	CLE year ends 6/ 30, atty msut report by 8/1 carryover of all hours to next year	S.Ct. Rule 52
NJ	No MCLE				
NM	12 hrs/yr, including 1 of ethics, 1 of prof.	Exemptions: (1) inactive members (not judges); (2) hardships	(1) live CLE courses; (2) self-study credit [can't be carried over]; (3) speaking at CLE; (4) writing published	CLE year ends 12/31, reporting deadline is 5/1 12 hrs can be	NM Rule 18-101 MCLE Board (9 members, appointed by

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
			materials; (5) Judicial education programs [for judges]	carried over into next hour	S.Ct.)
NY	Experienced Attorneys: 24 hours over two year period including 4 hours ethics/professionalism Newly admitted atty: 16 hrs in each of the first 2 years: 3 hrs ethics, 6 hrs skills, 7 hrs practice mgmt and professional practice	Exemptions: (1) Atty not praticing in NY; (2) Atty who has been	(1) Speaking/teaching/ moderating/panel participation at CLE; (2) In-house CLE; (3) Competitions (law, law school, college, high school) (capped at 6 hrs for these); (4) published articles (Capped at 12 hrs) ; (5) teaching law courses; (6) postgraduate law school classes; (7) Pro bono services capped at 6 hrs)	Atty must certify completion along with his/her biennial atty registration statement Atty may carry forward up to 6 hrs into next period 1 CLE hr = 50 mins	CLE Board Codes, Rules and Regs. of the State of NY, Title 22, Part 1500 NY State CLE Bd. Regs. and Guidelines
NC	12 hrs/yr, including 2 of ethics each year and 1 hr substance abuse/mental illness every 3 yrs In each of the first 3 years, atty must take 9 hrs of practical skills CLE	Exemptions: (1) Governor, Lt. Governor, US and NC legislators; (2) US and NC judiciary, law clerks; (3) active members residing outside NC who don't	(1) CLE courses; (2) serving as bar examiner; (3) law school courses (capped at 12); (4) online/taped CLE; (5) training volunteer attys (capped at 3 hrs)	CLE year ends 12/31, atty must report by February 28. atty may carry 12 hours forward into next year	NC State Bar Rules, Subchapter D, Section .1500 Bd. of CLE (9 members, all attorneys,

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
		practice in NC; (4) law teachers who do not practice in NC; (5) Board *may* exempt atty 65 or older who does not render legal advice or represent clients			appointed by Council of the NC State Bar)
ND	45 hours over 3-year period, 3 hours ethics every	Exemptions: (1) hardship; (2) inactive attys; (3) judges	(1) attending CLE courses; (2) teaching CLE; (3) self-study capped at 1/3 of requirement; (4) teaching law school courses, capped at 30 hours per period; (5) bar review courses; (6) in-house sessions;	Attys divided into 3 groups by name, period ends 6/30 and atty has until 7/30 to report no carry-forward	Comm'n for CLE – 7 members, appointed by Bd. of Governors of State Bar
OH	24 hrs/2 yr period 2 hrs ethics 1 hr prof. 30 mins substance abuse education New atty must complete 12 hrs of New Lawyer Training	Exemptions: (1) Atty on full time military duty who doesn't engage in private practice; (2) Disabled/ill atty; (3) US judges/magistrates; (4) inactive attys	(1) live CLE courses; (2) teaching CLE; (3) teaching at law school; (4) publishing books, articles (capped at 10 hrs/period); (5) approved self-study (capped at 6 hrs); (6) law school courses	Attys divided into 2 compliance groups by name, Reporting date is on even or odd years depending on group CLE year ends 12/31, atty must report by 1/31	S.Ct. Comm'n on CLE (19 members appointed by S.Ct. – 12 attys from each appellate district, one law school dean/faculty member; 5 judges; one non-attorney)

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
OK	12 hours per year including 1 hour ethics.	Exemptions: (1) First-year atty; (2) judges prohibited from private practice; Congresspersons and state legistlators, OK AG; (3) full-time active duty military; (4) Atty over 65; (5) nonresident OK who doesn't practice in OK; (6) inactive atty	(1) live CLE courses; (2) teaching CLE; (3) teaching law school; (4) taking law school courses; (5)	CLE year ends 12/31, atty must report by 2/15 50 minute hour	Rule of S.Ct. of the State of OK for MCLE MCLE Comm'n (11 members, 9 appointed by OK Bar Ass'n)
OR	45 hrs/3 yrs 3 hrs on role of lawyers concerning racial, ethnic, gender issues, access to justice 6 hrs on ethics, 1 of which must be on child abuse reporting New lawyers must complete 15 hrs by 12/31 of the year following admission, including 10 hrs practical skills, 2 hrs ethics.	Exemptions: (1) Attys in active pro bono or active emeritus status; (2) retired members	(1) CLE courses, live or taped; (2) teaching or writing materials for CLE; (3) teaching law school courses; (4) serving as bar examiner; (5) writing published articles; (6) serving on ethics committee; (7) serving in legislature	CLE year ends 12/31 6 credits can be carried over into next period [but atty must complete ethics, child abuse reporting hrs each year]	Oregon State Bar MCLE Rules and Regs MCLE Committee
PA	12 hrs/ yr, 1 hr ethics,	Exemptions: (1)	(1) live CLE courses; (2)	Attys divided	PA Rules for

