

MCLE Regulations for Mandatory Continuing Legal Education

Effective July 1, 2019

Purpose

The Supreme Court of Arizona has established a mandatory continuing legal education program which requires each Active member of the State Bar of Arizona to complete a minimum of fifteen total CLE hours in each educational year (July 1 through the following June 30), unless exempted from such requirement. (Rule 45, Ariz. R. Sup. Ct.)

The Supreme Court of Arizona has delegated to the Board of Governors of the State Bar of Arizona the responsibility to administer the program and has given the Board general administrative and supervisory powers necessary to effectuate the purposes of Rule 45, including the power to adopt reasonable and necessary regulations consistent with the Rule. Pursuant to this authority, these regulations have been adopted by the Board of Governors of the State Bar of Arizona.

REGULATION 101. DEFINITIONS

- A. "Active member" means any person defined as such by Rule 32(c)(2) of the Rules of the Supreme Court of Arizona.
- B. "Affidavit" means the document that each Active member files annually with the State Bar of Arizona affirming the Active member's compliance with the MCLE requirements.
- C. "Board" means Board of Governors of the State Bar of Arizona.
- D. "CLE" means continuing legal education.
- E. "CLE Activities" means activities meeting the standards of Regulation 104 engaged in to satisfy the annual CLE requirement and includes Interactive CLE, Self-study, teaching, writing, bar review/refresher courses and other educational activities.
- F. "MCLE" means the Mandatory Continuing Legal Education program, as enacted.
- G. "MCLE Dept." means the State Bar of Arizona staff designated to administer the MCLE Program
- H. "MCLE Panel or MCLE Working Group" means a panel or working group which may be convened from time to time at the request of the MCLE Dept. to perform specific functions or activities as described in these Regulations.

I. "Proof of Cure" means the submission of records evidencing compliance with Rule 45.

J. "Records" means course outlines, written materials, verification of attendance, and other evidence of a CLE program identifying the course, sponsor, and date and place of presentation and/or publication. Materials that are stored electronically as scans, either on an attorney's own computer system or through the provider's electronic system, that are accessible during the audit period will comply with this requirement.

K. "Rule" means Rule 45 of the Rules of the Supreme Court of Arizona.

L. "Professional Responsibility (Ethics) Hours" mean those types of continuing legal education outlined in Rule 45(a)(2) **including ethics**. Such CLE programs may address diversity and inclusion in the legal system of all persons regardless of race, ethnicity, religion, national origin, gender, sexual orientation, gender identity, or disabilities, as well as, the elimination of bias.

M. "Year" means the educational year from July 1 to June 30. A member's status as of the end of any educational year (June 30) determines whether the member has a requirement to meet the MCLE requirements for that educational year.

REGULATION 102. MANDATORY CONTINUING LEGAL EDUCATION ADMINISTRATION

MCLE shall be administered by The Board of Governors.

The MCLE Dept. has been designated by the Board to administer the day to day operation of the MCLE Program consistent with Rule 45 and the MCLE Regulations.

REGULATION 103. DUTIES OF THE MCLE DEPARTMENT

A. General Authority

The MCLE Dept. shall have general authority to administer the Rule and the MCLE Regulations, subject to the oversight of the Board, and to convene any working groups or panels deemed necessary or advisable.

B. Specific Duties

The MCLE Dept. shall have the following specific duties and responsibilities:

1. To distribute information regarding the requirements of these regulations.
2. To submit recommendations for revisions of the MCLE Regulations to the Board for approval.
3. To prepare the annual MCLE Affidavit
4. To conduct compliance audits of Affidavits to determine compliance with the Rule.

REGULATION 104. STANDARDS AND CALCULATION OF HOURS

Note: Specialists' Requirements are at Regulation 109.

A. Standards

CLE Activities that are claimed toward the annual requirement shall meet the following standards:

1. **Significant Content.** The activities shall have significant intellectual or practical content, have attorneys as the primary audience, and have as the primary objective to increase the participant's professional competence as a lawyer.

