
VII. Sections and Conferences

A. General Information

Sections of the Virginia State Bar are separate groups having special interests in particular areas of practice. Sections function under bylaws approved by the Virginia State Bar Council and broad policy guidelines, also established by the Council. (See pages 6–7)

Members in good standing of the Virginia State Bar are eligible for *active* membership in most sections upon payment of authorized dues. In addition to *active* membership, the bylaws of many sections also provide for *judicial*, *law student*, and *associate* categories of membership. As voluntary, nonappointed entities, sections elect their own officers and choose their own activities within limitations established by the bylaws of the section, as well as by the general policies and purposes of the Virginia State Bar.

Sections provide the structure through which all members of the bar have the opportunity to participate in bar work. Sections may be divided into smaller units. For example, committees of sections may be appointed to undertake particular projects such as membership recruitment and retention, newsletters and other publications, and continuing legal education (CLE) programs. The board of governors should serve to coordinate the work of the section committees rather than attempt to do all of the section's work.

As of September 1, 2018, the Virginia State Bar Council has authorized twenty sections, with a approximate total membership of 21,537. (<http://www.vsb.org/site/members/sections/>). In addition, Council has authorized four conferences:

- **Conference of Local and Specialty Bar Associations (CLSBA)**

All local and specialty statewide bar associations are eligible for membership

(<http://www.vsb.org/site/conferences/clba/>)

Number of Member Bar Associations: 124 (as of September 1, 2018)

- **Senior Lawyers Conference (SLC)**

All members of the Virginia State Bar in good standing who are aged 55 or older are automatic members of the SLC.

<http://www.vsb.org/site/conferences/slc/>

Membership: 20,499 (as of September 1, 2018)

- **Young Lawyers Conference (YLC)**

All members of the Virginia State Bar in good standing who are age 36 or younger and/or who have been admitted to their first bar less than three years are automatic members of the YLC.

<http://www.vsb.org/site/conferences/ylc/>

Membership: 9,166 (as of September 1, 2018)

- **Diversity Conference (DC)**

Open to all members of the Virginia State Bar in good standing who are interested in increasing diversity in the legal profession and in ensuring that Virginia meets the legal needs of an increasingly diverse population.

<http://www.vsb.org/site/conferences/dc/>

Membership: 773 (as of September 1, 2018)

B. Historical List of Sections and Conferences

NAME OF SECTION	ESTABLISHMENT DATE
ADMINISTRATIVE LAW SECTION	January 1979
ANTITRUST, FRANCHISE & TRADE REGULATION SECTION ⁷	April 1977
BANKRUPTCY LAW SECTION	February 1990
BUSINESS LAW SECTION ¹	January 1970
CONSTRUCTION LAW & PUBLIC CONTRACTS SECTION ⁸	April 1979
CORPORATE COUNSEL SECTION	October 1989

CRIMINAL LAW SECTION	October 1967
EDUCATION OF LAWYERS SECTION	October 1992
ENVIRONMENTAL LAW SECTION	October 1978
FAMILY LAW SECTION	January 1978
GENERAL PRACTICE SECTION	February 1986
HEALTH LAW SECTION	October 1984
INTELLECTUAL PROPERTY LAW SECTION ⁴	May 1970
INTERNATIONAL PRACTICE SECTION ⁶	October 1978
LITIGATION SECTION ²	October 1980
LOCAL GOVERNMENT LAW SECTION ⁵	February 1985
MILITARY LAW SECTION	February 1996
REAL PROPERTY SECTION ³	October 1978
TAXATION SECTION	October 1955
TRUSTS AND ESTATES SECTION ³	October 1978

CONFERENCE OF LOCAL AND SPECIALTY BAR ASSOCIATIONS	1990
SENIOR LAWYERS CONFERENCE ⁹	July 2001
YOUNG LAWYERS CONFERENCE	July 1974
DIVERSITY CONFERENCE ¹⁰	January 2010

