

MANDATORY CONTINUING LEGAL EDUCATION REGULATIONS

PURPOSE

The Virginia Supreme Court has established, by Rule of Court, a mandatory continuing legal education program in the Commonwealth of Virginia, which requires each active member of the Virginia State Bar annually to complete a minimum of twelve (12) hours of approved continuing legal education courses, of which at least two (2) hours shall be in the area of legal ethics or professionalism, unless expressly exempted from such requirement.

The Virginia Supreme Court has established a Continuing Legal Education Board to administer the program and has given to it those general administrative and supervisory powers necessary to effectuate the purposes of the Rule, including the power to adopt reasonable and necessary regulations consistent with the Rule.

Pursuant to this authority, these regulations have been adopted by the Continuing Legal Education Board.

REGULATION 101 DEFINITIONS

As used in these regulations, the following definitions shall apply:

- (a) The "Rule" shall mean the provisions of the Mandatory Continuing Legal Education (also referred to as "MCLE") Rule established by Paragraph 17 of Section IV, Part Six, Rules of Virginia Supreme Court.
- (b) The "Board" shall mean the Virginia State Bar Mandatory Continuing Legal Education Board established by Paragraph B of the Rule.
- (c) A "Member" as defined by Paragraph 2 of Section IV, Part Six, Rules of Virginia Supreme Court, shall comprise all attorneys-at-law in this commonwealth.
- (d) An "Active Member," shall mean an Active or Emeritus Member as defined by Paragraph 3 of Section IV, Part Six, Rules of Virginia Supreme Court.
- (e) A "newly-admitted member" shall mean a person first admitted to practice during the current completion period.
- (f) A "program sponsor" or "sponsor" is any person or entity presenting or offering to present one or more continuing legal education programs.

- (g) The terms "course" and "program" mean a discrete continuing legal education (also referred to as "CLE") offering, regardless of length or daily schedule, provided that the course or program is a minimum of 30 minutes in length.
- (h) An "accredited sponsor" shall mean an organization which, based on a history of providing approved courses and pursuant to Regulation 105, has been granted approval for its programs. The programs must meet the approval standards of Regulation 103 and are not subject to the individual course application procedures of Regulation 104(a).
- (i) An "approved course" means a course expressly approved by the Board for the relevant completion period or a course offered by an accredited sponsor during the completion period for which the sponsor is accredited and meets the approval standards of Regulation 103.
- (j) A "pre-recorded course" means a program where a live presentation has been recorded and presented via any electronic media (e.g. videotaped, DVD or CD-ROM presentations, audiotaped or CD presentations, pre-recorded telephone seminars or webcasts, on-demand online courses, etc.) that does not include simultaneous, live interaction with the presenter.
- (k) A "specially approved course or program" means a course which does not meet the standards of regulation 103(b) and (c) but which, because of its significant value to the practice of a member who has sought approval, has been approved by the Board for such member. As to such member, the term "approved course" includes a specially approved course or program.
- (l) The term "panel(s)" shall mean a committee or committees organized by the Board for the purpose of expeditiously considering and deciding matters arising under the Rule and these regulations.
- (m) The term "Director of MCLE" or "MCLE Director" shall mean the head of the Mandatory Continuing Legal Education Department of the Virginia State Bar who acts as the liaison and administrative staff for the Board.
- (n) A course or program offered "in-house" means one sponsored by a single private law firm, a single corporate law department or a single federal, state or local governmental agency or military branch for lawyers who are members or employees of the firm, department, agency or branch.
- (o) The term "completion period" shall mean a period of one year beginning on November 1, of one year and ending on October 31 of the next year; provided, however, that the next completion period following June 30, 2001, shall be July 1, 2001, to October 31, 2002.
- (p) The term "faculty member" shall mean a person qualified by practical or academic experiences to teach the subject he or she covers.
- (q) "Credit hours" (also referred to in context as "hours," "credits," and "hours credit") are the 60-minute units used for measuring completion of Mandatory Continuing Legal Education as required by the Rule.