2. **Organized Program.** The activities shall constitute an organized program of learning, deal with matters directly related to the practice of law, professional responsibility, professionalism, or ethical obligations of lawyers, follow the agenda and be accompanied by substantive or practical written materials or exercises.

3. **Appropriate Setting.** The activities shall be conducted in a setting physically suitable to the educational activity of the program.

4. **CLE Credit.** CLE credit for any individual program may be claimed one time only. Subsequent viewing of the same program or review of the same program materials may not be claimed in another MCLE educational year.

B. CLE Categories and Calculation of Credit Hours

1. **Carry-forward hours.** Hours of CLE credit listed in sections (B)(2) through (B)(9), in excess of that required for the current Year, may be applied to the succeeding Year only.

Carry-forward hours are limited to the total required for the succeeding Year, and do not change their classification by virtue of being carried forward. All other requirements of the succeeding Year, such as the number of professional responsibility (ethics) credits hours required or the limitations on other categories of CLE, must be met.

2. Interactive CLE

a. Definitions of Interactive programs:

1. A live CLE program or event attended in person and sponsored by the State Bar or a 3rd party organization (i.e. a commercial provider, an association of lawyers, a private law firm, a corporate law department, or a department of a federal, state or local governmental entity). The program must be attended by no fewer than 5 attorneys including presenter(s).

2. A web-cast or teleconference, offered in real time, with the ability of the member to ask questions of the presenters.

3. A CLE program which is offered online and in which the member is required to respond to prompts placed at random periods throughout the program or is required to capture imbedded codes during the program which are later entered online to obtain the certificate of completion or attendance.

b. Calculation of credit hours for Interactive CLE shall be determined by dividing the total minutes of instruction or participation by 60, and rounding down to the nearest quarter hour. Breaks shall not be included in calculating the credit hours.

c. The Active member claiming Interactive CLE credit must have future access to the written materials or exercises or the electronic equivalent (such as in a personal, firm or provider's website, or public library).

3. Teaching Hours

Credit may be earned for teaching at a CLE program or event; teaching at an ABA accredited law school; or teaching a law course at any accredited American university, any American community college, any ABA approved paralegal school or institute, or a CLE activity where the primary audience is paralegal professionals whether the teaching is in a classroom or online.

a. Speakers whose presentations are accompanied by original written materials, prepared, augmented, or updated by the speaker may earn teaching credit, as follows:

For the original presentation: First hour of presentation x 6 = total credit hours

Additional hours of presentation x 2 = total credit hours

Repeat live presentations hours x 1 = total credit hours

b. Speakers, including College of Trial Advocacy educators, whose presentations are not accompanied by original written materials prepared, augmented, or updated by the speaker may earn teaching credit as follows:

Each hour of presentation x 1 = total credit hours

c. Credit hours earned through teaching is limited to **a maximum of 10 credit hours each Year.**

4. Writing Hours

Credit may be earned for writing legal material not used in conjunction with a CLE program. Credit cannot be claimed for writing which is part of the regular practice of law or regular scope of employment.

Such material must address an attorney audience, be at least 3,000 words in length, and be published by a recognized third-party publisher of legal material or a sponsor.

a. For each 3,000 words of original material written, the author(s) may earn 2 credit hours. Multiple authors may share credit for material written.

b. Credit hours earned through writing is limited to **a maximum of 10 credit hours each Year.**

5. Self-study Hours

Self-study is any course of legal study meeting the standards of Regulation 104, which is undertaken by a member for the member's own benefit. Self-study may include listening to audio reproductions or viewing video reproductions of programs, but does not include reading. Credit hours earned through Self-study is limited to **a maximum of 5 credit hours each Year**.