- (1) Originally authorized October 21, 1955, with name changed to Section on Corporation and Business Law and then to Section on Corporation Counsel, October 1969.
- (2) Originally authorized October 21, 1955, with name changed to Section on Negligence, October 27, 1967.
- (3) Estates and Property Section authorized October 21, 1955, with a division into Trusts and Estates Section and Real Property Section, October 28, 1978.
- (4) Formerly Patent, Trademark and Copyright Law Section; name change was authorized by Council, February 27, 1987.
- (5) Formerly Municipal & Local Government Law Section; name change was authorized by Council, October 16, 1988.
- (6) Formerly International Law Section; name change was authorized by Council, June 15, 1989.
- (7) Formerly Antitrust Law Section; name change was authorized by Council, February 1989. Restated by section, June 1991.
- (8) Formerly Construction Law Section; name change was authorized by Council, February 1992.
- (9) Formerly Senior Lawyers Section, established February 1987. Council authorized establishment of the Conference in June 2001.
- (10) Council approved creation of the Diversity Conference in June 2009. Supreme Court of Virginia authorized establishment of the conference in January 2010.

C. Section Membership Structure, Dues, and Billing

(A.) Table of Membership

NAME OF SECTION	CURRENT MEMBERSHIP*
ADMINISTRATIVE LAW	556
ANTITRUST LAW	186
BANKRUPTCY LAW	675
BUSINESS LAW	1,708
CONSTRUCTION LAW	740
CORPORATE COUNSEL	1,492
CRIMINAL LAW	2,230
EDUCATION OF LAWYERS	178
ENVIRONMENTAL LAW	349
FAMILY LAW	1,873
GENERAL PRACTICE	683
HEALTH LAW	627
INTELLECTUAL PROPERTY	1,526
INTERNATIONAL PRACTICE	393
LITIGATION	3,083
LOCAL GOVERNMENT	647
MILITARY LAW	231
REAL PROPERTY	1,822
TAXATION	681
TRUSTS AND ESTATES	1,857
TOTAL	21,537

*As of September 1, 2018, includes Active, Associate, Judicial, and Non-Bar Member categories of section membership.

(B.) Section Dues Structure*

ADMINISTRATIVE LAW SECTION	\$20.00
ANTITRUST, FRANCHISE & TRADE REGULATION SECTION	\$10.00
BANKRUPTCY LAW SECTION	\$20.00
BUSINESS LAW SECTION	\$10.00
CONSTRUCTION LAW & PUBLIC CONTRACTS SECTION	\$20.00
CORPORATE COUNSEL SECTION	\$20.00
CRIMINAL LAW SECTION	\$20.00
EDUCATION OF LAWYERS SECTION	\$20.00
ENVIRONMENTAL LAW SECTION	\$20.00
FAMILY LAW SECTION	\$30.00
GENERAL PRACTICE SECTION	\$20.00
HEALTH LAW SECTION	\$20.00
INTELLECTUAL PROPERTY LAW SECTION	\$20.00
INTERNATIONAL PRACTICE SECTION	\$10.00
LITIGATION SECTION	\$15.00
LOCAL GOVERNMENT LAW SECTION	\$20.00
MILITARY LAW SECTION	\$20.00
REAL PROPERTY SECTION	\$25.00
TAXATION SECTION	\$15.00
TRUSTS AND ESTATES SECTION	\$10.00

[As of August 2018]

* Pursuant to the terms of their bylaws, sections have authority to raise their dues up to \$35.00 without further Council action. However, a dues amendment *must* be approved by the board of governors and general membership of the section (if applicable) prior to such action. If such amendment is approved at the Annual Meeting of the section in June, it will not become effective until the billing conducted one year later.

(C.) Dues and Billing

Section membership is voluntary. Section dues are billed on a fiscal-year basis to comport with the bar's mandatory dues billing.

Section dues are received continually during the months of July and August. Therefore, section membership lists fluctuate in size during this time period. Sections are encouraged to schedule mailings and newsletters after September 1 to ensure distribution to all new members of the section.

