

**WORKGROUP TO STUDY MANDATORY CONTINUING LEGAL EDUCATION
("MCLE") IN MARYLAND**

FINAL REPORT AND RECOMMENDATIONS

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I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

A. Summary of Formation and Mission of the Workgroup to Study Mandatory Continuing Legal Education in Maryland

At the request of the Supreme Court of Maryland (formerly the Court of Appeals), the Hon. Stuart R. Berger of the Appellate Court of Maryland (formerly the Court of Special Appeals)¹ spearheaded an initiative to investigate the viability of Maryland adopting a continuing legal education (“CLE”) mandate for all attorneys licensed by the Maryland bar to practice law in Maryland. To fulfill this mission, Judge Berger, with input from the Supreme Court, assembled a collection of 27 attorneys, judges, and leaders of the legal community to participate in discussions regarding whether, and how, Maryland should proceed with a potential CLE mandate. The members of this Workgroup to Study Mandatory Continuing Legal Education (“MCLE”) in Maryland (the “Workgroup”) represented varied personal, professional, and geographic backgrounds, with many serving prominent roles in well-known large firms, within governmental organizations, as leaders in state and regional bar associations, as well as deans of Maryland’s two law schools, and as reputable practitioners running small and solo law firms.²

The Supreme Court of Maryland charged the Workgroup with investigating two distinct questions: (1) whether or not Maryland should adopt mandatory CLE; and (2) what should a potential mandatory CLE requirement in Maryland address or entail. The Workgroup met seven times between November 2022 and June 2023 to review relevant materials, discuss these two distinct issues, and endeavor to reach consensus regarding the eventual recommendations it made

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 and the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

² See “Workgroup Members,” *supra* (providing roster of all members participating in the Workgroup to Study MCLE in Maryland).

to the Supreme Court. Throughout this process, the Workgroup engaged in vibrant discourse on these issues, pursued the input of Workgroup members and others with experience adhering to MCLE rules in other jurisdictions or who currently handled CLE training for their respective organizations. The Workgroup further reviewed articles from law reviews and media organizations, read in depth reports and model rules from the American Bar Association (“ABA”) and the Maryland State Bar Association (“MSBA”), and analyzed CLE provisions from other jurisdictions that mandate such career-long educational training.

Regarding its first charge -- determining whether to recommend that Maryland adopt a rule mandating minimum CLE for attorneys admitted to practice in the state -- the Workgroup assessed the utility and urgency for such a mandate, current participation with CLE by Maryland attorneys, criticism and support for mandatory CLE, and similar past initiatives and recommendations made by prior task forces and committees assembled by the Supreme Court of Maryland.³ The Workgroup spent much of its early meetings weighing reasons in favor of a CLE mandate -- such as the value of ensuring *all attorneys* engage with continuing education and the impact this would have on competency and public perception of the legal profession, the aligning of Maryland with the overwhelming majority of states that already require some baseline CLE participation, and the potential beneficial impact of MCLE on professional development and competency -- against the arguments opposed to a CLE mandate -- such as the costs and time burdens of such a mandate and how these would disproportionately affect those with fewer resources like small and solo firms and nonprofits, and general skepticism as to the efficacy of MCLE.

³ See Section III.C. *infra* (providing the Workgroup’s recommendation to the Supreme Court of Maryland that Maryland should adopted MCLE, so long as a suitable mandate is crafted).

Regarding the second part of its charge, the Workgroup separated a potential MCLE rule into its key component pieces to discuss how to best craft such a potential Maryland CLE mandate. The Workgroup addressed whether a mandate should apply immediately upon adoption or incrementally after a provisional period, what the minimum number of CLE hours required should be, how and when attorneys should report the completion of such hours, what activities should count towards completion of a CLE mandate, how state regulators should address oversight and accreditation of CLE programs and providers, whether and what specific subject-matter areas should be included in such a rule, and who, if anyone, should be exempt from the mandate. Though the Workgroup diligently tried to keep its two-question charge distinct, it became increasingly clear that the more substantive the debate grew, the more difficult it was to avoid issues of how an MCLE rule should operate influence the issue of whether MCLE should be adopted at all. Such overlap is evidenced in the Workgroup's eventual recommendations to the Supreme Court.

B. The Workgroup's Recommendations to the Supreme Court of Maryland⁴

1. *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*

The Supreme Court of Maryland should pursue a mandate requiring minimum participation in CLE for all attorneys licensed to practice in Maryland, but in so doing, the Court should ensure that such a mandate aligns with the provisions and recommendations that follow in Recommendations 2 and 3, *infra*. There is value to participation in CLE, as evidenced by the

⁴ See Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ., at 2-11 (Md. June 12, 2023) [hereinafter *MCLE Workgroup June 12, 2023 Meeting Minutes*] (summarizing debate regarding the final adoption and revision of the Workgroup's Recommendations).

experiences of many attorneys who take and teach CLE courses and who adhere to CLE mandates of neighboring jurisdictions.

These sentiments are distinct, however, from the separate issue of whether such CLE participation should be imposed on all Maryland attorneys. Concerns exist regarding the popularity of CLE participation undermining the need for a mandate: the lack of data showing MCLE makes the positive impacts it claims to, the costs and burdens imposed on attorneys by such a mandate, the potential for MCLE to grow into more of an administrative quagmire than an educational initiative, and the expected pushback from attorneys opposed to being told they must dedicate a set number of hours each year to CLE in order to remain in good standing.⁵

These issues, however, do not outweigh arguments in favor of a mandate: the reputational benefits such a rule may provide to the legal profession overall, a mandate's role in aligning Maryland with the MCLE trend adopted by a vast majority of other states and jurisdictions, the potential impact of a mandate on cultivating further professional development, the ability to address issues that contribute to the occurrence of misconduct and attorney grievance complaints and investigations, and a mandate's effect of aligning legal professionals with educational mandates of similar "knowledge" industries.⁶ These beneficial goals of MCLE can be best achieved and balanced against the burdens of such a rule, by adopting a mandate that adheres to the following suggested provisions of such a rule and approach to its implementation.

⁵ See discussion Section III.B *infra* (discussing concerns with mandating CLE).

⁶ See discussion Section III.A *infra* (discussing favorable reasons to implement MCLE).

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

i. *Recommendation 2(a): A mandate should require a minimum of 12 hours of CLE each year⁷*

Recognizing that most jurisdictions require roughly 10 to 15 hours of CLE annually, a minimum of 12 hours of CLE is appropriate for such a mandate in Maryland. Many attorneys already meet or surpass this threshold through their current consumption of CLE. A higher benchmark felt too onerous. The members of the Workgroup believed attorneys could carve out one hour a month or three hours each quarter to dedicate to CLE.

ii. *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 attorneys⁸*

A yearly reporting requirement presents fewer administrative burdens for attorneys, who already must pay into the Client Protection Fund and report pro bono hours each year. Such a reporting timetable also results in attorneys engaging in CLE yearly, rather than loading up on CLE every two or three years, which is more in line with the goals of a CLE mandate. Aligning the reporting period with the calendar year also makes CLE reporting more intuitive. In the alternative, aligning mandatory CLE reporting with an attorney's other reporting obligations, and permitting reporting through the Attorney Information Systems website, would further streamline such administrative elements of a CLE mandate.⁹

⁷ See discussion Section IV.B. *infra*.

⁸ See discussion Section IV.C.2 *infra*.

⁹ See Md. Code. (1989, Repl. 2018) § 10-311 of the Business Occupations & Professions Article ("BOP") (establishing the Client Protection Fund); Md. Rule 19-802 (requiring attorneys to register for the Client Protection Fund upon admission to the Maryland bar); Md. Rule 19-306.1 (providing Maryland's aspirational pro bono requirement for attorneys, and the reporting of such

- iii. *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 abuse¹⁰*

Aligning with trends seen in nearly all jurisdictions requiring CLE, a Maryland mandate should require attorneys to complete programming in specific subjects germane to all areas of legal practice and to the goals of a CLE mandate. Focusing on ethics and professional responsibility speaks to concerns with competence, misconduct, and attorney grievance complaints. Addressing diversity, equity, and inclusion aligns with goals of improving client relationships and representation and addressing intrinsic issues of bias and disparities in the law. Mental health and substance abuse awareness aims to improve attorney wellness in a profession with alarmingly high levels of substance abuse and mental health issues. Requiring these three subjects each year ensures such teachings stay current and impresses their importance on all attorneys. The Workgroup phrased these three subject-matter-specific requirements the “1-1-1 plan.”

- iv. *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 hours¹¹*

Yearly reporting both better serves the goals of a CLE mandate and the administration of that mandate. Nevertheless, allowing attorneys to carry over hours to the ensuing reporting period,

pro bono hours); Md. Rule 19-801(b) (describing the utility of Attorney Information Systems “AIS,” and requiring attorneys to use the AIS system to annually report pro bono hours); *see generally* discussion Section IV.C.2 *infra*.

¹⁰ *See* discussion Section IV.F.1 *infra*.

¹¹ *See* discussion Section IV.C.1 *infra*.

up to the entire 12-hour requirement, affords more flexibility in adhering to the CLE mandate and obtaining sufficient hours each reporting cycle. Carrying over hours allows attorneys to take as many courses as they may choose to when their schedules permit, without worrying that those hours may be “wasted” if they are in excess of the minimum requirement and with the knowledge that such excess participation provides a cushion for MCLE compliance if schedules become busier during the following reporting period. Permitting carry over of the “1-1-1 plan” subjects affords the opportunity to take more in-depth classes on those topics, beyond just the one-hour requirement for each respective subject, which may lead to deeper engagement with these important issues.

- v. *Recommendation 2(e): Only 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*¹²

Because mandatory CLE is meant to address the competency of all attorneys, then all attorneys who “practice” should be required to adhere to such a rule, regardless of whether they directly represent clients and organizations, or they serve in roles such as policy directors, legislators, law professors, or in-house counsel. Accordingly, only “inactive attorneys” -- who do not practice law at all within Maryland and have registered with the Maryland bar as inactive -- should be exempt from meeting the requirements of a CLE mandate. Because newly-admitted attorneys gain admission to practice at varying times of the year, to ease the administrative burden this presents, they will not have to comply until the next reporting period following the reporting period in which they gain admission to the Maryland bar. Though judges do not “practice” law in

¹² See discussion Section IV.G *infra*.

the traditional sense, they will be subject to the CLE mandate, but the annual judicial training requirement already imposed upon all judges would suffice a CLE minimum-hours threshold.

3. *Recommendation 3: Maryland should embrace the following approach to developing and applying a CLE mandate:*
 - i. *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 compliance¹³*

Without defining precisely which activities should or should not count towards meeting a CLE quota, taking a more flexible approach that permits both traditional CLE -- such as in-person courses and trainings -- as well as alternative formats -- such as online and on demand programs, academic legal writing and teaching, and pro bono work -- to qualify for required CLE credit hours best serves the goals of a mandate while also making compliance with such a rule less onerous for attorneys. A similar approach should be applied to certifying or accrediting CLE providers, particularly those “in-house” providers, bar associations, and law schools who have already invested resources in useful and unique training programs for their respective organization’s members or employees. Reciprocating CLE credit with other jurisdictions also serves this goal.

¹³ See discussion Section IV.A *infra*.

- ii. *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*¹⁴

The piecemeal nature of the adoption of CLE mandates across the country inevitably leads to conflicts and incongruencies between these rules, making navigating such varying requirements difficult for attorneys licensed in multiple jurisdictions. Maryland should be cognizant of this and look to ease these conflicts by limiting discrepancies between a Maryland mandate and those of states like Virginia, Pennsylvania, New York, and New Jersey, where the majority of Maryland attorneys permitted to practice in other jurisdictions report prior bar admissions. Additionally, Maryland should embrace concepts like reciprocity, such that programs provided in these neighboring jurisdictions should also be certified to count for CLE credit in Maryland, and attorney participation in CLE in other jurisdictions should count towards compliance with a potential Maryland CLE mandate.

¹⁴ See discussion Section II.E *infra* (discussing CLE provisions from five jurisdictions reporting the most prior bar admissions among applicants to the Maryland bar); notes 48-51, 108, 135, *infra* (discussing variance of CLE provisions among jurisdictions and the value of reciprocity regarding CLE mandates).

II. HISTORICAL REVIEW OF CONTINUING LEGAL EDUCATION

*“Legal incompetence is not cured by age.”*¹⁵

Maintaining sufficient, accurate, and current knowledge through a life-long pursuit of education rests at the heart of professional excellence for legal practitioners. To live up to these ideals, attorneys have long-pursued continuing legal education and instruction in varying forms, from fastidiously reading each precedential opinion as it is issued, to participating in standardized trainings and coursework, to obtaining additional professional degrees and certifications. Unsurprisingly, these efforts have led to the growth of “continuing legal education” (“CLE”) initiatives and industries throughout the country, with many organizations cultivating both resources and marketplaces for them, and with many jurisdictions institutionalizing these efforts through the rules that govern CLE and the mandates requiring attorneys to engage with it. To help contextualize this evolution of CLE, we review some of these efforts both nationally and within Maryland, as the Free State once again considers whether now is the time to require those admitted to practice law in Maryland to adhere to a mandatory CLE minimum.

A. The American Bar Association and the National Growth of CLE

As the largest national organization of legal practitioners, the American Bar Association (“ABA”) has long played an outsized role in shaping trends and standards in the legal profession.¹⁶ The ABA Model Rules of Professional Conduct serve as the basis for professional standards.¹⁷

¹⁵ Victor J. Rubino, *CLE and MCLE (Their History and Their Effect on Senior Lawyers)*, 7 EXPERIENCE 14, 14 (Spring 1997).

¹⁶ See Am. Bar Ass’n, *About Us: Featured Benefits of ABA Membership*, AMERICANBAR.ORG, https://www.americanbar.org/about_the_aba/ (last visited May 19, 2023, 10:55 A.M.) (“The ABA is the nation’s largest voluntary legal association.”).

¹⁷ Germane to a discussion regarding CLE are ABA Rules of Professional Conduct such as Rule 1.3 requiring attorneys to act with “reasonable diligence and promptness in representing clients,” Rule 1.4 requiring prompt communication with clients informing them of circumstances

Numerous states, while developing their respective rules of professional responsibility for attorneys, have adopted much of the ABA’s Model Rules, at times near verbatim.¹⁸ Regarding CLE, ABA Model Rule 1.1 “Competence” requires lawyers to “provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.”¹⁹ Accordingly, the ABA suggests that in order to “maintain the requisite knowledge and skill” an attorney 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.”²⁰ Maryland adopted the same rule regarding competence in its Rules of Professional Conduct, including a similar note advising participating in continuing legal education to ensure the requisite knowledge to competently practice.²¹

where their consent is required and when they request information, Rule 1.5 limiting fees, Rule 1.15 safekeeping property, and Rule 8.4(c) regarding misconduct in matters involving fraud, deceit, or misrepresentation.

¹⁸ *See, e.g.*, MOD. RULES OF PRO. CONDUCT § 1.4 (10th ed., AM. BAR ASS’N 2023) (requiring attorneys to “[p]romptly inform the client of any decision or circumstance with respect to which the client’s informed consent . . . is required by these rules[; k]keep a client reasonably informed about the status of a matter. . . .”); Md. Rule 19-301.4 (requiring attorneys to “promptly inform the client of any decision or circumstance with respect to which the client’s informed consent . . . is required by these Rules; keep the client reasonably informed about the status of the matter . . .”).

¹⁹ MOD. RULES OF PRO. CONDUCT § 1.1 (10th ed., AM. BAR ASS’N 2023).

²⁰ MOD. RULES OF PRO. CONDUCT § 1.1 cmt. 8 (10th ed., AM. BAR ASS’N 2023).

²¹ Md. Rule 19-301.1; *id.* Rule 19-301.1 cmt. 6 (“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.”).

1. The MacCrate Report - *The ABA leads the charge on growing CLE*²²

In 1881, the ABA began a campaign recommending “a national uniform type of academic training for lawyers which would take place in a three-year university course.” The ABA’s educational aspirations did not end with the obtaining of a formal degree, though, as the organization also advocated for additional educational resources and training for attorneys as they continue through their legal careers.

Continuing Legal Education as it exists today grew from efforts to provide supplementary legal education for lawyers returning home from after World War I.²³ Organized and operated mostly by local law clubs and bar associations, these programs were largely designed to provide updates and refresher materials to returning veterans.²⁴ These courses grew as more sponsors became involved and the legal community adjusted to the rash of New Deal legislation.²⁵

²² See generally 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 305-17 (1992) [hereinafter *The MacCrate Report*]. “The Report advocates the adoption of a holistic view of legal education which occurs through a developmental continuum of pre-law school education, law school and legal practice.” E. Eugene Clark, *Legal Education and Professional Development - an Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, (Illinois: American Bar Association 1992), LEG. EDUC. REV. 4, at 11 (available at <https://doi.org/10.53300/001c.5993>). “The MacCrate Report, which served as another catalyst for expanding the role of MCLE, suggested that while law school lays a foundation, CLE plays a critical role in teaching the skills and values necessary for practice.” Cheri A. Harris, *McLe: The Perils, Pitfalls, and Promise of Regulation*, 40 VAL. U. L. REV. 359, 362–63 (2006). Robert MacCrate, the then president of the ABA, chaired the task force responsible for creating the comprehensive analysis later known as the “MacCrate Report.” Thomas M. Steele, *The MacCrate Report: Its Impact on Education in Law Firm Management*, 23 PACE L. REV. 613, 616 (2003).

²³ See *The MacCrate Report*, *supra* note 22, at 305.

²⁴ See *The MacCrate Report*, *supra* note 22, at 305.

²⁵ See *The MacCrate Report*, *supra* note 22, at 305.

Similarly, in the 1930s, noted Yale Law School graduate Harold B. Seligson began conducting after-hours programs in New York imparting practical knowledge to young lawyers entering the profession, leading to the eventual creation of the “Practi[c]ing Law Institute” (“PLI”) in 1933.²⁶

The return of veterans again rekindled similar efforts following World War II, with the ABA Section of Legal Education and Admissions to the Bar providing refresher courses across the country from 1944 to 1947.²⁷ In 1946, the success of these refresher courses led the ABA House of Delegates, through its Committee on Continuing Legal Education of the Bar -- which later became a joint venture between the ABA and the American Law Institute (ALI) called the American Law Institute-American Bar Association Committee on Continuing Professional Education (“ALI-ABA”) -- to “initiate and foster a national program of continuing education of the bar.”²⁸ From 1947 to 1958, the ALI-ABA encouraged state and local bar associations to create sponsoring agencies that could develop and run CLE courses, with the ALI-ABA helping as needed.²⁹ Similarly, by the early 1960s the PLI also grew its offerings by circulating brochures and sponsoring such legal education programs across the country.³⁰

In 1958, the ABA and ALI organized the first Arden House National Conference on the Continuing Education of the Bar (later dubbed “Arden House I”).³¹ Arden House I recommended:

²⁶ Rubino, *supra* note 15, at 14.

²⁷ See *The MacCrate Report*, *supra* note 22, at 306.

²⁸ See *The MacCrate Report*, *supra* note 22, at 306.

²⁹ See *The MacCrate Report*, *supra* note 22, at 306.

³⁰ Rubino, *supra* note 15, at 14.

³¹ See *The MacCrate Report*, *supra* note 22, at 307.

(1) creating permanent CLE organizations in more states, modeling such organizations after those existing in California and Wisconsin, (2) increasing the emphasis on legal education regarding professional responsibility, (3) stimulating increased CLE attendance, (4) focusing special attention on meeting the needs of newly admitted attorneys, and (5) studying the potential establishing of standards for CLE programs.³² In the five years after Arden House I, 22 additional states established CLE administrations.³³

This rapid growth, however, led to a proliferation of programs and private providers, resulting in the ALI-ABA's 1963 sponsoring of a second Arden House conference ("Arden House II"), focusing on: "(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."³⁴ Roughly 10 years later, in 1974, the ABA established, within the Standing Committee on Continuing Education, the Division for Professional Education for the purpose of assisting the development of CLE programming for local and regional organizations.³⁵ As in-house training programs grew more prevalent through the 1980s, in 1984 the ABA Standing Committee created the American Institute for Law Training within the Office.³⁶ In 1987, the ABA and ALI convened a third Arden House

³² See *The MacCrate Report*, *supra* note 22, at 307.

³³ See *The MacCrate Report*, *supra* note 22, at 307.

³⁴ See *The MacCrate Report*, *supra* note 22, at 307.

³⁵ See *The MacCrate Report*, *supra* note 22, at 308.

³⁶ See *The MacCrate Report*, *supra* note 22, at 309. "In-house" programming is educational offerings provided by private law firms, corporations, or government agencies to private audiences typically composed of attorneys who are "members, clients, or employees" of the provider. AM. BAR ASS'N, MODEL RULE FOR MINIMUM CONTINUING LEGAL EDUCATION AND COMMENTS, INCLUDING REPORT, Rule at 2 § 1(E) (Feb. 6, 2017) (available at

Conference (“Arden House III”) that produced a Final Statement urging “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 meaningful transition education programs and to offer a wide variety of skills programs.”³⁷ Pointedly, Arden House III’s Final Statement “concluded that a central objective of CLE should continue to be the enhancement of lawyer competence.”³⁸

In 1975, Iowa and Minnesota became the first states to adopt mandatory CLE rules.³⁹ By 1992, this number swelled to 38 states.⁴⁰ Most mandates shared similar requirements: attorneys must complete a set amount of hours of CLE courses, usually between eight and 15 hours per year; attorneys must report completed hours to a state regulator within a set time period, usually between two or three years; failure to comply usually leads to suspension from practice; focus on specific subject matter, like ethics or professional responsibility; exemptions exist for special groups of attorneys; rules regarding what activities count as CLE hours, such as “self-study” or “in-house” programs; and standards for CLE providers regarding teaching prep, written materials, and accreditation.⁴¹ In its seminal 1992 *MacCrate Report*, the ABA’s Task Force on Law Schools and the Profession recommended:

https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2017/2017_hod_midyear_106.pdf) [hereinafter *2017 ABA Model Rule for MCLE & Report*].

³⁷ See *The MacCrate Report & Report*, *supra* note 22, at 310.

³⁸ See *The MacCrate Report & Report*, *supra* note 22, at 310.

³⁹ See *The MacCrate Report & Report*, *supra* note 22, at 310.

⁴⁰ See *The MacCrate Report & Report*, *supra* note 22, at 311.

⁴¹ See *The MacCrate Report & Report*, *supra* note 22, at 311.

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.⁴²

By 2017, 46 states and four other jurisdictions required attorneys to complete MCLE.⁴³

“[T]he 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.”⁴⁴

2. *2017 ABA Report and Proposed Rule on MCLE (“2017 ABA Model Rule”)*

In 2017, the ABA sought to review and update its 1988 Model Rule on Continuing Legal Education, noting the growth of CLE and jurisdictional mandates requiring it in the interim.⁴⁵ In so doing, the organization maintained several prior provisions from the previous rule, while

⁴² See *The MacCrate Report & Report*, *supra* note 22, at 312. The MacCrate Report prompted a wide-scale review of law school curricula, identified fundamental lawyering skills and values of the legal profession, and focused on the work of law firms and how systems could be developed to guarantee quality legal representation. See Steele, *supra* note 22, at 617, 620.

⁴³ *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 1 n.22 & Rule at 2 § 1(E). The 46 states with MCLE are: 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, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. *Id.* The four territories are: Guam, Mariana Islands, Puerto Rico, Virginia Islands, and some Indian tribes. *Id.*

⁴⁴ *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 3.

⁴⁵ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 1.

otherwise substantially overhauling the 1988 predecessor to better conform to current trends reflected in mandatory CLE rules nationwide.⁴⁶

The ABA's CLE Committee noted that the piecemeal nature of MCLE's growth across many jurisdictions leads to an inevitable incongruity among these competing provisions, making the drafting and adopting of a uniform rule near impossible, and thus focusing the Committee's wide-scale review on "the most important aspects of MCLE, including those that affect MCLE on a national level."⁴⁷ Corresponding with this concern, the ABA CLE Committee noted that the variance in MCLE provisions presented a potentially significant financial and administrative burden to CLE providers seeking to establish programs that may gain accreditation or certification across multiple jurisdictions.⁴⁸ This may result in fewer options both for nationwide programming or for programming that addresses matters of federal law, and it generally may keep certain providers from attempting to enter and grow the marketplace.⁴⁹

Accordingly, jurisdictions may lessen these burdens and costs to providers (and to sponsors financing such programming and attorneys paying to attend and thus absorbing downstream costs) "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

⁴⁶ See 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).

⁴⁷ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 3.

⁴⁸ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 12.

⁴⁹ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 12.

accreditation in multiple jurisdictions.”⁵⁰ In addition to such reciprocity, jurisdictions could collaborate to create regional or national accrediting agencies in lieu of accrediting processes confined to individual jurisdictions.⁵¹ Similarly, the 2017 ABA 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 lawyers’ principal office is located.”⁵² The Workgroup borrowed from this concept in reviewing key provisions of CLE rules from neighboring jurisdictions from which the highest number of attorneys seeking admission to the Maryland bar also report prior admission.⁵³

Highlighting the prominent themes the ABA’s Standing Committee aimed to address in the 2017 ABA Model Rule, the corresponding ABA Report noted how the educational needs of individual lawyers varied based on how long they had practiced, their particular areas of practice, the jurisdictions in which they practice, and their overall career trajectory or ambition.⁵⁴ Accordingly, the 2017 ABA Model Rule recommends jurisdictions take a more flexible and lenient

⁵⁰ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Rule at 12, § 5 cmt.1. The ABA CLE Committee further recommended that sponsors of “in-house” CLE programming -- programming created by organizations or employers specifically for an audience of employees or members -- be treated the same as other CLE sponsors in gaining accreditation, so long as the in-house programming otherwise meets a jurisdiction’s standards for accreditation. *Id.* Report at 4.

⁵¹ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Rule at 12, § 5 cmt.1.

⁵² See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 7.

⁵³ See discussion Section II.E *infra* (discussing MCLE provisions from five jurisdictions in which attorneys applying for admission to the Maryland bar report prior admission in those respective jurisdictions).

⁵⁴ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 3-4.

approach to determining both what activities may count towards the accrual of required CLE hours and what formats and forums attorneys may utilize in obtaining CLE credit.⁵⁵

Notwithstanding this call for flexibility, the 2017 ABA Model Rule notes “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.”⁵⁶ These subjects include (1) ethics and professionalism or professional responsibility, (2) diversity and inclusion, and (3) mental health and substance abuse, which often falls under the concept of “attorney wellness.”⁵⁷

In addressing these particular subjects, the 2017 ABA Model Rule noted that ethics and professionalism CLE should focus on the particular rules of professional conduct for each respective jurisdiction, “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 rule of law, the courts, clients, other lawyers, witnesses, and unrepresented parties.”⁵⁸ Diversity and inclusion CLE “can be used to educate lawyers about implicit bias, the needs of specific diverse populations, and ways to increase diversity in the legal profession.”⁵⁹

⁵⁵ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 4 (“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.”).

⁵⁶ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 4.

⁵⁷ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 4.

⁵⁸ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 6.