- (r) "Ethics credits" are credit hours which apply toward Mandatory Continuing Legal Education in the area of legal ethics or professionalism as required by the Rule.
- (s) A "qualified ethics course or component" is a clearly identified segment of a course or program which meets the requirements of Regulation 103(d) and is devoted to one or more topics embraced in recognized formulations of rules of professional conduct or codes of professional responsibility applicable to attorneys and/or to the systems and procedures which have been established for enforcement and interpretation of those rules or codes. An ethics component in a course or program involving a substantive area of law may constitute a "clearly identified segment" if the integration of the substantive material is necessary to understand the ethical topic, and if the ethical topic is the primary focus of the segment. Such a segment must be appropriately described or entitled in the course materials and must have a defined duration in the course or program schedule.
- (t) A "qualified professionalism course or component" is a clearly identified segment of a course or program which meets the requirements of Regulation 103(d) and is devoted to one or more topics designed to educate and encourage attorneys to aspire to and achieve higher and more noble standards of professional conduct than the minimum standards set forth in recognized formulations of rules of professional conduct or codes of professional responsibility. All or part of a malpractice program may qualify as a professionalism course or component if it is devoted to one or more topics designed to educate and encourage attorneys to take measures in the conduct of the practice of law to serve the interests of the client, consistent with the attorney's fiduciary duty to the client, and to endeavor to maintain an appropriate standard of care in the practice of the profession. Such a course or component will not be approved if the primary focus is malpractice litigation tactics or strategy. A professionalism component in a course or program involving a substantive area of law may constitute a "clearly identified segment" if the integration of the substantive material is necessary to understand the professionalism topic, and if the professionalism topic is the primary focus of the segment. Such a segment must be appropriately described or entitled in the course materials and must have a defined duration in the course or program schedule.
- (u) A "course presented by distance learning methods" includes any course in which the participant seeking credit received the instruction at a location different from the location from which the instruction was presented or at a time different from the time when the instruction was presented. Thus, all courses presented to participants from pre-recorded media (e.g. videotape, DVD or CD-ROM presentations, audiotape or CD presentations, pre-recorded telephone seminars or webcasts, on-demand online courses, etc.) are "courses presented by distance learning methods." Similarly, any course taken by a participant at a location separate from the instructor (e.g. live telephone seminars, live webcasts, live videoconferences, etc.) are "courses presented by distance learning methods." (Comment: See MCLE Board Opinion 16.)
- (v) The term "online MCLE record" shall mean the electronic access to the individual attorney's MCLE record maintained by the MCLE Department of the Virginia State Bar.

**REGULATION 102
REQUIREMENTS AND COMPUTATIONS**

- (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, of which at least two (2) hours shall be in the area of legal ethics or professionalism. Of the twelve credit hours required, no more than eight (8) may be earned from pre-recorded courses. Credit must be obtained in the manner hereinafter provided, unless expressly exempted therefrom pursuant to the provisions of Regulation 110 or waived pursuant to Regulation 111.
- (b) Credit 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. Credit in the area of legal ethics or professionalism will be given a member who attends a course approved for credit in such area and 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.
- (c) Credits for attendance will be awarded on the basis of time spent in personal attendance at an approved course which meets the standards of these regulations. Credits for teaching will be awarded on the basis of time spent in personal participation as an instructor at an approved course. However, no credit will be awarded for teaching and preparation of a "specially approved course or program." Credit hours will be computed by calculating the total instructional minutes attended or taught for the course, rounded to the nearest half hour. Credit will not be given for time spent in meal or coffee breaks. Credit will not be given for keynote speeches or introductory remarks or time spent on any subject matter which is not directly related to instruction pertinent to that course.

EXAMPLES:

- (1) A member attends a one-day course or seminar with seven (7) segments, each lasting 50 minutes. Two of the segments are in the area of legal ethics or professionalism under the standards set forth in Regulation 103. Credit hours will be computed by calculating the total instructional minutes rounded to the nearest half hour. Since there are 350 total instructional minutes (5 hours, 50 minutes) the Board will round this time to the nearest half hour and the member will receive six (6) hours credit, not seven (7). Of such six (6) hours credit, one and one-half (1 1/2) hours (100 minutes rounded to the nearest half hour) will be in the area of legal ethics or professionalism.
- (2) A member attends a course or program which is presented all day Friday and on Saturday morning. The member attends a 3 hour, 15 minute Friday morning session; a 2 hour, 15 minute Friday afternoon session; and a 3 hour, 10 minute Saturday

morning session. Since the total instruction time is eight (8) hours and 40 minutes for the two-day program, the Board will round this time to the nearest half hour and the member will receive 8 1/2 hours of credit.

