

Final draft

**(Proposed) Rules of the Maryland Commission
On Mandatory Continuing Legal Education**

Rule 1. Title and purpose; scope

There is hereby established a Maryland Commission on Mandatory Continuing Legal Education (“Commission”). These rules shall be known as the Mandatory Continuing Legal Education Rules (“Rules”). The Rules shall apply to every attorney who is licensed to practice law in the State of Maryland and is regularly engaged in the practice of law in the State of Maryland for any part of the year (hereinafter defined as an “active attorney”).

Rule 2. Continuing legal education requirement; carry-over provision; exemptions

(a) Every active attorney who is not exempt under section (c) of this Rule shall complete ten hours of mandatory continuing legal education (“MCLE”) during each applicable one-year compliance period. Fifty minutes of MCLE credit shall constitute one hour. At least two of the ten hours must be devoted to topics concerning professionalism. The two hours of professionalism credit may be obtained either by:

1. Taking a separate MCLE course or courses, or participating in other eligible MCLE activity under these Rules, specifically devoted to professionalism; or

2. Taking an MCLE course or courses, or participating in other eligible MCLE activity under these Rules, a portion of which is specifically devoted to professionalism. Only that portion of a course or activity specifically devoted to professionalism shall receive MCLE credit for the professionalism requirement set forth in this paragraph.

(b) If an attorney completes more than ten hours of MCLE during a one-year compliance period, up to eight excess hours may be carried forward and applied to the MCLE requirement for the succeeding one-year compliance period; however, an attorney may not use hours carried over from a previous year to satisfy his or her obligation to undertake two hours of MCLE devoted to topics concerning professionalism.

(c) The following persons shall be exempt from the requirement set forth in section (a) of this Rule:

1. Attorneys serving as a full-time Justice, Judge, Magistrate Judge, or Master of any federal or state court, or serving as a full-time administrative law judge for an agency of the United States or the State of Maryland executive branch;

2. Attorneys serving as a law clerk or judicial staff attorney to a Justice, Judge, Magistrate Judge, or Master of any federal or state court, or serving as a law clerk or judicial staff attorney to a full-time administrative law judge for an agency of the United States or the State of Maryland executive branch;

3. Attorneys on active duty in the Armed Forces of the United States;

4. Attorneys holding an elected public office of this State or the United States, and who certify to the Commission by affidavit that they are not engaged in the practice of law;

5. Attorneys who have complied with the MCLE requirements of another State, provided that the other State requires at least ten hours of MCLE per year, and requires that at least one of those hours of MCLE be devoted to topics concerning professionalism.

Rule 3. Effective date; reporting period and procedures

(a) The MCLE requirement imposed by these rules shall take effect January 1, 2011.

(b) Each active attorney who is not exempt under Rule 2(c) shall be required to complete ten hours of MCLE by December 31, 2011, and shall be required to complete this obligation before December 31 of each subsequent calendar year.

(c) For a newly-admitted attorney, the MCLE requirement shall not go into effect until January 1 of the year following the year the attorney was admitted to the Bar. For example, if an attorney is admitted to the Bar on July 1, 2011, that attorney's obligation includes completing ten hours of MCLE between January 1, 2012 and December 31, 2012 - the attorney has no MCLE obligation for the year 2011.

(d) Each attorney shall receive an affidavit approximately two months before the end of each calendar year. Each attorney shall complete the affidavit by attesting, under penalty of perjury, that the attorney has complied with the MCLE requirement, or is exempt from the MCLE requirement. The affidavit must be returned to the address listed on the affidavit and postmarked no later than January 31 of the following calendar year.

Rule 4. Accreditation standards

(a) The Commission shall approve continuing legal education activities consistent with the following standards:

1. They shall have significant intellectual or practical content and the primary objective shall be to increase the participant's professional competence as a lawyer or a judge.

2. They shall constitute an organized program of learning dealing with matters directly related to the practice of law, the exercise of judicial responsibility, professional responsibility, law office management, use of computers, or the ethical obligations of lawyers or judges.

3. Credit may be given for continuing legal education activities where (i) in person or televised live instruction is used or (ii) mechanically or electronically recorded or reproduced material is used in an organized program.

4. Continuing legal education materials are to be prepared, and activities conducted, by an individual or group qualified by practical or academic experience in a setting physically suitable to the educational activity of the program.

