

# Mandatory Continuing Legal Education: Productive or Just PR?

DAVID D. SCHEIN\*

## ABSTRACT

*Mandatory continuing legal education, “MCLE,” has been part of the practice of law for over forty-five years and is now required of licensed attorneys in most states. The introduction of MCLE was justified on the basis that it would make practicing attorneys more competent and improve ethical compliance. This Article presents a study of the impact, if any, of the introduction of MCLE across the United States, including a review of the history and rationale for the introduction of MCLE. It then reviews the various legal challenges to the imposition of MCLE on attorneys and examines the evidence of the success of MCLE in achieving its objectives. The Article concludes with recommendations for the future practice of law.*

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\* Licensed to practice law in Texas and Virginia. He is also Associate Dean, Director of Graduate Programs and a Professor at the University of St. Thomas Cameron School of Business in Houston, TX. He is a frequent author and speaker on employment and consumer law matters. © 2020, David D. Schein.

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#### INTRODUCTION<sup>α</sup>

About forty-five years ago, various state bar associations began requiring mandatory continuing legal education (“MCLE”).<sup>1</sup> Starting with just a few states in the 1970s, the majority of states introduced MCLE from the 1980s through the 1990s.<sup>2</sup> At the time of this writing, the bar associations of only four states and the District of Columbia do not require MCLE.<sup>3</sup> The introduction of MCLE was justified on the basis that professional organizations like state bar associations should ensure the competence of their members with a special emphasis on legal ethics training.<sup>4</sup> The state bar associations highlighted the MCLE requirement as a benefit for the members of the public who utilized legal services.<sup>5</sup> An attorney who fails to comply with the MCLE requirements of each state in which they are licensed risks fines and suspension of their license.<sup>6</sup>

This Article presents a study of the impact, if any, of the introduction of MCLE across the United States. Section I reviews the history and rationale for the introduction of MCLE, including estimated costs of participation and monitoring by the various state bars. Section II examines various legal challenges to MCLE itself and to aspects of its enforcement. Section III presents data assembled from a survey of state bar reports on the frequency of attorney discipline over the timeframe of MCLE and other objective information regarding the

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<sup>α</sup> Disclaimer: Not a single word in this Article was intended to denigrate the offering of legitimate continuing education courses, nor to suggest in any way that continuing legal education is not needed. The sole issue addressed in this Article is whether such courses should be mandated by state bar associations in order to practice law in the respective states.

1. Lisa A. Grigg, *The Mandatory Continuing Legal Education (MCLE) Debate: Is it Improving Lawyer Competence or Just Busy Work?*, 12 BYU J. PUB. L. 417, 418 (1998).

2. *Id.*

3. See Appendix, *infra*, for a compilation of MCLE requirements by state.

4. Grigg, *supra* note 1, at 417.

5. *Id.* at 430.

6. See, e.g., *People v. Ngo*, 924 P.2d 97 (Cal. 1996).

success or failure of MCLE. Section IV examines the need for MCLE in the future given the changing environment for law practice, including the impact of the Internet.

## I. MCLE ARRIVES ON THE SCENE

### A. INITIAL REQUIREMENTS

The first two states to introduce MCLE were Minnesota and Iowa in 1975.<sup>7</sup> Published at that time in support of this introduction was a law review article by The Honorable Robert J. Sheran and Laurence C. Harmon.<sup>8</sup> The rationale for this imposition on licensed attorneys included honing specific skills not taught in law school, strengthening a lawyer's sense of professional responsibility, and lowering legal malpractice claims.<sup>9</sup>

From this modest start, MCLE was adopted by Washington and Wisconsin in 1977, Colorado and Wyoming in 1978, and Idaho in 1979.<sup>10</sup> Through the 1980s and 1990s, state bars in most other states followed the lead of these earlier adopting states.<sup>11</sup> The adoption of MCLE was prompted by the American Bar Association's 1986 report: "... *In the Spirit of Public Service*."<sup>12</sup> The report itself was prompted by former United States Supreme Court Chief Justice Warren E. Burger, who had expressed concerns that the legal profession was moving away from professionalism.<sup>13</sup> The report contained a series of recommendations for the judiciary, law schools, and practicing attorneys.<sup>14</sup> It specifically called for mandatory continuing legal education and even suggested that examinations might be in order.<sup>15</sup> However, there were no metrics included to evaluate if any of the recommendations would make a difference in the actual delivery of legal services.<sup>16</sup>

New Jersey implemented MCLE in 2010.<sup>17</sup> This is not surprising given that the analysis by the Ad Hoc Committee on Continuing Legal Education of the New Jersey Bar was obliged to establish that there was a compelling case not to

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7. See Grigg, *supra* note 1, at 418.

8. The Honorable Robert J. Sheran & Laurence C. Harmon, *Minnesota Plan: Mandatory Continuing Legal Education for Lawyers and Judges as a Condition for the Maintaining of Professional Licensing*, 44 *FORDHAM L. REV.* 1081, 1082 (1976).

9. *Id.* at 1084.

10. *Id.* at 1091 n.26.

11. See *infra* Appendix.

12. ABA, *COMM'N ON PROFESSIONALISM, "... IN THE SPIRIT OF PUBLIC SERVICE": A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM* (1986) [hereinafter *IN THE SPIRIT OF PUBLIC SERVICE*].

13. *Id.* at v.

14. *Id.* at vii.

15. *Id.* at 12, 24.