- (3) A member attends a course or program which is advertised as having been "approved by the Virginia Mandatory Continuing Legal Education Board" for six (6) credit hours, of which one and one-half (1 1/2) apply in the area of legal ethics or professionalism. No further computation need be made by the member if he attends the entire course or program.
 - (4) A member personally teaches any of the courses in the previous examples. The teaching member will receive credit hours for teaching time computed in the same fashion as the credit hours are computed for the attending member.
 - (5) A member is a teacher at a one-day course or program with seven (7) segments, each lasting 50 minutes. Application forms are filed certifying that the member taught one segment and also attended one segment. The member did not attend or teach the other five segments. Since the member attended or taught 100 total instructional minutes for the course, the Board will round this time to the nearest half hour and the member will receive 1 1/2 hours of credit. The member does not receive one credit hour for 50 minutes teaching plus one credit hour for the other 50 minutes attending.
- (d) Credits for preparation will be awarded on the basis of time spent by a member (i) in preparing written materials which meet the standards of these regulations for use in the presentation of an approved course; and (ii) in preparing a personal presentation as an instructor for an approved course. The number of preparation minutes eligible for credit shall not exceed four times the number of instructional minutes in the presentation which is being prepared. Credit hours will be computed by calculating the total minutes spent in preparation for the course, rounded to the nearest half hour. In no event shall more than eight (8) hours of credit be awarded for preparing a single course or program.

EXAMPLES:

- (1) A member prepares thorough, high-quality instructional written materials which appropriately cover the subject matter for an approved program which lasts 120 minutes. The member certifies that eight (8) hours or more was spent preparing the written materials. The Board will award eight (8) credit hours for preparation time. This does not exceed the maximum limit of four times the presentation time of the program and is consistent with the maximum limit of eight (8) hours of credit for preparing a single course or program.
- (2) Same as example 1 above except the member also taught the entire program and certifies that an additional eight (8) hours or more was spent preparing for the presentation as an instructor. This is a total preparation time of sixteen (16) hours. The Board will still award eight (8) credit hours for preparation time because this is the maximum limit of four times the presentation time and also because this is the

maximum limit of credit for preparing a single course or program. However, the member will be awarded two (2) credit hours for teaching time and will therefore receive a total of ten (10) credit hours for the activities in preparing and teaching the program.

- (3) A member teaches at a course approved for five (5) credits including one (1) ethics credit. The member certifies that he taught the morning ethics segment of twenty (20) minutes. The member further certifies that one hour and twenty minutes was spent preparing for the presentation. Since the member taught twenty (20) minutes eighty (80) minutes (four (4) times the presentation time) of the member's preparation time is eligible for credit. The Board will total the minutes and round this time to the nearest half hour and the member will therefore receive a total of one and one half (1.5) hours CLE credit including one and one half (1.5) hours ethics credit for teaching and preparing the ethics segment.
- (e) A one-year carryover of credit hours will be permitted, so that accrued credit hours in excess of one year's requirement may be carried forward to meet the requirement of the following year. A member may carry forward a maximum of twelve (12) credit hours, not more than two (2) of which, if earned in the area of legal ethics or professionalism, may be counted toward credit hours required in such area. No more than eight (8) credit hours, of which not more than two (2) ethics or professionalism credit hours, may be carried forward from pre-recorded programs.
- (f) A member shall not receive credit for any course attended in preparation for admission to practice law in any state. A member shall not receive credit for teaching that is directed primarily to persons preparing for admission to practice law. Regular full time, part-time and adjunct academic faculty shall not receive credit for teaching any law school courses (undergraduate or graduate) or bar review courses. A member attending law classes, for a purpose other than preparing for admission to practice law, may receive credit in accordance with the manner described in Regulation 102(c). A member may not receive credit for any course which is not materially different in substance from a course for which the same member received credit during the same completion period or the completion period immediately prior to the one for which credit is sought.
- (g) A member may receive credit for attending a course delivered by distance learning methods which otherwise satisfies the requirements of these Regulations. No more than eight (8) credit hours may be earned in any twelve hour period attending pre-recorded courses. (Comment: See MCLE Board Opinion 16.)

REGULATION 103 STANDARDS FOR APPROVAL OF PROGRAMS

- (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.