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
	professionalism or substance abuse. 11 hrs substantive law	Inactive lawyers; (2) members of judiciary; (3) Active duty military while on duty; (4) newly admitted lawyers are exempt for their first reporting period	attending law school classes; (3) teaching CLE; (4) "distance learning" capped at 4 hrs/year No credit for in-house	into 3 groups, who report for different year-long periods. Atty must report within 30 days of completing a credit Atty may carry forward up to 24 hrs of non-ethics CLE into the two succeeding years	CLE, Regs for CLE CLE Board
PR	24 hrs per 2 yr period	Exemptions: (1) judges; (2) law professors; (3) inactive attys; (4) hardships; (5) barred from practicing law b/c of office; (6) attys in first two years following admission	(1) live CLE courses; (2) courses offered through nontraditional methods (capped at 1/3 of credit hours)	Atty must report within 30 days of end of reporting period up to 24 hrs can be carried forward into next period	Rules of the Puerto Rico CLE Committee CLE Board
RI	10 hrs/yr including 2 hrs of ethics	Exemptions: (1) Inactive/retired attys; (2) Attys holding full-time municipal, state, or fed. office, who are not engaged in	(1) Live CLE classes; (2) taking law school classes; (3) in-house programs (capped at 5 rs); (4) teaching CLE (capped at 6 hrs); (5)	CLE year ends 6/30, atty must report compliance by 6/30	MCLE Regulations RI MCLE Commission

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
		practice of law; (3) US, RI judges, magistrates, masters; (4) First-year attys; (5) attys over 70 years old; (6) active, full time military personnel	published articles (capped at 5 hrs); (6) on-line or video CLE (capped at 3 credits)	CLE hr = 50 mins. Atty may carry forward up to 10 hrs into the next period	
SC	14 hrs/yr including 2 of ethics/prof. resp.	Exemptions: (1) inactive attys; (2) judges [must complete judicial CLE]; (3) attys 60 and over who have been admitted for 30 or more yrs; (4) "specialists" who comply w/ CLE requirements of their specialty; (5) first-year lawyers;	(1) live CLE classes; (2) in-house CLE (capped at half the # of required hrs); (3) teaching CLE; (4) writing published legal articles/books	CLE year ends on last day of February; atty must report by 3/1 of each year Atty may carry forward up to 14 hrs into next reporting period	SC Appellate Ct. Rule 408; Regs. for MCLE for Judges and Active Members of SC Bar Comm'n on CLE and Specialization
SD	No MCLE requirement				
TN	15 hrs/yr including 3 of ethics/ professionalism.	Exemptions: (1) Active duty members of armed forces; (2) attys over 65 yrs old; (3) atty licensed in TN who resides in another state and doesn't practice in TN; (4) atty holding elective office in Executive or	(1) live CLE classes; (2) teaching CLE; (3) teaching law school courses; (4) taking law school classes; (5) serving as bar examiner; (6) serving on Bd. of Prof. Resp.; (7) "distance learning" (capped at 8 hrs); (8)	CLE year ends 12/31, atty must report compliance on or before 3/1 of following year Atty may carry forward up to 15 hrs into the	S.Ct. Rule 21 TN Comm'n on CLE

