

## **NEW JERSEY STATE BAR ASSOCIATION RECOMMENDATIONS FOR IMPLEMENTATION OF MANDATORY CONTINUING LEGAL EDUCATION**

As the largest lawyer organization in New Jersey, the New Jersey State Bar Association is comprised of over 15,000 member lawyers who practice in all areas of the law, work in large and small firms, are employed in the public and private sector, and have varying levels of expertise. The Association's individual members have a wide variety of views on whether mandatory continuing legal education (MCLE) should be implemented in New Jersey or not, ranging from steadfast opposition to a sense that such a program is long overdue. The NJSBA has historically officially opposed MCLE, and does not abandon that official position today; however, in light of the Court's mandate to its special committee and what appears to be the inevitable adoption of a mandatory continuing legal education program here, the Association offers the within recommendations for implementation of the program.

The recommendations strive for a program that is fair, flexible, reasonable and time and money-conscious. They attempt to carefully balance the goal of ensuring well-informed, updated attorneys are serving the public against the concerns of attorneys that MCLE requirements will be overly burdensome or difficult to meet. In making these recommendations, the Association relied upon an examination of other states' mandatory continuing legal education programs conducted by an ad hoc committee charged with reviewing the issue. The recommendations are therefore consistent with what other states have already implemented.

The specific recommendations are as follows:

### ***A. Number of Credits***

**The NJSBA recommends that 30 credits should be required over a 3-year period, for an average of 10 credits per year.** This is what is required by Florida and Idaho. The NJSBA recognizes that the majority of states require 12 credits per year; however, with no study available to show that a certain number of required credits yields better results than any other, such requirements appear to be rather arbitrary. In light of this, and with the overall guide of fair, flexible, reasonable, cost and time-conscious, the NJSBA believes a 30 credit over 3 year requirement is adequate. In addition, the NJSBA notes that requiring any higher number of credits would begin to diminish the value of the certification status afforded to certified attorneys, who are required to obtain 15 credits a year in their specialty.

### ***B. What Receives Credit***

**The NJSBA recommends that as wide a spectrum of activities that can be related to the practice of law as possible be accepted as credit-inducing activities,**

**provided that each activity provider meets uniform, objective compliance standards established by the oversight MCLE Board.** Thus, the NJSBA recommends that credit be available for Inns of Court programs, pro bono efforts, moot court and mock trial participation, in-firm training programs, in-house counsel training programs and any other program that applies for credit and meets uniform established standards. The NJSBA also recommends that credit be given for participation on fee arbitration and district ethics committees. For all such programs, the NJSBA recommends that 1:1 credit be given for each hour of service, with the attorney self-certifying the number of hours spent on the activity. This is consistent with the requirements in at least ten other states, including New York.

### *C. What Constitutes a Credit*

**The NJSBA recommends that every 50 minutes of a seminar be eligible for one credit of MCLE.** This is in recognition of breaks taken during seminars and various other “down time”. This is consistent with nine other states’ credit requirements, including New York.

### *D. Enhanced Credit*

**The NJSBA recommends that attorneys teaching seminars, participating on panels or moderating programs should receive triple credit the first time the program is presented in recognition of the time spent in preparing the materials, outline and presentations. Thereafter, the NJSBA recommends that presenters, including moderators, receive 1:1 credit.** This is consistent with at least 26 other states’ requirements, which vary from 2 credits to every one hour of teaching to 8 credits for every one hour of teaching. Triple credit is given in at least ten other states, while 11 states permit more. NJSBA members who have taught seminars widely reported that preparing for the seminar requires at least twice as much time as the actual seminar itself, and the knowledge gained from teaching is always greater than from just attending.

### *E. Reporting Date*

**The NJSBA recommends that the Court use an attorney’s birthday as the date from which a year is measured.** The NJSBA believes this will help to (1) roll out the program in a slow and deliberative manner; (2) deter a “last minute rush” on courses all at the same time to fulfill requirements; and (3) spread the administrative reporting work throughout the year instead of having it concentrated in one or two months. There does not seem to be any definitive pattern among other states’ reporting date requirements; however, Association members report that New York uses the “birthday system”, and, contrary to the ABA’s findings that use of a lawyer’s birth date causes the greatest number of administrative problems, they believe this system works well for both administrators and users for the reasons cited.

#### *F. Who Needs to Comply*

**The NJSBA recommends that MCLE requirements be applied uniformly to any individual with an active license to practice law in New Jersey, including judges, law professors, all private and public sector practitioners and all in-house and corporate counsel. The NJSBA recommends that the only exclusions be for (1) newly admitted attorneys subject to the Skills and Methods requirements; (2) attorneys serving in the military out-of-state; and (3) attorneys who are either 70 years old or have been practicing law for 40 years or more cumulatively in any jurisdiction. The NJSBA recommends that hardship waivers be made available in appropriate situations, but on an *ad hoc* basis.** To attempt to account for every conceivable hardship situation in the rules governing the MCLE program would result in overly complicated MCLE regulations that will be difficult and burdensome to apply. Thus, in keeping with the overall guide of fair, flexible, reasonable, cost and time-conscious, the NJSBA recommends adopting the above-described simple application criteria.