Pursuant to the terms of the section bylaws, section dues are waived for new members enrolled during the last quarter of the state bar's fiscal year (April–June).

D. Budget Preparation and Expenditures

(A.) Budget Cycle

The Virginia State Bar operates on the fiscal year cycle commencing July 1. Sections formulate a budget based on 80 percent of their dues revenue plus any seminar proceeds or miscellaneous revenue that may have been generated by the section.

Conferences prepare budgets based on the programs and projects planned for the fiscal year. Since conferences do not charge dues, these budgets are funded by the bar's general revenue, derived primarily from mandatory bar dues. In some cases, conferences may charge fees for events that would help offset the cost of that event.

Planning for the next fiscal year budget will begin in November. Sections and conferences should anticipate board meetings, projects, programs, newsletters, and Annual Meeting activities which they plan to conduct in the subsequent fiscal year. Costs associated with these activities should be included on the proposed budget. Section vice chairs should be actively involved in the budget process since they will be responsible for adhering to the budget when they assume the chair's position.

Section and conference budget proposals must be filed in the bar office on or before **December 3, 2018**. This allows time for the bar staff to compile the complete State Bar budget for review by the Standing Committee on Budget and Finance prior to the Executive Committee and Council meetings.

An Excel version of the budget form may be found on the State Bar's website at <http://www.vsb.org/site/members/chairs-handbook>.

(B.) VSB Section Budget and Expenditures Policy

These rules have been approved by the Executive Committee of the Virginia State Bar, and sections are enjoined to adhere to them:

1. After three years of operation, each section shall have a membership and dues structure which enables it to be self-supporting.
2. After three years of operation, each section shall pay annually 20 percent of its dues revenue as an administrative service charge for the use of the bar facilities, services and staff.
3. Each section's budget must be approved in accordance with the VSB's annual budgeting process. Proposed budgets must be submitted for approval on or before the specified due date. The budget must be detailed with specific line items in accordance with the VSB proposed budget form for sections.
4. The Executive Committee must approve, in advance, any increase or decrease to a section's budget. A section must request any amendment in writing as soon as the need is known and no later than the April meeting of the Executive Committee. Non-dues revenue generated in a given year will be considered by the Executive Committee in evaluating a section's proposed budget for the coming year and in evaluating a section's request for a budget amendment. In the event a decision needs to be made between Executive Committee meetings, the budget amendment decision may be made by the VSB's executive director.
5. A section's unexpended budget and excess revenue, as of June 30 of each year, becomes a part of the bar's general operating fund. Unexpended revenue which is available as year-end approaches cannot be expended for purposes not previously addressed in the approved budget.
6. Sections shall not expend funds in excess of their budget and all expenditures should be for the benefit of the entire section membership.
7. No vouchers will be approved for expenditures which are inconsistent with general policies of the bar as a state agency, such as political activities, meetings at resort hotels and other expenditures which are excessive.
8. Sections are responsible for Annual Meeting expenses which should be reflected in their annual budget. No charges may be made to the hotel master accounts established by the Virginia State Bar without express authority of the VSB executive director.
9. Council must approve, in advance, proposed dues increases over the amount of \$35 (as amended 2/89).

Amendment February 11, 2011

Approved by VSB Executive Committee September 19, 2008

Approved by VSB Executive Committee October 1988

Approved by VSB Executive Committee September 10, 1999

Approved by VSB Executive Committee February 25, 2011

(C.) Section and Conference Accounts

Virginia statutes require that all revenues collected by the state bar, or any of its sections, conferences or committees, be deposited into the state treasury to the credit of the bar. The state bar fiscal office maintains subsidiary ledgers for the sections and conferences, which reflect dues and other revenues. In accordance with policies regarding state funds, sections and conferences are prohibited from maintaining outside checking accounts.* The executive director of the Virginia State Bar has exclusive responsibility for the financial management of all section and conference budgets.