⁵⁹ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 7. The Report noted that at the time of its publishing, only three states required some form of diversity and

Though concerns about mental health and substance abuse frequently circulated among the legal community, the ABA’s urgency in including such attorney wellness CLE in its 2017 ABA Model Rule followed a 2016 study finding that roughly 21 percent of lawyers report drinking problems, 28 percent report struggles with depression, and 19 percent report anxiety, with the highest incidence of these problems occurring among young lawyers within their first 10 years of practice.⁶⁰ The ABA CLE Committee also pointed to national coverage regarding higher rates of suicide among attorneys than other professionals.⁶¹ Further, the 2016 study “found that the most common barriers for lawyers to seek help were fear of others finding out and general concerns about confidentiality.”⁶² Accordingly, CLE provisions in each jurisdiction that require *all attorneys* attend such programming would serve the dual goals of both making such resources available to the concerning large population of attorneys who may need access to them and lessening the stigma of seeking out these resources, as other attorneys are also required to engage in this programming.⁶³

inclusion programming, despite the ABA’s House of Delegates recognizing the importance of such programming. *Id.*

⁶⁰ See 2017 ABA Model Rule for MCLE & Report, *supra* note 36, Report at 7 (citing Patrick R. Krill, Ryan Johnson, & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. OF ADDICTION MED. 1 (Feb. 2016), (available at https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/the_prevalence_of_substance_use_and_other_mental.8.aspx).

⁶¹ See Rosa Flores & Rose Marie Acre, *Why are lawyers killing themselves?*, CNN, <https://www.cnn.com/2014/01/19/us/lawyer-suicides> (Jan. 20, 2014, 2:42 P.M.) (“Lawyers are 3.6 times more likely to suffer from depression than non-lawyers.”).

⁶² See 2017 ABA Model Rule for MCLE & Report, *supra* note 36, Report at 7.

⁶³ See 2017 ABA Model Rule for MCLE & Report, *supra* note 36, Report at 7. “[R]esearch indicates that lawyers may hesitate to attend such programs due to potential stigma; requiring all lawyers to attend such programming may greatly reduce that concern.” *Id.* Rule at 6, § 3 cmt. 4.

In providing a summary of key provisions of the 2017 ABA Model Rule to the leaders of state and jurisdictional supreme courts, the Chair of the ABA's CLE Committee noted that the 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.⁶⁴

Many of these provisions are referenced or discussed further, *infra*, as the Workgroup reviewed the 2017 ABA Model Rule and similar model proposals in considering how best to construct a potential CLE mandate in Maryland.⁶⁵

3. *Common trends among jurisdictions requiring mandatory/minimum CLE*⁶⁶

Although Maryland remains on the outside looking in at the world of mandatory CLE, 46 other states, as well as numerous jurisdictions, require attorneys to adhere to specific rules regarding completing some minimum number of CLE programs or credits with a designated reporting period. These reporting periods require alerting state regulators of CLE compliance in

⁶⁴ Letter from Micah Buchdahl, Standing Comm. on Continuing Leg. Educ. Chair, Am. Bar Ass’n, to State and Territorial Sup. Cts., *supra* note 46.

⁶⁵ *See* discussion, Section IV *infra* (discussing the MCLE Workgroup’s analysis of potential provisions of a Maryland MCLE rule).

⁶⁶ A more exhaustive breakdown of the varying CLE provisions across multiple jurisdictions, and how they compare and contrast, may be found by perusing the documents included in Appendix D *infra*. Additionally, Section II.E. *infra*, dives deeper into the CLE provisions from the five jurisdictions outside of Maryland from which the highest number of attorneys seeking admission to the Maryland bar report prior admissions.

either one, two, or three-year reporting cycles. Attorneys typically must complete between 10 and 15 hours of CLE a year, with the average being roughly 12.5 hours. Therefore, when multi-year reporting periods apply, these mandates may take the form of requiring 36 CLE hours in three years, or 24 in two years, or 12 hours in one year.⁶⁷ Across jurisdictions, each rule has some carve out for particular categories of lawyers who enjoy an exemption to the applicable rules, though these are often saved for judges, inactive lawyers, or those not practicing within the jurisdiction.⁶⁸

Within these MCLE rules, most jurisdictions require some minimum of the mandated CLE hours to be spent on specific subjects, typically some combination of: ethics, professionalism, professional responsibility, or malpractice or misconduct training; diversity, equity, and inclusion, or bias and discrimination training; mental health or substance abuse awareness, or programs focusing on “attorney wellness;” law office management or the “business of law;” technology and data security; trial advocacy or court procedure; or practice-relevant subject matter.⁶⁹

⁶⁷ See, e.g., Idaho R. Bar Comm. Rule 403(a)(1) (requiring attorneys licensed in Idaho to “complete a minimum of thirty (30) credit hours of Accredited Activity in every three (3) year reporting period”); N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22(a) (“Each attorney shall complete a minimum of 24 credit hours of accredited continuing legal education each biennial reporting cycle. . .”); Va. R. CLE Reg. 102(a) (“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 . . .”). Virginia defines a “completion period” as “a period of one year beginning on November 1, of one year and ending on October 31 of the next year . . .” Va. R. CLE Reg. 101(o). “Newly-admitted” attorneys are those first admitted to the Virginia bar during the current completion cycle. *Id.* 101(e).

⁶⁸ See, e.g., N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22(n)(4) (“An attorney who permanently ceases to practice law in New York while commencing or continuing the practice of law in another jurisdiction shall be exempt from the requirements of this program for the reporting cycle in which the permanent cessation from New York practice occurred, and shall comply with the requirements of the jurisdiction in which the attorney practices law during that cycle.”).

⁶⁹ See, e.g., N.J. Ct. R. 1:42-1 (“ . . . Five of the twenty-four hours of credit shall be concentrated in the areas of ethics and/or professionalism. At least two of the five hours of credit in ethics and/or professionalism shall be in diversity, inclusion, and elimination of bias. . . .”); N.J.

Additionally, newly-admitted attorneys at times must complete specific programs within a set time period of gaining admission to a jurisdiction's bar.⁷⁰

Despite the growth of such CLE mandates, currently Massachusetts, Michigan, Maryland, South Dakota, and the District of Columbia remain outliers by not requiring some level of minimum CLE. Alaska stands as an anomaly among "MCLE Jurisdictions," in that its rule is part mandatory and part voluntary.⁷¹ Alaska requires attorneys to complete at least three credit-hours of Mandatory Ethics Continuing Legal Education every year.⁷² Additionally, Alaska "encourage[s] all members to engage in Voluntary Continuing Legal Education," of at least nine credit-hours of CLE each year.⁷³ While commentary regarding this rule advocates for the value of engaging in this additional "Voluntary Continuing Legal Education" ("VCLE") for important reasons such as protecting the public, promoting professionalism, and ensuring competency, the Alaska rule also provides a clear incentive as well: "[o]nly members who complete at least nine

R. CLE Reg. 201:1 ("Every active lawyer shall complete twenty-four credit hours of continuing legal education every two years. Of those twenty-four credits, not less than five credits must be in ethics and/or professionalism. At least two of the five hours of credit in ethics and/or professionalism shall be in diversity, inclusion, and elimination of bias."); N.J. R. CLE Reg. 201:2 (requiring any combination of five of nine subject-matter categories: "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.")

⁷⁰ Pa. St. CLE Rule 105(c) ("Every newly admitted attorney shall attend the Bridge the Gap program, of at least four (4) credit hours, sponsored by approved Bridge the Gap CLE provider prior to his or her first compliance deadline.").

⁷¹ *See generally* Alaska Bar Rule 65 (providing Alaska's CLE rules for admission to the Alaska Bar Association).

⁷² Alaska Bar Rule 65(a).

⁷³ Alaska Bar Rule 65(b).

hours of VCLE are eligible to participate in the Alaska Bar Association's Lawyer Referral Service.”⁷⁴

B. Standing Committee on Rules of Practice and Procedure

The Standing Committee on Rules of Practice and Procedure (“Standing Committee”), under its broad power to “adopt rules and regulations concerning the practice and procedure in and the administration of the appellate courts and in the other courts of this state,” has previously considered the viability of a CLE mandate for all practicing attorneys, doing so largely within the context of CLE’s impact on the professionalism of Maryland attorneys.⁷⁵ Of note, extensive discussion regarding potentially adopting a broader CLE requirement took place in Standing Committee meetings in 1977 and 1996.

*1. 1977 Meeting of the Standing Committee on Rules of Practice and Procedure*⁷⁶

⁷⁴ Alaska Bar Rule 65(e).

⁷⁵ See Md. Const. art. IV, § 18 (providing the Supreme Court of Maryland – previously the Court of Appeals – the ability to adopt rules and regulations regarding the practice of law in Maryland); see also *Standing Committee on Rules of Practice and Procedure*, MDCOURTS.GOV, <https://www.mdcourts.gov/rules> (last visited May 16, 2023, 10:16 A.M.) (“[The Standing Committee’s] members meet regularly to consider proposed amendments and additions to the Maryland Rules of Procedure and to submit recommendations for change to the Supreme Court.”).

⁷⁶ The meeting took place on Tuesday, June 14, 1977, and Wednesday, June 15, 1997. See generally Extract from Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., (Md. June 14-15, 1977). Standing Committee members present at the meeting 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); Russel R. Reno, Jr., Esq.; Lawrence F. Rodowsky, Esq.; Hon. David Ross; Neil Tabor, Esq.; William Walsh, Esq.; and Hon. Alan M. Wilner. *Id.* at i. Additionally, in attendance were: Hon. Robert C. Murphy; George B. Gifford, Esq. (Reporter); and Prof. Bernard Auerbach (Assistant Reporter; Tuesday only). *Id.*

The Standing Committee has explored mandating CLE since at least 1977.⁷⁷ Minutes from a June 1977 Standing Committee meeting reveal discussions regarding MCLE as a solution for issues related to attorney professionalism.⁷⁸ The Standing Committee doubted that such a blanket rule would produce the benefits it desired:

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.⁷⁹

The Standing Committee was receptive to CLE as a tool to use in instances where attorney discipline may be required, noting that CLE could have value to “incompetent attorneys,” or those who more often find themselves the subject of attorney grievance issues.⁸⁰ At this June 1977 meeting, the Standing Committee made and seconded a resolution to draft rules regarding recommendations that attorneys cited for professionalism issues improve their competency through participation in “continuing legal education by attending [the Maryland Institute for

⁷⁷ See generally Extract from Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., (Md. June 14-15, 1977)

⁷⁸ See generally Extract from Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., (Md. June 14-15, 1977)

⁷⁹ Extract from Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 3-4 (Md. June 14-15, 1977).

⁸⁰ “Perhaps incompetent attorneys might be sent to the CLE Institute.” Extract from Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 8 (Md. June 14-15, 1977).

Continuing Professional Education of Lawyers] or other continuing legal education courses and programs.”⁸¹

2. *1996 Meeting of Standing Committee on Rules of Practice and Procedure*⁸²

The Standing Committee again set its sights on CLE when reviewing the Maryland State Bar Association’s (“MSBA”) 1995 proposed rules for Minimum Continuing Legal Education.⁸³ Representatives of the MSBA presented before the Standing Committee on “the need for MCLE” and responded to questions.⁸⁴ Presenters noted that most of the leadership of the MSBA favored implementing a minimum continuing legal education requirement, and the two-year study producing the 1995 report and proposed rules reiterated those sentiments.⁸⁵ MSBA leaders noted,

⁸¹ See Extract from Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 11 (Md. June 14-15, 1977).

⁸² Standing Committee members present at the meeting were: Hon. Alan W. 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.; Joyce H. Knox, Esq.; James J. Lombardi, Esq.; Hon. John F. McAuliffe; Anne C. Ogletree, Esq.’ Hon. Mary Ellen T. Rinehard; Linda M. Schuett, Esq.; Larry W. Shipley (Clerk); Melvin J. Sykes, Esq.; Roger W. Titus, Esq.; and Robert A Zarnoch, Esq. See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at i (Md. Mar. 15, 1996). Additionally, in attendance were: Sandra F. Haines, Esq. (Reporter); Sherie B. Libber, Esq. (Assistant Reporter); Joanne Finegan, Esq.; Ernest C. Trimble, Esq.; P. Dennis Delman, Esq. (MSBA); Robert H. Dyer, Jr., Esq. (MICPEL); Cleveland D. Miller, Esq. (MSBA); Daniel Clements, Esq. (Maryland Trial Lawyers Association; Janet Eveleth, Esq. (MSBA); Melivn Hirshman, Esq. (Bar Counsel); Randall Rolls, Esq.; Paul V. Carlin, Esq. (Montgomery County Bar Association); and Richard Rosenblatt, Esq. See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 1 (Md. Mar. 15, 1996).

⁸³ See Section II.C.1 *infra*; see generally Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 2-20 (Md. Mar. 15, 1996) (“Agenda Item 1. Consideration of a proposal of the Maryland State bar Association regarding Minimum Continuing Legal Education.”).

⁸⁴ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 2-20 (Md. Mar. 15, 1996).

⁸⁵ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 2-20 (Md. Mar. 15, 1996).

though, that “[t]he 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.”⁸⁶

The MSBA presenters and the Standing Committee members proceeded to discuss both the potential positive and negative impacts of MCLE, focusing largely on the potential response from Maryland attorneys if such a mandate occurred. MSBA presenters noted that “the Maryland Trial Lawyers Association (“MTLA”) who have unanimously agreed to support MCLE,” have also experienced trouble sustaining the voluntary CLE and mock trial programs they provided, often finding the same attorneys taking these courses “over and over.”⁸⁷ Presenters noticed a growing sentiment that the “fraternity that used to exist within the [legal] profession is gone,” and that “CLE serves to bring people together.”⁸⁸ Further, “[t]he best assessment is the opinion of those who already participate in MCLE, and 70 to 90% of those support it,” noting that in Pennsylvania, “the experience was that no one became a worse lawyer after taking CLE courses.”⁸⁹ “If attorneys are competent, a mandatory CLE system will keep up that competence.”⁹⁰

⁸⁶ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 15 (Md. Mar. 15, 1996).

⁸⁷ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 8 (Md. Mar. 15, 1996).

⁸⁸ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 8 (Md. Mar. 15, 1996).

⁸⁹ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 8 (Md. Mar. 15, 1996).

⁹⁰ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 18 (Md. Mar. 15, 1996).

Presenters and Standing Committee members expressed concerns and reservations regarding a CLE mandate, as well. A general skepticism about the utility of MCLE existed, with meeting attendees at times expressing support for using CLE as a disciplinary or “counseling tool,” while unconvinced of a blanket mandate.⁹¹ One MSBA presenter separated objections to MCLE into two categories:⁹² (1) “One is philosophical[,]” in which attorneys see the value in CLE, but they find the mandate unnecessary as “attorneys should do this on their own.”;⁹³ and (2) “The second type of objection is specific to the proposal” drafted by the MSBA, in which attorneys protested the overall number of hours required, exemptions, whether activities like “self-study” should or should not count, and other details of the MSBA’s 1995 Proposed Model Rule.⁹⁴ “If the prediction is that attorneys do not want this, mandating it leaves a gap in fairness and logic.”⁹⁵

⁹¹ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 8 (Md. Mar. 15, 1996). “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. . . . [One Standing Committee member] expressed the view that attorney counseling programs would be very helpful.” *Id.*

⁹² Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 5-6 (Md. Mar. 15, 1996).

⁹³ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 4-5 (Md. Mar. 15, 1996). “The basis of the philosophical objection is that lawyers are conscientious, and therefore a CLE requirement is unnecessary.” *Id.* “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.” *Id.*

⁹⁴ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 5-6 (Md. Mar. 15, 1996). One such objection to the proposed rule opposed exemptions from any attorney, regardless of whether the attorney is a judge, inactive, or a law professor. *Id.*

⁹⁵ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 16 (Md. Mar. 15, 1996).

Discussion focused on the District of Columbia's efforts to implement MCLE, and how the D.C. bar rejected such a proposal, with the D.C. Board of Governors rejecting an MCLE plan.⁹⁶ “[A]lthough Maryland should not necessarily be guided by that decision[, t]here has been no demonstrated need established.”⁹⁷

Much of the concern around MCLE pertained to costs. A representative speaking on behalf of the Maryland Institute for the Professional Education of Lawyers (“MICPEL”) noted that participation in CLE dips when the economy declines.⁹⁸ “Because of pressure on attorneys to bill in law firms, CLE is not rewarded.”⁹⁹ This creates a self-fulfilling cycle of declining programs as insufficient revenue is generated to pay instructors and offer a broader array of courses. MICPEL noted it was “rapidly going through its financial reserves.”¹⁰⁰ Regardless of the state of the economy, diverting any hours away from revenue generating work and towards CLE is a large imposition for attorneys, particularly those in more vulnerable economic positions, like small firms, solo practitioners, and young lawyers.¹⁰¹

⁹⁶ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 16-17 (Md. Mar. 15, 1996); see also Rocio T. Aliga, *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) (discussing D.C.'s failed attempts to implement mandatory CLE).

⁹⁷ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 16 (Md. Mar. 15, 1996).

⁹⁸ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 6-7 (Md. Mar. 15, 1996). “When the economy slips, CLE gets cut from law firm budgets.” *Id.*

⁹⁹ Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 7 (Md. Mar. 15, 1996).

¹⁰⁰ Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 7 (Md. Mar. 15, 1996).

¹⁰¹ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 7, 13 (Md. Mar. 15, 1996). “If an attorney loses one full week of billing due to attendance at CLE, this

Another strong objection highlighted the lack of data supporting MCLE's utility. "The most persistent objection is that no one can prove that MCLE makes attorneys better."¹⁰² The Standing Committee was troubled "that there is no empirical study to prove that all the effort is worthwhile The main issue is that there is no indication that mandatory CLE causes significant gain If MCLE is to be required to benefit the public interest, evidence is needed."¹⁰³ The Standing Committee was reticent to take such a large step as a mandate when "[t]here has been no demonstrated need established[,]" particularly when "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."¹⁰⁴

Proponents of MCLE noted that a mandatory system is effective in ensuring participation, as "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."¹⁰⁵ Concerns about course availability were allayed by a reassurance that a mandate

is a big loss." *Id.* at 13. "This could create a tremendous cost for young female attorneys who are also raising children." *Id.*

¹⁰² *See* Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 8 (Md. Mar. 15, 1996).

¹⁰³ *See* Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 15-16 (Md. Mar. 15, 1996).

¹⁰⁴ Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 15 (Md. Mar. 15, 1996). "[R]eading newspapers, advance sheets, magazines, law reviews, etc. may be more helpful than classroom training." *Id.* at 19.

¹⁰⁵ Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 5 (Md. Mar. 15, 1996).

will lead to “national providers” of CLE implementing additional programs.”¹⁰⁶ In terms of addressing professionalism and collegiality among attorneys, it was noted that “CLE serves to bring people together.”¹⁰⁷ Some participants doubted the cost concerns outweighed the need and value of ensuring CLE participation. “Whether attorneys are paid for CLE does not detract from the need to take education.”¹⁰⁸ Speaking to the primary mission of a mandate, proponents stated flatly, “[i]f attorneys are competent, a mandatory CLE system will keep up that competence.”¹⁰⁹

C. Maryland State Bar Association (“MSBA”) and CLE

The Maryland State Bar Association has long been involved in discussions surrounding CLE and potential mandates in the State. Such a position is unsurprising, as the MSBA is the flagship organization for legal professionals in Maryland, as well as a chief provider of CLE programming.¹¹⁰

¹⁰⁶ Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 14 (Md. Mar. 15, 1996).

¹⁰⁷ Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 8 (Md. Mar. 15, 1996).

¹⁰⁸ Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 13 (Md. Mar. 15, 1996).

¹⁰⁹ See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 18 (Md. Mar. 15, 1996).

¹¹⁰ “Typically, the MSBA offers 70+ new live accredited (virtual or in-person) CLEs annually and has a library of over 230+ accredited OnDemand courses available,” in addition to the conferences, events, and annual Summits organized by the organization. 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*]. The MSBA is also an accredited provider of CLE programming for many of the states surrounding Maryland that require MCLE. *Id.* at 13; see generally *CLE, Events, & Learning for MD Attorneys - Course Catalog*, MSBA.ORG, <https://www.msba.org/events-and-products-catalog/> (last visited May 17, 2023).

1. *1995 MSBA Report and Proposed Rule on Minimum Continuing Legal Education*

In 1995, the MSBA's Continuing Legal Education Committee ("MSBA CLE Committee") compiled a report investigating the implementation of a minimum CLE requirement in Maryland and proposing rules (the "1995 MSBA Proposed Rule") regarding the administration of MCLE as well as attorney compliance with such a mandate.¹¹¹ Despite the favorable position the MSBA took regarding MCLE in Maryland, as the Standing Committee noted when discussing its proposed MCLE rule, the MSBA lobbied against a bill pending in the legislature at the time that would have required "the education of all licensed professionals, because of its pending MCLE proposal."¹¹²

In the report, the MSBA's CLE Committee "unanimously recommend[ed] that the Supreme Court of Maryland approve a system of minimum continuing legal education (MCLE) for all attorneys licensed to practice in Maryland."¹¹³ The Committee proceeded to recommend requiring each attorney subject to a proposed MCLE rule to complete 30 hours of CLE every two years, after determining that 15 CLE hours-per-year was appropriate, but a two-year reporting

¹¹¹ See generally 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*]. Cleaveland D. Miller (Chair); P. Dennis Belman (President), and Paul V. Carlin (Executive Director) led the committee. See *id.*

¹¹² See Meeting Minutes, Ct. App. Standing Comm. on Rules of Prac. & Proc., at 3 (Md. Mar. 15, 1996). During the 1996 General Assembly Session, the Maryland Senate put forth a bill biennially requiring 30 hours of CLE for all attorneys, as recommended in the 1995 MSBA Proposed Rule, but action on the bill stopped after its first reading when the bill received an unfavorable report by the Judicial Proceedings Committee. Leg. Hist. S.B. 76, 1996 Leg., 410th Sess. (Md. 1996) (available at <https://mgaleg.maryland.gov/mgaweb/legislation/legislation?target=/1996rs/billfile/sb0076.htm>).

¹¹³ See *1995 MSBA Report on MCLE*, *supra* note 111, at 1; see also *id.* at 9-14 (providing Committee's proposed CLE rule, formatted as a statute/Maryland rule).

window provided increased flexibility in achieving this goal.¹¹⁴ Despite these flexibility concerns, the proposed rule did not permit the carrying over of excess hours from one reporting period to the next.¹¹⁵ Within those required 30 hours, the proposed rule also required four hours of study spent on “legal ethics” and four hours of study spent on “professionalism.”¹¹⁶

The MSBA CLE Committee provided additional details on how attorneys could attain their required CLE credit each year. Generally, the proposed rule required attorneys to gain credit through: (1) attending approved educational activities; (2) speaking at approved educational activities; (3) attending law school class after admission to the Maryland bar; (4) teaching approved law school activities; (5) attending bar review courses; (6) attending any course required of new admittees; and (7) self-study.¹¹⁷ Cognizant that “[f]airness dictates that the system be as inclusive as possible, “the Committee proposed no exceptions to the CLE rule, requiring that “[e]very person licensed to practice law in Maryland [must] meet the requirements of MCLE. Reciprocity with other states is recognized, but exemption in another state does not satisfy the Maryland requirement.”¹¹⁸

¹¹⁴ See 1995 MSBA Report on MCLE, *supra* note 111, at 3.

¹¹⁵ See 1995 MSBA Report on MCLE, *supra* note 111, at 3.

¹¹⁶ See 1995 MSBA Report on MCLE, *supra* note 111, at 3.

¹¹⁷ See 1995 MSBA Report on MCLE, *supra* note 111, at 4, 9-10. The 1995 Proposed Rule permitted “self-study” to account for up to 15 of the required 30 hours in a reporting period. *Id.* at 4. “Self-study” includes viewing approved video tapes, listening to approved audio tapes, preparing written materials to be published, participating in self-assessment, reading written materials from approved activities, and attending in-house programming provided by employers or legal organizations. *Id.* at 10.

¹¹⁸ See 1995 MSBA Report on MCLE, *supra* note 111, at 4.

The 1995 MSBA Proposed Rule gave attorneys credit for the actual time spent on a qualifying CLE activity, rounding such time to the nearest quarter hour.¹¹⁹ Attorneys who failed to comply with the requirements of the 1995 MSBA Proposed Rule would be notified in writing of their noncompliance and that they had 90 days upon receipt of that writing to rectify their deficiency.¹²⁰ Failure to do so within 90 days could result in the Supreme Court of Maryland suspending the noncomplying attorney's ability to practice until such CLE deficiency is remedied, and applicable fees are paid where appropriate.¹²¹

Regarding the administrative apparatus of such a CLE mandate, the 1995 MSBA Proposed Rule recommended the creation of a MCLE Commission composed of nine persons appointed by the Supreme Court of Maryland, with eight members being from the Judiciary, one being a "lay member," and all serving three-year terms, except for the first nine members appointed.¹²² This Commission would have the power to administer the program of minimum CLE, adopt regulations and procedures governing the administration of such a rule, determine the number of credit hours

¹¹⁹ See *1995 MSBA Report on MCLE*, *supra* note 111, at 11 (proposing "Rule 4 Computation of Credit Hours. (a) Formula for Computation"). The Proposed Rule gave the same credit to presenters and panelists of qualifying CLE activity as it did to attorneys participating in such activities. *Id.* at 10 (proposing Rule 4(b)). Those preparing materials for CLE activities would get three times the credit for "actual presentation time," meaning the length of time of an actual presentation, not the length of time of the overall CLE activity." *Id.* at 11 (proposing Ruling 4(c)).

¹²⁰ See *1995 MSBA Report on MCLE*, *supra* note 91 at 8 (proposing Rule CE 1.5(a) "Noncompliance").

¹²¹ See *1995 MSBA Report on MCLE*, *supra* note 111, at 8 (proposing Rule CE 1.5(b) "Sanctions").

¹²² See *1995 MSBA Report on MCLE*, *supra* note 111, at 4-6 (proposing Rule 1.1 creating the "Commission of Continuing Legal Education"). Regarding the terms of the original nine members of the proposed commission, "three shall be appointed for one year, three for two years, and three for three years." *Id.* at 6.

for accredited activities, encourage organizations to offer CLE programming in compliance with the 1995 MSBA Proposed Rule, randomly audit and inspect CLE records of participant attorneys and providers, decide requests for exemptions, and report to the Supreme Court of Maryland annually or as directed by that Court.¹²³

The Proposed Rule also provided standards for the approval and accreditation of qualifying “educational activities” and providers of CLE.¹²⁴ Qualifying educational activities must: (1) have “significant current intellectual or practical content for attorneys;” (2) “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) “be conducted by an individual or group qualified by practical or academic experience;” (4) for those activities lasting more than one hour in length, provide “substantive written materials” that are distributed at or before the activity is offered; and (5) in the case of “in-house education activities . . . be free of interruptions from telephone calls or other office matters.”¹²⁵ For providers of such CLE programming, they must agree to: (1) maintain official records for at least four years verifying the attendance of all participating attorneys, as well as tracking the time, location, date, subject matter, and length of the activity, providing such records at no cost to the Commission overseeing CLE; and (2) supply records to each attorney attending the CLE providing the same information regarding date, time, location, and length of

¹²³ See *1995 MSBA Report on MCLE*, *supra* note 111, at 6-7 (proposing Rule CE 1.2 “Commission Powers and Procedures”).

¹²⁴ See *1995 MSBA Report on MCLE*, *supra* note 111, at 11-12 (proposing “Rule 5. Criteria for Approval of Educational Activities.”).