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
		Legislative branches of gov't, who are prohibited from practicing law while in office; (5) federal judges, magistrates; (6) attys with disability	certain pro bono activities	following year	
TX	15 hrs/yr including 3 hrs ethics. Reporting date: last day of birth month each year.	Exemptions: (1) inactive attys; (2) non-practicing attys; (3) full-time law school faculty; (4) Judges; (5) members of state or US legislature; (6) hardship cases	(1) live CLE courses; (2) self-study (capped at 5 hrs of general CLE and 1 hr of ethics); (3) teaching CLE; (4) teaching law school courses (except for the 3 hrs of ethics credit); (5) attending law school classes	Attys are divided into 12 reporting groups, by birth month Atty may carry forward up to 15 hrs into the next year	TX Minimum CLE Rules Committee on Minimum CLE
UT	24 hrs/2 yrs including 3 hrs ethics, 1 of which of civility and professionalism	Exemptions: (1) inactive attorneys; (2) attys on active military duty; (3) lawyer over 75 or with more than 50 years in Bar (these attys need only complete 12 hrs/2 yrs)	(1) live CLE; (2) self study (capped at 12 hrs); (3) writing and publishing an article; (4) teaching CLE; (5) teaching at law school (capped at 12 hrs) [the total CLE hrs a lawyer can satisfy thru self-study writing, OR teaching is capped at 12]	Attys are divided into 2 compliance groups. CLE year ends 6/30, attys must report by 7/31 No carry over	S.Ct. Rules of Professional Practice, Chapter 14 Article 4 Bd. of MCLE

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
VT	20 hrs/2 yrs including 2 hrs of ethics .	Exemptions: (1) Inactive attys	(1) live CLE courses; (2) attending law school courses; (3) self study (capped at 10 hrs/period); (4) teaching CLE	Attys are divided into 2 groups – CLE year ends 6/1, atty must report by 7/15	VT Bd. of MCLE Rules, Regs for MCLE
VA	12 hrs/yr including 2 hrs of ethics	Exemptions; (1) first year attys; (2) attys who show good cause for waiver	(1) live CLE courses; (2) teaching CLE; (3) attending law school classes	CLE year ends 10/31, attys must report by 12/15 atty may carry forward up to 12 hrs into next period	VA S.Ct. Rules, Part VI, Section IV, ¶ 17; MCLE Regs. CLE Board
VI	12 hrs/yr including 2 hrs ethics	Exemptions: (1) newly admitted members; (2) hardships	(1) live CLE; (2) self-study; (3) in-house CLE; (4) teaching/lecturing on law; (5) service on Bar committees	CLE year ends 12/31. Attys must report by 1/31 atty may carry forward up to 6 hrs into next year	S.Ct. Rule 208 VI Bar Ass'n CLE and Admissions Committee
WA	45 hrs/3 yr period including 6 hrs ethics/prof. resp./ professionalism/ anti-bias/diversity	Exemptions: (1) undue hardship, age; (2) full time judges; (3) US, WA legislators; (4) attys on active duty w/ armed forces	(1) live CLE courses; (2) self- study (capped at 15 hrs/ period); (3) teaching CLE; (4) attending or teaching law school; (5) pro bono; (6) judging or	Lawyers divided into 3 groups; CLE period ends 12/31, attys must report by 1/31 of following year	Admission to Practice Rule 11 Bd. of MCLE

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
			helping with law school competitions; (7) writing (granted sparingly, capped at 10 hrs/period)	Up to 15 credits may be carried forward into next period	
DC	No MCLE				
WV	24 hrs/2 yrs including 3 hrs ethics/office management/substance abuse New attys must complete "bridge-the-gap" CLE	Exemptions: (1) active but not practicing members; (2) judges; (3) hardships	(1) live CLE courses; (2) taped CLE courses (capped at 1/2 the CLE requirement); (3) teaching CLE (up to 6 hrs); (4) publishing articles/books	CLE period ends 6/30, atty must report by 7/31 atty may carry forward up to 6 hrs of non-ethics CLE into next period 1 CLE hr = 50 mins	CLE Comm'n State Bar Rules and Regs., Ch. 7
WI	30 hrs/2 yrs including 3 hours ethics and professional responsibility.	Exemptions: (1) First-year attys; (2) Inactive attys; (3) Lawyer whose practice is principally in another jurisdiction that has MCLE, if the lawyer complies with that MCLE	(1) Live CLE courses; (2) teaching a CLE; (3) participating in judicial education activity; (4) "On-demand on-line" courses (capped at 10 hrs/ period); (5) service on law regulation committee (up to 3 hrs of ethics CLE	Attys are divided into 2 reporting periods, which end 12/31. Atty must report compliance by 2/1 of following year Up to 15 non-ethics hrs may be carried forward	S.Ct. Rules, Ch 31 CLE Committee

State	Credits Required	Exemptions/ who must comply	How can credit be earned?	Reporting/ Discipline	Authorities (Rules/Boards)
				1 CLE hr = 50 mins.	
WY	15 hrs/yr including 1 hr ethics. New atty must complete 4 hr Ethics CLE	Exemptions: (1) First year atty; (2) hnorary, inactive, retired attys; (3) elected officials	(1) Live CLE; (2) publishing law review article (max of 15 hrs/article); (3) teaching CLE	CLE year ends 12/31, atty must report by 1/30 CLE credits may be carried forward for 2 yrs	Rules for CLE of Members of WY State Bar State Bd. of CLE

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APPENDIX D.3

Letter from Micah Buchdahl, Standing Comm. on Continuing Leg. Educ. Chair, Am. Bar Ass'n, to State and Territorial Sup. Cts. (April 2017) (available at https://www.americanbar.org/content/dam/aba/directories/policy/outreach_letter_model_rule_mcle.docx).