- (b) The course must have significant intellectual or practical content. Its primary objective must be to increase the attendee's professional competence and skills as an attorney, and to improve the quality of legal services rendered to the public.
- (c) 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.
 - (1) A course which addresses law practice management may be approved so as to promote the efficient, economical and competent delivery of legal services. The course must cover topics that teach attorneys how to organize and manage their law practices and other law practice issues, which if improperly handled, could result in malpractice, disciplinary complaints or client dissatisfaction. A course which primarily focuses on marketing techniques, client development or other general business topics applicable to any business shall not be approved. (Comment: See MCLE Board Opinion 17.)
 - (2) A course which addresses substance abuse, stress management, or work/life balance issues may be approved if the topics relate to the practice of law and the quality of legal services rendered to the public. (Comment: See MCLE Board Opinion 19.)
 - (3) A course which addresses general skills topics such as time management, writing, communication or presentation skills may be approved provided the topics are specifically directed to an attorney audience and are covered in the context of the practice of law.
- (d) A course may be approved for credit in the area of legal ethics or professionalism only to the extent that the course constitutes or contains one or more qualified ethics or professionalism components as defined in Regulation 101. Topics which will not generally be approved for ethics credit include ethics standards of conduct applicable to other professions such as government employees, government contractors, accountants and businesses including corporate compliance. Also, rules of procedure, rules of evidence and litigation tactics will not generally be approved for ethics credit. (Comment: See MCLE Board Opinion 13.) A minimum scheduling of thirty (30) minutes in the aggregate of one or more qualified ethics or professionalism components is required before an approved course can be approved for credit in the area of legal ethics or professionalism.

EXAMPLES:

- (1) A sponsor's application for approval of a one-day program comprising seven 50 minute segments states in relevant part "each speaker will devote ten minutes of

allotted time to ethical considerations." The program does not contain a qualified ethics component and is not eligible for approval for credit in the area of legal ethics.

The requirement that a qualified component be a "clearly defined segment" is not met. Such segment must be capable of identification on the schedule and have a defined beginning and end.

- (2) A sponsor's application for approval of a one-day program reveals in relevant part that the opening 30 minute morning segment is clearly identified as devoted to ethical considerations and that the concluding 20 minutes of the afternoon session is also clearly identified as devoted to ethical considerations. Assuming that other requirements for course approval are met, the Board will approve the program for one (1) hour credit in the area of legal ethics or professionalism. (See Regulation 102.)
- (e) Courses must be conducted in a setting physically suitable to the educational course or program, free from distractions and conducive to learning.
- (f) No credit will be allowed (or "be granted") for any course or part thereof taken simultaneously with any other course or part thereof.
- (g) Thorough, high quality instructional written materials which appropriately cover the subject matter must be distributed to all attendees at or before the time the course is presented. A mere agenda or topical outline will not be sufficient. (Comment: See MCLE Board Opinion 14.)
- (h) Each course shall be presented by a faculty member or members qualified by academic or practical experience to teach the subjects covered. Consistent with Virginia State Bar policy, course sponsors should exercise care to ensure that faculty members, where possible, reflect the racial and gender diversity of the State Bar as a whole.
- (i) A course presented by distance learning methods which otherwise satisfies the requirements of these Regulations may be approved provided the speakers and attendees are participating simultaneously. Pre-recorded courses in any electronic form which otherwise satisfy the requirements of these regulations may be approved however no other form of self-study will be approved. (Comment: See MCLE Board Opinion 16.)
- (j) A program offered "in-house" may be approved by the Board provided the subject matter of the program does not primarily focus on internal policies, practices and procedures. An in-house program will be approved if it otherwise meets the standards of these regulations and if the approval procedures prescribed by these regulations are followed. (Comment: See MCLE Board Opinion 17.)
- (k) Participation in deliberative groups concerned with political activism, law reform, judicial administration, or regulation of the profession generally will not be approved for credit. Activities associated with membership or attendance at committee meetings, business meetings or work sessions will generally not be approved for credit.

- (l) To be accredited, a course must have no attendance restrictions based on race, color, national origin, religion, creed, gender, age, disability, sexual orientation or marital status.
- (m) No credit will be given for any course primarily focused on marketing a particular product or service. (Comment: See MCLE Board Opinion 15.)
- (n) A course that does not meet the requirements of subsections (b) and (c) of this Regulation may, on application of a member, be approved as a "specially approved course or program" for the applicant where the Board is satisfied that the course has significant value to the applicant's practice. Thus, for example, in appropriate cases courses on engineering, accounting or medical topics may be approved for a particular member.