* **Section 2.1-180 of the *Code of Virginia* requires that every state agency collecting monies from any source for the use of the agency pay the collected monies into the state treasury.**

(D.) Annual Meeting and Year End Expenditures

Sections and conferences are responsible for all expenses associated with Annual Meeting activities sponsored by the section or conference, including:

- a) Effective with the fiscal year beginning on July 1, 2005, section and conference board members may be entitled to travel reimbursement for one night during the Annual Meeting. Reimbursement will be allowed for board members if a section or conference business meeting is held during the Annual Meeting and if the section's or conference's budget is sufficient to cover the expenses. This exception to the general policy is based on the fact that sections and conferences play a major role in the activities that make up the bar's Annual Meeting.
- b) travel, lodging and other related expenses for speakers;
- c) awards for speakers and outgoing board members and officers;
- d) printing, AV and other special program requirements.

In accordance with state year-end guidelines, **original** invoices for section and conference expenditures that are not processed by the state bar office prior to fiscal year end closing will be charged against the group's budget for the following year.

(E.) Monthly Financial Reports

Section and conference chairs will receive a monthly financial report indicating the revenue and expenses. Reports are circulated approximately three weeks after the close of the month. A copy of the financial report also will be sent to the vice chair for information. Because of the vice chair's responsibility for budget preparation for the next year, the vice chair should keep abreast of the financial condition of the section and be mindful of any developing needs or problems that might be anticipated.

(F.) Grant Requests

Chairs should be advised that sections and conferences are required, as is the Virginia State Bar, to comply with state guidelines and restrictions applicable to seeking grants from private or public sources. See Solicitation Policy on page 34.

If a section or conference plans to submit a grant application for a special project, **prior** approval must be given by the executive director. All grant applications must be signed by the executive director or the deputy executive director and a copy of the application must be given to the bar's finance/procurement director. The fiscal department is responsible for tracking grants and complying with state fiscal policies and procedures.

If the grant is approved, a copy of the approval letter from the granting entity must be given to the finance/procurement director. The executive director or the deputy executive director must sign off on any paperwork related to receipt of grant funds. The section/conference liaison is responsible for working with the volunteer responsible for carrying out the grant to make sure all funds are spent as designated by the grant, invoices are submitted promptly for payment, and required reports are filed accurately and timely.

(G.) Approval of Vouchers

Under VSB budgetary guidelines, expenditures made during a given fiscal year should be covered by funds on hand and available for that fiscal year. Section and conference chairs have a personal responsibility for adhering to annual budgets as approved. Expenditures exceeding annual budgets must be approved in advance by the Executive Committee, according to the policies established by the Virginia State Bar. Requests for expenditures in excess of approved budgets are authorized only in unusual circumstances.

Volunteer expense reimbursement vouchers chargeable to section and conference budgets will be forwarded to the appropriate chair or staff liaison for approval prior to processing for payment by the Virginia State Bar Fiscal Office. Please refer to the volunteer expense reimbursement policies and procedures on page 44.

E. Newsletters, Websites, and Electronic Communications

Newsletters

Newsletter production varies by conference and section as well as by methods of disbursement. Staying in touch with your membership and providing current articles and information is vital to the health of your section or conference. The VSB encourages each section and conference to publish 2–3 newsletters a year. See Resources for Newsletter Editors at <http://www.vsb.org/site/members/editors>. For questions and to plan strategy, please contact Communications Coordinator Jackie Kruszewski at jkruszewski@vsb.org or (804) 775-0529. (Please refer to the Policy on Content of Publications of Virginia State Bar Committees, Sections, Conferences, and *Virginia Lawyer* on page 39.)

Section and Conference Websites

Section and conference webmasters take advantage of the website template that was designed to have the look and functionality of the state bar's website. The template is based on the VSB website's content management system. It allows for basic features such as lists of board members, meetings, news, bylaws, publications, and a membership form. Password protection is available for portions of the site, such as newsletters and member rosters.

Sections should designate a person to be in charge of content for their sites, and they may hire an outside contractor to maintain the sites. Your VSB liaison can connect your section or conference with an outside vendor to update the website. Your web editor may access the template by contacting Caryn Persinger at persinger@vsb.org or (804) 775-0588.