¹²⁵ See *1995 MSBA Report on MCLE*, *supra* note 111, at 11 (proposing Rule 5(a) “Standards for All Education Activities.”).

activity.¹²⁶ Further, likely in acknowledgement of attorneys needing to comply with CLE rules from multiple jurisdictions in which they gained bar admittance, the Proposed Rule permits attorneys participating in CLE activities for another jurisdiction to also count those hours towards a Maryland MCLE requirement, so long as the activities otherwise comply with the Proposed Rule and are accredited the other state respective.¹²⁷

2. *2020 MSBA Report & Recommendations: Professional Development and Maryland Legal Profession*

In 2020, the MSBA’s Strategic Implementation Committee conducted a review, made recommendations, and issued a report (the “2020 MSBA Report”) regarding the MSBA’s “Strategic Priorities and Objectives” intended ensure “Maryland attorneys become ‘future ready.’”¹²⁸ Within this effort, the Strategic Implementation Committee “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.”¹²⁹ The 2020 MSBA Report stressed that “[t]he future of the legal profession is dependent on incentivizing and encouraging legal professionals to engage in continued learning.”¹³⁰ It stressed that the Maryland Rules of Professional Conduct required competent representation to clients, which may be maintained by participating in continuing study and

¹²⁶ See *1995 MSBA Report on MCLE*, *supra* note 111, at 12 (proposing Rule 5(b) “Requirements for All Providers.”).

¹²⁷ See *1995 MSBA Report on MCLE*, *supra* note 111, at 12 (proposing Rule 5(c) “Activities Approved for Credit by Other States.”).

¹²⁸ *2020 MSBA Professional Development Report*, *supra* note 110, at 1.

¹²⁹ *2020 MSBA Professional Development Report*, *supra* note 110, at 1.

¹³⁰ *2020 MSBA Professional Development Report*, *supra* note 110, at 3.

education and “comply[ing] with all legal educational requirements to which the attorney is subject.”¹³¹ Further, the 2020 MSBA Report noted that Maryland stands opposed to the 46 other states currently requiring minimum continuing legal education, despite the fact that “nearly every profession in Maryland (outside of the legal profession) mandates a minimum learning component necessary to maintain licensure.”¹³²

In seeking to address current and growing issues in the legal profession, the 2020 MSBA Report noted the alarming rates of problem drinking and behavioral health issues among attorneys, and thus the need for attorneys to cultivate stress management and coping skills to handle the pressure and anxiety of legal work and to better balance their professional and personal lives.¹³³ One means to achieve this involves improving educational resources around these attorney wellness topics and increasing the incentives for attorneys to participate in this education such that it reduces the stigma associated with seeking help.¹³⁴

Regarding the decline in public perception of attorneys, the 2020 MSBA Report noted that the legal profession must show the public “that attorneys are continuously honing their skills and knowledge to respond to changing jurisprudence . . .”¹³⁵ Alongside such public-facing concerns,

¹³¹ 2020 MSBA Professional Development Report, *supra* note 110, at 3(quoted Md. Rule 19.301 cmt. 6).

¹³² 2020 MSBA Professional Development Report, *supra* note 110, at 3. The 2020 MSBA Report noted that certified public accountants must complete 80 hours of CLE, including four hours of ethics, during each two-year renewal period; architects must complete 12 hours of CLE a year; professional engineers must take 16 hours of CLE to renew their licenses; real estate professionals must take 15 hours of CLE, separated into varying subtopics, each renewal period; and sleep technicians must complete 20 hours of CLE each two-year renewal period. *Id.* at 13.

¹³³ 2020 MSBA Professional Development Report, *supra* note 110, at 5-6.

¹³⁴ 2020 MSBA Professional Development Report, *supra* note 110, at 6.

¹³⁵ 2020 MSBA Professional Development Report, *supra* note 110, at 7.

attorneys would do well to “learn marketing skills, not typically taught in law school, to reach consumers and potential clients.”¹³⁶ This concern paralleled the MSBA’s note that “[l]aw [s]chool 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 competitors,” thus professional development resources aimed at imparting such business savvy should be a priority.¹³⁷ The 2020 MSBA Report also stressed the need for attorneys to remain current regarding technological trends, both to improve the scope and efficiency of their practices, and to protect themselves and clients against cybersecurity threats and data breaches.¹³⁸

Turning attention specifically to CLE, the 2020 MSBA Report referenced the 2017 ABA Model Rule’s recommendation that states adopt MCLE requirements of 15 hours per year, with one hour spent on each of the subjects of (1) ethics, (2) mental health and substance abuse awareness, and (3) diversity and inclusion.¹³⁹ Further, the 2020 MSBA Report noted that the 2017 ABA Model Rule’s provisions roughly align with the 12 to 15 hours of CLE required by most jurisdictions, with most states also routinely requiring similar study of those specific topics, though some states have recently added a focus on minimum technology programming, as well.¹⁴⁰

¹³⁶ *2020 MSBA Professional Development Report, supra* note 110, at 7.

¹³⁷ *2020 MSBA Professional Development Report, supra* note 110, at 7.

¹³⁸ *2020 MSBA Professional Development Report, supra* note 110, at 8.

¹³⁹ *2020 MSBA Professional Development Report, supra* note 110, at 12.

¹⁴⁰ *2020 MSBA Professional Development Report, supra* note 110, at 12 (highlighting how Florida and North Carolina have added such technology training requirements in 2016 and 2018, respectively).

The 2020 MSBA Report shared data from a 2014 survey showing that 75 percent of respondents stated they engage in one to five CLE programs each year, with eight percent stating they take six or more programs, but 11 percent indicating they do not take any CLE at all.¹⁴¹ During the COVID-19 pandemic, the MSBA provided complimentary CLE to both members and nonmembers, and in response it saw “a significant increase in CLE consumption, with [more than] 22,000 hours of CLE consumed between March and August of 2020.”¹⁴²

With CLE participation already trending towards more online and on-demand engagement, the 2020 MSBA Report recommended to continue growing these digital offerings as they increase access to CLE and provide “increased flexibility in scheduling, retaining work-life balance, [and] reducing the burden of extensive travel or time out of office.”¹⁴³ Further, increasing the “learning delivery methods” such as using podcasts and audio files, or short on-demand videos focused on practical applications of particular skills or examples, may result in added CLE consumption.¹⁴⁴

Notwithstanding the findings and recommendations of the 2020 MSBA Report, it must be noted that “[t]he MSBA is an accredited provider” of CLE programming for many surrounding states that require MCLE.¹⁴⁵ Further, the MSBA provides numerous CLE programs to its members

¹⁴¹ 2020 MSBA Professional Development Report, *supra* note 110, at 14.

¹⁴² 2020 MSBA Professional Development Report, *supra* note 110, at 15.

¹⁴³ 2020 MSBA Professional Development Report, *supra* note 110, at 12.

¹⁴⁴ 2020 MSBA Professional Development Report, *supra* note 110, at 17.

¹⁴⁵ 2020 MSBA Professional Development Report, *supra* note 110, at 13. The MSBA is an accredited CLE provider in Virginia, Pennsylvania, and Delaware, with Virginia being the “most stringent accreditation standards in the country.” *Id.* Accordingly, such recognition from Virginia provides the MSBA reciprocity in other jurisdictions, including New York, Florida, and California. *Id.*

and the larger legal community, and it holds a position as a leading CLE sponsor in Maryland.¹⁴⁶ As such, a CLE mandate in Maryland will likely produce a considerable windfall to the organization through either or both of growing MSBA’s membership (which grants access to such CLE programming at a discounted rate or as a benefit included within the cost of membership dues), and/or from an influx of attorneys enrolling in the MSBA’s CLE offerings once required to participated in such CLE programming to remain licensed to practice law in Maryland.¹⁴⁷ Similarly, the mandate may leave Maryland officials reliant on the MSBA to swiftly accommodate such an influx of demand so that attorneys now subject to the mandate will have ample programming opportunities to suffice the requirement in an as yet mature CLE market for the State. Accordingly, we note that the MSBA both has valuable insight, as well as a vested interest, in the adoption of a CLE mandate in Maryland.

D. Maryland Task Force on Professionalism

In response to growing concerns about the devolving state of professionalism among the legal community in Maryland, the Supreme Court of Maryland took action to combat this trend. At the behest of the Court, Maryland’s Professionalism Center provided educational courses aimed at improving professionalism among lawyers and rehabilitating those cited for grievance issues

¹⁴⁶ 2020 MSBA Professional Development Report, *supra* note 110, at 14. The MSBA asserts it offers more than 70 “new live accredited (virtual or in-person) CLEs annually, and has a library of [more than] 230+ accredited OnDemand courses available,” as well as its Legal Summit & Annual Meeting, and its Solo & Small Firm Summit, and further programming offered by MSBA Sections. *Id.* According to a 2014 survey, 37 percent of respondents stated they received “some or all of their programming through the MSBA.” *Id.* During the COVID-19 pandemic the MSBA expanded its audience by providing complimentary CLE to members and non-members. *Id.* at 15. This resulted in a “significant increase in CLE consumption, with 22,000 hours of CLE consumed between March and August 2020.” *Id.*

¹⁴⁷ The 2020 MSBA Report spoke of cultivating an “all you can eat” consumption model for its CLE offerings, corresponding with a modest increase in MSBA dues for access to this buffet of courses. *See* 2020 MSBA Professional Development Report, *supra* note 110, at 19.

until its shuttering in 2020. Additionally, during the 2000s, the Supreme Court of Maryland explored the potential of developing essentially a CLE curriculum regarding professionalism. To assess these efforts and gauge the sentiments of attorneys across the State regarding the issue of professionalism, and, to a lesser extent, of increased continuing educational mandates, the Supreme Court of Maryland created the Maryland Task Force on Professionalism (the “Task Force”), which produced two substantial reports, in 2003 and 2007, respectively, that the Workgroup reviewed and relied upon for historical context and insight.

1. 2003 Maryland Judicial Task Force on Professionalism Report and Recommendation

Prompted by a recommendation from the MSBA that all licensed attorneys in the state should complete a mandatory legal education course on professionalism, in April of 2002 then Chief Judge Robert M. Bell established the Maryland Judicial Task Force on Professionalism (“the Task Force”), composed of 24 lawyers and overseen by Judge Lynne A. Battaglia as Chairperson.¹⁴⁸ The Task Force conducted a statewide “self-study” of professionalism, convening town hall meetings in each of Maryland’s judicial jurisdictions “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.”¹⁴⁹

Prior to the formation of the Task Force, on April 17, 2001, the Supreme Court of Maryland approved the concept of a mandatory course on professionalism and ethics, and, in so doing, the

¹⁴⁸ MD. JUD. TASK FORCE ON PRO., REPORT AND RECOMMENDATIONS, at 2 (Nov. 10, 2003) [hereinafter *2003 Md. Professionalism Report*].

¹⁴⁹ *2003 Md. Professionalism Report*, *supra* note 148, at 2.

Court directed the Professionalism Committee to develop a strategy of implementation for this course.¹⁵⁰ “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 Supreme Court of Maryland.”¹⁵¹ In 1997, however, the Professionalism Committee collaborated with the 1997 Professionalism Task Force to create a new-admittee professionals course, mandatory under Rule 11 “encompass[ing] 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.”¹⁵²

On November 10, 2003, the Task Force issued a *Report and Recommendations* (“the 2003 Report”) ultimately not recommending “a mandatory course in professionalism for all licensed Maryland attorneys. The Task Force [did], 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.”¹⁵³

¹⁵⁰ 2003 Md. Professionalism Report, *supra* note 148, at 25.

¹⁵¹ 2003 Md. Professionalism Report, *supra* note 148, at 24.

¹⁵² 2003 Md. Professionalism Report, *supra* note 148, at 24 (citing MSBA COMM. & PRO. TASK FORCE REP. AND RECOMMENDATIONS, PROFESSIONALISM AND EFFECTIVE LAW PRACTICE MANAGEMENT 3 (1997)).

¹⁵³ 2003 Md. Professionalism Report, *supra* note 148, at 6, 9. The 2003 Report defined “professionalism” as “encompass[ing] 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.” *Id.* at 15 (citing CHIEF JUSTICE’S COMMISSION ON PROFESSIONALISM TO THE SUPREME COURT OF GEORGIA, § 4, at 5 (1996)). The Report defined “ethics” as being “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. While ethics tends to focus on misconduct – the negative dimensions of ‘lawyering’ – professionalism focuses on helping, caring, protecting, counseling, and setting a good example.” *Id.* at 13 (citing ABA Comm. on Pro., *In the Spirit of Public Service: A Blueprint for the*

Perspectives shared by practitioners during the Task Force’s townhall meetings showed that there was little appetite for such a mandatory course on professionalism for all attorneys. The protests to such a mandatory educational requirement echo many of the same concerns often voiced regarding mandatory CLE.¹⁵⁴ Generally, attorneys did not think that a professionalism course was a solution to unprofessional behavior.¹⁵⁵ Additionally, participants voiced reservations about how such a required course would fit within the “time constraints of practicing law,” as “mandatory courses . . . place a heavy burden on practitioners.”¹⁵⁶ Notwithstanding these objections, most

Rekindling of Lawyer Professionalism, 112 F.R.D. 243, 259 (1986); Chief Justice’s Commission on Professionalism to the Supreme Court of Georgia, § 1, at 1 (1996)).

¹⁵⁴ See Section III.B *infra* (discussing negative implications and reservations regarding implementing mandatory CLE).

¹⁵⁵ See 2003 *Md. Professionalism Report*, *supra* note 148, at 38. “There is general sentiment among participants that a mandatory course would be ineffective because professionalism cannot be taught.” *Id.* The thought was that if such a course were to exist, it should be taught in law schools, and that the smaller the Bar, the less the need for a mandatory course, as the consensus was that professionalism is higher among a closed group, or a small, local bar, rather than the larger legal community or larger regional bars (i.e. Baltimore City). *Id.* at 38. “There are already too many rules and mandatory courses, and more place too heavy a burden on practitioners. There is a sentiment that a professionalism course does not actually promote professionalism. Civility should be addressed in law schools.” *Id.* at 39; *see also id.* at 42-43. The 2003 Report referenced a study by the Nebraska Bar Association surveying judges and lawyers, in which “[o]ver half of the general legal population, however, felt that a mandatory CLE requirement was not necessary.” *Id.* at 58-59 (citing Jane L. Schoenike, *Recent Member Survey Shows Lack of Support for Mandatory Continuing Legal Education*, THE NEB. LAWYER 19 (Mar. 2001)).

¹⁵⁶ See 2003 *Md. Professionalism Report*, *supra* note 148, at 39. A psychological research firm hired in December of 1987 to survey Maryland lawyers found that most attorneys who responded said they worked at least 50 hours a week, with many in excess of 60 hours a week, resulting in the average annual billable hours being 1800, with more than one-third of respondents saying they worked in excess of 2000 billable hours a year. *Id.* at 21 (citing PSYCHOR, 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 (1998)).

commenters believed the professionalism course for newly admitted attorneys did have value -- a sentiment with which several Workgroup members agreed.¹⁵⁷

2. *2007 Revised Final Report and Recommendations on Professionalism*

The Professionalism Commission returned to the subject of developing a mandatory class on professionalism in the 2007 publication of a *Revised Final Report and Recommendations* (“the 2007 Report”), again chaired by the Hon. Lynne A. Battaglia.¹⁵⁸ Again, the Committee did not recommend the implementation of a mandatory course for all attorneys on professionalism, instead recommending “that the Court adopt the Standards of Professionalism as an Appendix to the Rules of Professional Conduct.”¹⁵⁹ Among both the “Education and Excellence” subsection of these Standards, and the “Ideals of Professionalism” subsection, the Report notes that:

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.

¹⁵⁷ See Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ. (Md. Mar. 13, 2023), at 17-18 [hereinafter *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*] (discussing prior newly-admitted attorney’s program run by Maryland Professionalism Center, which has since disbanded). In noting the ending of the newly-admitted attorneys program in Maryland, a member of the Workgroup explained that attorneys currently seeking admission to the Maryland bar must now complete a “Maryland Law Component,” which requires answering 40 of 50 questions correctly in a timed, online test that may be taken as many times as needed. See *id.* at 18; *Maryland law Component, State Board of Law Examiners, MDCOURTS.GOV*, <https://www.mdcourts.gov/ble/mdlawcomponent> (last visited May 17, 2023, 11:10 A.M.).

¹⁵⁸ See generally MD. JUD. COMM’N ON PRO., REVISED FINAL REPORT AND RECOMMENDATIONS (May 30, 2007) [hereinafter *2007 Md. Revised Professionalism Report*].

¹⁵⁹ *2007 Md. Revised Professionalism Report, supra* note 158, at 6. The report defined “the Standards of Professionalism” by stating that “[p]rofessionalism 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.” *Id.* The Report proceeded to expound upon and further define concepts within these ideals of “professionalism.” See *id.* at 6-18.

...

3. Attend continuing legal education programs to demonstrate a commitment to keeping abreast of changes of the law.¹⁶⁰

Similarly, the 2007 Report advises experienced lawyers to “accept the role of mentor and teacher, whether through formal education programs or individual mentoring of less experienced attorneys”¹⁶¹ Such suggestions clearly align with the goals of a more expansive CLE mandate for all lawyers.¹⁶²

Though the 2007 Report did not directly address or recommend the potential implementation of mandatory CLE for all Maryland attorneys, it discussed the concept, as well as several adjacent and interrelated issues regarding methods to improve professionalism and means by which attorneys can partake in such educational enrichment. The 2007 Report continued to support the Maryland Professionalism Course New Bar Admittees (“the New Admittees Course”) as a requirement for all new admittees to the Maryland bar.¹⁶³ Notwithstanding this, it did offer suggestions on how to improve that program, such as: (1) permitting newly-barred attorneys to take the course within one year of admittance, thereby “allow[ing] new attorneys to bring some of their first-hand experience to the course, thus making the course more useful[;]” (2) “includ[ing] mentoring initiatives[;]” (3) including breakout sessions aligning with certain practice areas where more concentrated discussions of those fields of law may occur; (4) updating “video vignettes”

¹⁶⁰ *2007 Md. Revised Professionalism Report, supra* note 158, at 7-8.

¹⁶¹ *2007 Md. Revised Professionalism Report, supra* note 158, at 91.

¹⁶² *See generally* Section III.A *infra* (discussing benefits of MCLE).

¹⁶³ *See generally* *2007 Md. Revised Professionalism Report, supra* note 158, at 35-36. (discussing recommendations regarding the Maryland Professionalism Course for New Bar Admittees).

used to teach; and (5) focusing more on practical elements of law, like courtroom procedure and discovery abuse.¹⁶⁴

Additionally regarding MCLE, in cataloging the comments and insights collected during regional townhalls with attorneys and judges, the 2007 Report 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.”¹⁶⁵ Despite this reticence for a CLE requirement, other townhall attendees noted that “mandatory CLE would be helpful,” and that “Mandatory CLE would be a simpler and more effective way to deal with the problem of unprofessional behavior at the Bar.”¹⁶⁶ Similar to objections regarding the efficacy of mandatory CLE, several townhall participants challenged whether “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.”¹⁶⁷ In this exchange, Judge Battaglia responded that there was no empirical data available, but that she received comments from Pennsylvania, which requires CLE, implying that Pennsylvania had fewer problems regarding professionalism than Maryland.¹⁶⁸ At another townhall, though, participants flatly asserted that “[m]andatory CLE would be helpful,” though they did so without citing specific data to support this claim.¹⁶⁹

¹⁶⁴ See 2007 Md. Revised Professionalism Report, *supra* note 158, at 14-15.

¹⁶⁵ See 2007 Md. Revised Professionalism Report, *supra* note 158, at 35.

¹⁶⁶ See 2007 Md. Revised Professionalism Report, *supra* note 158, at 36.

¹⁶⁷ See 2007 Md. Revised Professionalism Report, *supra* note 158, at 60.

¹⁶⁸ See 2007 Md. Revised Professionalism Report, *supra* note 158, at 60.

¹⁶⁹ See 2007 Md. Revised Professionalism Report, *supra* note 158, at 74.

3. *The Maryland Center for Professionalism*

Following through on its goals to bolster professionalism among the Maryland legal community, in 2011 the Court Commission on Professionalism began conducting professionalism courses required for admittance to the Maryland bar.¹⁷⁰ In 2012, the Maryland Professionalism Center replaced the Commission and took over the task of administering the New Admittees Course.¹⁷¹ The Center existed “as a unit of the Maryland Judiciary.”¹⁷² On December 7, 2015, the Supreme Court of Maryland voted to change the new-admittee program from a one-day, in-person seminar on professionalism and legal ethics, to a three-hour online orientation program for new admittees focused on the Maryland Lawyers’ Rules of Professional Conduct and the handling of clients’ property.¹⁷³ On June 29, 2020, the Supreme Court of Maryland rescinded the mandate

¹⁷⁰ *Maryland Professionalism Center, Maryland Manual On-Line: A Guide to Maryland & Its Government*, MARYLAND.GOV (last visited Feb. 24, 4:14 P.M.) <https://msa.maryland.gov/msa/mdmanual/33jud/defunct/html/20profession.html>.

¹⁷¹ *Maryland Professionalism Center, Maryland Manual On-Line: A Guide to Maryland & Its Government*, MARYLAND.GOV (last visited Feb. 24, 4:14 P.M.) <https://msa.maryland.gov/msa/mdmanual/33jud/defunct/html/20profession.html>. The Supreme Court of Maryland replaced the Maryland Professionalism Commission with the Maryland Professionalism Center via an Administrative Order issued by the Chief Judge on September 12, 2012. Administrative Order As to the Maryland Professionalism Center, at 1 (Md. Sept. 12, 2012). Among the Center’s duties was “[a]dminister[ing] the New Bar Admittee’s Professionalism Course.” *Id.* at 6.

¹⁷² See Md. Rule 16-703(a) (rescinded June 29, 2020, eff. Aug. 1, 2020).

¹⁷³ Steve Lash, *[Supreme Court of Maryland] scraps professionalism course*, DAILY RECORD (Dec. 7, 2015), <https://thedailyrecord.com/2015/12/07/court-of-appeals-scraps-professionalism-course/>. The change became effective on January 1, 2016. *Id.* The prior program had been in existence for 25 years. *Id.* In making this change, the Court at the time rejected requiring attorneys to take and receive a passing score on the Multistate Professional Responsibility Examination (MPRE) to gain admittance to the Maryland bar. *Id.* Attorneys now must take and receive a passing score on the MPRE to be admitted to the Maryland bar. Md. Rules 19-201 & 19-213 (requiring attorneys to earn a qualifying score on the MPRE when applying for admission to the Maryland bar); Md. R. Att’y’s Rule 6 (providing rules regarding qualifying MPRE score and transfer of scores for admission to Maryland bar).

for the Center, effectively abolishing it as of August 1, 2020.¹⁷⁴

E. CLE Requirements for the Five-Most Frequent, Non-Maryland Jurisdictions from Which Attorneys Seeking Admission to the Maryland Bar Report Prior Admission

Information provided by the State Board of Law Examiners showed that since February 2011, 5,283 applicants for admission to the Maryland Bar reported prior admission to at least one other jurisdiction's bar.¹⁷⁵ Those applicants reported a total of 8,979 non-Maryland bar admissions.¹⁷⁶ To remain in good standing, these attorneys must remain current as to the requirements for admission and practice in these non-Maryland jurisdictions. The five most frequently reported non-Maryland admissions were the District of Columbia (2,301), New York (1,302), Virginia (1,018), Pennsylvania (660), and New Jersey (521).¹⁷⁷ These jurisdictions represent nearly 65% of the non-Maryland bar admissions. Therefore, the Workgroup examined the relevant state rules and regulations regarding CLE from these jurisdictions, as they represent

¹⁷⁴ See Md. Rule 16-703(a) (rescinded June 29, 2020, eff. Aug. 1, 2020); *Maryland Professionalism Center, Maryland Manual On-Line: A Guide to Maryland & Its Government*, MARYLAND.GOV (last visited Feb. 24, 4:14 P.M.) <https://msa.maryland.gov/msa/mdmanual/33jud/defunct/html/20profession.html>. In an administrative order issued in October of 2019, the Supreme Court of Maryland rescinded the September 12, 2012 Administrative Order that replaced the Maryland Professionalism Commission with the Maryland Professionalism Center, and, in so doing, the Court refunded the funds allocated to support the Center. Administrative Order Refunding Funds Dedicated to the Maryland Professionalism Center, at 2-3 (Md. Oct. 17, 2019).

¹⁷⁵ See Md. St. Bd. Law Examiners, Applications Reporting Other Bars Spreadsheet, Nov. 29, 2022 [hereinafter *Md. SBLE Admissions Spreadsheet*] (showing data from February 2011 through November 2022 breaking down applicants to the Maryland bar who noted their prior bar admission in another jurisdiction); see also Letter from Jeffrey Shipley, Sec'y & Dir., St. Bd. of Law Exam'rs, to Hon. Stuart R. Berger, App. Ct. of Md. (Nov. 29, 2002) (on file with Reporter).

¹⁷⁶ *Md. SBLE Admissions Spreadsheet*, *supra* note 175.

¹⁷⁷ *Md. SBLE Admissions Spreadsheet*, *supra* note 175.

the most common CLE requirements attorneys licensed in Maryland as well as in at least one other jurisdiction must negotiate, according to these statistics. As such, what follows is a summary reviewing similar provisions from these jurisdictions.

*1. CLE minimum-hours requirements and reporting periods in each Jurisdiction: New York, Virginia, Pennsylvania, and New Jersey*¹⁷⁸

New York sets a different minimum-hours requirement for newly-admitted attorneys, meaning those attorneys who have been licensed for two years or fewer, than for other attorneys.¹⁷⁹ All other practicing attorneys must complete 24 credit hours of CLE every two years, with no minimum per-annum requirement.¹⁸⁰ These attorneys can carry over at most six credits earned in excess of the 24 required to the next biennial reporting period.¹⁸¹ Newly-admitted attorneys in New York must complete 32 credit hours within two years of admission to the bar.¹⁸² Despite the two-year reporting period, newly-admitted attorneys must complete 16 credit hours each of the

¹⁷⁸ Though the District of Columbia shows up most frequently among non-Maryland bar admissions, because it does not have an MCLE requirement, no provisions from that jurisdiction are included in this summary.

¹⁷⁹ New York refers to these two groups as “Newly Admitted Attorneys,” meaning those practicing within two years of their admissions to the bar, and “Attorneys other than Newly Admitted,” meaning all other practicing lawyers licensed in excess of two years. *See* N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.12(a).

¹⁸⁰ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22 (a) (“Each attorney shall complete a minimum of 24 credit hours of accredited continuing legal education each biennial reporting cycle . . .”).

¹⁸¹ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22(c).

¹⁸² N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.12(a) (“Each newly admitted attorney shall complete a minimum of 32 credit hours of accredited transitional education within the first two years of the date of admission to the Bar. . .”).

first two years of their admissions.¹⁸³ Newly-admitted attorneys may carry over at most eight hours earned in excess of the 16 required from their first year to their second, and they may carry over six hours from their second year into the ensuing biennial reporting period when they transition out of their newly-admitted status upon completing the requirements.¹⁸⁴

In Virginia, each active member of the bar, other than those newly admitted, must complete 12 credit hours of CLE every year.¹⁸⁵

Pennsylvania requires active attorneys, not newly admitted, to complete twelve hours of CLE activity or programming each year.¹⁸⁶ Newly-admitted attorneys must complete a four-hour “Bridge the Gap” program.¹⁸⁷ Lawyers with emeritus licenses must complete eight CLE hours annually.¹⁸⁸ Pennsylvania attorneys may carry over credit hours completed in excess of the annual requirement, so long as they carry over “[n]o more than two times the current annual CLE requirement into two (2) succeeding years.”¹⁸⁹

¹⁸³ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.12(a) (“Sixteen accredited hours shall be completed in each of the first two years of admission.”).