Self-study also includes:

- **A computer based or online CLE program** that is not interactive (i.e. that does not provide an opportunity to respond to prompts or questions from the faculty or participating member).
- **Service on a legislative committee** by a state or federal elected legislative member. Such service qualifies a member as a "lawyer/legislator" for the purposes of the Rule and these regulations. The 5 hours per year maximum for Self-study does not apply to legislative committee work for lawyers who are legislators. Note: for audit purposes, members claiming hours in this category will be required to provide proof of legislative committee service.
- **Service as an arbitrator under Rule 73, Arizona Rules of Civil Procedure**. Such arbitration service qualifies for **2 hours of CLE** activity in lieu of financial compensation otherwise available under A.R.S. § 12-133(g) or local rule for service as an arbitrator.
- **Pro bono service** to the poor or near poor through an approved legal services organization as defined in Rule 38(e), Ariz. R. Sup. Ct.
Calculation: 1 hour of CLE credit for every 5 hours of pro bono service, to a **maximum of 5 hours** each year.
- **Moot Court hours** for participating in a moot court competition at an ABA Approved law school or accredited American university. A **maximum of 3 hours** of self-study for moot court may be claimed each year. Training sessions for moot court judges which otherwise meet the standards for CLE as outlined in regulation 104(a) may be claimed as Interactive CLE outside of Self-study.
- Participation as a **mentor** in the **State Bar of Arizona Mentoring Program** qualifies as voluntary pro bono public service under Ethical Rule 6.1. Mentors may claim a **maximum of 2 hours** of CLE each year; all 2 hours may be claimed as professional responsibility (ethics).
- Participating as a **mentee** in the **State Bar of Arizona Mentoring Program**. Mentees may claim a **maximum of 2 hours** of CLE each year. Mentee hours do not qualify under Ethical Rule 6.1.

a. Self-study hours shall be equal to the actual hours of the program watched or the actual time spent in Self-study, whichever is less.

b. A member may not receive credit for both attendance at a CLE program and Self-study of course materials from that program.

c. Written materials (or the electronic equivalent) must be in the possession of the member viewing the video reproduction or listening to the audio reproduction of a live CLE program at

the time of such viewing/listening. The member claiming Self-study credit must have future access to the written material (such as in a personal, firm, provider's website or public library).

d. Verification of Self-study in the event of audit includes the purchase receipt or rental agreement in the member's name; notes made while viewing/listening; and file notes establishing the date of Self-study, name of program, and sponsor of the program.

If a provider does not allow the sharing of Self-study programs with a 3rd party, then only the member whose name appears on the purchase or rental agreement may claim credits for that program.

e. Verification of non-compensated arbitration in the event of audit will be a copy of the appointment as arbitrator and a copy of the decision.

f. Verification of pro bono service hours in the event of audit will be a document produced by the attorney or legal services organization (LSO) to include the name of the LSO, date(s) of service, the number of service hours provided, the number of self-study hours being claimed, signed by a representative of the LSO affirming the attorney's service.

6. Law School Courses

Members may earn CLE credit by taking law school courses taught within the curriculum of an ABA-accredited law school. Success on an examination is not required for credit, and the course may be taken on an audit basis.

a. For each fifty (50) minutes of instruction, one-half hour (1/2 hr) of CLE credit may be earned.

b. Credit hours earned through law school courses is limited to **a maximum of 10 credit hours each Year**. No credit will be given for law school courses attended prior to becoming an Active member.

7. Bar Review/Refresher Course

Active members attending courses designed to review or refresh recent law school graduates or other attorneys in preparation for any bar examination may earn CLE credit for such courses. Credit hours earned through bar review/refresher courses is limited to **a maximum of 5 credit hours each Year**.

8. Service on the Criminal Jury Instructions (CRJI) Committee of the State Bar of Arizona

Service on this committee may be claimed for CLE credit. For members who attend and participate in the meetings and review but do not make any presentations, the committee time may be claimed as 1 credit hour per hour of attendance in the category of "Interactive" hours.

Members who research, review and present their recommendations may claim "Teaching" hours. See B(3) of these regulations for calculation and limitations on teaching hours.

9. Other Educational Activities

Members participating in educational activities not defined by the above categories may submit a request for consideration of such activity to the MCLE Dept. An MCLE panel will be

convened to review the request and determine on a case by case basis if CLE credit may be claimed for the activity.