VSB staff currently maintains the SLC, DC, and CLSBA sites, as well as the bar's entire site, including disciplinary information and the *Professional Guidelines* and its supplement of rule changes and proposed rule changes throughout the year.

A disclaimer will appear on all section pages that states that the information is the work of the section and that the contents do not necessarily reflect official state bar views or policies.

Group Email Distribution Lists

At the request of the chair of a section or conference, the bar will send a group email to the section's or conference's membership list. The text of group emails will be reviewed and edited by the VSB. The service does not permit members to respond to any of the messages. Please give one week's notice. (Please refer to the Policy Concerning the Use and Disclosure of VSB Email Addresses on page 31 and the Policy on Content of Publications of Virginia State Bar Committees, Sections, Conferences, and *Virginia Lawyer* on page 39).

F. CLE Seminars and Educational Programs

(A.) Coordination with CLE Providers

Sections and conferences interested in developing CLE programs are encouraged to establish a cosponsorship arrangement with cooperative VSB accredited CLE providers. In cosponsoring a program with a section, it is customary for CLE Providers to establish a discounted registration fee structure for section members.

Many sections have worked with Virginia CLE, a not-for-profit continuing legal education provider. Ray White with Virginia CLE (www.vacle.org) can be contacted at (800) 223-2167 or (804) 979-3147. A list of additional accredited sponsors, those sponsors with a history of Virginia approved courses, is available on the VSB's website under MCLE. For questions about a provider, please contact the VSB's MCLE department.

All sections and conferences must work closely with the cosponsoring CLE provider to coordinate essential administrative program support, including:

- **Marketing the seminar;**
- **Handling preregistration and on-site registration;**
- **Assembling and producing written materials;**
- **Assuring compliance with MCLE regulations;**
- **Coordinating on-site logistics; and**
- **Providing on-site staffing.**

In cosponsoring a program with a section, CLE providers will customarily establish a discounted registration fee structure for section members.

(B.) Independent Programming

With the exception of programs planned in conjunction with the Virginia State Bar's Annual Meeting, any seminar and/or educational program planned by a section/conference **independently** of Virginia CLE **must have advance approval** of the Director of Member Compliance in consultation with VSB Executive Director Karen Gould.

Such advance approval will ensure the section has adequate resources to promote and finance the program. Prior to approving, consideration will be given to the level of administrative support required of the state bar office to adequately staff all aspects of such an undertaking. Since the Virginia State Bar is generally not set up to conduct CLE programs on a regular basis, the impact on staff resources is an important consideration.

G. MCLE Regulations and Compliance

<http://www.vsb.org/site/members/mcle-courses/>

Pursuant to Rule of Court (Paragraph 17, Part Six, Section IV), the Supreme Court of Virginia established a mandatory continuing legal education program in 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. Of the twelve credit hours required, no more than eight (8) may be earned from pre-recorded courses resulting in a minimum requirement of four (4) credit hours via live interactive programs. The program is administered by the Mandatory Continuing Legal Education (MCLE) Board, appointed by the Supreme Court of Virginia, using regulations adopted by the board.

(A.) MCLE Attorney Online Records and Certification

Attorneys may visit the member's area of the Virginia State Bar's website at <https://member.vsb.org/vsbportal/> to review their MCLE records and certify course attendance online. Course attendance information is posted to the member's record immediately using this feature.

(B.) MCLE Definitions and Requirements

CLE credit will be given for attendance at an educational program sponsored by a section/conference of the Virginia State Bar if the seminar meets the standards of approval as outlined in the Mandatory Continuing Legal Education Regulations. Virginia CLE will be responsible for ensuring that programs which they cosponsor meet the required standards of approval. However, if a section/conference has received authorization from the VSB Executive Committee to present an independent program, the program chair should consult with the group's staff liaison to ensure that the program is developed to meet MCLE regulations.