5. Thorough, high quality, and carefully prepared written materials should be distributed to all who attend at or before the time the course is presented. It is recognized that written materials are not suitable or readily available for some types of subjects; the absence of written materials for distribution should, however, be the exception and not the rule.

6. Providers of MCLE courses and activities that are devoted to substantive law topics are strongly encouraged to incorporate professionalism as a topic of their courses and activities.

Rule 5. Accreditation of sponsors and programs

(a) *Accredited Sponsors.* The Commission may designate qualified organizations or persons as Accredited Sponsors. While so designated, any MCLE course or activity organized and conducted by any such Accredited Sponsor shall be an accredited course provided the Accredited Sponsor states that the course satisfies the requirements of Rule 4(a).

The Commission may issue from time to time a list of Accredited Sponsors it deems to meet the requirements set forth in this Rule. The Commission has the authority to audit and review programs, and may revoke the approval of an Accredited Sponsor which fails to comply with its Rules, requirements or course standards, and the Commission shall have the authority to impose reasonable fees upon Accredited Sponsors for the support of its operations. An organization or person seeking to be designated as an Accredited Sponsor must apply for such status on a form that will be made available by the Commission.

(b) *Accreditation of individual programs.* The Commission may, on its own initiative, or upon application by an Attorney or the provider of any MCLE course, accredit all or a portion of a particular MCLE course. An organization or person seeking accreditation of an MCLE course must apply for such status on a form that will be made available by the Commission, and certify that the course is an organized program of learning that satisfies the standards of Rule 4.

Rule 6. In-house programs; self-study; other activities

Up to five hours of an attorney's MCLE requirement may be completed through the activities described in this Rule:

(a) *In-house programs.* An attorney may earn MCLE credit through attendance at "in-house" seminars, courses, lectures, or other MCLE activity presented by law firms, corporate legal departments, governmental agencies, or similar entities, either individually or in cooperation with other such entities, provided the course or activity satisfies the requirements of Rule 4. No credit will be given for discussions relating to the handling of specific cases, or issues relating to the management of a specific law firm, corporate law department, governmental agency, or similar entity.

(b) *Self-study.* An attorney may earn MCLE credit by completing self-study courses involving the use of audio or video recordings or other technological means (including but not limited to courses made available through webcasts and other online presentations), or correspondence courses, provided such activities:

1. Satisfy the standards of Rule 4, as applicable;
2. Are part of a structured course of study;
3. Are organized by an Accredited Sponsor;
4. Include the use of thorough, high-quality written or electronically transmitted materials which are widely available to the registrant upon completion of the course; and
5. Are undertaken in a physical setting conducive to intellectual concentration and effective study.

(c) *Other activities.* An attorney may earn MCLE credit, upon application to the Commission, for the following activities:

1. Non-paid scholarly writing and publication;

2. Service on the Attorney Grievance Commission, the Board of Law Examiners, or as an assistant to the Board of Law Examiners; research and writing for preparation of bar examination questions and model answers;
3. Non-paid teaching in an approved MCLE activity;
4. Teaching at an ABA-accredited law school, or teaching a law course at a university, college, or community college;
5. Attendance at bar association, professional association, or inn of court meetings at which substantive law, matters of practice, professional responsibility, professionalism, civility, or legal ethics are discussed;
6. Attendance at a J.D. or graduate level law course offered by an ABA-accredited law school;
7. Attendance at courses or activities designed to train lawyers who have agreed to provide pro bono services;
8. Other activities approved by the Commission that are consistent with the purposes of these Rules.

Rule 7. Extension of time; waivers

If an attorney is unable to complete the MCLE requirement, due to disability or other special circumstances unique to that member constituting undue hardship, the attorney may apply for an extension of time in which to complete the requirement, or for a waiver of the MCLE requirement.

Rule 8. Failure to Complete MCLE Requirements

Any attorney who fails to comply with the provisions of these Rules or who fails to complete the MCLE requirement may have his or her right to practice law suspended by the Court of Appeals of Maryland upon entry by the Court of an Order of Decertification.

Rule 9. Administration - Composition of Commission

(a) The Commission shall consist of nine members appointed by the Court of Appeals. At least six of the members shall be registered attorneys, at least one of whom shall also be a judge, and one of the members shall be a non-attorney. At least one of the registered attorneys shall be under the age of 35 when he or she is appointed. There

shall be at least one member of the Commission from each of the Appellate Judicial Circuits of Maryland.