REGULATION 105. AFFIDAVIT

The MCLE Dept. annually shall prepare an affidavit to be filed online by the member, upon which compliance with the Rule and MCLE Regulations shall be demonstrated.

REGULATION 106. EXEMPTION/WAIVER OF MCLE REQUIREMENTS

Exemptions/waivers of any of the MCLE requirements may be granted upon an application and showing of undue hardship.

Undue hardship exists when a member is unable to complete the MCLE requirements because of a medical or financial hardship beyond their control or are active military. Examples of such hardships include:

- **Financial hardship** – due to unemployment; time out from practice for family or health reasons; low income based upon extraordinary practice or business losses.
- **Medical hardship** - serious health issue(s) resulting in extraordinary medical expenses or inability to work
- **Active Military** - A State Bar member, serving on active duty in the United States Military in an assignment *outside* the United States for a cumulative period of at least three months during the educational year covered by a MCLE filing, is deemed to have a personal hardship warranting an automatic waiver of MCLE requirements.

The following circumstances are *NOT* considered an undue hardship: 1) failure of the member to calendar the filing deadline; 2) failure of the member to promptly notify the State Bar of a change in the member's contact information; 3) assertion of the member that he/she did not receive reminder emails; or 4) the member's delegation of the responsibility to file the affidavit to another person.

To request an exemption/waiver of the MCLE requirements, members must submit an application on the form provided by the MCLE Dept. The Chief Executive Officer/Executive Director of the State Bar has the authority to grant exemptions/waivers, pursuant to the Rule,

All denials of requests shall be reviewed by the Board.

REGULATION 107 AUDITS

A. Audits of Compliance

Annually the MCLE Dept., under the direction of the Board, shall randomly select a designated number of Affidavits to audit for compliance.

1. Initial notification of audit will be completed no later than March 15 following submission of the Affidavit.

2. Notification of selection for audit shall be mailed to the member at the member's last address of record on file with the State Bar.
3. Each Active member whose Affidavit is selected shall supply such Records supporting the Affidavit to the MCLE Dept. as requested.
4. Following successful completion of a member's affidavit audit, a notification of compliance shall be mailed to the member at the member's last address of record on file with the State Bar as soon as practicable.

B. Presumption of Compliance

Affidavits reflecting the completion of a State Bar CLE Department sponsored program or those approved through the CLE Department shall be presumed to meet the Standards and Calculation requirements of Regulation 104, thus avoiding the need for the member to separately submit records supporting those credit hours.

C. Failure to Provide Records

If the member fails to provide the requested audit Records within 30 days after the MCLE Dept. mails its request, the MCLE Dept. may take appropriate action, which may include commencing action for summary suspension pursuant to Rules 45 and 62.

D. Disallowance of Credit Hours

If, as a result of an audit of the Affidavit or Records, the MCLE Dept. disallows some or all of the credit hours for failure to conform to the standards set forth in Regulation 104, and the remaining CLE hours are less than the number required for compliance, the member will be deemed not to have complied the MCLE requirements.

A notification of disallowance shall be mailed to the member at the member's last address of record on file with the State Bar as soon as practicable. The member shall have 45 days from the mailing date of notification of disallowance to complete the MCLE requirements, and upon completion shall file an amended MCLE affidavit demonstrating the disallowance has been cured. The member will be subject to the delinquent compliance and/or delinquent filing fees as provided in Rule 45(d).

If the MCLE Dept. does not receive an amended affidavit verifying the cure of the disallowance within 45 days of the mailing date of notification of disallowance, it will notify the member of the member's right to petition for a hearing. No CLE Activity designated to satisfy disallowed credit hours may be used to satisfy current MCLE requirements.

E. Hearing on Failure to Cure

1. If a hearing is requested, it shall be held within 30 days by an MCLE Panel convened for such purpose. Notice of time and place of the hearing shall be given 10 days in advance. The petitioner may be represented by counsel. Witnesses shall be sworn and, if requested by the petitioner or the MCLE Panel, a complete electronic record of a transcript shall be made of all proceedings and testimony with the expense, if any, being borne by the requesting party. The MCLE Panel shall have the authority to rule on all motions, objections, and other matters presented in connection with the hearing.