REGULATION 104
PROCEDURE FOR APPROVAL OF PROGRAMS

- (a) A member or course sponsor desiring approval of a course or program shall submit to the Board all information called for by the "Application for Approval of a Continuing Legal Education Course." The content of this application has been promulgated by the Board and may be changed from time to time. A member seeking approval of a course as a "specially approved course or program" should include on the Application for Approval of a Continuing Legal Education Course, or as an attachment thereto, a statement of why the course has significant value to the member's practice. The Board shall then determine whether or not the course or program satisfies the requirements of Regulation 103. If the course or program is approved, the Board also shall determine the number of credit hours to be awarded. The Board shall notify the requesting member or sponsor of its decision within 90 days after receipt of the completed application. The Board shall maintain and make available a list of all approved courses and programs for each completion period. An approved course or program is accredited only for the completion period for which it is approved. A "specially approved course or program" is accredited only for the member for whom approved.
- (b) The sponsor of an approved course or program should include in its brochures or course descriptions the information contained in the following illustrative statement: "This course or program has been approved by the Virginia Mandatory Continuing Legal Education Board for _____ hours of credit, of which _____ hours will also apply in the area of legal ethics or professionalism." An announcement is permissible only after the course or program has been specifically approved pursuant to an application submitted directly by the sponsor.
- (c) The sponsor of an approvable course or program that has not yet been approved after application should announce: "Application for approval for this course or program is pending with the Virginia Mandatory Continuing Legal Education Board."
- (d) At each presentation of an approved course or program or one for which approval is pending, the sponsor shall make available copies of the Board's Certification of Attendance for

completion by the attendees and the Board's Certification of Teaching for completion by the instructors, copies of which will be provided by the Board with the course approval notification. The content of these certifications has been promulgated by the Board and may change from time to time. Where some portion of the program has not been approved for CLE or ethics credit, the sponsor shall provide that information to the attendees with the certification of attendance.

- (e) In the instance of a course or program presented while an application for approval is pending, it will be the responsibility of the sponsor to provide the attendees with the Board's Certification of Attendance or Teaching as required in Regulation 104(d) immediately upon receipt of the approval notification. If such course or program is not approved, the sponsor shall immediately notify the attendees that credit for the course has been denied. Under certain circumstances a member may seek approval for a specially approved course or program as defined in Regulation 101(k) in the manner specified in Regulation 104(f).
- (f) Any member seeking credit for attendance at a course or program shall submit to the Board immediately following such attendance all information called for on the Application for Approval of a Continuing Legal Education Course. The Board will then determine whether the program qualifies under these Regulations and, if so, how many credit hours are approved. The Board will promptly notify the applicant of its decision. Applications received more than 90 days following the date of the program shall be subject to a late application fee.
- (g) Any sponsor seeking approval after presenting a course or program, shall submit to the Board within 30 days after the date of the program all information called for on the Application for Approval of a Continuing Legal Education Course. The Board will then determine whether the program qualifies under these Regulations and, if so, how many credit hours are approved. The Board will promptly notify the applicant of its decision.
- (h) Failure to comply with the sponsor requirements of Regulation 104 or Regulation 105 may result in fines; revocation of course approval; denial of future course credit; suspension or revocation of accreditation; or any other sanction deemed fit by and in the discretion of the Board.

**REGULATION 105
PROCEDURE FOR ACCREDITATION OF SPONSORS**

- (a) Any sponsor may apply for approval of individual courses by complying with the criteria of Regulation 103 and the procedures of Regulation 104.
- (b) If the Board determines that a sponsor regularly provides a significant volume of continuing legal education courses, that these courses uniformly meet the approval criteria of Regulation 103, and that the sponsor will maintain and submit the records directed by these Regulations,

the Board may designate such a course provider as an "accredited sponsor" under the Rule. Such designation shall be effective for a period of no more than two years unless renewed.