AMERICAN BAR ASSOCIATION

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5 April 2017

Dear Chief Justice «Last_name»,

We take this occasion to report to you the recent adoption of the ABA Model Rule for Minimum Continuing Legal Education and Comments dated February 2017 ("MCLE Model Rule"), which replaces the 1988 version of the rule. It is our hope that your jurisdiction will undertake a review of the MCLE Model Rule and consider integrating some or all of its provisions into your jurisdiction's MCLE rules.

This new MCLE Model Rule represents the culmination of more than two years of work by the ABA's Standing Committee on Continuing Legal Education (SCOCLE) in conjunction with more than fifty volunteers, including individual lawyers, ABA leaders, CLE regulators, CLE providers, judges, academics, law firm professional development coordinators, and state/local/specialty bar association leaders. The ABA House of Delegates adopted this MCLE Model Rule in February at its 2017 Midyear Meeting.

Like its predecessor, the new MCLE Model Rule recognizes the vital role MCLE plays in the legal profession. This MCLE Model Rule emphasizes several key goals in its Purpose statement, which provides: "To maintain public confidence in the legal profession and the rule of law, and to promote the fair administration of justice, it is essential that lawyers be competent regarding the law, legal and practice-oriented skills, the standards and ethical obligations of the legal profession, and the management of their practices."

This new MCLE Model Rule looks significantly different than its predecessor, employing a new structure and eliminating many specific provisions related to the administration of MCLE programs, such as the size and composition of a jurisdiction's MCLE governing entity, methods of reporting MCLE credits, deadlines, fees, sanctions, appeals, and methods of financing MCLE administration. However, some key provisions have remained the same.

Both the new MCLE Model Rule and its predecessor:

- Recommend fifteen hours per year of MCLE (while recognizing that some jurisdictions prefer twelve hours).

- Take no position on whether lawyers should report MCLE credits every 1, 2, or 3 years.

• Recommend that jurisdictions have a system by which frequent MCLE sponsors can be designated "approved providers."

• Recommend that all lawyers be required to take diversity and inclusion programming (although, as noted below, the new MCLE Model Rule has a more specific requirement than its predecessor).

• Recommend that speakers at MCLE programs have the necessary skills to teach the course, but do not require speakers to be lawyers.

Below is a summary of some of the key components of the new MCLE Model Rule:

- Requires lawyers to take the following specialty credits, which also count towards the general MCLE requirement: (1) Ethics and Professionalism (average one credit per year); (2) Diversity and Inclusion (one credit every three years); and (3) Mental Health and Substance Use Disorders (one credit every three years).
    - The Diversity and Inclusion credit requirement builds on existing ABA policy which encourages jurisdictions with MCLE to "include as a separate credit programs regarding diversity and inclusion in the legal profession of all persons regardless of race, ethnicity, gender, sexual orientation, gender identity, or disabilities, and programs regarding elimination of bias."
    - The Mental Health and Substance Use Disorder Credit recognizes that requiring all lawyers to receive education about these disorders can benefit both individual lawyers and the profession. This requirement is in part a response to the 2016 landmark study conducted by the Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs, entitled, "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys."
- Accredits CLE program formats that include the use of distance learning, and does not limit the number of credits that can be earned using a particular delivery format.
- Accredits CLE programs that address law practice and technology.
- Allows lawyers to choose the MCLE programs that best meet their educational needs by not limiting the number of credits that can be earned in any subject area (e.g., substantive law, law practice, technology, ethics and professionalism, diversity and inclusion, and mental health and substance use disorders).
- Treats in-house sponsors of CLE programs the same as other sponsors and allows for full accreditation of programs when all other accreditation standards have been met. Also, the new MCLE Model Rule no longer places limits on the number of credits a lawyer can earn through in-house programming.
- Encourages jurisdictions to adopt a special exemption for lawyers licensed in multiple jurisdictions, pursuant to which a lawyer is exempt from satisfying MCLE requirements if he or she satisfies the MCLE requirements of the jurisdiction where the lawyer's principal office is located.
- Recognizes that jurisdictions may choose to authorize additional exemptions from MCLE requirements for certain groups, such as retired lawyers. The new MCLE Model Rule does not contain the Comment from its predecessor that stated: "Exemptions are inconsistent with the purpose of MCLE and are not recommended."

