

Summary of recommendations of NJSBA MCLE Review Committee – September 10, 2008

- **Recommendation 1 (MCLE Credits):**
 - NJSBA accepts 24 hour credit requirement as reasonable, however, has concerns that 12 hours as opposed to ten requires that two full days be spent away from an attorney's practice or family at CLE programs; and 24 credits over two years, or 12 credits per year, may diminish the value of certification status that requires 15 credits per year.
 - NJSBA recommends that two hours of ethics credits be required per biennial cycle, rather than the SCC recommendation of four, thereby lending itself to the inclusion of ethics in other substantive courses and providing context to the ethical dilemmas presented.
 - NJSBA recommends that up to half of the required credits (12 per cycle) be permitted to be carried over, not just one-quarter, which would encourage participation in intensive advanced courses, such as week-long trial advocacy and the 40-hour mediation training.
 - NJSBA recommends that credit be permitted for instruction that is not strictly legal in nature but pertains to an attorney's specialty. Example: personal injury and workers' compensation attorneys benefit from medical courses; Criminal Bar benefits from learning about DNA and forensic science. Monitoring and approval would be handled as with certified attorney credits.
 - NJSBA recommends credit be extended to time spent by attendees for those courses that require extensive advance preparation for performance and participation in that course. Example: preparation for mock trial or moot court presentation outside of actual seminar time.
- **Recommendation 2 (Teaching):**
 - NJSBA recommends that enhanced credits for teaching course should be awarded on a 3:1 basis, rather than the 2:1 SCC recommendation, in recognition of the amount of time needed to research and prepare written materials for courses that are taught.
- **Recommendation 3 (Reciprocity):**
 - NJSBA agrees that reciprocity for courses taken in other states should be available to New Jersey attorneys as it enhances the educational opportunities for New Jersey attorneys and increases the convenience for attorneys licensed in other jurisdictions.
- **Recommendation 4 (Inns of Court):**
 - NJSBA agrees that participation in approved Inn of Court programs should be eligible for CLE credit, as the Inns of Court offer intensive supervision and instruction, and are time-consuming for all participants.
- **Recommendation 5 (Pro Bono Activity):**

- NJSBA feels that the goals of MCLE can be met and *pro bono* activity can be simultaneously encouraged by focusing on the educational component of *pro bono* work. NJSBA recommends that courses given by Court-approved *pro bono* providers be eligible for MCLE credit without the need for providers or attendees to pay fees. The NJSBA further recommends that attorneys attending the courses not be given credit for the course unless they then take a *pro bono* case.
- NJSBA recommends service on a District Ethics Committee and service on a Fee Arbitration Committee be eligible for credit.
- NJSBA recommends that three CLE credits be given for coaching a mock trial or moot court team and two credits be given for judging a competition.
- **Recommendation 6 (Who Must Attend):**
 - NJSBA recommends that there be three categories for attorney classification with respect to MCLE status: active, inactive and senior status. Active attorneys should fulfill their MCLE requirements. Inactive attorneys, as defined by Rule 1:28-2(b), should be excused from MCLE requirements. Senior status attorneys, who have maintained an active license for 40 years or more, should be required to complete 50 percent of the MCLE requirements for active attorneys.
 - NJSBA recommends that an inactive attorney who reinstates his/her license is responsible for MCLE for the reporting period in which the reinstatement occurs.
 - NJSBA recommends that attorneys be regarded as either active or inactive, and that there be no part-time status.
 - Regarding hardship waivers, NJSBA recommends that “hardship” be defined and urged that such waivers only be given in extraordinary circumstances and for reasons that generally relate to an attorney becoming either physically or mentally incapacitated.
 - NJSBA recommends that any attorney-instructor (including full professors, adjunct professors, part-time professors or other category of instructor) receive MCLE credit for teaching any approved post-secondary school course.
 - NJSBA agrees that judges be permitted to fulfill their MCLE requirements through their required educational programming. It is the NJSBA’s hope that judges continue to be active participants in substantive programs and seminars as their attendance and participation is beneficial to the relationship between the bench and the bar.
 - NJSBA agrees that in-house or staff counsel should be required to fulfill all applicable MCLE requirements.
 - NJSBA agrees that those on full-time active duty in the military, VISTA, Peace Corps should be exempt from MCLE.
- **Recommendation 7 (Skills and Methods):**
 - NJSBA recommends replacing Skills and Methods with a “101 Series Program.” The 101 Series courses should focus on teaching the most basic elements of a given substantive practice area and should offer a significantly reduced cost so that they are affordable for newly admitted attorneys.
 - NJSBA recommends that 75 percent of newly admitted attorneys’ MCLE credit hours be 101 Series courses in their first biennial reporting period. Attorneys