#### *G. Methods of Delivery*

**The NJSBA recommends that as many methods of delivery as possible be approved and utilized for attorneys to meet their MCLE requirements.** This will help reduce the cost of and provide flexibility for attorneys in meeting the requirements and will enable the providers to effectively meet the demand, as requiring all in-person training sessions may pose space and time limitations. Almost every other state with an MCLE program permits at least some credits to be obtained through participation in courses offered via audiotape, videotape, DVD and the internet. Some offer credit for writing and some for other forms of self-study. To the extent that articles, audiotapes, videotapes, webcasts, podcasts and any other innovative method of delivering CLE can meet the requirements established to certify any in-person program, the NJSBA recommends those innovative methods be approved for at least a portion of the credits required as well.

#### *H. Reciprocity*

**The NJSBA recommends that New Jersey extend reciprocity to qualified CLE courses taken in other states.** New York and Pennsylvania both accept New Jersey courses for their MCLE requirements, and the NJSBA recommends that New Jersey do the same.

#### *I. Special Requirements for Attorneys Facing Ethics Violations*

**The NJSBA recommends that MCLE requirements and ethics violation-related requirements be kept separate.** The NJSBA notes New Jersey has an adequate ethics system in place, complete with an ethics diversionary program, which appears to work well.

### *J. Course Requirements*

**The NJSBA recommends that the Court not set particular course requirements, but permit attorneys to choose which courses they would like to take on their own.** This will permit attorneys to take only those courses that are truly relevant to their practice, thus increasing the likelihood of attendees paying attention and gaining knowledge from meeting the requirements. In addition, it meets the goal of being time-conscious by ensuring, to the extent possible, that meeting the MCLE requirements is not a “waste of time” as some attorneys fear. The NJSBA does recommend, though, that one hour of ethics per year be required, which can be included in any substantive course offering. Most other states require a minimum number of ethics hours ranging from one to five hours required per year.

### *K. Impact on Certification Programs*

**The NJSBA recommends that, while some courses may be credited toward both MCLE and meeting one’s certification requirements, the programs be kept separate, with certification remaining available to those attorneys who wish to distinguish themselves in a particular practice area.**

### *L. Non-Legal Courses*

**The NJSBA recommends that certain non-legal courses be approved for MCLE credit, provided that the courses meet objective criteria established for regular legal courses.** This recognizes that some courses are necessary for lawyers in certain practice areas to adequately keep up with their practice, such as certain accounting courses for in-house corporate counsel.

### *M. Program Monitoring*

**The NJSBA recommends a self-monitoring model be established, as is used in New York, where attorneys are responsible for submitting certifications outlining the courses taken and the credits obtained each year.** The NJSBA recommends that providers also be required to maintain CLE records for at least five years in case there are questions about an attorney’s attendance or in case the attorney’s records are lost or compromised. The NJSBA also recommends that random audits be conducted of individual attorneys and of providers, with appropriate penalties put in place for those found to be out of compliance. A self-monitoring system such as this will reduce the administrative costs of maintaining central records and providing individual transcripts, as is done in Pennsylvania.

## *N. Funding*

**The NJSBA recommends that any costs affiliated with administering the program be funded first and foremost by uniform fees to providers who wish to offer CLE programs in New Jersey.** The NJSBA notes that at least 31 other states charge the providers some sort of application or annual fee to fund the MCLE program.

## *O. Minimum Criteria for Providers*

**The NJSBA recommends that uniform, objective, minimum criteria be established that every potential CLE provider must meet before being approved. Such criteria should include:**

- **Proven ability to maintain adequate attendance verification records for at least five years;**
- **Proven ability to provide the services proposed; and**
- **Proven ability to deliver written materials, if appropriate.**

The NJSBA does not recommend that providers be required to make their courses available statewide, or even publicly available. To the extent that in-house seminars offered by private law firms, corporate law departments and governmental agencies can qualify for credit, the NJSBA believes they should be able to obtain credit, even if only for their own attorneys. Likewise, to the extent that local or county bar associations can obtain credit for their course offerings, even if only available to attorneys in a particular area, they should be able to obtain credit. This will enable the greatest number of providers in the greatest number of settings to be available through which attorneys can meet their requirements.

## *P. Phase-In Providers for First Year of Implementation*

**The NJSBA recommends, as was done successfully in Pennsylvania, that for the first year of MCLE implementation, only existing non-profit providers with a history of sustained CLE offerings and an ability to meet the other uniform, minimum criteria specified above be permitted to offer courses for credit.** This will ensure quality providers in the first year and will provide an opportunity for both the users and administrators of the program to adjust to the new requirements.

## *Q. Oversight*

**The NJSBA recommends that an Oversight Committee be established to oversee implementation and provide guidance for future adjustments to the program. The NJSBA should have at least one, if not more, representatives on the Committee to ensure continued bar input.**

## **Conclusion**

The NJSBA recommends that any MCLE program implemented in New Jersey should have as its overall objective the establishment of a program that is fair, flexible, reasonable, and time and money-conscious. In making the recommendations contained in this report, the NJSBA used those objectives as its guidance. None of the recommendations contained herein are new or so far afield as to be out of the mainstream of what other states have already successfully implemented. The NJSBA urges careful consideration of these recommendations in structuring a mandatory continuing legal education in New Jersey.