¹⁸⁴ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.12(b)

¹⁸⁵ Va. R. CLE Reg. 102(a) (“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 . . .”). Virginia defines a “completion period” as “a period of one year beginning on November 1 of one year and ending on October 31 of the next year . . .” Va. R. CLE Reg. 101(o). “Newly-admitted” attorneys are those first admitted to the Virginia bar during the current completion cycle. *Id.* Reg 101(e).

¹⁸⁶ Pa. St. CLE Rule 105(a)(3).

¹⁸⁷ Pa. St. CLE Rule 105(c).

¹⁸⁸ Pa. St. CLE Rule 105(d).

¹⁸⁹ Pa. St. CLE Rule 108 (d); *see also* 204 Pa. Code § 5(c) (“A lawyer may carry forward a balance of credit hours in excess of the current annual CLE requirement for the next two (2)

Attorneys holding a license to practice in New Jersey must complete 24 hours of qualifying CLE programming over a two-year “compliance period.”¹⁹⁰ “No more than a total of [12] credit hours may be carried over to a subsequent compliance period.”¹⁹¹ By the end of the compliance period upon which a newly-admitted attorney gains admission to the bar, the attorney must complete 15 credit hours of CLE.¹⁹²

2. *How each jurisdiction regulates what qualifies as CLE*

i. What counts as a CLE hour?

In New York, a CLE credit, or hour, must consist of at least 50 minutes of instruction, excluding breaks, introductory remarks, or “other noneducational activities.”¹⁹³ Courses must be taught by an instructor with expertise in the subject matter, be specifically tailored to attorneys, provide participants with “high quality, readable and carefully prewritten materials,” be reasonably priced, and provide “significant intellectual or practical content[,] and [the CLE course’s] primary

succeeding years. No more than two (2) times the current annual CLE requirement may be carried forward into the two (2) succeeding years. CLE credits for ethics, professionalism or substance abuse may be applied as provided in Section 3(d). Distance Learning credits may be applied as provided in Section 13(n). Pro bono credits may be applied as provided in Section 13(o).”

¹⁹⁰ N.J. Ct. R. 1:42-1 (“An attorney holding a license to practice in this State shall be required to participate in a program of continuing legal education in accordance with regulations adopted under these rules. In satisfaction of the continuing legal education requirement, attorneys shall participate in twenty-four hours of qualifying continuing legal education over a two-year period.”). New Jersey’s “compliance period” refers to “any period of twenty-four consecutive months commencing on January first of any year and ending December thirty-first of the following year.” N.J. R. CLE Reg. 103. Attorneys must certify that they are in compliance with the CLE requirements at the end of each compliance period, and are responsible for maintaining all “necessary records and documents demonstrat[ing] such compliance.” N.J. Ct. R. 1:42-1.

¹⁹¹ N.J. R. CLE Reg. 201:3.

¹⁹² N.J. R. CLE Reg. 201:2.

¹⁹³ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.4(b)(1).

objective must be to increase the professional legal competency of the attorney in ethics and professionalism, skills, law practice management, areas of professional practice, diversity, inclusion and elimination of bias, and/or cybersecurity, privacy and data protection.”¹⁹⁴

¹⁹⁴ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.4(b). The regulation requires all accredited CLE programs to comply with the following guidelines:

(1) One hour of continuing legal education credit shall consist of at least 50 minutes of instruction, exclusive of introductory remarks, meals, breaks, or other noneducational activities.

(2) The course or program must have significant intellectual or practical content and its primary objective must be to increase the professional legal competency of the attorney in ethics and professionalism, skills, law practice management, areas of professional practice, diversity, inclusion and elimination or bias, and/or cybersecurity, privacy and data protection.

(3) The course or program shall be taught by instructors with expertise in the subject matter being taught and shall be specifically tailored to attorneys.

(4) The faculty of the course or program shall include at least one attorney in good standing, who shall actively participate in the course or program.

(5) The course or program shall not be taught by a disbarred attorney, whether the disbarred attorney is the sole presenter or one of several instructors.

(6) The continuing legal education course or program must be offered by a provider that has substantial, recent experience in offering continuing legal education to attorneys, or that has demonstrated an ability to effectively organize and present continuing legal education to attorneys.

(7) Thorough, high quality, readable and carefully prewritten materials must be made available to all participants at or before the time the course or program is presented, unless the absence of materials, or the provision of such materials shortly after the course or program, is pre-approved by the CLE board. Written materials shall satisfy the criteria set forth in the regulations and guidelines.

In Virginia, credit for attending CLE programming is awarded for time spent “in personal attendance at an approved course” and “computed by calculating the total instructional minutes attended or taught for the course, rounded to the nearest half-hour,” excluding meal or coffee breaks, keynote speeches, introductory remarks, or “time spent on any subject matter which is not directly related to instruction pertinent to that course.”¹⁹⁵

(8) The cost of continuing legal education courses or programs to the participating attorney shall be reasonable.

(9) Providers must have a financial hardship policy as provided in the regulations and guidelines.

(10) The course or program must be conducted in a physical setting that is comfortable and conducive to learning.

(11) At the conclusion of the course or program, each participant must be given the opportunity to complete an evaluation questionnaire addressing the quality, effectiveness and usefulness of the particular course or program. A summary of the results of the survey(s) must be submitted to the CLE board at the end of the calendar year in which the course or program was given. Providers must maintain the questionnaires for a period of four years following the course or program.

(12) Providers of continuing legal education courses or programs shall provide a certificate of attendance to all persons completing the continuing legal education course or program.

(13) Providers of continuing legal education courses or programs must maintain an official attendance list of participants in the program, and the time, date, location, title, speaker(s) and amount of approved CLE credit for each course or program, for at least four years after the completion date.

(14) Programs that satisfy these standards and that cross academic lines, such as accounting-tax seminars, may be considered for approval by the CLE board.

Id. § 1500.4(b).

¹⁹⁵ Va. R. CLE Reg. 102(c).

Pennsylvania awards one hour of CLE credit for each “[60] minutes of instruction, not including introductory remarks, keynote speeches, luncheon speeches or breaks, but including question-and-answer periods.”¹⁹⁶ Hours requirements must be fulfilled by attending CLE courses from accredited providers or by completing CLE activity approved by the CLE Board.¹⁹⁷ CLE programming and activities must pertain to the subjects of: “(i) substantive law, practice and procedure, (ii) lawyer ethics and the rules of professional conduct, (iii) professionalism, [or] (iv) substance abuse as it affects lawyers and the practice of law.”¹⁹⁸

For CLE hours to count for New Jersey’s requirement, the approved activity or course “must have significant intellectual, educational, or practical content, and its primary objective must be to increase each participant’s professional competence and proficiency as a lawyer.”¹⁹⁹ The course or activity must “constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, professionalism, or ethical obligations of lawyers.”²⁰⁰

¹⁹⁶ 204 PA. CODE § 5(a)(2); PA. St. CLE Rule 108(a). As such, a CLE provider may not have a class for fewer than 60 minutes, though half-hour credit can be awarded for attendance of at least 30 minutes, but fewer than 60 minutes. 204 PA. CODE § 5(a)(3). Courses provided by accredited providers are presumed accredited for the amount of time the provider designates. *Id.* § 5(a)(4).

¹⁹⁷ Pa. St. CLE Rule 105(b).

¹⁹⁸ Pa. St. CLE Rule 105(a)(2).

¹⁹⁹ N.J. R. CLE Reg. 301:1(a).

²⁰⁰ N.J. R. CLE Reg. 301:1(b).

ii. Activities that count for CLE credit

In New York, credit for both transitional education and other CLE programming must come from a provider and course approved by the state's CLE board.²⁰¹ Transitional education credit is not accepted for "program[s] consisting of nontraditional formats such as self-study, correspondence work, videotapes, audiotapes, motion picture presentations or on-line programs," unless prior permission has been granted by the CLE board.²⁰² For all other attorneys, CLE "may include traditional live classroom or audience settings; teleconferences; video conferences; satellite transmissions; videotapes; audiotapes; motion picture presentations; interactive video instruction; activities electronically transmitted from another location; self-study; correspondence work; and on-line computer courses."²⁰³ Attorneys, other than those newly-admitted, may also earn credit for speaking, teaching, or participating in panels for accredited CLE courses, or for judging or preparing students for law competitions like mock trial or moot court, or for teaching law school classes at ABA-accredited law schools, or for attending courses at ABA-accredited law

²⁰¹ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.12(c); N.Y. Comp. Codes R. & Regs. tit. 22, § 1500.22(k).

²⁰² N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.12(c) ("*Accredited courses or programs only*. Transitional continuing legal education credit will be granted only for courses and programs approved as such by the CLE board, except as provided in subdivision (d) of this section. No transitional continuing legal education course or program consisting of nontraditional formats, such as self-study, correspondence work, videotapes, audiotapes, motion picture presentations or on-line programs may be accepted for credit without prior permission from the CLE board, except as provided in the regulations and guidelines."); *see also* N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.12(d) ("*Other jurisdictions*. Transitional continuing legal education courses approved by another state, the District of Columbia, any territory of the United States or any foreign jurisdiction with requirements meeting the standards adopted by the CLE board shall count toward the newly admitted attorney's compliance with New York's transitional CLE program requirements in accordance with the regulations and guidelines established by the CLE board and this Part.>").

²⁰³ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22(d).

schools, so long as the attorney is registered for the course and completes the course as required by the terms of registration.²⁰⁴ Attorneys can also receive credit for legal research-based writing, so long as they apply for such credit from the CLE board and the activity produces material published in print or electronically, written in whole or in part by the applicant.²⁰⁵ Additionally, attorneys can earn up to 10 hours each two-year reporting period for time spent on uncompensated pro bono legal services.²⁰⁶

For Virginia attorneys needing to satisfy their 12-credit annual CLE requirement, no more than eight credits may come from participation in pre-recorded courses.²⁰⁷ Otherwise, “[c]redit will be given to a member who personally attends an approved course and to a member who prepares written materials for an approved course and to a member who personally participates as an instructor for such course.”²⁰⁸

Pennsylvania attorneys must fulfill their CLE requirements by attending the requisite number of CLE courses from approved providers, or by completing CLE activity approved by the

²⁰⁴ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22(d)-(h).

²⁰⁵ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22(i).

²⁰⁶ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22(j) (“*Credit for performing pro bono legal services.* Credit may be earned for performing uncompensated legal services for clients unable to afford counsel pursuant to: (1) assignment by a court; or (2) a program, accredited by the CLE Board, of a bar association, legal services provider or other entity. Credit shall be awarded pursuant to the Regulations and Guidelines of the CLE Board, provided that no more than 10 hours of CLE credit may be earned in a two-year reporting period for performing pro bono legal services. An additional five hours of CLE credit may be earned subject to the requirements and limitations set forth in the Regulations and Guidelines of the CLE Board.”).

²⁰⁷ Va. R. CLE Reg. 102(a).

²⁰⁸ Va. R. CLE Reg. 102(b).

CLE Board.²⁰⁹ “Self-study will not be approved for credit.”²¹⁰ Neither will “in-house activities.”²¹¹ Law school courses from ABA-accredited law schools qualify for CLE credit, so long as they are not taken as part of pursuing a law degree.²¹² Participation in pro bono legal services may count for CLE credit, such that every five hours of pro bono legal services rendered qualify as one CLE credit hour, with a maximum of three such CLE hours able to be earned in this way (thus a maximum of 15 pro bono hours counting towards the CLE requirement) in a given reporting period.²¹³

In New Jersey, a lawyer certified by that state’s Board on Attorney Certification may claim CLE credit for educational activities approved for certification by that Board.²¹⁴ Approved activities and courses, and any written material distributed therein, must be administered by an approved provider qualified by either practical or academic experience to lead such a course, and

²⁰⁹ Pa. St. CLE Rule 105(b).

²¹⁰ 204 PA. CODE § 5(h).

²¹¹ 204 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.”).

²¹² Pa. St. CLE Rule 108 (b).

²¹³ 204 PA. CODE § 5(h)(i)(1) (“The CLE Board may allow one (1) CLE credit hour for every (5) hours of pro bono legal service performed, up to a maximum of three (3) credit hours per compliance period.”). Pro bono CLE hours must be earned through participation with an organization “that receives funding from the Pennsylvania Legal Aid Network (PLAN) or the Pennsylvania Interest on Lawyers Trust Accounts Board (IOLTA) [or a] a non-profit organization with a partnership or referral relationship with PLAN or IOLTA or project that receives funding.” *Id.* § 5(h)(i)(2).

²¹⁴ N.J. R. CLE Reg. 201:5.

must occur in a setting “suitable to educational activity.”²¹⁵ A New Jersey lawyer may receive twice the credit hours for teaching an approved course “designed principally to maintain or advance the professional competence of lawyers and/or expand an appreciation and understanding of the ethical and professional responsibility of lawyers, and/or teach law to non-lawyers;” however, a lawyer teaching such courses may not claim this double credit for teaching the class twice within the same compliance period, though they may claim credit for the hours spent in attendance during the subsequent class.²¹⁶ An attorney can claim no more than six CLE hours “in any one compliance period for participation in moot court or mock trial educational activities.”²¹⁷ Law school professors and instructors may not receive CLE credit for teaching full-time or part-

²¹⁵ N.J. R. CLE Reg. 301:1(c) (“CLE materials are to be prepared, and approved educational activities or approved courses are to be conducted by an approved service provider or a per-course approved provider qualified by practical or academic experience for a traditional CLE course in a setting suitable to the educational activity of the program and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes.”); *id.* Reg. 301:1(d) (“[T]horough, high-quality, and carefully written materials are to be distributed to all attendees at or before the time the approved education activity or approved course is presented. These may include written materials printed from a computer presentation, computer website, or CD-ROM. A written agenda or outline for a presentation shall satisfy this requirement when written materials are not suitable or readily available for a particular subject. The absence of written material, however, shall be the exception.”).

²¹⁶ N.J. R. CLE Reg. 201:6. (“Teaching CLE. A lawyer who teaches an approved course designed principally to maintain or advance the professional competence of lawyers and/or expand an appreciation and understanding of the ethical and professional responsibility of lawyers, and/or teach law to non-lawyers is entitled to twice the credit hours authorized for that portion of the course taught by the lawyer claiming teaching credit. Teaching credit for the same course offered more than once during a compliance period shall be claimed only once during each compliance period. Nevertheless, customary credit will be allowed for the teacher's attendance at the same course for any second or subsequent course taught during that compliance period . . .”).

²¹⁷ N.J. R. CLE Reg. 201:6. (“No more than six total credits of CLE can be obtained in any one compliance period for participation in moot court or mock trial educational activities.”).

time law students.²¹⁸ Attorneys can also receive credit for participating as “masters, barristers or pupils in . . . education activities of an Inns of Court program that are substantially in compliance” with New Jersey’s CLE regulations.²¹⁹

New Jersey reciprocates with other states that require CLE such that participation in courses approved by those jurisdictions will receive one-for-one credit in New Jersey, so long as courses in other MCLE jurisdictions comply with the requirements of accreditation in New Jersey.²²⁰ Attorneys residing or working continuously in New Jersey or another mandatory CLE jurisdiction for an entire compliance period may utilize “alternative verifiable learning formats,” approved for CLE course accreditation, though no more than 12 such credit hours may be achieved in this fashion in a single compliance period.²²¹

²¹⁸ N.J. R. CLE Reg. 201:6. (“Law school professors and instructors shall not be awarded CLE credit for teaching full or part-time law students . . .”).

²¹⁹ N.J. R. CLE Reg. 201:7 (“Lawyers participating as masters, barristers or pupils in Inns of Court programs shall be entitled to 1:1 credit for participation limited to those educational activities of an Inns of Court program that are substantially in compliance with these regulations.”).

²²⁰ N.J. R. CLE Reg. 201:4 (“Except for the courses required under BCLE Reg. 201:2, all active lawyers will receive 1:1 credit for courses approved as satisfying the continuing legal education requirements of any other jurisdiction, so long as they comply with any course accreditation restrictions in New Jersey. Lawyers complying with requirements in other states that do not have an ethics/professionalism requirement nevertheless must satisfy the ethics/professionalism requirement set forth in BCLE Reg. 201 to be considered in full compliance with New Jersey’s CLE requirement.”).

²²¹ N.J. R. CLE Reg. 201:8(a). Attorneys living outside of New Jersey but in another MCLE jurisdiction may complete 100 percent of their courses through alternative verifiable learning formats, through reciprocity. *Id.* Attorneys living neither in New Jersey, nor another MCLE jurisdiction, may earn 100 percent of their CLE hours through alternative verifiable learning formats, though only during the time the attorney does not reside or work regularly or continuously in New Jersey or another MCLE jurisdiction, or if a licensed physician verifies the attorney is unable to attend live courses. *Id.* Reg. 201:8(b).

iii. Accreditation and Certification

In New York, CLE courses approved by other jurisdictions whose CLE accreditation requirements meet the standards adopted by New York's CLE Board may count towards an attorney's CLE benchmark.²²² Attorneys can also seek the approval of, and therefore, the credit for participation in, a course not otherwise approved by the CLE Board, so long as the requesting attorney does so at least 60 days prior to the "occurrence of the course or program."²²³ Providers may seek accredited status through application to the CLE Board, provided the applicant's programming satisfies New York's guidelines for CLE, which are cross-referenced in accompanying regulations.²²⁴

To gain accreditation as an approved CLE program or provider in Virginia, the commonwealth requires a CLE course to have "significant intellectual or practical content. Its primary objective must be to increase the attendee's professional competence and skills as an

²²² N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.12(d) ("*Other jurisdictions.* Transitional continuing legal education courses approved by another state, the District of Columbia, any territory of the United States or any foreign jurisdiction with requirements meeting the standards adopted by the CLE board shall count toward the newly admitted attorney's compliance with New York's transitional CLE program requirements in accordance with the regulations and guidelines established by the CLE board and this Part."); *Id.* § 1500.22(m) ("*Other jurisdictions.* Continuing legal education courses approved by another state, the District of Columbia, any territory of the United States or any foreign jurisdiction with requirements meeting the standards adopted by the CLE board shall count toward the attorney's compliance with New York's CLE program requirements in accordance with the regulations and guidelines established by the CLE board and this Part.").

²²³ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22(l) ("*Individual course approval.* An attorney seeking approval of a course or program that has not otherwise been approved shall apply to the CLE board for approval in accordance with board procedures. Such approval must be sought at least 60 days prior to the occurrence of the course or program, except in extenuating circumstances and only with prior permission of the board.").

²²⁴ *See* N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.4(c); *see also id.* § 1500.4(b).

attorney, and to improve the quality of legal services rendered to the public.”²²⁵ “The course must pertain to a recognized legal subject or other subject matter which integrally relates to the practice of law, or to the professional responsibility or ethical obligations of the participants.”²²⁶ To gain approval, the state CLE Board must determine that a course or a provider meets this criteria.²²⁷ Programs offered “in-house” -- meaning sponsored by a single private law firm, corporate law department, governmental agency, or military branch for that entity’s members or employees -- may be approved by the Board, so long as “the subject matter of the program does not primarily focus on internal policies, practices and procedures,” and the program “otherwise meets the standards of these regulations,” and the provider adheres to the approval procedures required by Virginia.²²⁸

At its discretion, the Pennsylvania CLE Board may grant accreditation to a CLE provider that satisfies the following requirements:

1. The provider has presented, within the past two (2) years, five (5) separate programs of CLE which meets the standards of quality set forth in the rules and these regulations, or

²²⁵ Va. R. CLE Reg. 103(b).

²²⁶ Va. R. CLE Reg. 103(c).

²²⁷ *See* Va. R. CLE Reg. 103(a) (“Subject to the provisions of Regulation 105(d), a course is approved for credit if it has been specifically approved by the Board or is presented by an accredited sponsor previously designated by the Board under the provisions of Regulation 105. A course is approved for credit in the area of legal ethics or professionalism if and to the extent specifically approved by the Board. Subject to the provisions of Regulation 105(d), a course presented by an accredited sponsor is also approved for credit in the area of legal ethics or professionalism if and to the extent so represented by such sponsor.”).

²²⁸ Va. R. CLE Reg. 101(j), (n).

2. The provider has demonstrated to the Board that its CLE activities have consistently met the standards of quality set forth in the rules and these regulations, or

3. Is an American Bar Association accredited law school.

4. The person or persons responsible for provider's compliance with the Pennsylvania CLE requirements shall successfully complete a course of training established by the Board and administered by the Board staff.

Training by the CLE Board staff will include: Rules and Regulations, provider reporting requirements, accreditation standards, compliance groups, deadlines, requirements for compliance, fee payment, and record keeping requirements.

The Board may require Accredited Providers to complete a course of training prior to continuation of the provider's accredited status.²²⁹

The provider must apply to the Pennsylvania CLE Board, and pay the requisite fees, to gain accreditation, which remains valid for two years and must be renewed thereafter.²³⁰ Providers must make available "a financial hardship policy for attorneys who wish to attend its course, but for whom the costs of such courses would be a financial hardship."²³¹ Such a policy may take the form of scholarships, waivers of fees, reduced fees, or discounts.²³²

Providers seeking to operate CLE activities or courses in New Jersey may seek approval either on a per-course basis, or as an "approved service provider," by demonstrating that they meet the approval requirements of the state.²³³ Approved providers must be open to monitoring, without

²²⁹ 204 PA. CODE § 11(d).

²³⁰ 204 PA. CODE § 11(a)-(b).

²³¹ 204 PA. CODE § 11(h).

²³² 204 PA. CODE § 11(h).

²³³ N.J. R. CLE Reg. 302:1.

charge or advance notice, from the CLE Board.²³⁴ Entities eligible to obtain “approved provider” status include: local, state, or specialty bar associations; for and nonprofit legal education providers; Inns of Court; educational institutions such as ABA-accredited law schools; and in-house providers, including law firms, nonprofits, and governmental entities.²³⁵

3. *Specific subject-matter requirements in each jurisdiction*

For newly-admitted attorneys in New York, their credit hours must be accomplished by completing “accredited transitional education.”²³⁶ The 16-hour-per-year requirement for the newly-admitted attorneys’ first two years must include the following subjects: (1) three hours of ethics and professionalism courses; (2) six hours of “skills” courses; and (3) seven hours of law practice management or areas of professional practice.²³⁷ All other attorneys must complete their hours in accredited programs focused on “ethics and professionalism, skills, law practice management, areas of professional practice, or diversity, inclusion, and elimination of bias.”²³⁸ At least four of the required 24 CLE hours must be spent on ethics and professionalism, and at least

²³⁴ N.J. R. CLE Reg. 301:6. (“Any approved educational activity or approved course must be open to monitoring by the Board or its members, or its authorized representatives, without charge or need for advance registration or notice.”).

²³⁵ N.J. R. CLE Reg. 302:1. (“The following are eligible for “approved service provider” status from the Board: local, state and specialty bar associations; for profit and nonprofit legal education providers; Inns of Court; educational institutions, including but not limited to law schools accredited by the American Bar Association; and in-house providers, including law firms, profit and nonprofit corporations, and governmental entities. Providers seeking either approved service provider status or individual course accreditation shall meet the course approval requirements established in BCLE Reg. 301.”); *see also* N.J. R. CLE Reg. 301:3, 302:2(d), & 103:1(m) (providing additionally clarity on “in-house” CLE programming in New Jersey).

²³⁶ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.12(a).

²³⁷ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.12(a).

²³⁸ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22(a).

one of the 24 hours must be spent on courses addressing diversity, inclusion, and elimination of bias, though “[t]he ethics and professionalism and diversity, inclusion and elimination of bias components may be intertwined with other courses.”²³⁹

New York defines what topics qualify for these specific requirements, though these definitions are not exclusive. “Ethics and professionalism” includes issues related to a lawyer’s representation of and obligation to clients, including competency, conflicts of interest, confidentiality, norms of a professional relationship, relations with third parties, recognizing and resolving ethical dilemmas, substance abuse control, and professional values.²⁴⁰ “Law practice management” relates to the practice of law, but may include court procedure, technology training, stress management, office management, litigation, and malpractice avoidance.²⁴¹ “Areas of professional practice” includes substantive topics of law upon which attorneys build their

²³⁹ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22(a).

²⁴⁰ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.2(c) (“Ethics and professionalism may include, among other things, the following: the norms relating to lawyers’ professional obligations to clients (including the obligation to provide legal assistance to those in need, confidentiality, competence, conflicts of interest, the allocation of decision making, and zealous advocacy and its limits); the norms relating to lawyers’ professional relations with prospective clients, courts and other legal institutions, and third parties (including the lawyers’ fiduciary, accounting and recordkeeping obligations when entrusted with law client and escrow monies, as well as the norms relating to civility); the sources of lawyers’ professional obligations (including disciplinary rules, judicial decisions, and relevant constitutional and statutory provisions); recognition and resolution of ethical dilemmas; the mechanisms for enforcing professional norms; substance abuse control; and professional values (including professional development, improving the profession, and the promotion of fairness, justice and morality).”).

²⁴¹ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.2(e) (“Law practice management must relate to the practice of law and may encompass, among other things, office management, applications of technology, State and Federal court procedures, stress management, management of legal work and avoiding malpractice and litigation.”).

practices, such as wills and trusts, criminal litigation, family law, intellectual property, etc.²⁴² “Diversity, inclusion and elimination of bias” programs address issues such as implicit bias, equal access to justice, serving diverse clientele, and cultural sensitivity as it relates to “interacting with members of the public, judges, jurors, litigants, attorneys, and court personnel.”²⁴³

Of the 12 CLE hours required of actively-practicing Virginia lawyers, at least two must be spent “in the area of legal ethics and professionalism.”²⁴⁴ The state provides credit both to attorneys who attend approved courses in these topics, or who teach or prepare materials for a qualified course in these topics, so long as such participation is uncompensated.²⁴⁵

²⁴² N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.2(f) (“Areas of professional practice may include, among other things, corporations, wills/trusts, elder law, estate planning/administration, real estate, commercial law, civil litigation, criminal litigation, family law, labor and employment law, administrative law, securities, tort/insurance practice, bankruptcy, taxation, compensation, intellectual property, municipal law, landlord/ tenant, environmental law, entertainment law, international law, social security and other government benefits, and alternative dispute resolution procedures.”).

²⁴³ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.2(g) (“Diversity, Inclusion and Elimination of Bias courses, programs and activities must relate to the practice of law and may include, among other things, implicit and explicit bias, equal access to justice, serving a diverse population, diversity and inclusion initiatives in the legal profession, and sensitivity to cultural and other differences when interacting with members of the public, judges, jurors, litigants, attorneys and court personnel.”).

²⁴⁴ Va. R. CLE Reg. 102(b) (“Credit in the area of legal ethics or professionalism will be given to a member who attends a course approved for credit in such areas . . .”).

²⁴⁵ Va. R. CLE Reg. 102(b) (“Credit in the area of legal ethics or professionalism will be given to a member who . . . personally prepares materials for a qualified ethics or professionalism component of such course and to a member who personally participates as an instructor for such a component. Credit will be given to a member who personally prepares written materials for a qualified course on a volunteer non-compensated basis concerning lawyer well-being initiatives and to a member who personally participates as an instructor for such courses given to judges or law students on a volunteer non-compensated basis.”).