16. *Id.*

17. CLE, N.J. STATE BAR ASS'N, <https://tcms.njsba.com/personifyebusiness/CLE.aspx> [https://perma.cc/59BR-HSZC] (last visited Feb. 5, 2020).

introduce it, rather than establishing a compelling case for introducing it.<sup>18</sup> Connecticut became the most recent state to make CLE mandatory in 2017.<sup>19</sup>

At the time of publication, Massachusetts, Maryland, Michigan, South Dakota, and the District of Columbia Bars do not require MCLE.<sup>20</sup> As will be discussed below, these fairly populous jurisdictions do not exhibit a higher level of attorney discipline or malpractice claims than MCLE states.<sup>21</sup> While this Article does not argue that voluntary continuing education is a harmful practice, making MCLE mandatory is not accomplishing its stated objectives.

#### B. COST OF COMPLIANCE FOR EXPERIENCED ATTORNEYS

There is no central source for cost of compliance with MCLE. Certainly, given the average requirement of fifteen hours of courses or other credits per year,<sup>22</sup> if a modest estimated cost of \$100 per credit hour is applied, an out-of-pocket cost of \$1,500 is a useful ballpark.<sup>23</sup> Given that the average income of attorneys across the nation is \$130,000,<sup>24</sup> this would be about one percent of their annual income. In itself, this does not appear to be an onerous requirement. However, as Abraham Lincoln is often quoted to have said, “A lawyer’s time and advice are his stock in trade.”<sup>25</sup> It would be hard to argue that an investment of fifteen hours just to complete the coursework, not including the time traveling to the MCLE courses and the time involved in filing for credit, is insubstantial. Using a modest billing rate of \$250/hour, the value of the time involved would be not less than \$3,750. This brings the expenditure up to approximately five percent of the average annual income.

In itself, given the demands of the legal profession, an expenditure of perhaps five percent of income is certainly not exorbitant. However, the reality is that the legal profession requires a near constant focus on changes in statutes, court rules, and case law relative to the area or areas of practice for most attorneys.<sup>26</sup> In the competitive legal profession, staying current is not limited to a structured fifteen hours of courses per year. With rapid reporting of new statutes and case law, attorneys are bombarded with updates and new material.<sup>27</sup> Rarely does this

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18. PETER G. VERNIERO & ARTHUR ITALIA, REPORT AND RECOMMENDATIONS 8 (Ad Hoc Comm. on Continuing Legal Education, 2008).

19. See *Minimum Continuing Legal Education*, STATE OF CONN. JUDICIAL BRANCH, [https://www.jud.ct.gov/mcle/MCLE\\_FAQs.htm](https://www.jud.ct.gov/mcle/MCLE_FAQs.htm) [<https://perma.cc/569W-W5KN>] (last visited Feb. 5, 2020).

20. See *infra* Appendix.

21. See *infra* Table pp. 313–15.

22. See *infra* Appendix.

23. See *id.*

24. Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree*, 43 J. LEGAL STUD. 249, 251 (2014).

25. Eileen Libby, *Changing Times: Fee Agreements May Be Modified, But Only for Good Reasons*, A.B.A. J. (Aug. 1, 2011), [http://www.abajournal.com/magazine/article/changing\\_times\\_fee\\_agreements\\_may\\_be\\_modified\\_but\\_only\\_for\\_good\\_reasons](http://www.abajournal.com/magazine/article/changing_times_fee_agreements_may_be_modified_but_only_for_good_reasons) [<https://perma.cc/FEE7-YJZX>].

26. See Grigg, *supra* note 1, at 423.

27. *Id.*

material come in neat annual packages which qualify for MCLE credit.<sup>28</sup> So, for many attorneys, the reality is gaining as much current knowledge as needed to actually be competent to practice, and then earning the MCLE credits to please their respective state bars.

The cost of compliance has attracted the attention of various authors.<sup>29</sup> One author addresses the key economic argument: Is there a problem to be corrected, and if so, does the requirement of MCLE provide enough of a correction of the problem to justify the cost of the program itself?<sup>30</sup> Consistent with the point of this Article, the author suggests that there is no empirical evidence that the illusory benefits will justify the various costs imposed.<sup>31</sup> An early commentator on the questionable need for MCLE stated:

Lawyers everywhere are expected to maintain their competence by studying on their own in any way that serves their needs. If they fail to do so, and if they cause resulting harm, they are liable to punishment. Why then do the bar, governors and supreme courts try to compel study through CLE that allows credit only for attending classroom lectures, and none for self-study?<sup>32</sup>

Another author commented on Arizona's MCLE requirement: "Material from external providers runs the tab higher. Even with the recent dues increases, many of us spend more on MCLE than on dues."<sup>33</sup> A 2001 article cites a study that estimates the total cost of MCLE, including incidental expenses, in that year at over \$440 million.<sup>34</sup> Nearly two decades later, this number could be forty-five percent higher.<sup>35</sup>

### C. COST OF COMPLIANCE FOR NEW ATTORNEYS

In evaluating the cost of MCLE compliance and its impact on attorneys, this Article divides attorneys into "experienced" and "new." As new attorneys typically can make partner five to seven years out of law school,<sup>36</sup> an arbitrary division is used at five or more years of practice for "experienced" attorneys. The rationale for this is that for most state bar MCLE requirements, the requirement is the same across the board. While the above Section indicates that there is some

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28. *Id.*

29. See Jack Joseph, *MCLE Rife with Pitfalls: An Unproven Solution to an Unproven Problem*, 12 B. LEADER 24, 24 (1987).

30. James C. Mitchell, *Colossal Cave-In: Why Reform of MCLE was DOA*, 37 ARIZ. ATT'Y 37 (2001).

31. *Id.*

32. Douglas Shaw Palmer, *How Not to Re-Educate Attorneys*, THE NAT'L L.J., Dec. 29, 1986–Jan. 5, 1987, at 15, 16.

33. James C. Mitchell, *The Joke's on Us*, 36 ARIZ. ATT'Y 27 (1999).

34. Mitchell, *supra* note 30.

35. *CPI Inflation Calculator*, <http://www.in2013dollars.com/us/inflation/2001?amount=1> [https://perma.cc/Q6XT-U85E] (last visited Feb. 5, 2020).