- (c) A sponsor applying for status as an accredited sponsor shall submit to the Board all information called for on the Application for Status as Accredited Sponsor of Continuing Legal Education.
- (d) An accredited sponsor shall be subject to and governed by the applicable provisions of the Rule and these regulations, including the quality standards of Regulation 103 and the record-keeping and reporting requirements of this Regulation 105. The Board may at any time review an accredited sponsor program and reserves the right to deny CLE or ethics credit when the standards for approval are not met. Accordingly, for example, an accredited sponsor may represent in its descriptive literature that a course or program generates credits in the area of legal ethics or professionalism only to the extent the course contains one or more qualified ethics components as provided in Regulation 103.
- (e) The approval procedure of Regulation 104 does not apply to accredited sponsors. An accredited sponsor shall provide the Board at least thirty days in advance of a program with a descriptive course agenda or brochure which includes the name, date, location and credit hours requested for a particular course pursuant to the approval standards of Regulation 103, including, where appropriate, credit hours requested in the area of legal ethics or professionalism and a description of the content of the ethics session(s). The Board may request additional information regarding a course or program. The Board will provide the sponsor with copies of the Board's Certification of Attendance and Certification of Teaching for each course or program and the sponsor shall make available, collect and transmit such forms in accordance with the requirements of Regulation 104(d).
- (f) The Board may at any time reevaluate and revoke the status of an accredited sponsor. If the Board finds there is a basis for revocation of the accreditation granted to an accredited sponsor, the Board shall send notice by certified mail to that sponsor of the revocation within thirty (30) days of the Board's decision.
- (g) Law firms, professional corporations, and corporate law departments are not eligible to become accredited sponsors.

REGULATION 106 DELEGATION

- (a) The Board may organize itself into panels to facilitate course approval, sponsor accreditation, interpretation of these regulations and to consider and decide matters arising under the Rule and under these regulations.
- (b) To facilitate the orderly and prompt administration of the Rule and these regulations, and to expedite the processes of course approval the Board may, under its supervision and direction,

delegate to the Director of MCLE (hereafter referred to as the MCLE Director) general authority to act on behalf of the Board to review applications and approve or deny programs for credit pursuant to the approval standards of Regulation 103.

REGULATION 107
BOARD'S DETERMINATION AND REVIEW

- (a) Pursuant to directions established by the Board, a panel or the MCLE Director on behalf of the Board shall, in response to written requests for approval of courses or programs or for awarding of credit for the attendance at or teaching in approved courses, waivers, extensions of time deadlines and interpretations of these regulations, make a written response describing the action taken. A Panel or the MCLE Director may seek a determination of the Board before taking action. Upon request of the Board, the panel or MCLE Director shall report on all determinations made since the last meeting of the Board.
- (b) An aggrieved party may file with the Board a written appeal of an adverse decision by a panel or the MCLE Director within thirty (30) days after notice of the adverse decision has been mailed to him or her. No form of appeal is required but the affected person or program sponsor shall state in narrative form the action complained of and all of the reasons he or she believes the decision is erroneous.
- (c) The Board shall review any adverse determination of a panel or the MCLE Director which has been appealed to it pursuant to Regulation 107(b). The aggrieved party may present information to the Board in writing or in person, and at such time and place as the Board may direct. If the Board finds that a panel or the MCLE Director has incorrectly interpreted the facts, the provisions of the Rule or the provisions of these regulations, it may take such action as may be appropriate. The Board shall advise the affected party or program sponsor of its findings and any action taken.
- (d) Pursuant to Paragraph 17 of Section IV, Part Six, Rules of the Virginia Supreme Court, the Virginia State Bar may from time to time establish fees for processing applications, approving courses and accrediting sponsors; the remittance of any of these may be required before action is taken by the Board.
- (e) All decisions of the Board under this Regulation 107 and any other of these regulations shall be final and binding on all persons affected thereby and no appeal or other relief therefrom shall lie, except as specifically provided in Regulation 109.

REGULATION 108
REPORTING OF CERTIFICATION PROCEDURES

- (a) Where a sponsor makes copies of the Certification of Attendance and the Certification of Teaching available at a course or program, each active member who wishes credit may certify attendance electronically as instructed on the MCLE attendance reporting site of the Virginia State Bar's internet website.