- Creates a more narrow definition for "self-study" activities that are not approved for MCLE credit, including programming without interactivity, informal learning, and reading. Activities such as viewing programs online or on video are now defined elsewhere in the new MCLE Model Rule and are approved for MCLE credit.

A discussion of each of these provisions can be found in the Report that was submitted to the ABA House of Delegates with the new MCLE Model Rule.

SCOCLE has created an MCLE Model Rule Implementation Committee that will gather information on the rule's implementation and serve as a resource for jurisdictions. SCOCLE maintains a website, located at http://ambar.org/mclemodelrule, which contains links to the new MCLE Model Rule, its accompanying Report, and other materials. The Implementation Committee is also available to meet with you by phone and to provide assistance as you review the rule. If you have questions or would like additional background on the MCLE Model Rule, please contact the Implementation Committee through Gina Roers-Liemandt, Director of MCLE and Professional Development, American Bar Association, gina.roersliemandt@americanbar.org, (312) 988-6215.

In addition to looking to SCOCLE and the Implementation Committee as resources, we anticipate that you may choose to call upon other associations and agencies. To keep those entities informed about the implementation of the MCLE Model Rule, we have forwarded a copy of this letter to state bar association executive directors, state bar Presidents and Presidents-Elect, ABA State Delegates, and others. If there are additional individuals or agencies you would like us to contact, please let us know.

In closing, SCOCLE is honored to have spearheaded the drafting of this new MCLE Model Rule. Its adoption reflects the ABA's continued leadership in continuing legal education. We look forward to serving as a resource to jurisdictions throughout the United States as they review the MCLE Model Rule. Thank you for your consideration of this important new rule.

Respectfully,

Micah Buchdahl, Chair

APPENDIX D.4

Am. Bar Ass'n, Comparison of Jurisdiction Rules to ABA MCLE Model Rule by State, AMERICANBAR.ORG (available at https://www.americanbar.org/events-cle/mcle/modelrule/).

Jurisdiction	Number of Credits Required Per Year	Credit Hour Calculation	Ethics and Professionalism Programming Required	Stand-Alone Diversity and Inclusion Programming Required	Stand-Alone Mental Health and Substance Use Disorders Programming Required
ABA MCLE Model Rule	**15 credits**	**60 minute credit hour**	**Yes - 1 credit per year**	**Yes - 1 credit every 3 years**	**Yes - 1 credit every 3 years**
Alabama	12 credits	60 minute credit hour	Yes - 1 credit per year	No	No
Alaska	3 credits required, 9 additional credits voluntary	60 minute credit hour	Yes - 3 credits per year	No	No
Arizona	15 credits	60 minute credit hour	Yes - 3 credits per year	No	No
Arkansas	12 credits	60 minute credit hour	Yes - 1 credit per year	No	No
California	8.33 credits	60 minute credit hour	Yes - 4 credits per 3 year period	Yes - 1 credit Elimination of Bias per 3 year period	Yes - 1 credit Competence Issues per 3 year period
Colorado	15 credits	50 minute credit hour	Yes - 7 credits per 3 year period	No	No
Connecticut	12 credits	60 minute credit hour	Yes - 2 credits per year	No	No
Delaware	12 credits	60 minute credit hour	Yes - 4 credits per 2 year period	No	No
Florida	11 credits	50 minute credit hour	Yes - 5 credits per 3 year period	No	No
Georgia	12 credits	60 minute credit hour	Yes - 1 credit per year of ethics and 1 credit per year of professionalism	No	No
Guam	10 credits	60 minute credit hour	Yes - 2 credits per year	No	No
Hawaii	3 credits required, 9 additional credits voluntary	60 minute credit hour	Yes - 3 credits per year	No	No