Newly-admitted Pennsylvania attorneys must complete the “Bridge the Gap program[] by the end of their next succeeding compliance period” after the compliance period in which they were admitted.²⁴⁶ This program represents four credit hours of CLE, and must be administered by an approved Bridge the Gap CLE provider.²⁴⁷ All other attorneys must complete two hours of “ethics, professionalism, or substance abuse” training, with the remaining 10 required hours focused on “substantive law, practice, and procedure.”²⁴⁸ “[C]redits for ethics, professionalism, or substance abuse may be applied to any substantive law, practice, or procedure requirement.”²⁴⁹

For newly-admitted attorneys in New Jersey, the 15 credit hours required must be completed in any combination of five of nine subject-matter categories: “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.”²⁵⁰ Further, “[a] lawyer who has completed at least the first full year’s requirements of the Skills and Methods Course will be considered to have met the additional requirements for a newly admitted lawyer.”²⁵¹ For all other New Jersey attorneys

²⁴⁶ 204 PA. CODE § 4 (“Newly admitted lawyers shall complete their CLE requirement, including the Bridge the Gap program, by the end of their next succeeding compliance period.”).

²⁴⁷ Pa. St. CLE Rule 105(c) (“Every newly admitted attorney shall attend the Bridge the Gap program, of at least four (4) credit hours, sponsored by approved Bridge the Gap CLE provider prior to his or her first compliance deadline.”).

²⁴⁸ Pa. St. CLE Bd. Reg. § 3(d).

²⁴⁹ Pa. St. CLE Bd. Reg. § 3(e).

²⁵⁰ N.J. R. CLE Reg. 201:2

²⁵¹ N.J. R. CLE Reg. 201:2.

needing to meet the 24-hour CLE benchmark, at least five of those hours must be spent on courses or programs pertaining to ethics and/or professionalism, and at least two of those five credits must be spent on diversity, inclusion, and elimination of bias training.²⁵²

4. *Exemptions and exceptions in each jurisdiction*

Attorneys who permanently cease practicing law in New York, but who practice in another state, are exempt from New York's CLE requirement, but they must comply with the CLE requirements of the jurisdiction in which they still practice.²⁵³ Attorneys exempt from adhering to New York's CLE requirement, but required to comply with another jurisdiction's CLE requirement, must certify that they are complying with that other jurisdiction's requirements on the attorney's biennial attorney registration form in New York.²⁵⁴ The same certification is required of attorneys exempt from *both* New York's CLE requirement as well as another jurisdiction's CLE requirement.²⁵⁵ If an attorney was exempt from New York's CLE requirement, but then commences practicing law in New York during a biennial reporting cycle, the attorney

²⁵² N.J. Ct. R. 1:42-1 ("Five of the twenty-four hours of credit shall be concentrated in the areas of ethics and/or professionalism. At least two of the five hours of credit in ethics and/or professionalism shall be in diversity, inclusion, and elimination of bias. . . ."); N.J. R. CLE Reg. 201:1 ("Every active lawyer shall complete twenty-four credit hours of continuing legal education every two years. Of those twenty-four credits, not less than five credits must be in ethics and/or professionalism. At least two of the five hours of credit in ethics and/or professionalism shall be in diversity, inclusion, and elimination of bias.").

²⁵³ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22 (n)(4) ("An attorney who permanently ceases to practice law in New York while commencing or continuing the practice of law in another jurisdiction shall be exempt from the requirements of this program for the reporting cycle in which the permanent cessation from New York practice occurred, and shall comply with the requirements of the jurisdiction in which the attorney practices law during that cycle.").

²⁵⁴ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22 (n)(1).

²⁵⁵ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22 (n)(2).

must complete at least one credit hour of CLE, in accordance with state provisions, for each “full calendar month of the biennial cycle during which the attorney practices law in New York.”²⁵⁶

Virginia exempts from its CLE requirements only newly-admitted attorneys, and only to the extent that such newly-admitted attorneys need not begin to comply with the state’s CLE mandate until the beginning of the next reporting period after they are admitted.²⁵⁷

Pennsylvania similarly exempts only newly-admitted attorneys from adhering to its general CLE requirements for 12 months, but not more than 24 months, from the date of admission, though they must still complete the required Bridge the Gap program.²⁵⁸ Otherwise, Pennsylvania requires “[e]very active lawyer” to complete their required CLE hours within the compliance period, thus implying that the only exception may be for licensed lawyers no longer in active status.²⁵⁹

New Jersey’s rules and regulations regarding CLE have no documented exceptions or exemptions. As such, it is presumed that all attorneys licensed by the state and actively practicing there must comply with the state’s CLE requirement to remain in good standing.

²⁵⁶ N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22(n)(3). For newly admitted attorneys who do not practice, but begin practicing during a biennial reporting cycle, they must complete 1.5 hours of CLE for each month they practice within the reporting cycle. N.Y. Comp. Codes R. & Regs. tit. 22, § 1500.12(f)(3).

²⁵⁷ 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.”).

²⁵⁸ 204 PA. CODE § 4 (“Lawyers newly admitted to practice law in Pennsylvania, including lawyers admitted on motion from other states, shall be exempt from the requirements of these regulations for twelve (12) months but no more than twenty-four (24) months from the date of their Pennsylvania admission depending upon the compliance group to which the newly admitted lawyer is assigned and the compliance period for that group . . .”).

²⁵⁹ Pa. St. CLE Rule 105(a)(1).

III. WORKGROUP QUESTION 1 – SHOULD MARYLAND ADOPT MANDATORY CONTINUING LEGAL EDUCATION?

Discussion of whether or not Maryland should adopt mandatory CLE for attorneys dominated the Workgroup's early meetings. This discourse provided ample opportunity for Workgroup members to share their experiences with CLE programming, their beliefs in the value that a CLE mandate could impart on the profession, and their concerns about the considerable burdens such a mandate will impose. Additionally, analysis drawn from law review articles, reports, commentaries, and ABA and MSBA model rules supplemented the anecdotal experiences and insights shared by Workgroup members.

Generally, the Workgroup continually affirmed the value of CLE, but opinions were more split as to whether such participation should become a mandate. Unsurprisingly, Workgroup members who had prior experience complying with other jurisdictions' MCLE rules or who had leadership positions in legal organizations or legal employers with strong CLE offerings appeared more accepting of a mandate. This was countered by Workgroup members in small firms or solo practice, or who had concerns that in-house training may become compromised by a mandate, who were more suspect of leveraging a mandate. Additionally, the lack of conclusive studies supporting such proclaimed positives or feared negatives of a CLE mandates left many wanting. What follows presents a summary of the best arguments both in favor of requiring mandatory minimum CLE and against imposing such a mandate on Maryland attorneys. From this assessment, the Workgroup ultimately agreed to recommend that Maryland pursue a minimum CLE mandate for Maryland attorneys, with the understanding that this recommendation would be conditioned on the construction of a suitable rule enforcing the CLE mandate.

A. The Reasons in Favor and Potential Benefits of Implementing Mandatory CLE in Maryland.

1. Reputational benefits and the legal profession's responsibility to police itself

Continuing legal education has been viewed as a tool to ensure “competent” representation in the face of few other clear metrics or devices to do so. The Supreme Court of the United States passed along this self-policing responsibility to the legal profession, as a community, in guaranteeing “effective assistance of counsel.” This constitutional right “relies 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.”²⁶⁰ The Court declined to provide further guidelines as to what such “effective” assistance means or how it could be maintained. Therefore, mandating CLE is one tool through which the legal community can instruct and enforce such standards.²⁶¹ Members of the Workgroup took the Court’s words in *Strickland v. Washington* as a charge to cultivate and enforce such guidelines for the profession. These members view MCLE as a means to do so.²⁶²

This premise aligned with the assertion that MCLE is “worth it for its own sake.”²⁶³ This framing of MCLE characterizes such a mandate as a way to institutionalize what are already seen

²⁶⁰ *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

²⁶¹ See Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ., at 2 (Md. Dec. 5, 2022) [hereinafter *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*] (“Improving the profession is the burden of the profession. . . *Strickland* suggests this is our job.”).

²⁶² See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 2 (discussing how “[i]t’s up to us to fill in the gaps” of regulating professional behavior, and CLE is a means to this end).

²⁶³ Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ., at 16 (Md. Jan. 24, 2023) [hereinafter *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*] (“I just think it’s part of our obligation as members of the bar and the juice is worth the squeeze to me.”).

as intrinsic values of the profession by instilling a regular practice of seeking additional training and education to maintain attorney competency. This framing also tempered grandiose expectations for MCLE, cautioning that a mandate cannot solve all of the problems that often manifest in attorney grievance complaints, disciplinary investigations, and issues resulting from lagging competence, but falling short of these lofty aims does not undercut the value of a continuing education mandate.²⁶⁴

MCLE was also discussed as a “values check-in” for attorneys, in the hopes of reacquainting them with the ideals of the profession, before such attorneys potentially wander too far astray.²⁶⁵ Mandating that attorneys dedicate a minimum number of hours to such professional engagement each year may lead attorneys to find help if needed and to recognize when they need additional help or resources and where to find them, before larger grievance issues potentially develop later.²⁶⁶

2. *MCLE would bring Maryland in line with most other jurisdictions. Further, the ubiquity of MCLE lessens the burdens of a potential new mandate*

During the past more than half-a-century, the trend across jurisdictions within the United States’ legal system has been to adopt rules requiring that licensed, practicing attorneys within

²⁶⁴ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes, supra note 263, at 17* (“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. . . . [yet, still] the juice is worth the squeeze to me.”).

²⁶⁵ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes, supra note 263, at 16.*

²⁶⁶ “There are problems of substance abuse and mental health challenges in our profession. . . . 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.” *MCLE Workgroup Jan. 24, 2023 Meeting Minutes, supra note 263, at 16.*

those jurisdictions dedicate some quota of hours over a one-to-three year period to continuing legal education.²⁶⁷ As of 2022, 46 states and at least four U.S. territories require MCLE.²⁶⁸ Maryland is one of just four states -- along with Massachusetts, Michigan, and South Dakota -- that does not currently require MCLE.²⁶⁹

The ubiquity of MCLE provided members of the Workgroup both a sense of urgency in wanting to align Maryland with these neighboring jurisdictions as well as a confidence that any struggles from either the administrative end of introducing and enforcing an MCLE rule or from the compliance end for providers and attorneys in adhering to the specifics of such an MCLE requirement should not be a bar to introducing such a rule.²⁷⁰ A common refrain from some Workgroup members was that “I’m a proponent of mandatory CLE . . . I think it’s a great idea. I think 46 states [currently requiring MCLE] can’t be wrong.”²⁷¹

²⁶⁷ See discussion *supra* Section II.A.

²⁶⁸ See 2017 ABA Model Rule for MCLE & Report, *supra* note 36, Report at 1 n.22, Rule at 2 § 1(E); see generally discussion *supra* note 30.

²⁶⁹ See generally app. D (providing comprehensive catalogs of CLE rules from multiple jurisdictions). Michigan had CLE for a brief period from 1989 to 1994. *Michigan Lawyers Reject Mandatory Continuing Education*, 12 MICH. SOC’Y FOR PSYCHOANALYTIC PSYCH. 3 (October 2002). MCLE became a requirement in Michigan in 1989, after the State Bar of Michigan asked the Supreme Court to institute an MCLE rule. *Id.* The rule required 36 hours of CLE be completed every three years. *Id.* “Experiment was a ‘disaster.’” *Id.* “It was universally detested among young lawyers.” *Id.* The State Bar asked the Michigan Supreme Court to rescind the rule in 1994, which the Court did. *Id.* In 1998, the President of Michigan Bar Association made reinstating MCLE a top priority. *Id.* After three years of inaction by the Supreme Court, the Bar Association rescinded its proposal. *Id.*

²⁷⁰ Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ., at 4 (Md. Nov. 14, 2022) [hereinafter *MCLE Workgroup Nov. 14, 2022 Meeting Minutes*]; *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 6.

²⁷¹ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 6.

Further, because of the ubiquity of such MCLE requirements, many Maryland attorneys are already familiar with navigating these mandates due to the licensing of those attorneys in jurisdictions requiring them to complete a threshold amount of CLE every reporting period.²⁷² Because several members of the Workgroup were also licensed in Virginia, frequent comparisons were made to that state's MCLE rule requiring licensed and practicing attorneys to complete 12 hours of CLE every year.²⁷³ Most of these attorneys spoke of the ease with which this threshold can be achieved, as well as the negligible administrative burden upon attorneys in reporting their CLE participation.²⁷⁴ Because MCLE rules often permit attorneys to fulfill their hours requirements through participating in MCLE activity sanctioned by another jurisdiction that also requires a minimum CLE quota, the thought is that Maryland attorneys already completing MCLE hours elsewhere could simply apply those hours to any new MCLE rule in Maryland.

Additionally because of the wide-scale growth of MCLE, and the often reciprocal accreditation among jurisdictions, a market for CLE programming exists with ample options for

²⁷² See, e.g., *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 6-7. Between February 2011 and November 2022, applicants to the Maryland bar reported prior bar admission from 54 of 55 United States jurisdictions, covering all 49 other states, as well as the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. *Md. SBLE Admissions Spreadsheet*, *supra*, note 175 (showing data from February 2011 through November 2022 breaking down applicants to the Maryland bar who noted their prior bar admission in another jurisdiction). The 5,283 applicants to the Maryland bar during this time period reported 8,979 bar admissions, underscoring that often an applicant might have prior admission to multiple other jurisdictions at the time of seeking licensure in Maryland. *Id.* The 10 jurisdictions which appeared most often were the District of Columbia (2301), New York (1302), Virginia (1018), Pennsylvania (660), New Jersey (521), Florida (374), California (373), Massachusetts (247), Illinois (203), and Texas (184). *Id.* Of these jurisdictions, only the District of Columbia and Massachusetts do not have MCLE requirements.

²⁷³ See Va. R CLE Reg. 102(a).

²⁷⁴ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 6-7.

attorneys to obtain CLE credit, thus easing the burdens of a MCLE requirement.²⁷⁵ Some Workgroup members pointed out that Maryland could use the experiences of these other MCLE jurisdictions to better craft any eventual Maryland rule, almost “crowd-sourcing” the issue to cultivate relevant regulations that keep the burden and cost of MCLE low while still serving the ultimate goal of increasing attorney competence and improving the profession.²⁷⁶ It was often noted that within both the Maryland Attorneys’ Rules for Attorney Conduct and the ABA Rules of Professional Responsibility attending CLE classes is advised as a way to maintain such the competency required to represent clients.²⁷⁷

3. *MCLE bolsters professional development*

Throughout Workgroup discussions ran the theme of MCLE’s benefit to aspects of professional development, both in terms of the development of individual practitioners, the development of bonds and connections among like professionals, and the development of the profession and the services it provides to the public. It was noted that, because MCLE aims to bolster skills related to practical representation of clients -- from better understanding and utilizing relevant law in advocacy, to enforcing concepts of professionalism, to better managing the business-end of a law practice, to better utilizing tools like technology -- an attorney who dedicates time to such MCLE instruction will provide better services to clients. This better representation

²⁷⁵ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 9.

²⁷⁶ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 14. “Forty-six other states that do CLE have figure out these things. . . 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 costs.” *Id.*

²⁷⁷ Md. Rule 19-301.1 cmt. 6; see generally *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 4-6.

helps promote the unique skills attorneys bring to clients' needs, which in turn aids in showing the value attorneys can provide in the face of competition from new consumerist legal products, like Legal Zoom.²⁷⁸

MCLE was also seen as a potential benefit to local bar associations, who already provide a considerable amount of CLE programming.²⁷⁹ The theory is that because bar associations offer CLE programming, often at low or no cost to dues-paying members, a CLE mandate will prompt more attorneys to join these associations as these attorneys quickly realize that their memberships provide them easy access CLE resources, and the memberships' costs pay for themselves since the attorney would otherwise spend a sum greater than the membership fee registering *a la carte* for each CLE seminar.²⁸⁰ The CLE programming currently offered by local bar associations, like the MBSA and the Bar Association of Baltimore City ("BABC") are built to accommodate attorneys' schedules and provide valuable discussion and instruction, such as brown bag lunches and lecture

²⁷⁸ *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 3. "LegalZoom.com Inc., [is] an online platform for connecting small business owners to legal services." Gerrit De Vynck, *LegalZoom Gains \$2 Billion Valuation in Funding Round*, BLOOMBERG NEWS (July 31, 2018, 8:00 A.M.), <https://www.bloomberg.com/news/articles/2018-07-31/legalzoom-gains-2-billion-valuation-in-latest-funding-round#xj4y7vzkg>. LegalZoom also offers other "do-it-yourself" legal services, such as estate planning, without the expense or need to personally contact and employ an attorney. *See* Paul Sullivan, *Making Wills Easier and Cheaper with Do-It-Yourself Options*, N.Y. TIMES, (Sept. 7, 2018), <https://www.nytimes.com/2018/09/07/your-money/online-wills.html>.

²⁷⁹ *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 6. "Anything that increases participation and that strengthens the bar [associations] and encourages participation and membership is a good thing." *Id.* at 12.

²⁸⁰ *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra*, note 261, at 7. One Workgroup member said that the MSBA has already begun to explore how it could expand its CLE offerings in anticipation of a CLE mandate to accommodate more attorney participation and a potentially growing membership. *Id.*

series.²⁸¹ Workgroup members cautioned, however, that a MCLE rule should work to accommodate programming already available so that events like these brown bag lunches are accredited as CLE compliant, with the concern voiced that once a mandate exists, attorneys will eschew activities they otherwise would have participated in for programming that suffices hours requirements, since it is unlikely attorneys would have time to participate in both MCLE accredited programming *and* unaccredited bar association sessions.²⁸²

Related to MCLE's potential benefit to organizations like bar associations, bringing lawyers together to participate in MCLE programming, particularly in the form of live, in-person programming, will bolster interactions between attorneys in venues less stressful or work-driven than offices, and less adversarial than courtrooms or negotiations. This would prove particularly beneficial to young lawyers -- as CLE provides a venue outside of the confines of work to develop relationships with more experienced attorneys -- who could network to cultivate new employment opportunities, mentoring relationships, and a more integrated presence into the legal community.²⁸³ Additionally, such programming and interaction with more experienced attorneys could help younger attorneys more quickly hone the skills they need to improve their practices, or

²⁸¹ *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 12. Many such offerings are accessible via online platforms like Zoom and may be watched on demand at a later date. *Id.* "Zoom is an online video platform, which has been used to facilitate remote hearings because some court hearings have not been able to be held in person due to the COVID-19 pandemic." *Tallant v. State*, 254 Md. App. 665, 688 n.17 (2022) (citing *Remote Hearing Toolkit*, MdCourts.gov, <https://mdcourts.gov/legalhelp/remotehearing> (last visited June 1, 2023)).

²⁸² *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 12.

²⁸³ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 241 at 5.

could expose them to new and better practice methods learned from more experienced colleagues.²⁸⁴

4. *MCLE aligns the Maryland attorneys with similar professionals*

Often cited by both Workgroup members, and by advocates of MCLE generally, is that attorneys stand apart from similar professions that do require extensive continuing education mandates. Similar to the practice of medicine, the practice of law depends on attorneys staying abreast of developments and changes in the industry so that they can provide clients services that account for the current state of the law and current best practices. Accordingly, because similar white collar professionals like doctors, engineers, real estate brokers, and architects all must comply with continuing education mandates to maintain licensure, the attorneys should hold themselves to a similar standard.²⁸⁵ Joining the ranks of these professions by requiring such an investment in education would bolster the legal industry’s perception among the public.²⁸⁶ “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.”²⁸⁷ As such, MCLE serves as a public declaration

²⁸⁴ “[The o]pportunity for CLE, I think, would be a great benefit to younger attorneys to get some of the necessary training and to sure up their knowledge, to share their practice skills, to sure up their ability to persuasively advocate. *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 15.

²⁸⁵ *See 2020 MSBA Professional Development Report*, *supra* note 110, at 13. The MSBA noted that certified public accountants must complete 80 hours of continuing education every four years, architects must complete 12 hours of continuing education every year, professional engineers must complete 16 hours of continuing education to renew their licenses, real estate professionals must complete 15 hours of continuing education annually, and polysomnographers (sleep technicians) must complete 20 hours of continuing education every two years. *Id.*

²⁸⁶ *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 4.

²⁸⁷ *See 2020 MSBA Professional Development Report*, *supra* note 110, at 7.

of commitments to competence and professionalism that “might go a long way to improving the image of the profession.”²⁸⁸ As one Workgroup member stated, a commitment to continuing legal education fosters a “culture of excellence.”²⁸⁹

B. Concerns Regarding MCLE and Reasons Why Maryland Should Not Adopt a CLE Mandate

1. A CLE mandate is not needed

A general concern from members of the Workgroup, and from critics of MCLE generally, is that a mandate is a “solution in search of a problem.”²⁹⁰ Workgroup members pointed out that a lot of Maryland attorneys already participate in ample CLE, and they derive great value from the CLE they decide is important enough to prioritize in their schedules, so there is no need to mandate further participation.²⁹¹ A recent report by the Maryland State Bar Association noted that 75

²⁸⁸ Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ., at 8 (Md. Jan. 4, 2023) [hereinafter *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*]. The Workgroup discussed how the unfavorable public perception of attorneys colored the origins of many attorney grievance cases, as such cases begin with complaints from clients, who likely enter the attorney-client relationship inherently skeptical of the attorney. As such, clients are more likely to file grievances. But if such attorney-client relationships began from a less skeptical basis, with the public believing attorneys inherently try to be professional and competent, then clients may be less likely to jump to filing grievances and instead give attorneys the benefit of the doubt during early misunderstandings. *Id.* at 8-9. “I think [MCLE is] a value statement . . . it really would pair seamlessly with the state purpose of attorney regulation.” *Id.* at 9. Further, MCLE may teach attorneys better skills to communicate with clients and navigate issues before they grow into attorney grievance complaints. *See id.*

²⁸⁹ *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 10.

²⁹⁰ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 10.

²⁹¹ *See MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 10-11.

percent of Maryland attorneys already participate in one to five CLE classes a year, and only 11 percent of Maryland attorneys do not engage in any CLE programming.²⁹²

As one Workgroup member pointed out, the issues that lead to most incidents of attorney grievance or misconduct are not because of a lack of understanding of competence or diligence that could be corrected through CLE training, but are instead structural issues within the professional reality of being a lawyer.²⁹³ Because attorneys often feel the need to take on as many clients as possible, and to work in excess of 50 or 60 hours per week to generate billings and provide services to those clients, then inevitably attorneys will make mistakes due to being overtired, overburdened, disorganized, or unable to maintain sufficient communications with clients.²⁹⁴ “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.”²⁹⁵

²⁹² *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 14. The MSBA’s Fall 2020 report noted that 75 percent of respondents to its CLE survey said they attend one to five CLE classes each year; 8 percent said they attend six or more CLE classes; and 11 percent said they do not engage in any CLE programming. *Id.* Additionally, 37 percent of survey respondents said they obtained some or all of the CLE they took from the MSBA. *Id.* The MSBA noted that it saw a “dramatic increase” in CLE consumed between March and August of 2020, a period of time that aligns with the emergence of the COVID-19 pandemic and widespread shutdowns, including that of the Judiciary. *Id.* at 15.

²⁹³ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 9.

²⁹⁴ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 10.

²⁹⁵ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 10.

2. “No data” -- no empirical evidence supports the argument that MCLE impacts attorney grievance or misconduct complaints

The same longstanding objection to CLE heard in past discussions of a mandate again frequently appeared in the Workgroup’s dialogue -- no evidence shows MCLE does what it claims to do.²⁹⁶ Some Workgroup members who were skeptical of a mandate admitted that they believed CLE made them better lawyers, but they did not believe a CLE mandate would inevitably lead to declines in attorney grievance or misconduct incidents.²⁹⁷ Akin to this “solution in search of a problem” sentiment, a frequent criticism of MCLE is that no data -- such as comparisons of attorney grievance or misconduct incidents in jurisdictions with MCLE compared to those without it, or comparisons of such incidents in a jurisdiction before and after the implementation of a CLE requirement -- shows that a mandate supports the goals for which such a requirement is usually lauded.²⁹⁸ Therefore, if the reasoning behind a CLE mandate is to improve professionalism and

²⁹⁶ See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 9; *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra*, at 11-12; *see, e.g.*, discussion Section III.B.2 *infra*.

²⁹⁷ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 11-12. “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 of a mandate.” *Id.* at 11. “The absence of data is something that resonates with me . . . We’re doing this because we think it’s going to be a good idea,” in an attempt to stress and impart ethical and competent practice, “but is there data that that actually does occur? And I don’t think there is.” *Id.* at 12.

²⁹⁸ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 12. Workgroup members cited articles investigating this lack of data, noting that even articles asserting data supporting MCLE’s effect on misconduct are unconvincing as the effect seems de minimis; further, authors of such papers often may have vested interests in the growth of the CLE industry. *Id.*; *see* David D. Schein, *Mandatory Continuing Legal Education: Productive or Just PR?*, 33 *GEO. J. LEGAL ETHICS* 301 (Spring 2020); Chris Ziegler & Justin Kuhn, *Is MCLE a Good Thing? An Inquiry into MCLE and Attorney Discipline*, *CLEREG*, https://www.clereg.org/assets/pdf/Is_MCLE_A_Good_Thing.pdf [permalink: <https://perma.cc/Q9BH-SVWZ>] (last visited March 01, 2023).

competence, with the frequency of misconduct and attorney grievance complaints often cited to add urgency to those concerns, then the failure of MCLE proponents to provide definitive, empirical data showing MCLE's effect on these issues undercuts the credibility that such a mandate is urgent.²⁹⁹ In the face of this absence of convincing data, Workgroup members shared concerns that much of the current offerings of CLE programming lacks the “pedagogical component that would convey the kind of information we would need to really solve the problems of grievances and attorney malpractice.”³⁰⁰

3. *Cost concerns and the disproportionate burden of MCLE on solo practitioners, small firms, and young attorneys*

Although an MCLE requirement would apply uniformly to all licensed Maryland attorneys actively practicing law, Workgroup members routinely raised concerns that the burden of meeting such a new requirement will be greater for solo practitioners, small firms, and young lawyers.³⁰¹ At the heart of such concerns is the realization that attorneys with access to fewer resources will have more difficulty allocating funds and time towards completing meaningful MCLE work. Cost concerns were two-fold: (1) the cost of attending CLE training would occupy a larger percentage of the budget for solos, small firms, and young attorneys, than their better-resourced counterparts; and (2) solos and smalls in particular have little slack in their schedules to accommodate CLE

²⁹⁹ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 11. In its 1992 MacCrate Report, the ABA noted that “there is little evidence regarding mandatory CLE’s effect on competence Efforts to compare attorneys in mandatory and non-mandatory states have not produced any useful result.” *The MacCrate Report*, *supra* note 22, at 311. Arden House III recommended the ABA study MCLE to determine “whether it makes a significant contribution to lawyer competence,” but this recommendation was not followed. *Id.*

³⁰⁰ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 11.

³⁰¹ See, e.g., *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 10.

training and fewer colleagues working with or for them to absorb the lost work hours spent on CLE. As a result, every hour spent on MCLE is an hour not spent otherwise generating revenue for the firm.³⁰² These disproportionate burdens are more frustrating when Workgroup members are doubtful that the time spent on MCLE is productive at all, let alone if it is productive enough to justify such a resource reallocation.

These same concerns are less pressing for large firms or institutional employers like the government who have ample resources to help the attorneys they employ accomplish their CLE mandate either by subsidizing the cost of attendance or by producing in-house programming free to employees. Moreover, their larger staffs can better absorb the temporary loss of an attorney participating in CLE programming, as the firm can continue to work and generate revenue while a few attorneys participate in CLE.³⁰³ Additionally, larger employers have the resources to produce in-house training that can satisfy CLE requirements. This again widens resource-gap between small and solo firms and these larger organizations, as in-house programming can be provided at little comparative cost to the attorneys of larger employers and does not require the additional expenses associated with travel. The inverse is true for smalls and solos, who face the burden of both the price of registration for in-person CLE, as well as the cost of travel, on top of the lost work hours.³⁰⁴ A member of the Workgroup hypothesized a potential arms race developing as large employers use their resources to build better and better MCLE programs, using this as a

³⁰² See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 15. “The cost is not lost on me . . . that those who are least able and capable of absorbing the cost are the ones who will be hit the hardest.”

