

# XVI. CLE Seminars/ Educational Programs

## A. Coordination with Virginia CLE Office

Sections and conferences interested in developing CLE programs are encouraged to establish a cosponsorship arrangement with Virginia CLE, the continuing legal education program administered by the CLE Committee of the Virginia Law Foundation. The CLE Committee includes representatives appointed by both the Virginia State Bar and The Virginia Bar Association, as well as representatives from each of the state's six law schools.

Gary L. Wilbert, director of Virginia CLE, and his staff operate out of offices located in Charlottesville. Virginia CLE currently conducts programs which are cosponsored with many state bar sections on an annual basis. Staff liaisons from the Virginia CLE office will work with a group's board of governors to develop the substantive aspects of the CLE program. In addition, the CLE office is organized to coordinate all of the administrative details of planning and conducting the program. Typically, the staff of Virginia CLE will assume responsibility for:

- ◆ **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, Virginia CLE will customarily establish a discounted registration fee structure for section members.

Chairs should contact Gary Wilbert early in the bar year to discuss proposed cosponsorship of a CLE program.

VIRGINIA CLE  
P.O. Box 4468  
Charlottesville, Virginia 22905  
(800) 223-2167 or (804) 979-5644  
FAX: (804) 979-3147  
(<http://www.vacle.org>)

## B. Independent Programming

With the exception of programs planned in conjunction with the Virginia State Bar's Midyear Legal Seminar and Annual Meeting, any seminar and or educational program planned by a section/conference **independently** of Virginia CLE **must have advance approval** of the Virginia State Bar's Executive Committee, after consultation with the VSB executive director and the staff liaison.

Such advance approval will ensure that the section has adequate resources to promote and finance the program. Prior to the approval of an independent program, consideration will be given to the level of administrative support required of the state bar office in order to adequately staff all aspects of such

an undertaking. Since the Virginia State Bar is not set up generally to conduct CLE programs on a regular basis, the impact on staff resources may be an important consideration.

If an independent CLE program is approved by the Virginia State Bar, the section/conference must work closely with its liaison to coordinate all of the administrative details of the program, including selecting the site, marketing the seminar, handling registration, producing written materials, ensuring MCLE compliance, and handling on-site logistics and staffing.

### **C. 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 will be posted to the member's record immediately using this feature.

### **D. MCLE Regulations and Compliance**

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(f), 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(q and r) 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:

- 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(q and r)];**
- 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 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**).

## **E. 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 or substantive areas of the law, such as attorney/client privilege and the work product doctrine, 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 8/13/07

## **F. MCLE Opinion #14—Requirement for Written Materials**

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(f). 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 threefold. First, it insures thorough course preparation by the provider. Generally, the provider must furnish materials prepared specifically for the course and the subject matter addressed. The distribution of copies of cases or statutes without customized materials is not acceptable. A second purpose of this requirement is to insure that the attendees will be provided with materials which 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 third 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 to insure that the topics addressed are appropriate for accreditation purposes.

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.

Several recurring problems regarding the provision of instructional materials, however, have come to the Board's attention.

- a) 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.
- b) Bibliographies or a list of other reference materials, such as internet sites, standing alone, will generally not suffice as thorough, high quality instructional material. Similarly, sample pleadings, without instructional materials are inadequate to satisfy this requirement.

The requirement to provide 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 website or other area where electronic copies are available for downloading. In the event that a provider does not provide printed copies to all course participants, such copies must be made available to any attendee who requests them.

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

Effective 07/01/95, Revised 02/11/02