Jurisdiction	Number of Credits Required Per Year	Credit Hour Calculation	Ethics and Professionalism Programming Required	Stand-Alone Diversity and Inclusion Programming Required	Stand-Alone Mental Health and Substance Use Disorders Programming Required
ABA MCLE Model Rule	**15 credits**	**60 minute credit hour**	**Yes - 1 credit per year**	**Yes - 1 credit every 3 years**	**Yes - 1 credit every 3 years**
Idaho	10 credits	60 minute credit hour	Yes - 2 credits per 2 year period	No	No
Illinois	15 credits	60 minute credit hour	Yes - 4 credits per 2 year period*	Yes - 1 credit Diversity and Inclusion per 2 year period*	Yes - 1 credit Mental Health and Substance Abuse per 2 year period*
Indiana	12 credits	60 minute credit hour	Yes - 3 credit per 3 year period	No	No
Iowa	15 credits	60 minute credit hour	Yes - 3 credits per 2 year period	No	No
Kansas	12 credits	50 minute credit hour	Yes - 2 credits per year	No	No
Kentucky	12 credits	60 minute credit hour	Yes - 2 credits per year	No	No
Louisiana	12.5 credits	60 minute credit hour	Yes - 1 credit per year of ethics and 1 credit per year of professionalism	No	No
Maine	11 credits	60 minute credit hour	Yes - 1 credit per year	No	No
Maryland	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE
Massachusetts	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE
Michigan	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE
Minnesota	15 credits	60 minute credit hour	Yes - 3 credits per 3 year period	Yes - 2 credits Elimination of Bias per 3 year period	No

Jurisdiction	Number of Credits Required Per Year	Credit Hour Calculation	Ethics and Professionalism Programming Required	Stand-Alone Diversity and Inclusion Programming Required	Stand-Alone Mental Health and Substance Use Disorders Programming Required
ABA MCLE Model Rule	**15 credits**	**60 minute credit hour**	**Yes - 1 credit per year**	**Yes - 1 credit every 3 years**	**Yes - 1 credit every 3 years**
Mississippi	12 credits	60 minute credit hour	Yes - 1 credit per year	No	No
Missouri	15 credits	50 minute credit hour	Yes - 2 credits per year	No	No
Montana	15 credits	60 minute credit hour	Yes - 2 credits per year	No	No
Nebraska	10 credits	60 minute credit hour	Yes - 2 credits per year	No	No
Nevada	12 credits	60 minute credit hour	Yes - 2 credits per year	No	Yes - 1 credit of Substance Abuse, Addictive Disorders, and/or Mental Health every 3 years
New Hampshire	12 credits	60 minute credit hour	Yes - 2 credits per year	No	No
New Jersey	12 credits	50 minute credit hour	Yes - 4 credits per 2 year period	No	No
New Mexico	12 credits	60 minute credit hour	Yes - 2 credits per year	No	No
New York	12 credits	50 minute credit hour	Yes - 4 credits per 2 year period	No	No
North Carolina	12 credits	60 minute credit hour	Yes - 2 credits per year	No	Yes - 1 credit Substance Abuse Awareness or Debilitating Mental Conditions every 3 years
North Dakota	15 credits	60 minute credit hour	Yes - 3 credits per 3 year period	No	No

Jurisdiction	Number of Credits Required Per Year	Credit Hour Calculation	Ethics and Professionalism Programming Required	Stand-Alone Diversity and Inclusion Programming Required	Stand-Alone Mental Health and Substance Use Disorders Programming Required
ABA MCLE Model Rule	**15 credits**	**60 minute credit hour**	**Yes - 1 credit per year**	**Yes - 1 credit every 3 years**	**Yes - 1 credit every 3 years**
Northern Mariana Islands	10 credits	60 minute credit hour	No	No	No
Ohio	12 credits	60 minute credit hour	Yes - 2.5 credits per 2 year period	No	No
Oklahoma	12 credits	50 minute credit hour	Yes - 1 credit per year	No	No
Oregon	15 credits	60 minute credit hour	Yes - 5 credits per 3 year period	Yes - 1 credit Access to Justice per 3 year period	No
Pennsylvania	12 credits	60 minute credit hour	Yes - 2 credits per year	No	No
Puerto Rico	12 credits	60 minute credit hour	Yes - 4 credits per 2 year period	No	No
Rhode Island	10 credits	50 minute credit hour	Yes - 2 credits per year	No	No
South Carolina	12 credits	60 minute credit hour	Yes - 2 credits per year	No	Yes - 1 credit Substance Abuse or Mental Health Issues in the Legal Profession every 3 years
South Dakota	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE
Tennessee	15 credits	60 minute credit hour	Yes - 3 credits per year	No	No
Texas	15 credits	60 minute credit hour	Yes - 3 credits per year	No	No
Utah	12 credits	60 minute credit hour	Yes - 2 credits ethics per year and 1 credit professionalism and civility per year	No	No