36. Nabeal Twereet, *After Graduating Law School, How Long Does Someone Need to Practice Before Becoming a Partner?*, LAW CROSSING, <https://www.lawcrossing.com/article/900041902/After-Graduating-from-Law-School-How-Long-Does-Someone-Need-to-Practice-Before-Becoming-a-Partner/> [https://perma.cc/6UKZ-RUCP] (last visited Feb. 5, 2020).

impact on experienced attorneys, it is clear that given the financial challenges for new attorneys, the impact is much greater.

Law students are graduating from law school with significant debt.<sup>37</sup> A recent article suggests that the average law school debt is a stunning \$139,900.<sup>38</sup> Adding the burdens of paying for MCLE and the taking of time to fulfill course requirements, instead of looking for work or focusing on their first employment opportunities, the burden of MCLE on new attorneys is substantially higher than it is on experienced attorneys.

The “Great Recession” of 2008-09 had a major impact on many sectors of the economy, and attorneys were not spared. New graduates sued their law schools due to disappointment in the employment market.<sup>39</sup> Attorneys who graduated law school in 2011 had the lowest employment percentage in nearly twenty years—only about 85.6 percent had jobs.<sup>40</sup> The 2011 employment number dropped two percentage points since 2010 and more than six points since 2007, according to data from the National Association for Law Placement, Inc.<sup>41</sup> Attorneys who graduated more recently have fared slightly better in the job market: 2016 graduates have an 87.5 percent employment rate, while for 2017 graduates, 88.6 percent are employed.<sup>42</sup> Another report notes: In 2008, the U.S. Department of Labor’s Bureau of Labor Statistics (“BLS”) estimated that for the ten-year period ending in 2018, the economy would produce an additional 98,500 legal jobs.<sup>43</sup> In 2012, after the Great Recession decimated the market for attorneys, the BLS revised that estimate downward, to 73,600 openings from 2010 through 2020.<sup>44</sup> In fact, only fifty-six percent of attorneys who graduated law school in 2012 were able to find full-time jobs that required a bar card within nine months of graduation.<sup>45</sup> A 2015 report indicates that law school applications have dropped by half since 2010, underscoring the dim reports for employment after law school.<sup>46</sup>

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37. Catherine New, *Which Graduate Degree Earns the Most and Get You Out of Debt Quickly?*, EARNEST (Apr. 11, 2017), <https://www.earnest.com/blog/which-graduate-degree-gets-you-out-of-debt-the-fastest/> [https://perma.cc/M9JV-R22K].

38. *Id.*

39. Ben Wolfgang, *Unemployed Lawyers Sue Schools Over Promises of Jobs*, THE WASH. TIMES (June 17, 2012), <http://www.washingtontimes.com/news/2012/jun/17/unemployed-lawyers-sue-schools-over-promises-of-jo/?page=all> [https://perma.cc/U8LL-CSNR].

40. *Id.*

41. Steven J. Harper, *Law School is a Sham*, SALON (Apr. 6, 2013), [http://www.salon.com/2013/04/06/law\\_school\\_is\\_a\\_sham/](http://www.salon.com/2013/04/06/law_school_is_a_sham/) [https://perma.cc/6AZ6-BMBW].

42. NATIONAL ASSOCIATION FOR LAW PLACEMENT, CLASS OF 2017 NOTCHED BEST EMPLOYMENT OUTCOMES SINCE RECESSION (Aug. 2, 2018), <https://www.nalp.org/uploads/SelectedFindingsPressReleaseClassof2017.pdf> [https://perma.cc/29X8-TQ8M].

43. *Id.*

44. STEVEN J. HARPER, THE LAWYER BUBBLE: A PROFESSION IN CRISIS (2016).

45. R. Amani Smathers, *The 21st Century T-Shaped Lawyer*, LAW PRAC. MAG., July/Aug. 2014, at 34, available at <http://dashboard.mazsystems.com/webreader/31892?page=34> [https://perma.cc/3JNR-FSF8].

46. Natalie Kitroeff, *Law School Applications Set to Hit 15-Year Low*, BLOOMBERG NEWS (Mar. 19, 2015), <http://www.bloomberg.com/news/articles/2015-03-19/law-school-applications-will-hit-their-lowest-point-in-15-years> [https://perma.cc/J7HF-F5KK].

New attorneys have a greater chance of being unemployed and carrying a large amount of student debt.<sup>47</sup> This is happening at a time when the entire legal profession is under pressure regarding fees and competition from non-traditional legal sources.<sup>48</sup> Salaries for new attorneys and those in the government and the non-profit sector are also a factor.<sup>49</sup> Therefore, the burden of MCLE on new attorneys is even greater than it is for more experienced attorneys.