³⁰³ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 13.

³⁰⁴ See *MCLE Workgroup Meeting Minutes Jan. 24, 2023*, *supra* note 263, at 13.

selling point to attract top talent.³⁰⁵ While this could be beneficial for nonprofit, government, and public interest organizations seeking to compete in a field where they tend to offer lower salaries than their private counterparts, it could continue to penalize small employers who do not have the scale and resources to create in-house programming.

Similar cost and time concerns are present for young lawyers facing an MCLE requirement. These attorneys often carry tremendous debt following law school, have not gravitated to higher positions of employment that produce greater compensation, and their time may be more difficult to manage as they have less control of their own schedules and are often worried about making hours minimums at their given firms.³⁰⁶ “That’s a real concern I have, that we’re going to put that financial burden on young lawyers who may not really be able to afford it . . . and I don’t know how we’re going to address that.”³⁰⁷ Many Workgroup members noted that often an attorney’s ability to access CLE opportunities and complete hours is tied to that attorney’s station in life, with less-established attorneys having more difficulty participating in any CLE, let alone programming with sufficient value to be justifiable.³⁰⁸

³⁰⁵ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 16.

³⁰⁶ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 13.

³⁰⁷ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 13.

³⁰⁸ *See MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 11. One Workgroup member shared her experience working through different stages of her career and life in another jurisdiction with a CLE mandate. She shared that while she worked at a large firm early in her career, the firm had the resources to cover the costs of attending CLE courses, both the admittance fee and external costs related to travel. Because the firm paid for the CLE, the firm ensured the classes she took were practice-relevant. The firm was also better positioned to absorb her stepping away from firm-related work to attend CLE, as a large firm has multiple attorneys working on multiple cases and clients thus bringing in varied streams of revenue. This was different when she became a solo practitioner and a working parent. At that stage, finding time to take any CLE was a challenge, and so she would routinely sign up for what is available, as opposed to what might be most practice-relevant.

4. “Mission creep” -- vested interests and apprehension about an MCLE requirement expanding or becoming more rigorous over time

A concern among some Workgroup members was that any recommendation of MCLE, no matter how measured, achievable, or limited it began, would inevitably grow over time.³⁰⁹ The theory is that once a rule has been implemented, it will only grow more onerous and complex with time, as the General Assembly or Standing Committee continues to add more stringent requirements on what counts as CLE hours, activities, or courses that suffice the mandate, either in response to better addressing the goals of improving competency and professionalism, or in seeing CLE as a means to address any number of problems.³¹⁰ Another member of the Workgroup characterized this concern as “mission creep,” as the MCLE rules grow beyond their original goal.³¹¹

Running parallel to this worry were concerns about the growth of the bureaucracy and industry supporting MCLE in Maryland.³¹² If accomplishing a set number of CLE hours becomes

³⁰⁹ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 11.

³¹⁰ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 11. “We’re going to come up with new rules and new rules, and new rules.” *Id.* A Workgroup member framed his concern by noting that “we are on the precipice” of introducing a significant new burden upon attorneys, and even if our proposal starts with an “easy rule,” “things are going to become tougher.” *Id.* at 11.

³¹¹ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 11. “Mission creep” refers to “the gradual broadening of the original objectives of a mission or organization.” *Mission Creep*, MERRIAM-WEBSTER.COM DICTIONARY, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/mission%20creep> (last visited Mar. 8, 2023, 12:32 P.M.)

³¹² See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 9. Concerns about the growth and influence of an expanding CLE industry were compared to the industry that has grown around bar exam preparation, and how such businesses have a vested interest in maintaining the bar exam, despite a current push to eradicate or modify bar exams. See Joe Patrice, *Mixed Feelings Over Proposal to End Bar Exam*, ABOVE THE LAW (Mar. 17, 2021, 12:16 P.M.), <https://abovethelaw.com/2021/03/mixed-feelings-over-proposal-to-end-bar-exam/>; Sam

a requirement to practice, the need for CLE programming and the consumer-base for such programming, will result in a growing CLE industry. This industry would have a vested interest in seeing CLE requirements continue to grow in the hopes this would also feed more resources back into these businesses. This feedback loop creates a strong incentive for industry players to advocate and lobby for more MCLE, or to protect the market shares of individual companies in the CLE market, potentially at the expense of the original goals of the CLE requirement or of the attorneys subject to it.³¹³

This concern is the inverse of another voiced by the Workgroup, that an MCLE requirement causing a sudden influx of attorneys needing access to more CLE programming could overwhelm an industry that does not have the capacity to handle the need.³¹⁴ Concern developed that, without sufficient providers and options available, attorneys will have to just take whatever CLE they can find that fits into their schedules in order to meet their hours requirements. This would undermine the chief goal of MCLE -- that participating in such educational courses will improve legal competence *germane to an attorney's practice*. There was also a fear that within this vacuum of

Skolnick, *Over 1,000 New Lawyers Get Licenses Without Taking Bar Exam*, BLOOMBERG LAW (Jan. 4, 2021 6:50 A.M.) <https://news.bloomberglaw.com/business-and-practice/over-1-000-new-lawYERS-get-licenses-without-taking-bar-exam>.

³¹³ See Rima Sirota, *Making CLE Voluntary and Pro Bono Mandatory: A Law Faculty Test Case*, 78 LA. L. REV. 547, 548 (2018) (“The primary rationale for mandatory CLE is to help ensure competent client representation, but the mandatory system fails to achieve that goal. Instead, mandatory CLE has become a self-perpetuating industry that earns hundreds of millions of tuition dollars for course purveyors but demonstrates little, if any, connection to better serving the public.”).

³¹⁴ Meeting Minutes, Workgroup to Study Mandatory Continuing Leg. Educ., at 19 (Md. Feb. 13, 2023) [hereinafter *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*] (“Do we have capacity out there to provide enough CLE hours for everyone?”).

classes and providers, “shady actors” could fill the void before oversight and accreditation of an MCLE system is fully operational.³¹⁵

5. *Upsetting the status quo and professional pushback*

A general concern, heard occasionally within the Workgroup’s discussions and found routinely within literature analyzing CLE mandates, is the frequent pushback and reticence to change exhibited by many attorneys. One Workgroup member noted that, despite his personal support of MCLE, any mention of his involvement with the Workgroup and of MCLE to his colleagues was met with an almost universal response of opposition.³¹⁶ “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.”³¹⁷

The Workgroup operated within the shadow of prior attempts to implement CLE mandates in Maryland, as materials reviewed included draft MCLE rules from prior task forces and select committees assigned to investigate and cultivate a potential MCLE requirement, including a 1995 MCLE rule proposed by the MSBA, and prior reports examining MCLE as one tool towards increasing “professionalism” among attorneys.³¹⁸ Additionally, the Workgroup noted that similar efforts to implement MCLE in Washington, D.C. failed.³¹⁹ Upon inquiry, the Workgroup noted

³¹⁵ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 18-19.

³¹⁶ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 4.

³¹⁷ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 5.

³¹⁸ See Section II.B-D (discussing the MSBA’s 1995 Proposed Rule on MCLE and the Standing Committee on Rules of Practice and Procedure’s review of that rule, and the Maryland Task Force of Professionalism).

³¹⁹ See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 10; *Rocio*, *supra* note 96 (discussing D.C.’s failed attempts to implement MCLE).

that Michigan implemented an MCLE requirement, only to repeal the measure after it was “universally detested,” and considered a “a ‘disaster.’”³²⁰

C. The Workgroup Recommended Adopting MCLE for Maryland, Depending on the Details of the Mandate Developed

In an effort to close the debate regarding the arguments in favor of and opposed to a CLE mandate and instead to shift focus to the potential provisions of a potential CLE rule should the Supreme Court of Maryland decide to go forward with mandating CLE for all licensed attorneys in the state, the Workgroup took a vote about whether to recommend to that Court that Maryland should adopt MCLE.³²¹ Using interactive polling features provided by the Zoom platform upon which Workgroup meetings were held, members were asked, “Should our Workgroup recommend to the Supreme Court of Maryland that Maryland require continuing legal education for all attorneys licensed by the State?”³²² The Workgroup members were presented with the following options: “(A) Yes; (B) No; (C) Yes, *depending on the details of the recommendation.*”³²³

The results of the poll produced eight “Yes” votes, three “No” votes, and 11 votes for “Yes, depending on the details of the recommendation.” Thus, a supermajority of Workgroup members were in favor of pursuing MCLE for all licensed and practicing Maryland attorneys, but a majority of that supermajority conditioned their recommendations on the provisions of the MCLE mandate put forth. Therefore, in subsequent meetings, the Workgroup moved on to working on those details

³²⁰ See McLoughlin, *supra* note 268; see also *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 6.

³²¹ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 18-20.

³²² *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 18.

³²³ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 18.

of such a recommendation, with the understanding that the Workgroup appeared poised to cultivate a rule upon which they would feel comfortable recommending Maryland adopt MLCE.

Workgroup members who conditionally approved the MCLE recommendation noted that their chief concerns about implementing such a rule involved: how burdensome the rule would be for attorneys to adhere to; how flexible the mandate would be in determining which activities would count for “CLE hours;” how low the hours threshold would be while still achieving its goal of increasing participation in CLE; and how difficult the reporting requirements might be.³²⁴ The Workgroup proceeded to address these issues, in turn, as it dove into the second issue of its mandate.

IV. WORKGROUP QUESTION 2 - “WHAT SHOULD AN MCLE RULE FOR MARYLAND LOOK LIKE?” – WORKGROUP RECOMMENDATIONS REGARDING THE PROVISIONS OF A POTENTIAL CLE MANDATE IN MARYLAND

The Workgroup proceeded to address how best to construct an MCLE rule in Maryland as an independent inquiry from whether such a rule should be adopted. Notwithstanding this intention, because the Workgroup’s first recommendation was for Maryland to adopt MCLE, so long as a suitable rule was crafted, debate regarding such provisions was bled into most Workgroup dialogues. Workgroup members knew that crafting an optimal rule would largely govern whether a full-throated endorsement of MCLE could occur.

The Workgroup urges the Supreme Court and the Standing Committee, when considering adopting a CLE mandate in Maryland, to aim for immediate implementation rather than a provisional period to start, but for a lenient, less proscriptive approach as to what types of activities may count for CLE credit and how relevant to an attorney’s practice area a particular CLE course

³²⁴ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes, supra* note 263, at 4.

must be. Regarding specific provisions a mandate, the Workgroup ultimately concluded that an ideal MCLE rule for Maryland should: (1) require 12 hours of CLE each year; (2) with attorneys reporting their CLE compliance each year; and (3) during a reporting period that runs from either (i) January 1 to December 31 of each calendar year, or (ii) in alignment with other attorney reporting requirements. The mandate should require attorneys to spend at least one-credit each on courses related to (i) ethics and professional responsibility; (ii) diversity, equity, and inclusion, and (iii) mental health and substance abuse. Lastly, all attorneys practicing in Maryland would need to comply with such a rule, with exceptions only for (i) those registered as “inactive” with the Maryland bar, (iii) judges, and (iv) newly-admitted attorneys during the reporting period in which they were admitted.

A. Immediate Implementation vs. Incremental/Provisional Approach

During conversations regarding both specific provisions of the mandate, and whether to implement MCLE or not, some Workgroup members proposed taking a provisional approach in which the mandate and all its requirements would not be enforced immediately, but an “adjustment period” would exist for a brief time to allow both attorneys and the state’s regulatory apparatus to adapt to such a stark change.³²⁵ This approach was compared to how Maryland has attempted to implement a pro bono hours requirement that has yet to become mandatory but remains aspirational, as attorneys currently must report pro bono hours completed but do not need to meet a minimum threshold.³²⁶ Such a similar approach to MCLE would afford Maryland a period of

³²⁵ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 4-5, 7.

³²⁶ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 4, 7. “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). Attorneys must report their

time to collect data and assess how attorneys spend their CLE hours and what issues often arise, and then use that information to better craft the eventual mandatory provision.³²⁷

Similarly, noting a potential halfway measure to a fully probationary approach, one Workgroup member pointed to Alaska’s MCLE rule which *requires* attorneys to complete at least three hours of CLE on certain “qualifying educational topics,” but this rule proceeds to *recommend* attorneys complete an additional nine “Voluntary Continuing Legal Education” hours.³²⁸ These suggestions received considerable pushback. Workgroup members argued that anything short of an actual mandate or requirement would likely lead to attorneys not engaging in CLE any differently than they had in the past, let alone at levels that would advance the goals of a CLE mandate.³²⁹ “If we are going to require mandatory CLE, *it ought to be mandatory.*”³³⁰ Additionally, Maryland’s pro bono rule became effective July 1, 2016, yet it remains only aspiration and has yet to grow into a true mandate of such public service.³³¹

pro bono hours yearly through the the Attorney Information System (“AIS”) online. Md. Rule 19-503(b).

³²⁷ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 4-5, 7. “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.” *Id.* at 5.

³²⁸ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 8; Alaska Bar Rule 65.

³²⁹ *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, at 8. As one Workgroup member surmised, if a provisionary or aspiration rule suggestions 10 hours of CLE but requires only least three, you’ll get at most the bare minimum. People will do the lowest they have to. *Id.*

³³⁰ *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, at 8.

³³¹ See Md. Rule 19-306.1 (showing rule adopted June 6, 2016 and became effective July 1, 2016).

B. Minimum Hours Requirement – 12 Hours Per Annum

Because the minimum-hours' threshold largely shapes the burden a CLE requirement imposes on attorneys, and because establishing the hours required provides a framework for other stipulations within a CLE rule, the Workgroup focused considerable time discussing what the minimum-hours' threshold should be. This discussion often alluded to the requirements of other states, particularly states outside of Maryland where Workgroup members also enjoyed bar admission.³³² In looking to these other states, the Workgroup discussed annual CLE hours requirements in excess of 15 hours per year, before eventually focusing on 12 hours per year as the most appropriate figure.³³³ A vote at the conclusion of the February 13, 2023 Workgroup meeting revealed a near-unanimous approval of a 12 hour per year threshold.³³⁴

Due to Virginia's close proximity to Maryland resulting in many attorneys being licensed and practicing in both jurisdictions, Workgroup members frequently drew from their experiences adhering to Virginia's 12 hours per year MCLE rule.³³⁵ These members shared that the 12-hour

³³² See, e.g., *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, supra note 288, at 11 (discussing how the Maryland Office of the Public Defender's ("OPD") training program requires 12 hours of CLE for staff attorneys and 14 hours for supervisors, and, in so doing, borrows from Georgia's CLE rule).

³³³ The Workgroup looked at both other states' MCLE rules, as well as the 2017 proposed rule from the American Bar Association in which 15 CLE hours per year is the minimum. See *MCLE Workgroup Nov. 14, 2022 Meeting Minutes*, supra note 270, at 4; *2017 ABA Model Rule for MCLE & Report*, supra note 36, Rule at 5 § 3(A). The general consensus was that 15 hours per year felt too high and complicated to track, compared to the one hour per month set-up of a 12 hour per year rule. See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, supra note 314, at 11. One Workgroup member commented that the jump from requiring zero CLE hours currently, to suddenly mandating at least 15 such hours, "seems extreme." *MCLE Workgroup Nov. 14, 2022 Meeting Minutes*, supra note 270, at 6.

³³⁴ *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, supra note 314, at 12.

³³⁵ 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

requirement was easy to comply with, working out to roughly one CLE program a month over the course of a year, which can be accomplished within “a lunch hour per month,” particularly through the increased availability of online CLE programming.³³⁶

C. Length of Reporting Period - 12 months, “Annual Reporting”

Independent of the yearly hours’ requirement, the group considered how the length of a reporting period would affect the completion of such hours and the administrative burdens on both practitioners and the state in reporting required CLE participation. While 12 hours of CLE each year was the goal, this could be accomplished by requiring attorneys to report their 12-hour mark each year, or reporting 24 hours every two years, 36 every three, and so on. As such, the Workgroup categorized and discussed reporting rules as “single-year reporting,” compared to “multi-year reporting.”

Single-year reporting, in which attorneys would be responsible for meeting their required CLE benchmark each year and reporting to the State the hours completed annually, appeared to most align with the goals of a CLE mandate, in that it would ensure attorneys “stay current” and better their legal skills and acumen through training each year.³³⁷ Single-year reporting ensures

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.”); *see generally* *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 11 (discussing how aligning Maryland’s rule with Virginia’s, where many Maryland lawyers are also barred, makes the adjustment to a new Maryland rule easier as attorneys simply continue to comply as they had been to the Virginia rule).

³³⁶ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 6. One member commented that this one hour per month requirement “may seem like a burden to those who have never had to do mandatory CLE, but it sounds like most of the folks here are doing CLE anyway.” *Id.* Another member noted that the 12-hour mark can be met through “one hour per month,” or through one three-hour course per fiscal quarter. *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 11.

³³⁷ *See MCLE Workgroup Nov. 14, 2022 Meeting Minutes*, *supra* note 270, at 4.

minimum CLE reporting each year, rather than the potential for attorneys to take advantage of a longer reporting period, procrastinate and not attend CLE for more than a year, then attempt to cram in all necessary CLE hours in a rush before the end of a two or three year deadline.³³⁸ Such a result both undercuts the goals of a CLE requirement and lends itself to issues with adherence as attorneys fail to accomplish 24 or 36 CLE hours in a short burst.³³⁹

In terms of administrative burden, for attorneys at least, single-year reporting aligns with Maryland's other yearly reporting requirements, such as the requirement to report pro bono hours or to pay into the Client Protection Fund each year.³⁴⁰ Further, reporting CLE yearly would lead to greater compliance if attorneys could report such CLE coursework through the Attorney Information Systems ("AIS") website, when this other annual reporting occurs.³⁴¹ Addressing a

³³⁸ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 14.

³³⁹ See *MCLE Workgroup Nov. 14, 2022 Meeting Minutes*, *supra* note 270, at 4 (discussing how a single-year reporting period serves the goal of impressing upon attorneys the need to stay current by completing coursework each year).

³⁴⁰ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 13. Maryland does not require attorneys to complete a minimum number of pro bono hours each year, but Maryland does require attorneys to report the pro bono hours they do complete each year. See Md. Rule 19-503(b). Maryland does require attorneys annually contribute to the Attorney Protection Fund. See BOP § 10-301; text note 9, *supra*.

³⁴¹ See Md. Rule 19-801(b)(1) ("AIS is an electronic database maintained by the Judicial Information Systems, a unit within the Administrative Office of the Courts, that (A) centralizes certain information regarding attorneys collected by the constituent agencies pursuant to other Rules or statutes, and (B) provides a single portal for attorneys to update required information, communicate with the constituent agencies on matters regarding their status, file certain mandated reports, and pay certain mandated fees.").

concern routinely expressed by the Workgroup, annual reporting was thought the best means to combat the natural inclination of many attorneys to procrastinate.³⁴²

The greatest benefit of a multi-year reporting period is the increased flexibility afforded attorneys in completing their CLE requirements.³⁴³ This benefit was countered by a feeling from the Workgroup that multi-year reporting creates an uneven strange “ebb and flow” to CLE participation, rather than a more balanced participation produced by yearly reporting.³⁴⁴

1. *Carry-over hours*

With a CLE mandate setting a minimum of necessary hours each reporting period, most jurisdictions provide the ability for attorneys to “carry over” hours from one reporting period to the next.³⁴⁵ This both incentivizes attorneys to take as much CLE as they can, while providing flexibility so that if schedules get busy attorneys can rely on such excess hours to meet the CLE

³⁴² See, e.g., *MCLE Workgroup Nov. 14, 2022 Meeting Minutes*, *supra* note 270, at 4. In discussing such problems with procrastination and attorneys adhering to CLE requirements, a Workgroup member with experience in the OPD’s training said that the problems apparent with compliance most often appear with the attorneys who generally have such problems of meeting deadlines, staying organized, and being on top of their work. See *MCLE Workgroup Nov. Jan. 4, 2023 Meeting Minutes*, 16, 17.

³⁴³ See *MCLE Workgroup Nov. 14, 2022 Meeting Minutes*, *supra* note 270, at 5. The MSBA recommended a two-year reporting period, largely to provide such additional flexibility. See *1995 MSBA Report on MCLE*, *supra* note 111, at 4. The ABA reached a similar conclusion, advising in its model rule a two- or three-year reporting period for increased flexibility, though the ABA acknowledged such a timeline also lends itself to more procrastination and less incentive to regularly engage with CLE. *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Rule at § 3 cmt. 2, Report at 6.

³⁴⁴ See *MCLE Workgroup Nov. 14, 2022 Meeting Minutes*, *supra* note 270, at 5.

³⁴⁵ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 7; e.g., Pa. St. CLE Rule 108(d); see also 204 Pa. Code § 5(c) (“A lawyer may carry forward a balance of credit hours in excess of the current annual CLE requirement for the next two (2) succeeding years.”); N.J. R. CLE Reg. 201:3 (“No more than a total of [12] credit hours may be carried over to a subsequent compliance period.”).

requirement in a subsequent reporting period.³⁴⁶ Such carry-over hours are often capped at a certain percentage of the overall hours requirement.³⁴⁷ Additionally, they may or may not apply to subject-specific requirements within the MCLE rule.³⁴⁸

The Workgroup agreed that some amount of carry-over hours should be permitted, but it debated exactly how much and whether this should apply to subject-specific requirements.³⁴⁹ Some members felt that carry over should be capped at 50 percent of the overall hours requirement, thereby letting attorneys carry over six, or even nine, excess hours to count towards the 12 hours required in a subsequent reporting period.³⁵⁰ Similarly, some thought that subject-specific requirements should be met each reporting period, thus any excess hours in those subjects could apply to the next reporting period's overall 12-hour requirement, but not towards the any subject specific requirements.³⁵¹

³⁴⁶ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 7, 12-13.

³⁴⁷ By permitting carrying over of up to 12 CLE credits, New Jersey permits an attorney to suffice up to half of his or her 24-hour MCLE requirement with carry over hours. See N.J. Ct. R. 1:42-1; N.J. R. CLE Reg. 201:3;

³⁴⁸ See, e.g., Pa. St. CLE Rule 108 (d) (“No more than two (2) times the current annual CLE requirement may be carried forward into the two (2) succeeding years. CLE credits for ethics, professionalism or substance abuse may be applied as provided in Section 3(d). Distance Learning credits may be applied as provided in Section 13(n). Pro bono credits may be applied as provided in Section 13(o).”)

³⁴⁹ See generally *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 10-14.

³⁵⁰ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 11-12.

³⁵¹ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 11-12; *MCLE Workgroup June 12, 2023 Meeting Minutes*, *supra* note 4, at 6-7; see also discussion, Section V.E.1.iv *infra* (discussing “1-1-1 plan” regarding requiring one credit of the 12 required be spent on each of (1) ethics/professionalism, (2) attorney wellness, and (3) diversity, equity and inclusion training).

Harkening back to previous debates about the length of reporting periods and the allocation of a percentage of overall CLE hours on certain required subjects, eventually a compromise arose. A Workgroup member noted that if attorneys could carry over a full excess of 12 hours, including carrying over excess hours on subject-specific requirements that count towards the next reporting periods subject-specific requirements, in effect a de facto two-year reporting period exists.³⁵² This would provide attorneys greater flexibility to complete CLE hours when time was most available, while maintaining the more streamlined administrative goals of a consistent, single-year reporting period.³⁵³

Further, permitting carry over of subject-specific requirements would not undermine the overall goal of a CLE mandate, as attorneys could only carry over hours from one reporting period to the next, thus an attorney would go no more than one year before having to engage with CLE on those topics.³⁵⁴ Such a plan would also permit attorneys to take longer, more intensive classes in the subject-specific requirements of the “1-1-1 plan” without worrying that a certain amount of those excess hours would effectively be wasted by not applying to either the current reporting period or a subsequent period.³⁵⁵ I like people taking the class every year . . . but taking a longer

³⁵² See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 13. See discussion Section IV.F.1 *infra*. (discussing subject-specific requirements and the “1-1-1 plan”).

³⁵³ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 13. “I don’t have a problem with full carry over, as long as the required subject matter is represented in the carry-over hours.” *Id.* at 14.

³⁵⁴ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 13-14.

³⁵⁵ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 13-14. “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.” *Id.* at 14.

class may be more beneficial.”³⁵⁶ Allowing carry over of all hours – including subject-specific requirements – may also ease the administrative burden, as attorneys would not need to track which hours apply to which portion of the MCLE rule and thus which can or cannot apply to the MCLE threshold of the subsequent reporting period.³⁵⁷

2. *Reporting mechanisms*

Wrapped within this discussion of reporting periods is a brief discussion of reporting mechanisms or procedures. Though the Workgroup generally avoided crafting the administrative format of an MCLE regime, it discussed the self-reporting of CLE hours as the best means for informing the State regulators of individual attorney compliance. The MSBA’s 1995 Proposed Rule utilized self-attested affidavits for such reporting, with attorneys filing such affidavits with the State.³⁵⁸ Some Workgroup members spoke of attending CLE conferences where forms -- compliant with each state’s CLE requirements -- had been provided by the program’s organizers for attorneys who attended to swiftly fill out and submit to their respective jurisdictions.³⁵⁹ Another Workgroup member explained how her organization uses Google Suite’s shared software

³⁵⁶ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 14.

³⁵⁷ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 14; *MCLE Workgroup June. 12, 2023 Meeting Minutes*, *supra* note 4, at 6-7

³⁵⁸ See *1995 MSBA Report on MCLE*, *supra* note 111, at 9 (providing such reporting requirements in Rule 2 of the proposed “Rules of the Commission on Continuing Legal Education”).

³⁵⁹ See *MCLE Workgroup Nov. 14, 2022 Meeting Minutes*, *supra* note 270, at 7. Discussion of such forms led to further discussion of the pre-approval of classes or programming, and the need for uniformity both in such approval requirements and in the drafting of such verification forms. *See id.*

platform to track in-house attorneys' completion of required training, including CLE.³⁶⁰ With the Workgroup concluding that a single-year reporting period was optimal, it quickly became apparent that reporting through the Attorney Information System, where other such annual reporting occurs, would be the ideal method.³⁶¹ The State could proceed to randomly audit such CLE reporting to ensure compliance.³⁶²

One unavoidable issue regarding reporting and verification is the potential administrative headaches it may cause for attorneys who are barred in multiple jurisdictions and who may be required to adhere to the varied nuances of different CLE rules in those respective jurisdictions.³⁶³ Documentation required in one state may be different than documentation required in another, or reporting dates may vary, or methods of reporting may be different. This is in addition to potential

³⁶⁰ See *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 12. The organization uses G-Suite to collect all forms from CLE programs taken by in-house attorneys -- in so doing aiding in state-level compliance as attorneys can use the G-Suite platform to store and share any documentation needed by respective jurisdictions in which they are barred and must meet a CLE requirement -- and to track hours, allowing for both attorneys and supervisors to check on compliance. *Id.* "G-Suite" or "Google Suite" is a collaborative software platform created by Google allowing groups to access and collaborate on shared materials. See *Google Suite Basic Edition*, GOOGLE WORKSPACE ADMIN HELP, <https://support.google.com/a/answer/6047848?hl=en> (last visited May 5, 2023).