The MCLE Panel shall, in every case, file with the Board a report containing its findings of fact and a determination whether the petitioner has complied with the Rule, and upon a finding of failure to cure, a determination whether there was reasonable cause for failure to cure. The report shall be filed, and a copy served upon the petitioner within 30 days after conclusion of the hearing.

The findings and determinations in the report shall be final, unless within 10 days from the date of service the petitioner files a written objection with the Board.

2. If the MCLE Panel determines that there was reasonable cause for failure to cure, the petitioner shall be allowed 15 days to file a specific plan for correcting the failure to cure within the next 60 days following submission of the plan. The plan shall be deemed accepted by the MCLE Panel unless within 15 days after receipt, the MCLE Panel notifies the petitioner. Completion of the plan shall be reported by affidavit to the MCLE Panel not later than 15 days following the 45-day period. If the petitioner fails to complete and certify completion within the 45-day period, the MCLE Panel shall proceed as though there was not reasonable cause for failure to cure.

3. If a request for hearing is not received within 15 days, the MCLE Dept. may take appropriate action, which may include commencing action for summary suspension pursuant to Rules 45 and 62.

F. Appeal to Board

Any objection to an MCLE Panel report shall be considered by the Board at its next available regular meeting. To perfect such objection, the Active member shall file a Memorandum in Support Of review within 15 days of the filing of the notice of objection. Upon the filing of any such notice of objection with the MCLE Dept., the MCLE Dept. shall prepare a report of the hearing, a transcript of the hearing (if an electronic record of the hearing was requested) and copies of all orders, findings, and other documents pertinent to the proceedings, which shall be certified by the MCLE Panel. The Board may, but shall not be obligated to, permit the member or the member's counsel to appear in person before it. The Board may affirm, reverse, or modify the ruling of the MCLE Panel, as it deems appropriate. The decision of the Board shall be reduced to writing, and a copy thereof shall be mailed to the member. The decision of the Board shall be final. If appropriate, the Board shall direct commencement of action for summary suspension pursuant to Rules 45 and 62.

REGULATION 108. AMENDMENTS

These regulations may be amended, deleted, or supplemented by action of the Board.

REGULATION 109. CERTIFIED SPECIALISTS

As long as the CLE requirement established by the Board of Legal Specialization for a certified specialist is at least consistent with the minimum requirement of section (a) of the Rule, a certified specialist may meet the requirement of section (a) of the Rule by meeting the MCLE requirements of the Board of Legal Specialization.

SPECIALIST MCLE REQUIREMENTS
(Reference: Board of Legal Specialization Regulations
Section VIII. Annual Requirements)

1. Annual CLE.

a. Each specialist must complete 15 or more hours per year at one or more CLE activities which meet the standards stated in Section VII B.2. This includes a substantive requirement of 12 hours and a professional responsibility requirement of three hours.

Note: Members who are certified as specialists in more than 1 area of specialization are required to meet the substantive CLE requirement in **each** area of specialization.

1. **Substantive Requirement:** The 12 hour substantive requirement refers to CLE Activities in the specialist's area of specialization.

2. **Professional Responsibility Requirement:** The three hour professional responsibility requirement refers to CLE Activities on topics of professional responsibility, as defined in Rule 45, Ariz. R. Sup. Ct. (MCLE Rule).

3. **Categories of CLE Activities:** Within the overall 15 hour CLE requirement, 12 of which must be substantive and three of which must be professional responsibility (ethics), the following minimum and maximums apply:

- a. At least five hours must be earned by attendance at Interactive CLE.
- b. No more than 7.5 hours may be earned through a combination of teaching and/or writing CLE. Written legal material must be in the area of specialization.
- c. Credit, **at a maximum of five (5) hours**, may be earned through Self-study.

b. **Carry Forward Hours:** If a specialist has completed more than the required 12 (twelve) hours in their area of specialization, **up to 5 (five) hours** in that area of specialization may be carried forward to the next educational year. Additionally, up to 3 (three) hours in professional responsibility may be carried forward to the next educational year. The annual CLE requirement must be met for each year a specialist is certified, including the year of certification.