(b) Members shall serve three-year terms; except that of the members initially appointed, three shall serve for one year, three shall serve for two years, and three shall serve for three years. In the event of a vacancy, a successor shall be appointed for the unexpired term of the member whose office is vacated. No member shall hold office for more than two three-year terms. Membership on the Board may be terminated as to any member by the Court of Appeals at its pleasure.

(c) The Court of Appeals shall appoint one of the members to serve as Chair at its pleasure, and one of the members to serve as Vice Chair at its pleasure.

Rule 10. Administration – Powers and Duties of Commission

(a) The Commission shall administer the program of mandatory continuing legal education established by these rules.

(b) The Commission may formulate rules and regulations and prepare forms not inconsistent with these rules pertaining to its functions and modify or amend the same from time to time. All such rules, regulations, and forms, and any modifications or amendments thereto, shall be submitted to the Court of Appeals and shall be made known to all registered attorneys and judges. Those rules, regulations, and forms shall automatically become effective on the 30th day following submission unless they have been suspended by the Court of Appeals prior to that date.

(c) The Chair may appoint from time to time any committee deemed advisable, and may, with the consent of a majority of the members of the Commission, delegate to any committee such authority as is deemed advisable.

(d) The Commission shall have the following specific duties and responsibilities: (1) To determine whether all or any portions of any courses, programs, or activities of a provider satisfy the educational requirements of Rules 4 and 5; (2) To determine the number of credit hours to be allowed for each course or educational activity; (3) To ensure that courses and activities offering credit for professionalism are of high quality and are consistent with the standards of professionalism articulated by the Commission on Professionalism established by the Court of Appeals; (4) To encourage established educational organizations to offer courses and programs either within or without the State; (5) To interpret these Rules and adopt policy statements to address issues as to eligibility for credit or amount of credit for particular activities; (6) To report at least annually to the Court of Appeals on the activities and programs of the Commission and to make recommendations to improve the effectiveness of the program established by these Rules; (7) To report promptly to Bar Counsel any violation of these Rules. The

Commission shall have the power and duty to do all other things necessary and proper to carry out its powers and duties under these Rules.

(e) The Commission shall have the power to grant and hold hearings, upon request, concerning the following issues:

(1) The Commission's denial of Accredited Sponsor status to a person or organization, pursuant to Rule 5(a);

(2) The Commission's denial of individual course accreditation to a person, organization, or attorney, pursuant to Rule 5(b);

(3) The Commission's denial of credit for in-house programs, self-study, or other activities, pursuant to Rule 6;

(4) The Commission's denial of a waiver of, or extension of time to complete, the MCLE requirement, pursuant to Rule 7.

Rule 11. Administration - Finances

(a) The members of the Commission shall serve without compensation. Reasonable expenses of Commission members necessarily incurred in performance of their Commission responsibilities may be reimbursed by applying to the Court of Appeals.

(b) The Court of Appeals shall hire and determine the compensation of the Executive Director and other employees as part of the Court of Appeals' budget process. The Executive Director of the Commission and its other employees shall be employees of the Court of Appeals and the State of Maryland.

(c) Funds for the Commission's operations shall be obtained as follows: (1) The Commission shall determine, subject to the approval of the Court of Appeals, an assessment to be paid by attorneys concurrently with payment into the Client Protection Fund; (2) The Commission may adopt a schedule of fees to be charged organizations sponsoring continuing legal education programs as a condition of accreditation for attendees to receive Maryland MCLE credit; (3) All fees and assessments shall be reasonably calculated to generate funds necessary for the Commission's activities, including payment of salaries of its professional staff.

Rule 12. Confidentiality

Final draft

Unless otherwise directed by the Court of Appeals or these Rules, the files, records and proceedings of the Commission, as they relate to or arise out of any failure of any attorney to satisfy the requirements of these Rules, shall be deemed confidential and shall not be disclosed, except in furtherance of the duties of the Commission, upon the request of Bar Counsel, or the attorney affected, or as introduced into evidence or otherwise produced in proceedings under these Rules.

Adopted [insert Date of Adoption]

Please note:

One member of the Commission, who opposes mandatory CLE, dissented from the passage of the Rule by the Commission, while two other members, who generally favor MCLE, dissented because the Rule, as drafted, does not stipulate mentoring as an articulated substitute activity; one of the two supports permitting attorneys to garner their CLE credits from either accredited programs or substituted activities or a combination of the two - without mandating a precise ratio for each.