#### D. STATE BAR OVERHEAD

The administrative costs borne by each state bar that requires MCLE are significant, and the lack of a central index for such costs should not be overlooked.<sup>50</sup> The website for the Virginia State Bar does not indicate the number of employees involved in administering the MCLE program.<sup>51</sup> The author has confirmed with the Virginia State Bar officials that there is no breakdown of costs allocated to the overhead for the MCLE operation.<sup>52</sup> However, it does list an MCLE Director and there is reference to its staff.<sup>53</sup> The Virginia Bar offices are located in downtown Richmond, an area commanding some of the higher rents in that state.<sup>54</sup> This is similar to other state bars, which are often located in premium office spaces in their respective state capital cities.<sup>55</sup> Adding salary and benefits to the office overhead, an estimate of a million dollars per year even for a modest MCLE department of the Virginia State Bar, may be a reasonable figure.<sup>56</sup>

The State Bar of Texas is located in downtown Austin, Texas.<sup>57</sup> The substantial budget does not have the cost of maintaining MCLE operations separated.<sup>58</sup> Although, the Texas Bar did collect \$1.3 million in MCLE fees from its members in 2018.<sup>59</sup>

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47. See New, *supra* note 37; Wolfgang, *supra* note 39.

48. James G. Leipold & Judith N. Collins, *The Stories Behind the Numbers: Jobs for New Grads Over More Than Two Decades*, NALP BULL. (Dec. 2016), <https://www.nalp.org/1216research?s=salary&&&print=Y> [<https://perma.cc/C86M-6YKJ>].

49. Don Macaulay, *How Much Will You Earn As a Lawyer?*, NAT'L MAG. (Nov. 14, 2017), <http://nationaljurist.com/national-jurist-magazine/how-much-will-you-earn-lawyer> [<https://perma.cc/DD9V-NADA>].

50. VA. STATE BAR, REPORT OF THE TREASURER (Aug. 5, 2019), [https://www.vsb.org/site/about/report\\_of\\_the\\_treasurer\\_19](https://www.vsb.org/site/about/report_of_the_treasurer_19) [<https://perma.cc/8CCQ-7QPU>] (last visited Feb. 5, 2020).

51. *Bar Staff*, VA. STATE BAR, <http://www.vsb.org/site/about/bar-staff/> [<https://perma.cc/BK45-SU8J>] (last visited Feb. 5, 2020).

52. E-mail correspondence from author to Cameron Rountree and Stephanie Blanton of the Virginia State Bar (Aug. 30, 2019–Sept. 3, 2019) (on file with author).

53. See *Bar Staff*, VA. STATE BAR, <http://www.vsb.org/site/about/bar-staff/> [<https://perma.cc/BK45-SU8J>] (last visited Feb. 5, 2020).

54. *Id.*

55. *Id.*

56. *Id.*

57. *Contact Us*, STATE BAR OF TEX., [https://www.texasbar.com/AM/Template.cfm?Section=Contact\\_Us&Template=/customsource/ContactUs/ContactUs.cfm](https://www.texasbar.com/AM/Template.cfm?Section=Contact_Us&Template=/customsource/ContactUs/ContactUs.cfm) [<https://perma.cc/97KS-Q484>] (last visited Feb. 5, 2020).

58. FINANCIAL REPORT, STATE BAR OF TEX. (May 31, 2018), available at <https://www.texasbar.com/Content/NavigationMenu/AboutUs/OurFinances/2018StateBarofTexasFS.pdf> [<https://perma.cc/G35U-GZFN>].

59. E-mail correspondence from author to Tracy Jarratt of the State Bar of Texas (Aug. 25, 2019–Aug. 30, 2019) (on file with author).

The website for the Colorado State Bar lists thirty-seven persons involved in seminars and continuing education.<sup>60</sup> Even if MCLE was to be eliminated in the future, state bar associations like Colorado would most likely continue to offer CLE courses.<sup>61</sup> Therefore, it would be unfair to indicate that eliminating MCLE would produce a savings on all of the listed positions. However, a substantial savings appears likely.<sup>62</sup> In turn, the Oklahoma State Bar lists five employees under Continuing Education located in its offices in Oklahoma City.<sup>63</sup> The average state of Colorado employee makes \$65,000 per year with a generous benefit package,<sup>64</sup> while the average annual salary of an attorney in Oklahoma is \$69,209.<sup>65</sup> Again, it is hard to estimate a savings if MCLE was changed to CLE, but a savings of a half million dollars a year could be possible for just the state of Oklahoma.

In Connecticut, the most recent state to implement an MCLE program, the potential cost of administering an MCLE program was mentioned as a reason the program should not be implemented.<sup>66</sup> However, prior to MCLE, Connecticut had considered requiring new attorneys to participate in a “boot camp” type program.<sup>67</sup> A boot camp type program for new lawyers is a more logical approach to maintaining attorney quality and ethical compliance. The Connecticut Bar Association currently offers a “Professionalism Boot Camp” recommended for attorneys with less than five years of practice experience.<sup>68</sup> The contents are heavily focused on the practical aspects of law practice, including technology, insurance, networking, screening clients, and making partner at a larger law firm.<sup>69</sup>

## II. LEGAL CHALLENGES TO MCLE

### A. EXEMPTION OF JUDGES, LAW PROFESSORS, AND OTHERS

An early analysis of MCLE and the legal problems associated with MCLE was presented by Lisa A. Grigg.<sup>70</sup> In 1998, California was embroiled in controversy over MCLE when an attorney who was placed on inactive status by the

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60. *About CLE*, COLO. BAR ASS'N, <http://cle.cobar.org/About-CLE> [<https://perma.cc/KBB3-2MX8>] (last visited Feb. 5, 2020).

