

**AMENDMENTS TO MCLE OPINION 13
AND REGULATION 103**

MCLE Opinion 13 (Legal Ethics)

The MCLE Board proposes to amend the penultimate paragraph of MCLE Opinion 13 (Legal Ethics) by clarifying how certain types of continuing legal education courses are evaluated to determine whether they qualify for credit in the area of legal ethics or professionalism. The Board has noticed over the past few years a proliferation of course providers that have requested ethics credits for courses that teach substantive areas of the law, such as attorney/client privilege and the work product doctrine. Several course providers and Bar members maintain that since attorney/client privilege and the work product doctrine are specifically mentioned in the body of and Comments to Rule 1.6 of the Rules of Professional Conduct, courses that examine these issues should qualify for ethics credits.

The MCLE Board has considered that input, as well as the definition of a “qualified ethics course” found in MCLE Regulation 101 (q). In that regulation, the Board is directed to allow ethics credits for courses that are “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.” In order for a portion of a course to so qualify, the rule requires that the “ethical topic” must be “the primary focus of the segment.”

Currently, MCLE Opinion 13 provides that programs dealing with litigation tactics or strategy, rules of evidence and rules of procedure will not be approved for ethics credits. Attorney/client privilege and the work product doctrine, while mentioned in the Rules of Professional Conduct, are generally topics that focus on litigation, evidentiary and trial issues. The MCLE Board seeks to clarify this paragraph of Opinion 13 to allow ethics credits for courses that deal with substantive areas of the law such as attorney/client privilege and the work product doctrine, but *only* if the focus of these courses is on “applicable rules of professional conduct or codes of professional responsibility.” The amended provision provides clear guidance as to how these courses can obtain ethics credits and sets forth more clearly how the MCLE Board has historically approached the question of whether these courses should be afforded ethics credits.

MCLE Regulation 103 (a) (Standards for Approval of Programs)

The MCLE Board proposes to amend this section of its regulations to make it clear that it may not approve a course for credit even though that course is presented by an accredited sponsor previously designated as such pursuant to Regulation 105. In other words, accredited sponsors must still present courses that comply with all the criteria for approval of MCLE courses, and their courses will not automatically be accorded credit in instances where they do not comply. Regulation 105 contains clear language to this effect, and the MCLE Board determined that Regulation 103 (a) should be similarly unambiguous.

PROPOSED AMENDMENTS TO MCLE OPINION 13 AND REGULATION 103

MCLE OPINION 13

LEGAL ETHICS

The Virginia Supreme Court has required by Rule of Court that each active member of the Virginia State Bar complete a certain minimum amount of continuing legal education “in the area of legal ethics or professionalism.” MCLE Regulations provide that an approved course or program may provide credit toward this requirement by addressing “topics embraced in recognized formulations of rules of professional conduct or codes of professional responsibility applicable to attorneys.” The board has encountered instances where it has received applications for approval of ethics credits for topics which do not objectively pertain to or specifically address rules of professional conduct or codes of professional responsibility specifically applicable to attorneys.

The following are examples of some of the topics and types of courses which DO NOT qualify for ethics credits:

Ethics in Government

Programs or components which, although presented to attorneys, focus on standards of conduct applicable to non-attorney employees including those dealing with:

- i) the ethical standards applicable to governmental employees, federal legislators, governmental contractors;
- ii) United States’ employees’ compliance with the President’s Executive Order requiring a standard of conduct higher than the bare ethical rules might require;
- iii) educating the government attorney in these standards to enable that attorney to better advise a legislative and/or executive branch client on the applicable standards.

Medical Ethics

Programs or components which, although presented to lawyers, focus on:

- i) an analysis or the application of medical ethics, “bioethics,” or “biomedical” ethics;
- ii) statutory options involving “living wills,” the right to die, and “informed consent”;

- iii) educating the lawyer in these subjects to enable that lawyer to better advise a client.

Ethics of other Professions

Programs or components which although presented to lawyers, focus on:

- i) an analysis or the application of ethical standards governing members of a profession other than the legal profession, e.g. ethics for museum administrators, accountants, realtors, architects, engineers, chemists, etc.;
- ii) educating the lawyer in these standards to enable that lawyer to better advise a client on the applicable standards.

Business or Corporate Ethics

Programs or components which, although presented to lawyers, focus on:

- i) an analysis or the application of ethical standards appropriate for executives, corporate officers and employees;
- ii) educating the lawyer in these standards to enable that lawyer to better advise a client on the applicable standards.

~~Litigation Tactics~~ **Rules of Procedure, Rules of Evidence and Litigation Tactics**

Programs or components which focus on rules of procedure, rules of evidence or substantive areas of the law, such as attorney/client privilege and the work product doctrine, and rules of procedure and not on unless the focus of the programs or components also provides a substantial treatment of applicable rules of professional conduct or codes of professional responsibility. In particular, malpractice prevention programs or components which focus primarily on malpractice litigation, tactics, or strategy will not be approved for ethics credit. Programs or components devoted to or including these topics may meet the requirements for general MCLE credit. The board is of the opinion that such topics do not fulfill the requirement for continuing legal education in the area of legal ethics or professionalism. The board will therefore not assign ethics credits to such topics.

*[Paragraph 17.C.(1) of Section IV, Part Six, Rules of the Supreme Court of Virginia and MCLE Regulations 101(q), 101(r) and 103(d)]. (12/92)
Amended effective /07*

Regulation 103

STANDARDS FOR APPROVAL OF PROGRAMS

- (a) Subject to the provisions of Regulation 105 (d), Aa 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), Aa 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.