- (b) Where a member attends a course or program, and for any reason the member is unable to certify his or her attendance or teaching credit electronically, the member who wishes the Board to record credit may obtain a copy of the Certification of Attendance or Certification of Teaching from the sponsor, complete it and forward it to the Board.
- (c) On or before October 31 of each year each active member shall certify attendance online or submit the Certification of Attendance or Certification of Teaching for the minimum educational requirement.
- (d) The MCLE Board shall provide ongoing access to each individual attorney's MCLE record for the current compliance year on the Virginia State Bar's internet website. The record shall include carryover hours from the previous reporting period, identifying course information including the number of hours reported for each course and the total hours of CLE, including the totals for those CLE hours designated as ethics or professionalism and those hours for pre-recorded courses which are limited to eight (8) hours per reporting period. Attorneys shall periodically review this online MCLE record to ensure accuracy and timely compliance.
- (e) Following the end of each completion period, the Board shall advise each active member of his or her status respecting completion of the annual educational requirements. This notice shall be entitled the "MCLE END OF YEAR REPORT" and shall include the information reflected on the individual attorney's MCLE record as of October 31 and instructions for completion and timely compliance.
- (f) If the active member accepts the MCLE END OF YEAR REPORT as accurately reflecting his or her credit hours for the period, including any carryover hours from the previous reporting period, and the form lists 12.0 or more CLE credits of which 2.0 or more are ethics or professionalism credits, the member does not need to file his form with the MCLE Board. If a member believes that the information reflected on the Board's records is erroneous or incomplete, then additions and corrections to the MCLE END OF YEAR REPORT must be filed as instructed and received by the MCLE office no later than close of business on December 15 of the year in which the credit is sought.
- (g) To the extent not completed online, the MCLE End of Year Report must accompany any request for credit or corrections submitted after October 31.
- (h) Delinquency fees for failure to timely complete the MCLE requirements are set forth in Paragraph 19 of Section IV, Part Six, Rules of Virginia Supreme Court. Members who have attended an insufficient number of required credits by the October 31 deadline shall remit a delinquency fee hereto referred to as a "noncompliance fee." Members who certify attendance after the December 15 certification deadline shall remit the appropriate delinquency fee hereto referred to as a "late filing fee." The late filing fee amount shall be doubled for members who fail to comply with the certification requirements by February 1 following the completion period.

- (i) After December 15, a member who wishes to receive credit for credit hours earned during the previous completion period whether for compliance or additional carryover credit may forward to the Board a certification on the appropriate forms together with remittance of the late filing fee. Any credits approved shall be recorded for the previous completion period and shall be eligible for the one year carryover into the current completion period in the same fashion as other credits. A member may not apply for credits earned earlier than the next preceding completion period.

**REGULATION 109
NONCOMPLIANCE, RESTORATION
AND REINSTATEMENT**

(a) Noncompliance

- (1) An active member who fails to comply with the educational and certification requirements of the Rule and these regulations, including payment of any required fees, and has not obtained a waiver or extension for good cause shown by December 15 of each year, shall be subject to suspension of such active member's license to practice law as is provided by Paragraph 13.2 of Section IV, Part Six, Rules of Virginia Supreme Court.
- (2) Pursuant to Paragraph 13.2 of Section IV, Part Six, Rules of Virginia Supreme Court, whenever the Board determines that an active member has failed to (i) complete the mandatory continuing legal education requirements as required by Regulation 102 and/or (ii) failed to certify attendance and pay any required fees as required by Regulation 108 without first obtaining a waiver or extension in accordance with Regulation 111, the member shall be deemed to be delinquent.

(b) Restoration and Reinstatement

- (1) A delinquent member may be restored to good standing only following (i) his or her certifying to the Secretary-Treasurer of the Virginia State Bar of compliance with the requirements of the Rule in the manner provided by Regulation 108 and as instructed in the notice of impending suspension provided pursuant to Paragraph 19 of Section IV, Part Six, Rules of Virginia Supreme Court, and a determination by the Board that he or she has completed the mandatory continuing legal education requirements of the Rule and paying any required fees, or (ii) the obtaining of a waiver or extension in accordance with Regulation 111.
- (2) A delinquent member who is suspended pursuant to Paragraph 13.2 shall not further engage in the active practice of law until he or she has been reinstated. A suspended member may be reinstated only after paying any required fees and certifying compliance with the Rule as provided in Paragraph 13.2 and these regulations.

- (3) Where a default in compliance is cured by earning credit hours in a subsequent completion period, credit hours applied to correct the default shall not be applied to satisfy the requirements of any other period.
- (4) A member suspended for an entire completion period must show attendance at 12.0 CLE credit hours including 2.0 ethics credits earned within the previous 12 months. This member cannot rely on credits earned through carryover in the previous completion period or credits used to satisfy the requirement of any previous compliance year.