61. *Id.*

62. *Id.*

63. *Staff and Department Directory*, OKLA. BAR ASS'N, <https://www.okbar.org/staff/> [<https://perma.cc/4CZ9-QL4Z>] (last visited Feb. 5, 2020).

64. *Average State of Colorado Salary*, PAYSACLE, [https://www.payscale.com/research/US/Employer=State\\_of\\_Colorado\\_\(CO\)/Salary](https://www.payscale.com/research/US/Employer=State_of_Colorado_(CO)/Salary) [<https://perma.cc/68LG-Y4QW>] (last visited Feb. 5, 2020).

65. *Average Attorney/Lawyer Salary in Oklahoma City, Oklahoma*, PAYSACLE (July 17, 2019), [https://www.payscale.com/research/US/Job=Attorney\\_%2F\\_Lawyer/Salary/022cb06b/Oklahoma-City-OK](https://www.payscale.com/research/US/Job=Attorney_%2F_Lawyer/Salary/022cb06b/Oklahoma-City-OK) [<https://perma.cc/2XGB-UYMM>] (last visited Feb. 5, 2020).

66. Thomas B. Scheffey, *Rules Committee Puts MCLE Plan on Hold*, CONN. L. TRIB., Mar. 26, 2012.

67. Jay Stapleton, *Rules Committee Task Force Says No To MCLE, For Now*, CONN. L. TRIB., Feb. 15, 2013.

68. *Events & Education*, CONN. BAR ASS'N, <https://members.ctbar.org/events/Sessions.aspx?id=1126165> [<https://perma.cc/JBU6-5QAN>] (last visited Feb. 5, 2020).

69. *Id.*

70. *See Grigg, supra* note 1.



California State Bar for failing to meet his MCLE course requirements sued the State Bar.<sup>71</sup> One of the plaintiff's main arguments in *Warden v. State Bar of California*<sup>72</sup> was that the MCLE rules excluded a host of attorneys from coverage, generally those in the more visible professions in the legal field, such as retired judges, full-time law professors, and elected officials.<sup>73</sup> Warden started by winning a summary judgment motion, which resulted in the MCLE rules for the entire state being suspended.<sup>74</sup> Ultimately, however, the court ruled in favor of the California Bar, but the judge questioned the exceptions while holding that they did not violate the California constitution.<sup>75</sup> This case highlights the hypocrisy of the structure of MCLE.

Texas, another large state, exempts full-time attorneys working for the state legislature and some other administrative positions.<sup>76</sup> Clearly, if MCLE is so important to competence and ethical behavior, it makes little sense that such high profile and important positions would be exempt from the requirements. In June 2017, the State Bar of Texas removed the exemption from MCLE for attorneys who are seventy years old or older.<sup>77</sup> If a student graduated high school at eighteen, then completed four-year programs for both their undergraduate degree and law school, that student would graduate law school at twenty-six. Estimating an average age of completion of law school at twenty-six, an attorney who is seventy years old would have completed over forty years of law practice. The logical reasoning for removing the exemption is presumably that such attorneys really need fifteen hours of legal courses each year to be good attorneys. The Texas Bar task force explained that many attorneys continue to practice law past age seventy, and therefore, they should continue to participate in MCLE.<sup>78</sup> The fact that such attorneys have probably learned about all any MCLE program might provide in terms of ethics and general legal concepts apparently was not considered.<sup>79</sup>

## B. MCLE AND RESIDENCY REQUIREMENTS

One case presented a challenge to New Jersey State Bar residency and MCLE requirements.<sup>80</sup> The fact situation is summarized by the court as follows:

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71. See *Warden v. State Bar*, 982 P.2d 154 (Cal. 1999).

72. *Id.*

73. *Id.* at 156.

74. *Id.*

75. *Id.* at 157.

76. See *infra* Appendix.

77. *Emeritus Attorneys: It's Time to Report MCLE Hours*, STATE BAR OF TEX., [https://www.texasbar.com/Content/NavigationMenu/ForLawyers/MCLE1/Emeritus\\_Attorney\\_Exemption/default.htm](https://www.texasbar.com/Content/NavigationMenu/ForLawyers/MCLE1/Emeritus_Attorney_Exemption/default.htm) [<https://perma.cc/Y6HK-8CEC>] (last visited Feb. 5, 2020).

78. TASK FORCE ON AGING LAWYER ISSUES REPORT, STATE BAR OF TEX. (2014), available at <https://www.texasbar.com/Content/NavigationMenu/ForLawyers/AgingLawyerIssues/AgingLawyerTaskForceReport.pdf> [<https://perma.cc/SP2W-CTVF>].