Jurisdiction	Number of Credits Required Per Year	Credit Hour Calculation	Ethics and Professionalism Programming Required	Stand-Alone Diversity and Inclusion Programming Required	Stand-Alone Mental Health and Substance Use Disorders Programming Required
ABA MCLE Model Rule	**15 credits**	**60 minute credit hour**	**Yes - 1 credit per year**	**Yes - 1 credit every 3 years**	**Yes - 1 credit every 3 years**
Vermont	10 credits	60 minute credit hour	Yes - 2 credits per 2 year period	No	No
Virgin Islands	12 credits	60 minute credit hour	Yes - 2 credits per year	No	No
Virginia	12 credits	60 minute credit hour	Yes - 2 credits per year	No	No
Washington	15 credits	60 minute credit hour	Yes - 6 credits per 3 year period	No	No
Washington DC	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE
West Virginia	12 credits	50 minute credit hour	Yes - 3 credits per 2 year period	No	No
Wisconsin	15 credits	50 minute credit hour	Yes - 3 credits per 2 year period	No	No
Wyoming	15 credits	60 minute credit hour	Yes - 2 credits per year	No	No
	*Effective July 1, 2017				Compiled 4/12/2017

Jurisdiction	Carryover Credit Allowed	Law Practice Programming Allowed	Technology Programming Allowed	Cap on Moderated Programming Other than Live In-Person	Cap on Non-Moderated Programming with Interactivity as a Key Component
ABA MCLE Model Rule	**Yes**	**Yes**	**Yes**	**No**	**No**
Alabama	Yes	Yes	Yes	No	Yes
Alaska	Yes	Yes	Yes	No	No
Arizona	Yes	Yes	Yes	No	No
Arkansas	Yes	Yes	Yes	No	Yes - Prohibited
California	No	Yes	Yes	No	No
Colorado	No	Yes	Yes	No	No
Connecticut	Yes	Yes	Yes	No	No
Delaware	Yes	Yes	Yes	No	Yes
Florida	No	Yes	Yes - 3 credits of Approved Technical Programs is required	No	No
Georgia	Yes	Yes	Yes	Yes	Yes
Guam	Yes	Yes	Yes	No	No
Hawaii	Yes	Yes	Yes	No	No

Jurisdiction	Carryover Credit Allowed	Law Practice Programming Allowed	Technology Programming Allowed	Cap on Moderated Programming Other than Live In-Person	Cap on Non-Moderated Programming with Interactivity as a Key Component
ABA MCLE Model Rule	**Yes**	**Yes**	**Yes**	**No**	**No**
Idaho	No	Yes	Yes	No	Yes
Illinois	Yes	Yes	Yes	No	No
Indiana	No	Yes	Yes	Yes	Yes
Iowa	Yes	Yes	Yes	No	Yes
Kansas	Yes	Yes	Yes	No*	Yes
Kentucky	Yes	Yes	Yes	No	Yes
Louisiana	Yes	Yes	Yes	Yes	Yes
Maine	Yes	Yes	Yes	No	Yes
Maryland	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE
Massachusetts	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE
Michigan	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE
Minnesota	No	Yes	Yes	No	Yes

Jurisdiction	Carryover Credit Allowed	Law Practice Programming Allowed	Technology Programming Allowed	Cap on Moderated Programming Other than Live In-Person	Cap on Non-Moderated Programming with Interactivity as a Key Component
ABA MCLE Model Rule	**Yes**	**Yes**	**Yes**	**No**	**No**
Mississippi	Yes	Yes	Yes	Yes	Yes
Missouri	Yes	Yes	Yes	No	Yes
Montana	Yes	Yes	Yes	No	Yes
Nebraska	Yes	No	No	Yes	Yes
Nevada	Yes	Yes	Yes	No	No
New Hampshire	Yes	Yes	Yes	No	No
New Jersey	Yes	Yes	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes	No	Yes
New York	Yes	Yes	Yes	No	No
North Carolina	Yes	Yes	Yes	No	Yes
North Dakota	No	Yes	Yes	No	Yes

Jurisdiction	Carryover Credit Allowed	Law Practice Programming Allowed	Technology Programming Allowed	Cap on Moderated Programming Other than Live In-Person	Cap on Non-Moderated Programming with Interactivity as a Key Component
ABA MCLE Model Rule	**Yes**	**Yes**	**Yes**	**No**	**No**
Northern Mariana Islands	Yes	Yes	Yes	No	No
Ohio	Yes	Yes	Yes	Yes	Yes
Oklahoma	Yes	Yes	Yes	No	Yes
Oregon	Yes	Yes	Yes	No	No
Pennsylvania	Yes	Yes	Yes	Yes	Yes
Puerto Rico	Yes	Yes	Yes	Yes	Yes
Rhode Island	Yes	Yes	Yes	No	Yes
South Carolina	Yes	Yes	Yes	Yes	Yes
South Dakota	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE
Tennessee	Yes	Yes	Yes	Yes	Yes
Texas	Yes	Yes	Yes	No	No
Utah	No	Yes	Yes	Yes	Yes