2. Standards

CLE Activities that are claimed toward the annual requirement shall meet the following standards:

- a. **Significant Content.** The activities shall have significant intellectual and/or practical content and the primary objective shall be to increase the attendee's professional ability as a specialist. The content of activities may include a broad or narrow range of subjects dealing with the particular specialty field.
- b. **Organized Program.** The activities shall be an organized program of learning, deal with matters directly related to the specialization field or professional responsibility, follow the agenda, and accompanied by the written materials or exercises. The level of instruction of

CLE Activities in the area of the specialization field shall be directed toward the development of advanced skills in the area of specialization.

- c. **Appropriate Setting.** The activities shall be conducted in a setting physically suitable to the educational activity of the program.
- d. **Instructors.** The instructors of CLE Activities shall be experts in the field in which they are teaching. The instructors' qualifications and appropriate background information shall be set forth in the activity's brochure or written materials.
- e. **Records.** Course outlines, written materials or the electronic equivalent, verification of attendance, and other evidence of a CLE Activity identifying the course, sponsor and date and place of presentation and/or publication must be retained by the specialist for recertification and any MCLE audit.

3. Calculation of Credit Hours

- a. **Calculation of credit hours shall be determined by dividing the total minutes of instruction** by 60, and rounding down to the nearest quarter hour. Breaks shall not be included as part of instructional time. For CLE Activities in the specialization field, if the activity contains other subject matter not directly related to the specialty, credit shall be allowed for the time spent in the specialty area.
- b. **Teaching Hours.** Credit may be earned for teaching at a CLE Activity or at an ABA accredited law school, or teaching a law course at any accredited American university or any American community college.

Teaching may be on-line or in a classroom, so long as the instruction meets the standards of Section VIII.B.2, except that the instruction may be at a basic level.

Calculation of Teaching Hours.

Speakers whose presentations are accompanied by written materials prepared, augmented, or updated by the speaker may earn teaching credit, as follows:

For the original presentation:

First hour of presentation x 6 = total credit hours

Additional hours of presentation x 2 = total credit hours

Repeat live presentation hours x 1 = total credit hours

Speakers, including College of Trial Advocacy educators, whose presentations are not accompanied by written materials prepared, augmented, or updated by the speaker may earn teaching credit as follows:

Each hour of presentation x 1 = total credit hours

Credit hours earned through a combination of teaching and/or writing CLE may be reported to satisfy **a maximum of 7.5 credit hours each year.**

c. Writing Hours. Credit may be earned for writing legal material in the area of specialization not used in conjunction with a CLE Activity. Such material must address an attorney audience, be at least 3,000 words in length, and be published by a recognized third-party publisher of legal material or a sponsor.

- i. For each 3,000 words of original material written, the author(s) may earn two credit hours: Multiple authors may share credit for material written.
- ii. The first two hours may be basic in nature, but beyond that must be at an advanced level.
- iii. Credit hours earned through a combination of teaching and/or writing CLE may be reported to satisfy **a maximum of 7.5 credit hours each year.**

d. Self Study. Professional responsibility credit may be earned for participation in self-study activities. “Self-study” may include listening to or viewing course materials but does not include reading.

- i. Specialists may claim **up to 5 hours of CLE** in their area of specialization via self-study formats. Self-study formats are CDs, DVDs, and non-interactive videos or webcasts, or non-interactive online programming. The self-study programs must meet the higher standards for specialists with respect to intellectual and/or practical content and be primarily focused on the area of specialization. Credit hours earned by self-study of course materials shall be equal to the hours of presentation of the seminar on which the materials are based, or the actual time spent in self-study, whichever is less.
- ii. A specialist may not receive credit for both attendance at a seminar and self-study of course materials from that seminar.
- iii. Credit hours earned through self-study is limited **to a maximum of 5 hours** of CLE in their area of specialization via self-study formats.
- iv. Specialists may not receive self-study credit for service as a non-compensated arbitrator.