REGULATION 110 EXEMPTIONS

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.

EXAMPLE:

Attorney A is first licensed to practice law in October 2009. Attorney A is not required to comply with the minimum continuing legal education requirement of the Rule and these regulations by taking or teaching approved courses until on and after November 1, 2009. Attorney A also shall not be required to file the certification required by Regulation 108 until December 15, 2010. If Attorney A attends or teaches approved courses between October 2009 and November 1, 2009, he may "carry over" to the next completion period credits in accordance with Regulation 102. Attorney A, beginning on November 1, 2009, will be subject to said requirement as long as he or she is an active member of the Virginia State Bar.

REGULATION 111 WAIVERS, EXTENSIONS AND DEFERRALS

- (a) Waivers
 - (1) A waiver of the MCLE requirement or of any fees associated with MCLE noncompliance may be sought by filing a request with the Board, together with any appropriate or required supporting material or documentation (e.g. doctors' letters, medical records). The filing of any waiver request does not toll the running of any time limit set forth in these regulations or the Rule regarding suspension.

- (2) A waiver shall be valid for a single completion period, unless renewed or extended by the Board. A waiver will be granted only for good cause.
 - (3) If the waiver is based on medical reason, condition, illness or hospitalization, then the application for waiver shall be a completed form entitled "Request for Waiver Based on Hospitalization, Illness or Medical Reason." It must be completed and signed by the admitting, family or attending health care provider and it must set forth the medical condition, hospitalization or illness which prevents the member from completing the required MCLE courses for the period for which the Waiver is being requested and have attached to it any appropriate supporting material or documentation.
 - (4) If the waiver is based on non-medical reasons, then the grounds shall be stated in a letter to the Board and any appropriate supporting material or documentation shall be attached.
 - (5) A member who is unable to satisfy the MCLE requirement due to extraordinary or extenuating circumstances beyond the control of the member may apply as prescribed in Regulation 111(a)(1) to have all or part of the eight-hour limitation on pre-recorded courses waived.
 - (6) All waiver requests should be promptly submitted when the grounds for the waiver request become known to the applicant or applicant's representative. Failure to file a waiver request in a timely manner may be considered by the Board in determining whether to grant a waiver. A prudent lawyer will use the carryover of credits provision of the Rule to avoid most non-medical based waiver requests.
- (b) Extensions
- (1) An extension may be sought by filing with the Board a request, together with any appropriate or required supporting material or documentation (e.g. physicians' letters, medical records, military deployment orders). The filing of an extension request does not toll the running of any time limit set forth in these regulations or the Rule regarding suspension.
 - (2) An extension shall be valid for the specific time period granted by the Board unless renewed or extended. An extension will be granted only for good cause.
 - (3) If the extension is based on medical reason, condition, illness or hospitalization, then the application for extension shall be a completed form entitled "Request for an Extension Based on Hospitalization, Illness or Medical Reason." It must be completed and signed by the admitting, family or attending health care provider and it must set forth the medical condition, hospitalization or illness which prevents the member from completing the required MCLE courses for the period for which an extension is being requested and have attached to it any appropriate supporting material or documentation.

- (4) If the extension is based on non-medical reasons, then the grounds should be stated in a letter to the Board and any appropriate supporting material or documentation should be attached.
 - (5) All extension requests should be promptly submitted when the grounds for the extension request become known to the applicant or the applicant's representative. Failure to file an extension request in a timely manner may be considered by the Board in determining whether to grant an extension. A prudent lawyer will use the carryover of credits provision of the Rule to avoid most non-medical based extension requests.
- (c) Deferrals
- (1) Members who change their class of membership from Active or Emeritus Member to any other class of membership, as defined in Paragraph 3 of Section IV, Part Six, Rules of Virginia Supreme Court, during the course of the compliance year may defer the completion of any remaining MCLE requirements (including payment of any outstanding MCLE delinquency fee obligations) for that compliance year including any MCLE deficiencies for any previous year(s). Prior to reactivation of their membership status, members shall satisfy all deferred MCLE requirements in addition to the requirement for the current compliance year. Credit hours reported for compliance with the current year's requirement must have been completed within the previous twelve months prior to reactivation.

**REGULATION 112
REPRESENTATIONS BY MEMBERS**

A member who makes a materially false statement in any document filed with the Board shall be subject to appropriate disciplinary action.

Effective November 1, 2010