

MCLE Opinion #16—Courses Provided by Distance Learning Methods

The Virginia Mandatory Continuing Legal Education (MCLE) Board solicits comment from members regarding these proposed amendments to MCLE Opinion #16 concerning approval standards for distance learning programs and proposed changes to MCLE Regulation 101, 102 & 103 to define distance learning and the standards for approval; and to limit duplication of course credit for all programs. The MCLE board will receive any input or comments to the address below through April 30, 2003 for consideration at its May meeting:

MCLE BOARD, 707 East Main Street, Suite 1500, Richmond, VA 23219 or cartwright@vsb.org.

The technological changes brought about by the Internet have raised questions as to whether continuing legal education courses might be delivered through the Internet or by other distance learning technologies. The Mandatory Continuing Legal Education Board will, in certain circumstances, approve CLE courses delivered by distance learning methods, including on-line presentations. In order for such courses to be approved they must meet the standards as to content prescribed by the Virginia MCLE Regulations. The purpose of this Opinion is to clarify the application of the Regulations to courses offered by distance learning methods as follows:

1. The courses must afford interaction between the attendees and the presenter with respect to the subject matter of the course. An Internet discussion group or a "bulletin board" may satisfy this requirement so long as it facilitates vigorous discussion.
2. The provider of **Internet or telephone** courses must have a system which allows certification of attendance to be controlled by the provider **and which permits the provider to verify the date and time of attendance**. For example, for an Internet delivered course, a system which identifies the log on and log off of a participant and is secured against attendee manipulation may satisfy this requirement.
3. **A provider of a course which is delivered by distance learning methods where the presenter and the attendee are not simultaneously engaged in the course at the same time (i.e. asynchronous distance learning), must clearly specify during its registration process when the last substantive revision of the course was made. Additionally, the provider should advise attendees during registration that the Virginia CLE requirements do not allow approval for programs that do not include an audio or audiovisual component.**
4. The attendee must self-certify that any course delivered by a distance learning method was taken in a setting physically suitable to the course or program and that a suitable writing surface was available. **To insure compliance with MCLE Regulation 102(f), for any course delivered by distance learning methods where the presenter and the attendee are not simultaneously engaged in the course at the same time (i.e. asynchronous distance learning,) the attendee must also self-certify that the course for which credit is sought is not substantially identical to 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.**
5. The provider must furnish high quality written instructional materials. Consistent with MCLE Board Opinion 14, these materials may be made available electronically or

provided in printed form. In most instances, such materials should be made available prior to course attendance so that the participant can refer to them during the course. In appropriate circumstances additional and supplementary materials may be made available during or immediately subsequent to the presentation.

6. The requirement of a group setting under Regulation 103(h) will be satisfied if the presentation is made to more than one attendee and affords each attendee the opportunity to participate in interaction and discussions as outlined in ¶ 1 above.
7. The presentation must include audio and/or audiovisual presentations so each attendee hears and/or sees an actual presentation made by the presenter.
8. An attendee attending a course presented by an approved provider must certify compliance with the provisions of ¶¶ 3 and 5 above before credit can be received with respect to the course.

REGULATION 101 DEFINITIONS

- (s) **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 presentations, DVD presentations, pre-recorded telephone seminars or webcasts, 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, etc.) are "courses presented by distance learning methods."**

REGULATION 102 REQUIREMENTS AND COMPUTATIONS

- (f) A member shall not receive credit for any course attended in preparation for admission to practice law in any state nor for attending the legal ethics course required by Paragraph 13.1 of the Rules of the Virginia Supreme Court, unless such course has been approved by the Board pursuant to these regulations. 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 accor-

dance 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.**

REGULATION 103 STANDARDS FOR APPROVAL OF PROGRAMS

- (h) **A course presented by distance learning methods which otherwise satisfies the requirements of these Regulations (including the requirements for high quality instructional material) may be approved so long as the course is provided in a manner that affords participants the opportunity for discussion or the exchange of ideas with the instructor or other participants.** No course will be approved that involves only self-study.

EXAMPLES.

- (1) **Three attorneys listen to a pre-recorded audio program under conditions which present adequate opportunity for discussion and exchange of ideas among the participants. Credit will be granted so long as the course otherwise satisfies the requirements of these Regulations.**
- (2) **Several attorneys, from different locations, view a pre-recorded audio-video course presentation which is downloaded from an Internet web site. The web site provides an area in which the participants may engage in an on-line discussion with other participants or may present questions to the instructor. Credit will be granted so long as the course otherwise satisfies the requirements of these Regulations.**
- (3) **An attorney participates in a course presented on a web site that consists entirely of text material read by the participant. The web site provides an area in which the participants may engage in an on-line discussion with other participants or may present questions to the instructor. Credit will not be granted because the course involves only self-study.**