- 1) **Accredited Sponsors:** Together with over 100 other providers, the Virginia State Bar and Virginia CLE have been designated as accredited sponsors of continuing legal education programs in Virginia. Accredited sponsors are subject to and governed by the applicable provisions of the rules and regulations of the MCLE Board, including the quality standards of Regulation 103 and the record-keeping and reporting requirements of Regulation 105. **The MCLE 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.**
- 2) **Written materials:** An outline **must** be submitted in order for a program to qualify for CLE credit. Pursuant to MCLE Regulation 103(g), thorough, high-quality instructional written materials which appropriately cover the subject matter must be provided. **An agenda or topical outline will not be sufficient. [MCLE Opinion #14]**
- 3) **Ethics Credit:** A presentation may qualify for credit in the area of legal ethics or professionalism if the ethics component meets the definition in MCLE Regulation 101(s and t) and covers a minimum of 30 minutes, as outlined in MCLE Regulation 103(d).

If a section/conference plans to incorporate an ethics segment into a CLE program, the program chair is responsible for ensuring that:

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- a) the material qualifies as legal ethics or professionalism [MCLE Opinion #13];
 - b) the segment is clearly and appropriately described or entitled in the written materials [MCLE Reg 101(s and t)];
 - c) the time for the ethics component is clearly designated in the program schedule [MCLE Reg 103(d)].

- 4) **Coordination with VSB MCLE Department:** If a program is being planned independently by a section/conference, it is the responsibility of the section to apprise the MCLE Department of the proposed program and to seek approval of the course for the specified number of CLE and ethics credits. **Applications must be received at least 30 days in advance of the program.**

Virginia CLE or other accredited co-sponsors will coordinate with the State Bar's MCLE Department for course approval for any programs cosponsored with that office.

- 5) **Course Approval:** At the earliest possible date in the planning, the section/conference should coordinate through its staff liaison to ensure that an Application for Course Approval (**Form #4**) and the proper materials are submitted to the MCLE Department. Since the section/conference is applying for credit under the auspices of the Virginia State Bar, which is an accredited sponsor, it is exempt from filing the fee specified on the application form. It is helpful in marketing the seminar if course approval is finalized prior to advertising the program and mailing the announcement brochure.
- 6) **MCLE Certification Forms:** Once a program has been approved for CLE credit, the MCLE Department will provide attendance certification forms to the "accredited sponsor" (either Virginia CLE or the VSB section). These forms must be distributed to all registrants at the seminar. For CLE programs planned independently of Virginia CLE, it is the section's/conference's responsibility to coordinate with its staff liaison to make sure that the appropriate number of these forms (**Form #2**) are provided. The MCLE Department will also provide certification forms for the speakers (**Form #3**).

(C.) MCLE Opinion #13—Topics Qualifying for Ethics Credit

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.

Rules of Procedure, Rules of Evidence and Litigation Tactics: Programs or components which focus on rules of procedure, rules of evidence, unless the focus of the programs or components also provides a substantial treatment of applicable rules of pro-

essional 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(s), 101(t) and 103(d)]. (12/92)

Amended effective 11/1/09

(D.) MCLE Opinion #14— Requirement for Written Materials

MCLE OPINION #14

REQUIREMENT FOR WRITTEN INSTRUCTIONAL MATERIAL

The Supreme Court of Virginia has required by Rule of Court that courses or programs qualifying for MCLE credit must provide attendees with written educational materials which reflect a thorough preparation by the provider of the course and which assist course participants in improving their legal competence. Paragraph 17(H)(3) of Section IV, Part Six, Rules of the Supreme Court of Virginia. In compliance with this mandate, the MCLE Board has promulgated Regulation 103(g). That provision provides:

Thorough, high quality instructional 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.

Although courses of shorter duration may require less lengthy materials, this requirement must be satisfied by courses of any length in order for MCLE credit to be granted.