79. See *id.*

80. See *Tolchin v. Supreme Court*, 111 F.3d 1099 (3d Cir. 1997).

Appellant Robert Tolchin is a resident of New York State. He graduated from Cardozo Law School in 1992, sat for and passed the New Jersey Bar Exam in July, 1992, and was sworn in to the New Jersey Bar in December, 1992. Tolchin contacted ICLE [Institute for Continuing Legal Education] and asked whether he could satisfy the skills and methods course requirement through equivalent courses offered in New York or through home study materials. ICLE informed him that he must physically attend the courses in New Jersey. Tolchin has not attended the courses, nor does he maintain an office in New Jersey. As a consequence, Tolchin has not satisfied the conditions necessary to practice law in New Jersey, even though he has been sworn into the New Jersey bar.<sup>81</sup>

The New Jersey Bar required new attorneys to attend an in-person forty-hour course offered in New Jersey.<sup>82</sup> In addition, attorneys who wanted to practice in the state had to maintain an office in New Jersey.<sup>83</sup> Tolchin challenged both requirements under the Commerce Clause and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.<sup>84</sup> Tolchin argued that the requirements of the New Jersey Bar were excessive in light of the burden on interstate commerce and therefore violated his constitutional protections, but he lost at the trial court level on summary judgment.<sup>85</sup> The district court held that in light of the balancing test, the procedures of the State Bar were facially neutral.<sup>86</sup>

However, the United States Court of Appeals for the Third Circuit held that not only must the test be facially neutral, but the actual outcome must also be neutral.<sup>87</sup> The court stated the Commerce Clause “prohibits economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.”<sup>88</sup> However, the Third Circuit ruled that since both New Jersey attorneys and out-of-state attorneys must maintain an office in the state, there is no preference shown to in-state residents.<sup>89</sup>

Tolchin still argued that the mandatory attendance at the required skills and methods course served no valid educational function.<sup>90</sup> However, the Third Circuit ruled that Tolchin’s argument failed to raise a genuine issue of material fact as to whether the mandatory attendance requirement is rationally connected to its intended benefits.<sup>91</sup> Therefore, the argument did not establish that it

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81. *Id.* at 1105.

82. *Id.*

83. *Id.* at 1107.

84. *Id.* at 1105.

85. *Id.* at 1106.

86. *See id.* at 1107.

87. *Id.*

88. *Id.* at 1106 (quoting *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269, 273 (1988)).

89. *Id.* at 1107.

90. *Id.* at 1110.

91. *Id.*

burdened interstate commerce.<sup>92</sup> Many states, including California,<sup>93</sup> New York,<sup>94</sup> Missouri,<sup>95</sup> and Illinois,<sup>96</sup> allow their non-resident bar members to attend MCLE courses in other states, and yet Tolchin did not succeed in his court challenge.<sup>97</sup>

Two California cases further defended the requirement of MCLE. In *Greenberg v. State Bar*, the California Court of Appeals ruled that the goal of MCLE was rationally related to consumer protection in the legal profession.<sup>98</sup> Therefore, a First Amendment claim that MCLE subjected lawyers to compulsory government reeducation programs and partisan political propaganda was rejected.<sup>99</sup> In *Warden v. State Bar*, attorneys challenged MCLE on equal protection grounds.<sup>100</sup> They claimed exemptions from MCLE for retired judges, full-time law professors, and elected officials were arbitrary and invalid.<sup>101</sup> The court found that the rational justification for these exemptions (that these classes of attorneys were less likely to represent clients) had a conceivable legislative purpose.<sup>102</sup>

Generally, it is difficult for attorneys, or even other licensed professionals, to challenge state regulations such as MCLE:

... the constitutional rights of professionals faced with increased regulation are very limited. Substantive due process and equal protection rights provide almost no protection against ill-conceived or economically inefficient regulations. Although procedural due process rights provide greater protection, significant procedural safeguards are triggered only when the continuing competency measure is subjective and focuses on an individual professional. Otherwise, procedural rights provide meager protection against unreasonable regulations.<sup>103</sup>

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92. *Id.*

93. *Out-of-State Residents*, THE STATE BAR OF CAL., <http://www.calbar.ca.gov/Attorneys/MCLE-CLE/Requirements/Out-of-State-Residents> [https://perma.cc/ME47-24XE] (last visited Feb. 2, 2020).

94. *CLE Requirement for Experienced Attorneys*, N.Y. STATE UNIFIED COURT SYS., [https://www.nycourts.gov/attorneys/cle/attorney\\_faqs.shtml#s2\\_q2](https://www.nycourts.gov/attorneys/cle/attorney_faqs.shtml#s2_q2) [https://perma.cc/Y63U-BFBE] (last visited Feb. 2, 2020).

95. *Frequently Asked Questions about MCLE*, MISSOURI BAR ASS'N, <http://www.mobar.org/mcle/requirements/> [https://perma.cc/297B-3F2J] (last visited Feb. 2, 2020).

96. *What Are The Requirements to Claim an Out-Of-State Exemption from MCLE Requirements?*, MCLE BOARD OF THE SUPREME COURT OF ILLINOIS, [http://mcle.custhelp.com/app/answers/detail/a\\_id/502/~/~what-are-the-requirements-to-claim-an-out-of-state-exemption-from-mcle](http://mcle.custhelp.com/app/answers/detail/a_id/502/~/~what-are-the-requirements-to-claim-an-out-of-state-exemption-from-mcle) [https://perma.cc/KUM2-P6MW] (last visited Feb. 2, 2020).

97. *Tolchin*, 111 F.3d at 1116.

98. *Greenberg v. State Bar*, 92 Cal. Rptr. 2d 493, 496 (Ct. App. 2000).

99. *Id.*

100. *Warden v. State Bar*, 982 P.2d 154, 156 (Cal. 1999).

101. *See id.*

102. *See id.* at 163, 169.

103. Toni Massaro & Thomas O'Brien, *Constitutional Limitations On State-Imposed Continuing Competency Requirements For Licensed Professionals*, 25 WM. & MARY L. REV. 253, 257 (1983).