subject to these requirements should take two credit hours of a 101 Series course in three substantive areas of law thereby requiring attorneys to take courses in areas outside their particular practice areas if they are specialists.

- NJSBA recommends that “extended CLE courses,” those taking place over several days, be permitted to satisfy multiple substantive areas, provided that the approved provider demonstrate during approval process that the course will educate the attending attorneys in more than one substantive area.
- **Recommendation 8 (Regulation of Approved Service Providers):**
 - NJSBA affirms that there must be strict controls and ongoing accountability required of entities that seek and are granted status as an approved service provider (ASP). Regulation of ASPs must balance the critical underlying basis for the establishment of the MCLE program – “assuring the competence and professionalism of...practitioners in our rapidly changing and complex legal world” – against the need for diverse educational opportunities to be provided to lawyers from all walks of life and ideological, cultural and other backgrounds.
- **Recommendation 9 (Regulation of Individual Course Providers):**
 - NJSBA recommends that the requirements for individual course providers (non-ASP) be liberally construed to provide for the maximum amount of quality legal education possible, with appropriate safeguards. Providers should be considered so as to allow for smaller niche programming and diversity of programming that may be attractive to individual practitioners, but that may not attract large crowds or be profitable to larger for-profit or other established entities.
- **Recommendation 10 (Faculty Implementation):**
 - NJSBA recommends consideration be given to “grandfathering” educational programs offered between the time MCLE is announced and implementation actually begins.
 - NJSBA recommends the MCLE regulator should solicit input from the Board on Attorney Certification to ensure consistency and that the goals of MCLE and attorneys are met.
 - NJSBA noted that faculty is sometimes replaced or installed in a program days before it is to be conducted. NJSBA recommends that MCLE programming should provide for such replacement where the advertised and approved faculty is equal or nearly equal to the replacement faculty.
- **Recommendation 11 (Fees and Costs):**
 - NJSBA is concerned that the proposed fees will not cover the costs of the administration of the program. In addition, there is concern that while the fees as proposed appear to be reasonable, those fees will be increased in the near future to meet the actual costs of the program and will, at some point, become prohibitive to most of the practicing bar.
 - NJSBA recommends that scholarship guidelines should be established and liberally construed, and ASP and individual providers should be required to offer a definite amount of programming to people who demonstrate both interest and financial need for programming that may provide particular benefit to public good and welfare.

- **Recommendation 12 (Reporting):**
 - NJSBA recommends that a self-reporting and self-monitoring model be established, as is used in New York, where attorneys are responsible for tracking their own CLE activity and submitting certifications of compliance to the MCLE Regulator. This model eliminates the need for the database system recommended by the SCC.
- **Recommendation 13 (Self-Reporting):** As with Recommendation 12, NJSBA recommends a self-reporting and self-monitoring model.
- **Recommendation 14 (Forms):** NJSBA recommends that in alternate years commencing in 2012, the Court include a self-reporting form in the same mailing as the Client Security Fund.
- **Recommendation 15 (Compliance):** In recognition of the NJSBA recommendation for self-reporting and self-monitoring, compliance reports will not be necessary.
- **Recommendations 16, 17, 18 (Extensions, Hearing and Petition Process, Combined Regulation MCLE/Attorney Certification):** NJSBA agrees.
- **Recommendation 19 (Staffing and Oversight):** NJSBA believes that self-reporting will greatly diminish the administrative burdens and costs and make a combined staff of 6 to 8 people for New Jersey's MCLE and Specialization Program feasible.
- **Recommendation 20 (Program Evaluation):** NJSBA agrees.