Jurisdiction	Carryover Credit Allowed	Law Practice Programming Allowed	Technology Programming Allowed	Cap on Moderated Programming Other than Live In-Person	Cap on Non-Moderated Programming with Interactivity as a Key Component
ABA MCLE Model Rule	**Yes**	**Yes**	**Yes**	**No**	**No**
Vermont	No	Yes	Yes	No	Yes
Virgin Islands	Yes	Yes	Yes	No	No
Virginia	Yes	Yes	Yes	No	Yes
Washington	Yes	Yes	Yes	No	No
Washington DC	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE	Non-MCLE
West Virginia	Yes	Yes	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes	No	Yes
Wyoming	Yes	Yes	Yes	No	Yes
	*Effective July 1, 2017				Compiled 4/12/2017

Jurisdiction	Differing Rules for In-House CLE Programming	Approved Provider Status Available	Summary of Agreement with ABA Model Rule
ABA MCLE Model Rule	No	Yes	12 ASPECTS TRACKED
Alabama	Yes	Yes	7 of 12
Alaska	No	No	8 of 12
Arizona	Yes	No	8 of 12
Arkansas	Yes	Yes	7 of 12
California	No	Yes	10 of 12
Colorado	Yes	No	6 of 12
Connecticut	No	No	8 of 12
Delaware	Yes	Yes	7 of 12
Florida	No	No	6 of 12
Georgia	Yes	Yes	6 of 12
Guam	No	Yes	9 of 12
Hawaii	No	Yes	9 of 12

Jurisdiction	Cap on In-House CLE Programming	Approved Provider Status Available	Summary of Agreement with ABA Model Rule
ABA MCLE Model Rule	No	Yes	12 ASPECTS TRACKED
Idaho	No	No	6 of 12
Illinois	No	Yes	12 of 12* (was 9 of 12 at time of Model Rule's passage)
Indiana	Yes	Yes	5 of 12
Iowa	No	No	8 of 12
Kansas	Yes	No	5 of 12
Kentucky	No	No	7 of 12
Louisiana	Yes	Yes	6 of 12
Maine	Yes	Yes	7 of 12
Maryland	Non-MCLE	Non-MCLE	0 of 12
Massachusetts	Non-MCLE	Non-MCLE	0 of 12
Michigan	Non-MCLE	Non-MCLE	0 of 12
Minnesota	Yes	No	7 of 12

Jurisdiction	Cap on In-House CLE Programming	Approved Provider Status Available	Summary of Agreement with ABA Model Rule
ABA MCLE Model Rule	No	Yes	12 ASPECTS TRACKED
Mississippi	Yes	Yes	6 of 12
Missouri	No	Yes	8 of 12
Montana	Yes	Yes	8 of 12
Nebraska	Yes	Yes	4 of 12
Nevada	No	Yes	10 of 12
New Hampshire	No	No	8 of 12
New Jersey	No	Yes	6 of 12
New Mexico	Yes	Yes	7 of 12
New York	No	Yes	8 of 12
North Carolina	Yes	Yes	8 of 12
North Dakota	Yes	No	6 of 12

Jurisdiction	Cap on In-House CLE Programming	Approved Provider Status Available	Summary of Agreement with ABA Model Rule
ABA MCLE Model Rule	No	Yes	12 ASPECTS TRACKED
Northern Mariana Islands	No	Yes	8 of 12
Ohio	No	Yes	7 of 12
Oklahoma	Yes	Yes	6 of 12
Oregon	No	No	10 of 12
Pennsylvania	Yes	Yes	6 of 12
Puerto Rico	Yes	No	5 of 12
Rhode Island	Yes	Yes	6 of 12
South Carolina	Yes	Yes	7 of 12
South Dakota	Non-MCLE	Non-MCLE	0 of 12
Tennessee	Yes	No	6 of 12
Texas	Yes	Yes	9 of 12
Utah	Yes	Yes	5 of 12

Jurisdiction	Cap on In-House CLE Programming	Approved Provider Status Available	Summary of Agreement with ABA Model Rule
ABA MCLE Model Rule	**No**	**Yes**	**12 ASPECTS TRACKED**
Vermont	Yes	Yes	6 of 12
Virgin Islands	No	Yes	9 of 12
Virginia	No	Yes	8 of 12
Washington	No	Yes	10 of 12
Washington DC	Non-MCLE	Non-MCLE	0 of 12
West Virginia	Yes	Yes	5 of 12
Wisconsin	No	Yes	8 of 12
Wyoming	No	No	8 of 12
	*Effective July 1, 2017		Compiled 4/12/2017