As is true in many cases in our heavily regulated society, there is no absolute right to practice law, regardless of the substantial investment attorneys make in their education and establishing their practices. The *Tolchin* case and other examples illustrate those attorneys failing to comply with the MCLE regulations of their respective state bars face suspension of their law licenses.

### III. INDICATORS OF SUCCESS OR FAILURE OF MCLE

#### A. MCLE DOES NOT REDUCE LAWYER DISCIPLINE

Certainly, a successful MCLE program should provide some objective benefit. One could anticipate that attorneys who participate in MCLE courses would be subject to less discipline. There is no central index for attorney discipline. However, the available data on complaints filed with the various state bar associations was reviewed to attempt to determine the impact of MCLE on attorney discipline.<sup>104</sup> There is no magic wand, but examining the data displayed in Table 1 below does lead to the conclusion that MCLE has had no impact on the number of attorneys who have been disciplined by their respective state bars.<sup>105</sup>

Texas is a large state with a large Bar.<sup>106</sup> The existence of the MCLE program does not appear to have reduced the frequency of discipline or its impact on the State Bar budget. In 2002, the active lawyer population of Texas was approximately 75,000, and the State Bar budget for lawyer discipline was approximately \$6.5 million. A few short years later in 2009, the active lawyer population was approximately 86,000, and the State Bar disciplinary budget was \$7.4 million. However, the total number of final sanctions against lawyers during that time remained constant.<sup>107</sup>

The Texas Bar's 2018 Financial Report includes a net expenditure of a stunning \$13,155,665 for "public protection."<sup>108</sup> This was in the face of a Texas in-state Bar membership of approximately 91,000,<sup>109</sup> only a modest increase in the total number of lawyers from 2009.

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104. See A.B.A., *2017 Surv. on Lawyer Discipline Systems*, [https://www.americanbar.org/groups/professional\\_responsibility/resources/surveyonlawyerdisciplinesystems2014/](https://www.americanbar.org/groups/professional_responsibility/resources/surveyonlawyerdisciplinesystems2014/) [https://perma.cc/J5EU-B247] (last visited Feb. 2, 2020); A.B.A., *2010 Surv. on Lawyer Discipline Systems*, [https://www.americanbar.org/groups/professional\\_responsibility/resources/survey\\_lawyer\\_discipline\\_systems\\_2010/](https://www.americanbar.org/groups/professional_responsibility/resources/survey_lawyer_discipline_systems_2010/) [https://perma.cc/QQX9-3PGP] (last visited Feb. 2, 2020); A.B.A., *2002 Surv. on Lawyer Discipline Systems*, [https://www.americanbar.org/groups/professional\\_responsibility/resources/survey\\_lawyer\\_discipline\\_systems\\_2002/](https://www.americanbar.org/groups/professional_responsibility/resources/survey_lawyer_discipline_systems_2002/) [https://perma.cc/B3Z5-EZSW] (last visited Feb. 2, 2020).

105. See *infra* Table pp. 313–15.

106. See Mark D. White, *A Matter of Discipline*, 76 TEX. B. J. 1047, 1051 (2013).

107. *Id.*

108. STATE BAR OF TEX. COMM'N FOR LAW. DISCIPLINE, ANNUAL REPORT 30 (Jun. 1, 2018–May 31, 2019), available at <https://www.texasbar.com/AM/Template.cfm?Section=Home&Template=/CM/ContentDisplay.cfm&ContentID=41986> [https://perma.cc/5Y4C-F28L] (last visited Feb. 2, 2020).

109. STATE BAR OF TEX. DEP'T OF RES. AND ANALYTICS, STATE BAR OF TEX. MEMBERSHIP: ATT'Y STATISTICAL PROFILE (2018–19), available at [https://www.texasbar.com/AM/Template.cfm?Section=Content\\_Folders&Template=/CM/ContentDisplay.cfm&ContentID=43800](https://www.texasbar.com/AM/Template.cfm?Section=Content_Folders&Template=/CM/ContentDisplay.cfm&ContentID=43800) [https://perma.cc/BBJ2-SG3W] (last visited Feb. 2, 2020).

**TABLE MANDATORY CLE STATES**

<b>Percent of Complaints per Licensed Attorney</b>			
<b>STATE</b>	<b>2002</b>	<b>2010</b>	<b>2016</b>
Alabama	12.1%	9.1%	8.4%
Alaska	8.7%	8.6%	5.8%
Arizona	No data available	25.1%	19.2%
Arkansas	14.3%	10.2%	8.3%
California	8.2%	12.5%	No data available
Colorado	25.8%	17.2%	13.5%
Connecticut	3.8%	2.8%	No data available
Delaware	14.4%	7.5%	4.3%
Florida	13.8%	10.1%	7.7%
Georgia	9.5%	6.3%	8.1%
Hawaii	15.3%	7.3%	6.9%
Idaho	12.3%	9.9%	7.3%
Illinois	8.2%	6.5%	7.8%
Indiana	10.3%	9.0%	7.7%
Iowa	6.8%	6.8%	9.4%
Kansas	10.6%	No data available	4.4%
Kentucky	7.7%	6.4%	6.2%
Louisiana	14.7%	15.5%	13.1%
Maine	8.6%	7.2%	3.8%
Minnesota	5.1%	5.8%	4.7%
Mississippi	6.1%	6.5%	5.3%