³⁶¹ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 13-14; see also Md. Rule 19-801(b)(1) - "AIS is an electronic database maintained by the Judicial Information Systems, a unit within the Administrative Office of the Courts, that (A) centralizes certain information regarding attorneys collected by the constituent agencies pursuant to other Rules or statutes, and (B) provides a single portal for attorneys to update required information, communicate with the constituent agencies on matters regarding their status, file certain mandated reports, and pay certain mandated fees."

³⁶² See *1995 MSBA Report on MCLE*, *supra* note 111, at 5 ("The [MCLE] Commission will have the power to audit randomly to verify compliance.").

³⁶³ See generally Section II.E (discussing MCLE provisions from the five most frequent jurisdictions where attorneys seeking admission to practice in Maryland have previously been admitted to practice).

conflicts with some jurisdictions counting certain courses or activities towards a CLE mandate while others do not. Because CLE mandates have been adopted piecemeal across the country, and because Maryland would be joining the ranks of these MCLE states late (after 46 other states already created such mandates), rules are not uniform.³⁶⁴ As such, Maryland should be cognizant of these potential incongruencies and strive for reciprocity wherever possible.

D. What Activities Should Count for CLE Credit?

1. Strict rules vs. lenient approach

In assessing what activities may or may not count for CLE hours, the Workgroup debated the pitfalls and benefits of both a proscriptive approach, in which the rule would strictly limit what activities suffice the mandate, and a lenient approach, in which a mandate applies a more flexible and inclusive assessment of what activities may count for CLE hours. Concerns were voiced that if the standards are too lenient, it may dilute the purpose of the CLE mandate, as attorneys can take whatever class or random activity they want that simply checks a box and may not provide much educational or practical value.³⁶⁵ This concern was more acute with topics like “self-study,” where a more lenient approach could yield attorneys claiming that activities they otherwise perform as part of their normal work responsibilities qualify as “self-study.”³⁶⁶

³⁶⁴ See 2017 ABA Model Rule for MCLE & Report, *supra* note 36, Report at 3 (“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.”).

³⁶⁵ See MCLE Workgroup Jan. 24, 2023 Meeting Minutes, *supra* note 263, at 9.

³⁶⁶ See MCLE Workgroup Feb. 13, 2023 Meeting Minutes, *supra* note 314, at 10. Illustrating this concern, a Workgroup member gave the example of an attorney claiming, “I took a deposition. I learned a lot,” and attempting to get CLE credit for it. *Id.*

Many in the Workgroup saw a great value in a more lenient approach. One pragmatic reason for such leniency, is that it would be easier and less disruptive to hone and tighten MCLE requirements as the mandate is introduced and the legal community adjusts to it.³⁶⁷ Some Workgroup members directly tied the expected recalcitrance of the Maryland legal community to such a mandate as reason alone for a lenient approach, even conditioning their support of such a mandate on taking such a lenient, inclusive attitude towards what may count for CLE hours.³⁶⁸

The ultimate conclusion of the Workgroup was to embrace a more flexible approach to allowing hours completion, as a means to both soften the blow of the sudden change of the mandate, and as a way to ameliorate some of the concerns MCLE disproportionately creates for particular groups of attorneys.³⁶⁹ Because the burden of CLE will be felt disproportionately on solo practitioners and small firms, providing those attorneys greater flexibility in the activities that might count towards CLE hours will lessen the burden on these groups.³⁷⁰

³⁶⁷ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 4. This is particularly true if efforts are made to collect data on how Maryland attorneys achieve their CLE hours, such that this data could be used to better understand and adjust the MCLE rule as needed. See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 4.

³⁶⁸ *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 5. “I think we just have to be as flexible as possible and make it as convenient as possible and not be too onerous.” *Id.* at 6-7. Specifically, any future rule should permit CLE hours be accomplished by online learning, self-study, and credit for teaching. *Id.* One member expressly stated they did not “want to be hall monitor.” *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 6.

³⁶⁹ *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 9. “My view is to be as inclusive as possible . . . We want to encourage participation.” *Id.* at 10.

³⁷⁰ See, e.g., *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 11; *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 13.

2. *Participation in CLE coursework*

Important to the Workgroup was making compliance with the CLE mandate, at least initially, simple and easy. This could be achieved through providing greater flexibility in how attorneys participate in CLE programming. Traditionally, CLE would involve attending in-person classes, either held individually or as part of larger legal conferences where attorneys can attend multiple sessions within a single day or stretch of days. Such in-person participation, particularly within larger conferences, afforded the ability to both attend several sessions in a condensed time frame, and to enjoy the benefits of interacting with colleagues and fellow practitioners. Nevertheless, such in-person attendance also increases the cost of participation, as attorneys must afford both the price of the CLE programming and the requisite ancillary costs of travel. These cost concerns particularly disadvantage new attorneys, solo practitioners, and those who work in nonprofit or low-income legal services where compensation often skews to the lower end of the spectrum.

Much CLE programming has migrated to online and on demand offerings. Members of the Workgroup who worked closely with the MSBA relayed that the MSBA saw a substantial jump in attendance and participation in its online CLE offerings through the COVID-19 pandemic, when so many people were working from home, and so many attorneys saw the benefits of utilizing such online tools and offerings.³⁷¹ In response to such a shift, and in anticipation of a potential increased interest in these online classes upon the enactment of a CLE mandate, the MSBA is seeking to

³⁷¹ See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 5. Workgroup members involved in the drafting of the MSBA's Fall 2020 *Report and Recommendation — Professional Development and the Maryland Legal Profession*, discussed recent changes in CLE participation, and the MSBA's efforts to grow more of such offerings.

expand such online offerings.³⁷² The ease of access and flexibility provided by such courses often being offered on-demand and online -- and therefore accessible from anywhere without the burdens of travel -- make such digital CLE programming particularly important for solo practitioners and small firms, who have fewer resources to cultivate in-house CLE materials or to subsidize participation in third-party CLE courses.³⁷³ Concerns about using such online classes to “game the system” -- where attorneys might just leave a video playing on mute to get credit for “attendance” while not actively participating and learning -- may be assuaged by some courses using tools like a code that flashes unannounced during the course and is required for submission later to gain credit for attendance or interactive quizzes during classes.³⁷⁴

3. “Self-study” and “experiential” learning

Online and on-demand offerings at times are associated with “self-study,” or independent study, a concept with which the Workgroup was receptive but skeptical. There were concerns with how fungible the term “self-study” could be, permitting activities that do not serve the goals of a CLE mandate.³⁷⁵ At the root of the controversy regarding “self-study” is “There should be

³⁷² See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 5.

³⁷³ See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 10.

³⁷⁴ See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 10. Further, attendees to online CLE programming letting a video run without paying attention are little different than attendees of in-person CLE programming who nap in the back of the room, or show up just to sign the attendance sheet and make their way out shortly thereafter. There is no panacea to such concerns.

³⁷⁵ See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 7; *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, at 4-5. The 2017 ABA Model Rule on CLE encourages attorneys to participate in “self-study,” but the Model Rule does not count self-study towards a CLE-hours requirement. *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Rule at 10 § 4 cmt. 10. The rule defines “self-study” as “activities that are important for a lawyer’s continuing education and professional development, but which do not qualify as MCLE.” *Id.* Rule at 3 § 1(N).

guardrails.”³⁷⁶ One example involved activities like “mentoring,” or “experiential learning,” which have value, but maybe too elastic and indefinable to align with a CLE rule.³⁷⁷ There were concerns that a lenient “self-study” policy could lead to attorneys doing any number of activities, including performing research for their own legal work or attending a deposition, and calling it “self-study” sufficing CLE credit hours.³⁷⁸ In contrast, there was support for being more accepting of self-study activities like teaching (CLE programming, law school classes, college classes, and general legal seminars) or writing legal articles or books that are later published.³⁷⁹

The root of the “self-study” controversy may be traced to the inexactness of this language.³⁸⁰ At times, “self-study” was used as a catch all for several types of otherwise recognized CLE activity, 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. As such, any CLE provision utilizing the term “self-study,” would do well to either (1) clearly define what activities fall within “self-study” that may count towards fulfillment of the CLE quota, or (2) expressly state that CLE credit

³⁷⁶ See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 7.

³⁷⁷ See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 7.

³⁷⁸ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 10.

³⁷⁹ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 4-5. In its proposed MCLE rule, among the ABA’s “other MCLE Qualifying Activities” that count for CLE are teaching (including being a speaker for a CLE program, teaching, so long as it is not a full-time position in a law-school, or teaching non-law school courses), at least partially authoring books later published in print or electronically, mentoring, and pro bono work. See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 14 § 6.

³⁸⁰ *MCLE Workgroup June 13, 2023 Meeting Minutes*, *supra* note 4, at 9-10.

will not be awarded to any “self-study” activity that does not otherwise fall into another articulated category of approved CLE activity.

Within the conversation of activities counting towards CLE hours was the issue of pro bono participation, and how mandatory CLE might affect such pro bono work. Some Workgroup members were concerned that MCLE could have a “chilling effect” on pro bono, as the already overstuffed schedules of attorneys now needing to make room for minimum CLE may lead to cutting out such pro bono work.³⁸¹ Similarly, if pro bono activities, such as trainings, may count for CLE, attorneys who used to do more substantive pro bono work may now just look to pick the low-hanging fruit, looking for “flimsy” pro bono activities to acquire CLE hours rather than substantive, and needed, pro bono practice.³⁸²

The Workgroup did not discuss whether pro bono practice should or should not count towards CLE hours, outside of the context of such practice fitting other categories of CLE participation -- such as attending a pro bono training session likely counting the same as attending a CLE class so long as the organization providing such training is reputable and certified as a CLE provider. One Workgroup member briefly discussed a theory debated in a law review article in which any and all pro bono hours should count towards CLE requirements, as this would likely bolster much needed pro bono participation.³⁸³ In considering its 2017 ABA Model Rule regarding

³⁸¹ See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 7.

³⁸² See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 7.

³⁸³ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 11; Rima Sirota, *Making CLE Voluntary and Pro Bono Mandatory: A Law Faculty Test Case*, 78 *LA. L. REV.* 547 (2018) (arguing that because claims that CLE improves attorney competence are dubious at best, such efforts would be better spent by providing needed, free or low cost legal services, particularly as access to such legal services is a severe impediment to many, especially those who are low income). “This Article argues that the time is ripe to upend the status quo—to eliminate mandatory CLE and to explore replacing mandatory CLE hours with required pro bono service

pro bono participation, the ABA noted that “[i]n addition to being a professional responsibility, the rendering of pro bono legal services has been invoked as a mitigator, a sanction, and a way to satisfy continuing legal education requirements.”³⁸⁴

E. Oversight, Accreditation, and Certification of CLE Courses and Providers

The ABA recommends that each jurisdiction’s Supreme Court should establish an MCLE commission to develop MCLE regulations and oversee the administration of MCLE.³⁸⁵ How companies, organizations, and employers become certified or accredited to provide CLE programming was an issue of concern for many in the Workgroup. Additionally, in attempting to limit the financial burdens of MCLE, providers should be required to develop financial assistance plans for those who need it, or programs that are deliberately low cost or no cost.³⁸⁶

hours.” *Id.* at 549. The author further argues that because pro bono work may become hours-intensive, CLE mandates that allow carry over hours from one reporting period to the next, or that utilize longer reporting periods (i.e., 36 hours in three years rather than 12 hours in one year) permit deeper, more useful engagement in the pro bono practice while still serving as a way to satisfy CLE mandates and improve legal practice. *Id.* at 579.

³⁸⁴ *Pro Bono as a Mitigator, a Sanction, or a Component of CLE*, 6.1 Voluntary Pro Bono Publico Service, Mod. Rules Prof. Cond. § 6.1. “Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.” 6.1 Voluntary Pro Bono Publico Service, Mod. Rules Prof. Cond. § 6.1. “Some jurisdictions permit lawyers to earn part of their continuing legal education credits by taking pro bono cases.” Standing Committee on Pro Bono & Public Service, Am. Bar Ass’n, *CLE Credit for Pro Bono*, AMERICANBAR.ORG, https://www.americanbar.org/groups/probono_public_service/policy/cle_rules.html (last visited May 15, 2023); *see also* AM. BAR ASS’N, ESSENTIAL QUALITIES OF THE PROFESSIONAL LAWYER at 212 (2013).

³⁸⁵ *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, at 4 § 2

³⁸⁶ *See MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 13; *see also* N.Y. Comp. Codes R. & Regs. tit. 22, § 1500.4(b)(9) (requiring CLE providers to have a financial hardship policy); 204 Pa. Code § 11(h) (“The provider shall have available a financial hardship policy for attorneys who wish to attend its courses, but for whom the cost of such courses would be a financial hardship.”).

This fed into ancillary concerns about having sufficient CLE options once a mandate increases demand, as well as the ability for organizations who already provide such programming to continue to do so. The Workgroup was favorable to creating “presumptive providers,” which would include employers, organizations, and local and state bar associations with established CLE practice and programming, who can begin offering CLE courses to either their in-house employees or to other attorneys swiftly, without having to navigate extensive bureaucracies, permitting processes, or costs to do so.³⁸⁷ Organizations like the Maryland Office of the Public Defender (“OPD”) and the MSBA that invest tremendous resources and personnel in developing such thorough CLE offerings do not wish to lose that investment, and they likely offer products better than many commercial CLE providers.³⁸⁸

Further, permitting in-house programming to easily gain accreditation is particularly important for employers that may not offer as competitive of compensation as the larger firms, as easily accomplishing required CLE through in-house programming becomes a benefit to these organization’s attorneys, and it allows them to marshal limited resources better, as they cannot afford to subsidize individual participation in third-party CLE for their employees.³⁸⁹ This

³⁸⁷ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 7. One such example of a presumptive provider was the Maryland Office of the Public Defender, which already mandates attorneys attend 12 to 14 hours of CLE a year, requires all incoming attorneys to participate in an extensive training program, and organizes numerous CLE programs throughout the year to ease the burden of this internal CLE mandate. *Id.*; see generally *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 9-17; Patrice Fulcher, *Maryland Office of the Public Defender’s CLE Policy & Training Programs*, MD. OFF. PUB. DEF. (presented Jan. 4, 2023).

³⁸⁸ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 7; see generally Patrice Fulcher, *Maryland Office of the Public Defender’s CLE Policy & Training Programs*, MD. OFF. PUB. DEF. (presented Jan. 4, 2023).

³⁸⁹ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 7.

approach aligns with the recommendation in the 2017 ABA Model Rule, in which in-house providers of CLE may attain accreditation the same as commercial providers.³⁹⁰ Failure to attain accreditation for in-house providers puts their attorneys in a potential bind -- either disregard in-house offerings pertinent to their daily work and potentially necessary for career advancement, or attend both in-house programs and duplicative CLE programming simply to fulfill a mandate.³⁹¹

F. Specific Subject-Matter Requirements

Within the CLE mandates of most jurisdictions are rules to dedicate a portion of the required CLE hours to certain specific subjects, typically some combination of: (1) ethics and/or professional responsibility; (2) diversity, equity, and inclusion, or bias and cultural sensitivity training; (3) attorney wellness; and (4) topics related to the business of law, such as law practice management or technology.³⁹² These requirements typically account for one-third to one-fifth of

³⁹⁰ *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 4 (“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.”).

³⁹¹ *See MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 8.

³⁹² *See generally Mandatory CLE*, AM. BAR. ASS’N, <https://www.americanbar.org/events-cle/mcle/> (last visited May 5, 2023) (providing provisions of CLE rules from all 46 state requirements); Am. Bar Ass’n, *ABA Jurisdictional Breakdown of CLE Requirements*, AMERICANBAR.ORG, (compiled from <https://www.americanbar.org/events-cle/mcle/>); Appx. D (providing documents compiling and comparing MCLE provisions across jurisdictions).

The 2017 ABA Model Rule defines “ethics and professionalism” as “CLE Programming that address 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 tenants 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.” *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Rule at 1 § 1(D). The 2017 ABA Model Rule defines “Diversity and Inclusion programming” as “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.” *Id.* Rule at § 1(C). The Model

the overall CLE hours mandated, and they must be completed anew within each reporting period.³⁹³ Notably, they cannot be sufficed through carry-over hours. Additionally, some jurisdictions require that CLE hours not spent on such specific required subjects must otherwise be spent on “practice-relevant” subject matter, thus, as an example, a criminal defense attorney could not take a real estate law CLE and count that towards the attorney’s CLE requirement.

1. *Ethics, professionalism, wellness and diversity, equity and inclusion*

The Workgroup ultimately concluded that any MCLE rule should require a certain minimum of CLE hours be spent on classes regarding: (1) ethics and professionalism; (2) diversity, equity and inclusion; and (3) attorney wellness focused on mental health and substance abuse. The Workgroup adopted a name for this requirement within the 12-hour minimum CLE framework as the “1-1-1 plan.”³⁹⁴ Proponents of such subject-matter courses emphasized that the reason these topics must be specifically required is that they are otherwise unlikely to be taught, as attorneys

Rule defines “Mental Health and Substance Abuse Disorders Programming,” which would fall under the auspices of “attorney wellness,” as “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.” *Id.* Rule at § 1(J). The ABA’s Model Rule defines “Law Practice Programming” 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.” *Id.* Rule at § 1(H).

³⁹³ *2017 ABA Model Rule for MCLE & Report, supra* note 36, Rule at 5 § 3(A)(2) (Requiring attorneys earn at least one CLE hour of ethics and professionalism programming each year, one hour of mental health and substance abuse awareness every three years, and one hour of diversity and inclusion programming every three years); *Id.* Rule at § 3 cmt. 3 (noting that requiring specific subject matter credits accomplishes the goal of addressing these often-overlooked subjects, but also adds to the administrative burden and requires a proactive effort to ensure the availability of such programming, but these benefits far outweigh their burdens).

³⁹⁴ *See MCLE Workgroup Mar. 13, 2023 Meeting Minutes, supra* note 157; *see* discussion Section IV.F.1.iv (discussing concept of “1-1-1 plan” and subject-specific CLE requirements).

instead pursue CLE more directly related to their respective practice areas.³⁹⁵ Further, as one Workgroup member put it, requiring these specific subjects aligns with a CLE mandate’s goals of improving professional competency, client relations, and more socially aware legal practice.³⁹⁶ As such, if a CLE mandate is meant to address certain issues, then topics germane to those issues should be included as part of the mandate.³⁹⁷

i. Ethics, professionalism, and professional responsibility

The Workgroup felt strongly that some combination of ethics, professionalism, and professional responsibility should be required in a CLE mandate. Such topics speak to the concerns prompting the review of the necessity of mandatory CLE -- that attorneys need more emphasis on how to practice ethically and professionally in an effort to improve the reputation of the profession, deliver better services to clients, and lessen the frequency of attorney grievance issues.³⁹⁸ The next most common grievance issue relates to attorneys’ handling of fees, trust accounts, and clients’ property, all issues that could be addressed through ethics-focused CLE

³⁹⁵ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 9.

³⁹⁶ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 9.

³⁹⁷ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 9.

³⁹⁸ As presented by the Office of Bar Counsel in a presentation to the Workgroup, about one-third of attorney grievance issues relate to allegations of a lack of competence, diligence, or communications with clients. See *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 5. “I can say that one-third of the work we do is totally preventable because it comes from communication, diligence, and competence issues.” *Id.* at 6; see also Md. Rule 19-301.1 (requiring attorneys to provide competent representation to clients. “Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.”); Md. Rule 19-301.3 (requiring attorneys to act diligently, such that “[a]n attorney shall act with reasonable promptness in representing a client”); Md. Rule 19-301.4 (requiring an attorney to communicate with a client promptly, particularly regarding issues needing the client’s informed consent, and that the attorney must be forthright and clear regarding the client’s situation and the applicable legal counsel an attorney may provide).

programming.³⁹⁹ Lydia E. Lawless, former Bar Counsel, expressed an interest in helping craft such CLE programming to better address these areas the agency most frequently investigates.⁴⁰⁰ By mandating ethics and professional responsibility within the allocation of required CLE hours, it ensures that these subjects are a focus of attorney training -- training most attorneys avoid if possible because behaving ethically and professionally seem to be obvious requirements of the trade, despite the frequency of attorney grievance complaints related to these topics.⁴⁰¹ One Workgroup member was careful to distinguish “ethics” from “professional responsibility,” raising concerns that the former is a bit amorphous and hard to define, while the latter could be rooted in

³⁹⁹ *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 5. The rules for attorneys regarding the collection of fees, trust accounts, and record keeping can be found in Maryland Rules 19-301.5, 19-404, and 19-407, respectively. Regarding the keeping of client’s property in trust accounts, “[u]nless the client gives informed consent, confirmed in writing, to a different arrangement, an attorney shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the attorney’s own benefit only as fees are earned or expenses incurred.” Md. Rule 19-301.15(c).

⁴⁰⁰ *See MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 9.

⁴⁰¹ *See MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 9; *Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 5. In fiscal year 2022, with 42,050 active attorneys in Maryland, 1,589 attorney grievance complaints were filed, with most prompted by trust account overdraft notifications, reinstatement investigations, resignation investigations, and post-sanction compliance issues. Lydia Lawless, *Bar Counsel Complaints: Background & Statistics*, MD. OFF. BAR COUNS. (presented Jan. 4, 2023), PowerPoint Presentation [hereinafter *Bar Counsel Complaints PowerPoint*]. Of these, 303 complaints proceeded to investigation. *Id.* Broken down by practice area: 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.* From these investigations, the following dispositions resulted: 9 disbarments; 27 suspensions; 33 reprimands; 54 warnings/admonitions/cautionary advice; 11 conditional diversion agreements; 51 dismissals. *Id.*

fixed standards like the Rules of Professional Conduct.⁴⁰² This same concern applied to the other potentially required subjects, DEI and attorney wellness.⁴⁰³

ii. Diversity, equity, & inclusion (“DEI”)

Arguments in favor of requiring DEI courses in a CLE mandate focus on the immediate utility such programming has in terms of understanding how the law affects marginalized communities, providing better service and advocacy to clients, growing the marketplace for such course offerings, and ensuring these challenging and often overlooked issues become part of the discourse of the legal community. One Workgroup member gave pointed examples showcasing the immediacy DEI has on criminal defense work, as an attorney might need to be cognizant how navigating the criminal matter may affect other aspects of the client’s life, such as the client’s or a client’s families immigration status; how cultural sensitivities and understandings may affect how the client or family relate to the attorney and the judicial system; how trauma experienced by clients can be amplified by other attorneys or judges misgendering clients; and how the cultural competency of juries, judges, and other attorneys can affect outcomes from clients.⁴⁰⁴

As one Workgroup member shared from their experience on the bench, “I don’t think individuals always feel like they need [DEI training,] but I think they need that.”⁴⁰⁵ Accordingly,

⁴⁰² See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 8. Regarding “ethics” courses, the Workgroup member questioned, “What are the standards? What are the criteria that will have to be met, and who sets that?” *Id.* This member noted that other practice-related topics, such as criminal law or medical malpractice, provide clear rules, statutes, and case precedents, whereas such materials do not exist for DEI or mental health. *Id.*

⁴⁰³ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 8.

⁴⁰⁴ See *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 15.

⁴⁰⁵ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 5.

to combat this aversion, the Workgroup concluded that a portion of a potential CLE mandate's required hours be focused on DEI.⁴⁰⁶ Further, mandating a minimum allotment of hours be spent on this subject, which is not often found within other CLE subjects, should lead to a market place response that creates more classes related to DEI.⁴⁰⁷

iii. Attorney “wellness” - mental health & substance abuse

Discussions regarding the legal profession's persuasive issues with mental health and substance abuse prompted the Workgroup to align with other jurisdictions in requiring some focus on “attorney wellness” within the subject-specific CLE requirements.⁴⁰⁸ The ABA emphasized the need for such a focus on wellness in its 2017 ABA Model Rule.⁴⁰⁹ The MSBA did the same in its 2020 MSBA Report, noting prior studies establishing the prevalence of “problem drinking

⁴⁰⁶ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 9. “If you allow people to continue to take whatever CLE’s they want, certain CLEs will not be done, like ethics” and DEI; such subjects are essential but are rarely taught in other CLE or law school. *Id.*

⁴⁰⁷ See *MCLE Workgroup Jan. 24, 2023 Meeting Minutes*, *supra* note 263, at 9.

⁴⁰⁸ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 4 (discussing ABA report noting that attorneys are routinely the “least happy professionals,” thus requiring CLE relating to mental health and wellness combats such issues by lessening stigma and providing resources for treatment); *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 6 (discussing need for “attorney wellness” courses because of prevalence of mental health, wellness, and substance abuse issues in the profession). “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.” *MCLE Workgroup Dec. 5, 2022 Meeting Minutes*, *supra* note 261, at 6.

⁴⁰⁹ See *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Report at 7 n.11 (“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.”); see also 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/en/groups/lawyer_assistance/well-being-in-the-legal-profession/ (last visited March 15, 2023).

and other behavioral health problems in the U.S. Legal profession,” make “clear that legal professionals need to develop stress management and coping skills to handle the pressure and anxiety of their professional lives in a positive manner.”⁴¹⁰ Such wellness issues often become the genesis for attorney grievance issues, either directly or as seeds of later compromised or questionable behavior.⁴¹¹ These issues also can fester and combine with other stressors that contribute to the alarming rates of suicide within the legal profession.⁴¹²

One positive result of requiring CLE regarding mental health and substance abuse is that it increases the amount of discourse around such topics within the profession, thus lessening the stigma of seeking help for those who need it, and circulating useful knowledge and resources so those in need can access such help.⁴¹³ Further, requiring all attorneys to participate in such CLE

⁴¹⁰ See *2020 MSBA Professional Development Report*, *supra* note 110, at 5-6.

⁴¹¹ See *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 4 (discussing Office of Bar Counsel presentation discussing most common issues resulting in attorney grievance complaints and investigations). “A nationwide study of more than 13,000 lawyers galvanized interest in lawyer well-being when it was published in 2016. That study revealed that 28% of lawyers experienced depression, 19% reported anxiety, 21% had alcohol use problems, and 11% had problems with drug use.” Paula Davis, *Stress, Loneliness, & Overcommitment Predict Lawyer Suicide Risk*, FORBES (Feb. 15, 2023, 12:00 P.M.) <https://www.forbes.com/sites/pauladavis/2023/02/15/stress-loneliness-overcommitment-predict-lawyer-suicide-risk/?sh=4afa782f621e>.

⁴¹² “[S]tudies show that lawyers experience elevated levels of stress and loneliness. In addition, lawyers contemplate suicide at double to triple the rate of the general population.” Davis, *supra* note 411 (discussing troubling mental health trends among lawyers, statistics reflecting the problem, and how such issues are tied to concerns around healthier workloads); see also Karen Sloan, *Stress and overwork linked to lawyers’ suicidal thoughts, study says*, REUTERS (Feb. 14, 2023, 9:50 A.M.) <https://www.reuters.com/legal/litigation/stress-overwork-linked-lawyers-suicidal-thoughts-study-says-2023-02-13/>.