The purpose of the requirement of written materials is fourfold. First, it ensures thorough course preparation by the provider. Second, it minimizes the need for attendees to take extensive notes, whether written or electronic, during the presentation thereby allowing attendees to focus their attention on the presentation. Third, it ensures that the attendees will be provided with materials that are useful after the course is completed. Materials provided should be sufficient to assist the attendee when questions regarding the particular subject matter covered are raised at a later date and to serve as a general resource after course completion. The fourth reason for this requirement is to allow the MCLE Board to evaluate the quality and nature of the course and the actual subject matter being covered. Occasionally neither the title of the course submitted on an application nor the agenda for the presentation provides sufficient information about course content to allow evaluation. The review of the written materials provided to course attendees allows the Board to assess the quality and subject matter of the course and ensures that the topics addressed are appropriate for accreditation purposes.

The phrase “[t]horough, high quality instructional written materials which appropriately cover the subject matter” as used in Regulation 103 means current and up-to-date materials that directly, concisely, and adequately cover the subject matter in such a way as to effectively and thoroughly instruct attendees on the topics covered during the program and assist course participants in improving their legal competence. These materials can include, by way of example and not limitation, the following:

- a. Materials prepared specifically for the course; or
- b. A book, chapter of a book, article, or other writing directly on point to the presentation.

Distribution of primary sources, such as statutes, regulations, cases, briefs, pleadings, or motions may supplement thorough, high quality instructional written materials; however, such primary sources alone are not adequate to satisfy the written materials requirement. Similarly, compilations of articles and informational resources may also supplement thorough, high quality instructional materials; however, such compilations alone, which require the attendee to research through the documentation in order to discern, ascertain or search for, the information conveyed during the program, will not satisfy the written materials requirement.

In determining whether written materials are adequate, the Board will also consider the teaching method employed. For example, materials appropriate to participatory skills development courses, such as a trial advocacy course, will differ from a course where a straight lecture method is employed. Moreover, courses in which role-playing or other interactive teaching methods are employed will have varied materials. However, in all such cases, high quality instructional materials must be provided.

The following recurring issues regarding the provision of instructional materials have come to the Board's attention:

- a) **Presentation Slides:** Presentation slides, such as PowerPoints, will satisfy the requirement for high quality written materials so long as the other requirements set forth in this opinion have been met. To be considered as written materials, an electronic or paper copy of the presentation slides must be distributed to the individual attendees at or before the presentation. Presentation slides which were not distributed to attendees at or before the presentation will not be considered when evaluating instructional materials.
- b) **Hypotheticals:** Written materials which contain only hypotheticals will not satisfy this requirement. While the discussion of hypotheticals can be an appropriate teaching method, written materials including only hypotheticals to be discussed will not suffice as thorough, high quality instructional material. On the other hand written materials in which the hypotheticals are accompanied by (1) course materials which assist the understanding of the subject matter and have reference value to the participants or (2) course materials which provide a thorough written discussion and/or responses to such hypotheticals may satisfy this requirement. Such written discussion or responses to hypotheticals may be provided to the participants separately at any time up to the time of the conclusion of the course.
- c) **Lists of Reference Materials:** Bibliographies or a list of other reference materials, such as internet sites, standing alone, will not suffice as thorough, high quality instructional material.
- d) **Late Materials:** Instructional materials provided after the course do not comply with Virginia's MCLE requirement.

The written materials requirement must be satisfied for each segment of a program. For any segment not meeting the written materials requirement, no credit will be granted. The requirement to distribute written materials can be satisfied by providing printed copies or copies stored on electronic media. It may also be satisfied by allowing attendees access to a web-site or other area where electronic copies are available for downloading. To ensure easy access and identification by the attendee and the MCLE Board as they relate to the course agenda, instructional materials (whether in written or electronic format) must be readable, and user friendly. For example, a linear PDF file of documents without bookmarks to identify the agenda segment to which they apply would not be acceptable.

[Paragraph 17(H)(3) of Section IV, Part Six, Rules of the Supreme Court of Virginia; MCLE Regulation 103(g)].

Effective 07/01/95

Revised 02/11/02

Revised 8/15/13 to change reference to MCLE Regulation 103(f) to 103(g).

Revised 8/21/17