The Mandatory Continuing Legal Education (MCLE) Board is seeking comment on amendments to Opinion 16, designed to provide more comprehensive information on the standards for approval of distance learning programs provided via live or pre-recorded formats. The board will consider these amendments at its meeting in October. Comments should be submitted in writing to MCLE Board, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, or to Cartwright@vsb.org. The deadline for receiving comments is October 1, 2011.

Proposed Amendments to MCLE Opinion 16 Courses Presented Provided By Distance Learning Methods

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 provide guidance for the application of the MCLE Regulations to courses presented live, or presented pre-recorded, offered by distance learning methods, as follows:

Courses presented by distance learning methods must meet the following requirements:

1. The courses provided by distance learning methods must afford interaction between the attendees and the presenter with respect to the subject matter of the course. Simultaneous, live interaction, an internet discussion group, or an electronic "bulletin board," or the use of electronic mail or other features providing such interaction may satisfy this requirement so long as it facilitates vigorous active discussion is thereby facilitated.

2. For purposes of this opinion "simultaneous, live interaction" means live real time synchronous communication between and among the presenter and the attendees either using voice communications or instantaneous electronic communication such as electronic mail communications or a live internet discussion group or other features providing synchronous interaction among the presenter and the attendees may satisfy the requirement so long as active discussion thereby is facilitated.

3. Courses provided by distance learning methods utilizing a live presentation must afford simultaneous, live interaction between the attendees and the presenter regarding the subject matter of the course.

4. As defined in MCLE Regulation 101(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. Any distance learning CLE course that affords simultaneous, live interaction between the attendees and the presenter is not considered to be a “pre-recorded course” and is thereby allowable for all or any portion of the minimum of twelve (12) credit hours of approved CLE as provided in MCLE Regulation 102.
5. For purposes of this opinion a presenter is either (a) the faculty member qualified by practical or academic experience to teach the subject he or she teaches during the CLE course, or (b) a person qualified by practical or academic experience to facilitate and who does facilitate discussion among the attendees during the seminar regarding the subject matter of the CLE course. The presenter shall be available for some designated portion of no less than fifteen (15) minutes of the program for simultaneous, live interaction with the attendees.

26. The provider of a course which is delivered by distance learning methods Internet or telephone courses must have a system and must maintain an archival record which allows certification of attendance to be controlled by the provider and which permits the provider to verify the date and time of attendance and which does not rely solely on a representation made by the participating attendee. For example, for an Internet delivered course, a system which identifies the log on and log off of an attendee participant and is secured against prevents inaccurate representations regarding attendance and participation attendee manipulation may satisfy this requirement.

37. 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. Courses may not be approved for more than three (3) years after the date the course was originally recorded, except those courses determined by the Board to be substantively current.

Additionally, the provider should advise attendees during registration that the Virginia MCLE requirements do not allow approval for programs that do not include an audio or audiovisual component.

48. 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 learning environment existed. 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.

59. The provider must furnish high quality written instructional materials and attendees must self-certify receipt of same. 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.

610. 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. No more than eight (8) hours
of distance learning credit may be earned during any twelve (12) consecutive hour period. No credit will be allowed for courses or portions thereof taken simultaneously.

7.11. The presentations Courses must be presented through include audio and/or audiovisual means 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.

12. Course sponsors must provide the MCLE Board with free access to all CLE courses so that they may be monitored for compliance with the MCLE regulations.

13. Without limitation, course accreditation may be terminated if the course sponsor is found to have failed to meet applicable MCLE regulations and the guidance provided by this opinion. Such findings may result in denial of approval to the sponsor for future distance learning programs.

[Paragraph 17 of Section IV, Part Six, Rules of the Supreme Court of Virginia and MCLE Regulations 103(b), 103(c)].
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