⁴¹³ See *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 7; *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 5. In the face of growing data showing the increased risk of suicide and mental health disorders among attorneys, the California Lawyer’s Association established online campaigns, free toolkits, social media conversations, “wellness walks,” and similar initiatives to make resources available to combat this alarming trend, and to “de-stigmatize dialogue surrounding mental health in the legal profession.” Sakura Gray,

subjects will make all attorneys more aware of the early signs of such problematic behavior, hopefully leading to early interdiction and remedial measures either from the attorney suffering such issues, or from colleagues who may notice and be more apt to intervene.⁴¹⁴ “Wellness” programs could include topics like time management, mindfulness, meditation, and nutrition, thus appealing to a broader audience of attorneys who may find value in these practices, even if they are not as concerned with the more acute issues of mental health and substance abuse.⁴¹⁵

iv. “1-1-1” Rule - Allotment of subject-specific hours requirement

Upon concluding that a prospective MCLE rule should require a certain allotment of CLE hours spent on (1) ethics and professional responsibility, (2) DEI, and (3) attorney wellness, the Workgroup was left to determine how much of the overall CLE requirement should focus upon these subjects. Working from an assumption of an overall 12-hour requirement, the Workgroup felt that the specific subject-matter requirements should not consume more than one-quarter to one-third of the overall hours allotment.⁴¹⁶ This would work out to three to four total hours spent on the three required subjects. Noting this proportional allocation, the Workgroup determined that dedicating at least one hour to each subject each reporting period seemed practical and intuitive.⁴¹⁷

Predictors of suicide risk in lawyers: new data sparking conversation, change, CBS SACRAMENTO (May 18, 2023, 9:26 A.M.), <https://www.cbsnews.com/sacramento/news/predictors-of-suicide-risk-in-lawyers-new-data-sparking-conversation-change/>.

⁴¹⁴ See *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 288, at 7.

⁴¹⁵ See *MCLE Workgroup June 12, 2023 Meeting Minutes*, *supra* note 4, at 5.

⁴¹⁶ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 5.

⁴¹⁷ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 5, 8.

The Workgroup discussed variations of such a plan, including requiring these subjects each reporting period, while others preferred a rotating basis such that attorneys would only need to complete CLE on those topics every-other year.⁴¹⁸ Because the idea of mandatory CLE germinated from concerns about professionalism and ethics, requiring one to two hours on these subjects each year seemed appropriate.⁴¹⁹ Similarly, several Workgroup members prioritized DEI and attorney wellness as yearly requirements, stressing the immense importance of these subjects, and their pervasive impact on legal professionals and the practice of law.⁴²⁰

Relatedly, there were concerns that a one-hour-per-subject allotment could create its own issues in finding classes that suffice such a narrow rule.⁴²¹ Though requiring two or more hours on each subject could be “excessive” and otherwise swallow the majority of a CLE requirement, a one-hour-per-required-subject rule could discourage potentially more valuable “deeper dives” into these topics found by participating in longer seminars.⁴²² Conversely, there were also concerns about the scarcity of CLE programming on each topic, though these were met by our

⁴¹⁸ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 5, 9.

⁴¹⁹ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 5-6.

⁴²⁰ See *MCLE Workgroup June 12, 2023 Meeting Minutes*, *supra* note 4, at 6. Advocating for a yearly DEI and attorney wellness requirement in the “1-1-1 plan,” one Workgroup member stated that “these issues are incredibly important. We see every ay why the are so important.” *Id.*

⁴²¹ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 6.

⁴²² See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 6. Concerns existed that a one-hour class on DEI or ethics could prove superficial, whereas multi-hour classes could better grapple with such substantive subject matter. *Id.*

sincere hope that a requirement would cultivate a market and by insight from some members who attest to these subjects being prevalent in many current CLE offerings.⁴²³

The Workgroup referred to the one-hour-per-required subject for each of (1) ethics and professional responsibility, (2) DEI, and (3) attorney wellness, as the “One-One-One” or “1-1-1” plan.⁴²⁴ This allocated three total hours of the 12 required, or 25 percent of the total CLE requirement, for these subjects. This allocation reflects a slightly larger percentage of the overall hours’ requirement than many other jurisdictions, though not disproportionately so.⁴²⁵

Some Workgroup members expressed concern that dedicating such a large percentage of the overall mandate to these three required subjects diluted the ability to spend the other required CLE hours on practice-relevant training that more directly addresses competency.⁴²⁶ They argued that requiring ethics each year, with a rotational requirement for DEI and wellness, better allocated

⁴²³ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 6-7. “I have not found a shortage of it on the defense side,” said one Workgroup member who organizes CLE for fellow defense attorneys. “Every training is now having something on mental health, something on DEI, and also ethics.” *Id.* at 7. “We will create a market for these subjects, and I think that will happen very quickly.” *Id.*

⁴²⁴ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 8. “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 CLE oversight committee to establish what will or will not count towards the other nine hours of the 12-hour requirement. *Id.* at 9. “I like the 1-1-1, and then we let the rest be for individuals to decide.” *Id.* at 10.

⁴²⁵ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 8. As comparative examples: New Jersey requires attorneys to spend at least five of the 24 required CLE hours (21 percent) on ethics and/or professionalism. N.J. R. CLE Reg. 201:1. Rhode Island requires attorneys to spend two of their required 10 hours (20 percent) of CLE on ethics training. R.I. R. Sup. Ct. Art. IV Att’y Regis. § 1.3.2(a). A comparison of these subject-specific requirements can be made by reviewing the summaries of CLE provisions found in Appendix D, *infra*.

⁴²⁶ See *MCLE Workgroup June 12, 2023 Meeting Minutes*, *supra* note 4, at 4-5.

an attorney’s time.⁴²⁷ The yearly “1-1-1 plan,” however, seemed to best address concerns about sufficiently tackling these important subjects that the Workgroup prioritized while also avoiding the administrative complications of subject-specific requirements that change from year-to-year. Accordingly, the “1-1-1 plan” reflects a compromise of these competing concerns that future rules makers should weigh when crafting MCLE regulations.⁴²⁸

2. “*Business of law*”⁴²⁹

Though the Workgroup did not feel the need to include other subjects among the 1-1-1 requirement, it did discuss the utility of requiring CLE focused on topics related to the “business of law.” This elastic term could encompass various topics related to the more practical and pragmatic elements of lawyering, as such topics are not often the focus of law school education.⁴³⁰ Few schools focus on practical matters like handling e-discovery or how and when to file certain documents and motions, let alone the more blatant “business” skills needed to run a solo or small practice.⁴³¹ The Office of Bar Counsel tied many of the grievance issues it sees to failings of such business practices, particularly issues with handling client property, accurate record keeping, and

⁴²⁷ Such a rotational approach aligns with the 2017 ABA Model Rule, which requires one credit of ethics each year, but one credit of mental health and substance use disorder programming, and one credit of diversity and inclusion programming, every three years. *2017 ABA Model Rule for MCLE & Report, supra* note 36, Rule at 5 § 3(A)(2).

⁴²⁸ See *MCLE Workgroup June 12, 2023 Meeting Minutes, supra* note 4, at 6.

⁴²⁹ “[L]awyers may acquire law firm management skills and knowledge through continuing legal education programs devoted to business of law topics.” Steele, *supra* note 22, at 642.

⁴³⁰ See *2020 MSBA Professional Development Report, supra* note 110, at 9. “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.” *Id.*

⁴³¹ See *MCLE Workgroup Dec. 5, 2022 Meeting Minutes, supra* note 261, at 4.

maintaining attorney trust accounts.⁴³² Further, the Workgroup saw a value in attorneys acquiring such “business” skills as a means to facilitate greater “attorney wellness” through professional fulfillment, reasoning that if more attorneys could understand how to transition into or out of solo practice, they may be better equipped to pivot their careers to find more sustainable or appealing work when needed.⁴³³

3. *Technology*

Another CLE topic relating to the “business of law,” and also to general themes of attorney competency that the Workgroup debated, was technology and its growing place in the legal world. While the Workgroup saw considerable utility to such subject matter, it did not believe such courses should be proscribed.⁴³⁴ The 2020 MSBA Report stressed that the growing influence of technology on the legal profession produces a vast opportunity for attorneys to further their professional development through CLE related to technology.⁴³⁵ Further, it warned of the potentially problematic results of attorneys being obstinate or cavalier about their awareness of technology’s impact on the industry.⁴³⁶ The MSBA highlighted issues with data management and

⁴³² *MCLE Workgroup Jan. 4, 2023 Meeting Minutes, supra* note 288, at 5. “If you are talking about continuing legal education those were the categories that would be most effective.” *Id.*

⁴³³ *See MCLE Workgroup Dec. 5, 2022 Meeting Minutes, supra* note 261, at 6 (discussing how better understanding of the legal marketplace might help some attorneys move to jobs in which they feel more fulfilled, hopefully lessening mental health and substance abuse issues that arise from professional dissatisfaction or stress).

⁴³⁴ *See MCLE Workgroup Feb 13, 2023 Meeting Minutes, supra* note 314, at 6.

⁴³⁵ *See 2020 MSBA Professional Development Report, supra* note 110, at 7.

⁴³⁶ *See 2020 MSBA Professional Development Report, supra* note 110, at 7.

protecting client information.⁴³⁷ Notably, cyber security is another concern.⁴³⁸ Additionally, also tied to the issues of attorney wellness, cultivating relevant technology skills provides attorneys with additional marketable skills aiding their transition and appeal to new legal jobs and thus career development.⁴³⁹

4. *Practice-relevant hours*

Along with requiring specific subjects each reporting period, the Workgroup debated whether all other CLE hours should otherwise be limited to only those subject matters relevant to an attorney's practice. This was referred to as "practice-relevant hours." Requiring "practice relevant hours" was meant to allay concerns about attorneys just "checking a box," and accumulating CLE hours through whatever may be the easiest or most convenient course offering, regardless of whether the subject matter was at all related to the attorney's area of practice and betterment as a practitioner.⁴⁴⁰

Objections to a practice-relevant requirement for mandated CLE focused on the administrative burden and the potential limitations this could impose on attorneys seeking to broaden their skills or pivot their careers.⁴⁴¹ In terms of administrative burden, "practice-relevant"

⁴³⁷ See *2020 MSBA Professional Development Report*, *supra* note 110, at 7. These issues become more unwieldy when data is duplicated across cloud locations, local servers, and physical copies. *Id.*

⁴³⁸ See *2020 MSBA Professional Development Report*, *supra* note 110, at 8. The report noted the constant cyber security threats -- from attacks to phishing, etc. -- that can cripple business and put client info at risk. *Id.*

⁴³⁹ See *2020 MSBA Professional Development Report*, *supra* note 110, at 6.

⁴⁴⁰ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 3-5. "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." *Id.* at 4.

⁴⁴¹ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 5-7.

hours is poorly defined, as the topic is not explicit and is defined in relation to an attorney's area of practice. Therefore, the immediate challenge exists as to determine what may or may not be "practice relevant." Such potential ambiguities can lead to confusion regarding whether certain classes will count, or the burden by attorneys of having to explain how each class is "practice relevant" if it is not apparent on its face. Similarly, determining how regulators monitoring CLE compliance may have to determine retroactively if course selections were "practice relevant" or not, leaves room for potential inconsistency and second-guessing. This picture gets more complicated when an MCLE rule may permit pro bono hours to count towards an hours minimum. Indeed, as attorneys often seek pro bono assignments in subject matters they do not currently work in as a means to gain the additional experience. A "practice relevant" requirement may lead to attorneys diverting efforts away from certain pro bono activities towards CLE courses that more blatantly appear "practice relevant," thus undermining the competing goals of Maryland's existing pro bono rules.

Another argument against "practice-relevant" hours involved its potential to limit the opportunities for attorneys to grow their practices or to pursue career change. Currently, attorneys can use CLE to explore new skills and practice areas, potentially growing their books of business or using the newly acquired knowledge as the first step towards career pivots. Forcing CLE to be "practice relevant" limits such exploration and harms the ability for attorneys to diversify. This can compound concerns about attorney wellness, which is notoriously low in this profession.⁴⁴² Further, not allowing attorneys to explore new areas of practice before making such career pivots undermines the ultimate goals of a CLE mandate in that it inhibits, rather than helps, an attorney

⁴⁴² See discussion Section IV.F.1.iii *infra* (discussing issues of attorney wellness).

gain competency before practicing in a new field.⁴⁴³ One Workgroup member argued that if attorneys cannot explore new areas of practice for a career change, then they cannot seek to change or better their careers if they are unhappy or in an untenable professional situation, thus exacerbating attorney wellness concerns.⁴⁴⁴

An argument in favor of practice-relevant hours was that an MCLE rule merely establishes a floor or minimum of hours required, not a maximum. Therefore, if attorneys can complete there 12 required hours with practice-relevant classes and “1-1-1 plan” subjects, they can pursue any other legal topics of interest with additional hours beyond what is required.⁴⁴⁵ Additionally, concerns about administrative difficulties could be lessened if a ‘good faith’ approach applies, in which attorneys are generally trusted to pursue subjects relevant to their legal work and can self-report such CLE participation.⁴⁴⁶ Similarly, concerns about attorneys just “checking boxes” and picking whatever CLE is available and “easy” are unlikely to become pervasive because attorneys have limited time and will spend their CLE hours gravitating towards the most useful subjects, as they already do when participating in CLE that is currently not mandatory.⁴⁴⁷ Further, many Workgroup members doubted there really were “easy” CLE courses for attorneys to pick, and such

⁴⁴³ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 5-7.

⁴⁴⁴ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 7.

⁴⁴⁵ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 4. Focusing on “practice-relevant hours” “just establishes a baseline competence in core practice areas.” *Id.* at 5.

⁴⁴⁶ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 6.

⁴⁴⁷ See *MCLE Workgroup Feb 13, 2023 Meeting Minutes*, *supra* note 314, at 6-7. “I just don’t have concern that lawyers are going to be wasting their own time, finding ‘easy courses’ . . . I think they are going to try to find something helpful to [their] practice and helpful to clients.” *Id.* at 7.

concerns land more at the feet of regulating courses and providers than in demanding adherence to subject matter requirements.⁴⁴⁸

G. Exemptions

Acknowledging that most CLE mandates accommodate exceptions or exemptions to such rules for some defined groups or categories of attorneys, the Workgroup took a similar, if more limited approach, to providing such relief from any MCLE rule in Maryland.⁴⁴⁹ A certain skepticism of exemptions existed, as the more groups were removed from a CLE mandate, the more it undermined the mandate's goals of raising the level of education and professionalism across *all attorneys* and boosting *the legal profession's* public perception writ large.⁴⁵⁰ Ultimately, the Workgroup determined that separating attorneys into categories of "practicing" and "nonpracticing," and exempting the latter from MCLE, would be the most equitable approach.⁴⁵¹

⁴⁴⁸ See *MCLE Workgroup Feb 13, 2023 Meeting Minutes*, *supra* note 314, at 7.

⁴⁴⁹ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 14-16; *see, e.g.*, N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.22 (n)(4) (exempting attorneys who permanently cease to practice law in New York from that state's CLE requirement); Alaska R. Bar Rule 65(i)(2) (providing Alaska's CLE mandate does not apply to members newly admitted to practice in the state during their first year of practice).

The ABA proposed exempting inactive lawyers, those only temporarily admitted to practice *pro hac vice* in a jurisdiction, attorneys active in a jurisdiction but who keep principal offices outside that jurisdiction, military personnel, full-time professors, those with medical issues, and judges. *2017 ABA Model Rule for MCLE & Report*, *supra* note 36, Rule at 5 § 3(B). Additionally, recognizing many attorneys may be licensed in multiple jurisdictions and thus subject to MCLE rules in any or all of those jurisdictions, the ABA recommended jurisdictions adopt exemptions for such lawyers in as much as they are exempt from satisfying MCLE if they completed the MCLE requirements in the jurisdiction where their principal office is located. *Id.* Rule at 5 § 3(B)(3).

⁴⁵⁰ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 18

⁴⁵¹ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 15.

As one Workgroup member succinctly stated, “[i]f you practice in the state, at whatever age, you should have to do CLE. ... If you are not practicing, then check that box.”⁴⁵²

1. Judicial Compliance

A judicial exemption fit this “nonpracticing” concept as judges do not have clients, and, though they oversee the adjudication of legal matters, they are not “practicing law” like the attorneys who appear before them.⁴⁵³ Further, examining the practical impact of requiring judges to complete mandatory CLE hours, the Workgroup acknowledged the training requirements that already apply to judges and the resultant concerns of overloading a judicial calendar and removing judges from busy courtroom dockets if a CLE mandated added to this training burden.⁴⁵⁴

Currently, all judges (including active and senior judges) must complete 12 hours of judicial education through the Judicial College of Maryland. Recent changes to this curriculum added an additional three hours of programming focused on diversity, equity, and inclusion.⁴⁵⁵ The Judicial College adds value to the Maryland Judiciary by providing relevant, results-oriented education and professional development.

The Workgroup noted, however, that if judicial training otherwise satisfies the particulars of an MCLE rule, then the mandate could apply to judges with little actual impact on judicial schedules as their already-required training would suffice both existing rules for judicial education

⁴⁵² *MCLE Workgroup Feb. 13, 2023 Meeting Minutes, supra* note 314, at 16.

⁴⁵³ *See MCLE Workgroup Feb. 13, 2023 Meeting Minutes, supra* note 314, at 15-16.

⁴⁵⁴ *See MCLE Workgroup Feb. 13, 2023 Meeting Minutes, supra* note 314, at 15-16.

⁴⁵⁵ *See MCLE Workgroup June 12, 2023 Meeting Minutes, supra* note 4, at 8 (discussing current judicial training requirements and their alignment with a potential CLE mandate).

as well as MCLE. Pragmatically, the Workgroup also acknowledged the significant pushback judges would likely exert upon learning that a CLE requirement had been added to their duties.

Against these concerns, though, was an acknowledgement that exempting judges -- who fulfill a venerated position atop our legal system -- could undermine the goals for bolstering the public perception of the legal profession.⁴⁵⁶ Additionally, having judges and attorneys potentially participate in similar CLE programs could help foster professionalism and camaraderie between the bench and the bar, as attorneys and judges interact outside the courtroom in a less formal setting.⁴⁵⁷ Further, if judges and attorneys are exposed to the same educational materials (i.e. terminology, theories, examples, etc.) in CLE instruction, they may be able to operate from a common understanding and legal lexicon.⁴⁵⁸

To address these concerns of fairness, optics, and practicality, the Workgroup crafted a compromise regarding judicial compliance to a CLE mandate. The Workgroup recommended that a CLE mandate apply to judges, but this mandate would be fulfilled by participation in the required annual judicial training provided through the Maryland Judicial College.⁴⁵⁹ Accordingly, provisions of a future CLE mandate should explicitly recognize that adherence to Maryland's judicial education requirements also suffices all requirements of a CLE mandate.

⁴⁵⁶ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 16. One Workgroup member called a judicial exemption a “hit to public perception,” making judges look as if they exist on a plain outside the scrutiny of other practitioners. *Id.*

⁴⁵⁷ See E.I. “Skip” Cornbrooks, IV, *Mandatory CLE in Maryland? Pro/Con*, MD. LITIGATOR, at 14 (June 2010) (“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.”).

⁴⁵⁸ See Cornbrooks, *supra* note 457, at 14.

⁴⁵⁹ See *MCLE Workgroup Jan. 4, 2023 Meeting Minutes*, *supra* note 4, at 8.

2. “New” attorneys (those recently gaining admission to practice in Maryland)

A particularly vexing conundrum arose when assessing whether attorneys recently gaining admission to the bar in a jurisdiction should be exempted, and if so, to what extent. Many jurisdictions provide such full or partial exemptions from CLE mandates for a designated period following an attorney’s passing of the bar exam and/or gaining admission in a jurisdiction, while others create special rules making CLE requirements potentially more onerous for new admittees.⁴⁶⁰

Exempting new lawyers mitigates some of the cost concerns regarding a CLE requirement for those who may have recently finished law school, are likely carrying considerable educational debt, and who have yet to establish themselves and begin building their earnings as lawyers.⁴⁶¹ Pragmatically, as attorneys who just graduated school and studied for the bar and MPRE likely have considerable exposure to educational materials similar to those taught in CLE -- particularly regarding key subject matter like professional responsibility and ethics -- there is less urgency to

⁴⁶⁰ New York requires newly-admitted attorneys to complete 32 hours of CLE within two years, but the state requires all other attorneys to only complete 24 hours of CLE every two years. *Compare* N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.12(a) *with id.* § 1500.22. Virginia does not require newly-admitted attorneys to complete CLE requirements during the reporting period in which they are admitted to practice in the state. Va. R. CLE Reg. 110. Pennsylvania requires newly-admitted attorneys to complete a special “Bridge the Gap” program. 204 PA. CODE § 4; Pa. St. CLE Rule 105(c).

⁴⁶¹ *See MCLE Workgroup Feb. 13, 2023 Meeting Minutes, supra* note 314, at 16.

instruct in those subjects.⁴⁶² Additionally, new attorneys participating in clerkships would likely be exempted under the “practicing vs. non-practicing” categorization.⁴⁶³

Perhaps the most glaring issue with CLE rules and new lawyers is the administration of such a rule, as newly admitted lawyers come into practice in a jurisdiction at odd times within CLE mandate’s a reporting calendar.⁴⁶⁴ Several members barred in Virginia pointed to that state’s rule that exempts newly admitted attorneys from the CLE requirement for the first year they are admitted to practice in the state.⁴⁶⁵

Workgroup members expressed concerns that exempting new attorneys could be counterproductive to achieving a CLE mandate’s goal of making participation in such course work

⁴⁶² See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 16. “‘MPRE’ means the Multistate Professional Responsibility Examination published and administered by the [National Conference of Bar Examiners].” Md. Rule 19-101(j); *see also* Md. Rules 19-201 & 19-213 (requiring attorneys to earn a qualifying score on the MPRE when applying for admission to the Maryland bar); Md. R. Att’s Rule 6 (providing rules regarding qualifying MPRE scores and transfer of scores for admission to Maryland bar).

⁴⁶³ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 16. Acknowledging that clerks may be exempt prompted concerns of creating two classes of young lawyers, which could foster more pervasive issues of bias and elitism in the profession, as those who clerk are often higher ranked graduations, or from more prestigious institutions, or those able to take less economically lucrative work early in exchange for the potential career benefit later. *Id.*

⁴⁶⁴ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 16. One young attorney involved with the Workgroup gave the example that he had recently gained admission to the Maryland bar in November. If a reporting period ran from January 1 to December 31 of a given year, then he would be left to compete all required CLE hours in roughly one month, an untenable task. See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 16-17.

⁴⁶⁵ 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.”).

and striving for such professional betterment a habit established early in a career.⁴⁶⁶ Acknowledging that new attorneys recently finished extensive educational exposure in law school, Workgroup members contrasted this with the more practically-relevant skills taught in CLE that could potentially pay immediate dividends towards a young lawyer's professional development.⁴⁶⁷ Further, acknowledging the "soft professional skills" fostered by the interactions among lawyers at events like networking receptions or CLE classes, young attorneys could benefit the most from having such exchanges with more seasoned colleagues, both in terms of growing professional networks and in terms of digesting practical advice.⁴⁶⁸

The Workgroup ultimately concluded that the best path forward would likely be to exempt newly-admitted attorneys from adhering to the CLE mandate during the reporting period in which they gain admission to the bar, whether they come in at the very beginning or the very end of that reporting period.⁴⁶⁹ This would produce the most manageable administration of a mandate for both those attorneys and the parties overseeing the CLE system.⁴⁷⁰

⁴⁶⁶ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 18. "We want to have people get in the habit of this right from the beginning of their careers." *Id.*

⁴⁶⁷ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 18. This approach aligns with the rule for newly-admitted attorneys in Virginia. See Va. R. CLE Reg. 110.

⁴⁶⁸ See *MCLE Workgroup Feb. 13, 2023 Meeting Minutes*, *supra* note 314, at 18.

⁴⁶⁹ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 17. With a reporting period operating from January 1 to December 31 of a given year, this means that whether new attorneys gain admission following the February Bar Exam, or the July Bar Exam, or seek admission at any other time in the year, it would be inconsequential to their obligation to complete mandatory CLE hours until the commencement of the following CLE reporting period.

⁴⁷⁰ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 17.

3. “Practicing” attorneys vs. “non-practicing” attorneys

Building from the idea that an MCLE requirement should apply to all attorneys “practicing law” in Maryland, the Workgroup reckoned with the issue that such a delineation is not necessarily straightforward.⁴⁷¹ While attorneys currently handling legal matters for clients might clearly fall into the “practicing” category, and those who are retired, or who serve as judges and clerks, and thus do not represent clients, might fall into “non-practicing” bucket, there are some who exist in murkier waters. Attorneys serving as in-house counsel, or who oversee student-run clinics, or who are law school faculty, or who lobby or work in a legislative capacity, may not be considered “practicing,” yet they are still using their legal knowledge and position to apply the law in one capacity or another and often advocate for clients or groups.⁴⁷² As such, these attorneys would still gain value from adhering to a mandate, and subjecting them to such a requirement serves the goal of raising the overall level of legal knowledge and skill of the Maryland legal community, as well as improving the public perception of that community and protecting the public trust.⁴⁷³

Some Workgroup members proposed that all attorneys actively paying the fees and dues required to remain in good standing and practice should be subject to a MCLE mandate.⁴⁷⁴ Two Workgroup members noted that they are considered “inactive” in other jurisdictions where each respectively first obtained their law license, and where they remain licensed, but where they no

⁴⁷¹ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 15-16.

⁴⁷² See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 15. “There are a lot of people who still use their law degrees but who do not call themselves ‘active attorneys.’” *Id.*

⁴⁷³ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 15.

⁴⁷⁴ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 15.

longer practice.⁴⁷⁵ They explained that if either wished to return there and practice again in those respective jurisdictions, they would have to alert the respective local bars and change their statuses to active.⁴⁷⁶ Maryland has a similar system, in which attorneys can exempt themselves from obligations like paying into the Client Protection Fund by signifying they were “inactive, exempt,” doing so by filing an affidavit with the State.⁴⁷⁷ Maryland could rely on this data to determine who is considered active or inactive, and thus who should be subject to a mandate.

⁴⁷⁵ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 16.

⁴⁷⁶ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 16.

⁴⁷⁷ See *MCLE Workgroup Mar. 13, 2023 Meeting Minutes*, *supra* note 157, at 16. 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*, MDCOURTS.GOV, <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).

V. CONCLUSION

In summary, the Workgroup recommends that Maryland adopt a mandate requiring all attorneys complete 12 hours of CLE each year, with the ability to carry over up to 12 hours from one yearly-reporting period to the next. The yearly reporting period should either: (1) run from January 1 to December 31 of each calendar year, or (2) otherwise align with other mandatory reporting requirements for attorneys. This requirement shall apply to all lawyers licensed and actively practicing in Maryland, including judges, though the required annual judicial training should suffice the CLE mandate. The mandate will not apply to newly-admitted attorneys until the beginning of the first full reporting period following their admission to the Maryland bar. This requirement will not apply to attorneys registered as “inactive” with Maryland’s Client Protection Fund.

Within this MCLE requirement, the Workgroup recommends that attorneys must comply with the “1-1-1 plan” in which they complete at least one hour of CLE coursework in each of the three subject-matter requirements of (1) ethics and professional responsibility; (2) attorney wellness (focusing on mental health and/or substance abuse); and (3) diversity, equity, and inclusion. Additional hours spent on these subjects may be carried over and count for the “1-1-1” requirement in the reporting period. Further, the Workgroup recommends that the State consider taking a lenient approach to regulating what may count for CLE hours, such that activities such as teaching, online and on-demand classes, legal writing, attendance of conferences and legal summits, and pro bono practice all may count towards CLE hours. Additionally, reciprocity should be extended such that attorneys who comply with the mandatory CLE requirements of other jurisdictions may also see such participation count towards compliance with a Maryland CLE mandate. To ease the administration of a new MCLE mandate, State officials should consider

adjusting the Attorney Information Services platform used for other annual reporting requirements to also collect information regarding attorney compliance with this recommended MCLE mandate.