<b>Percent of Complaints per Licensed Attorney</b>			
<b>STATE</b>	<b>2002</b>	<b>2010</b>	<b>2016</b>
Missouri	7.6%	6.7%	5.6%
Montana	4.4%	10.8%	7.4%
Nebraska	9.1%	6.5%	6.9%
Nevada	22.1%	No data available	No data available
New Hampshire	4.8%	1.7%	4.7%
New Jersey	13.0%	2.0%	4.8%
New Mexico	10.8%	9.6%	9.2%
New York	10.2%	13.4%	6.6%
North Carolina	No data available	5.8%	4.8%
North Dakota	11.9%	8.1%	5.7%
Ohio	15.4%	10.6%	8.7%
Oklahoma	10.8%	9.0%	7.4%
Oregon	12.1%	10.3%	12.4%
Pennsylvania	9.0%	7.6%	6.0%
Rhode Island	9.9%	9.6%	6.7%
South Carolina	12.8%	14.4%	12.4%
Tennessee	11.2%	16.8%	4.8%
Texas	13.1%	8.4%	7.5%
Utah	17.9%	13.2%	9.1%
Vermont	10.7%	13.2%	9.1%
Virginia	16.5%	13.1%	10.1%
Washington	10.2%	8.6%	6.3%

<b>Percent of Complaints per Licensed Attorney</b>			
<b>STATE</b>	<b>2002</b>	<b>2010</b>	<b>2016</b>
West Virginia	11.2%	8.0%	8.7%
Wisconsin	11.5%	9.7%	7.4%
Wyoming	10.2%	4.9%	5.4%
<b>AVERAGE</b>	11.2%	9.4%	7.7%
<b>Non-Mandatory CLE States</b>			
<b>Percent of Complaints per Licensed Attorney</b>			
<b>STATE</b>	<b>2002</b>	<b>2010</b>	<b>2016</b>
District of Columbia	2.6%	1.6%	1.3%
Maryland	6.2%	5.8%	4.6%
Massachusetts	2.6%	1.6%	1.4%
Michigan	10.2%	6.8%	5.7%
South Dakota	No data available	3.1%	4.5%
<b>AVERAGE</b>	5.4%	3.8%	3.5%

In an effort to provide a more empirical approach to the attorney discipline issue, the Table above was compiled based on data publicly reported by state bars.

Examining the data by comparing states with MCLE and states that do not require MCLE, the states that do not require MCLE actually have on average a lower percentage of lawyers with complaints against them.<sup>110</sup> In fact, the data show that in each of the sampled years, 2002, 2010 and 2016, the states where CLE is not mandatory had a lower rate of attorney complaints.<sup>111</sup>

#### B. MCLE DOES NOT REDUCE LEGAL MALPRACTICE SUITS

As with attorney discipline, there is not a comprehensive, national index showing legal malpractice claims by state and over time. However, there is significant anecdotal evidence that MCLE has no impact on reducing malpractice claims. As

110. *See supra* Table.

111. *Id.*

an example, a study with a focus on Florida's attorneys concluded: "The ABA insists that legal malpractice is not widespread or serious, but legal malpractice is rampant and cannot be ignored. Fundamental changes must occur and must be undertaken with the situational perspective in mind."<sup>112</sup> MCLE is not the answer for the legal malpractice dilemma.

A consistent effort to describe legal malpractice claims was undertaken by the American Bar Association starting in the mid-1980s.<sup>113</sup> The data is reported in *Profile of Legal Malpractice Claims*.<sup>114</sup> Reviewing the data, which covered the period 2008-2011, the report notes its limitations in that the data is collected on a voluntary basis from major legal malpractice insurance companies.<sup>115</sup> The survey does not cover the attorneys who do not carry malpractice insurance at all, nor do all malpractice carriers participate in the survey.<sup>116</sup> The 2000-2003 report covered approximately 30,000 claims,<sup>117</sup> the 2004-2007 report covered 40,000 claims, the 2008-2011 report covered 53,000 claims, and the 2012-2015 report covered 44,000 claims.<sup>118</sup> Despite the slight decrease in total claims during the last available reporting period, these are still substantial numbers during a period where the number of attorneys grew modestly in comparison, suggesting an increase in overall malpractice levels.<sup>119</sup> Again, this is during a period when the majority of states had adopted MCLE.<sup>120</sup>

No amount of MCLE will fix "bad clients." Despite the title of their article, "When the Lawyer Screws Up," Herbert Kritzer and Neil Vidmar note that the majority of legal malpractice claims are due to issues like "bad clients" and other non-fault issues, rather than incompetent legal work.<sup>121</sup> Notably, the article features a comparison by median and mean amounts paid for legal malpractice

112. Manuel R. Ramos, *Legal Malpractice: The Profession's Dirty Little Secret*, 47 VAND. L. REV. 1657, 1733 (1994) (internal citation omitted).

113. See A.B.A. Press Release, *ABA Releases Data Study Analyzing Trends in Legal Malpractice Claims From 2012-15* (Oct. 11, 2016), available at [https://www.americanbar.org/news/abanews/aba-news-archives/2016/10/aba\\_releases\\_datast/](https://www.americanbar.org/news/abanews/aba-news-archives/2016/10/aba_releases_datast/) [<https://perma.cc/TV9B-8A93>] (last visited Feb. 2, 2020).

114. *Id.*

115. A.B.A. STANDING COMM. ON LAW. PROF'L LIAB., PROFILE OF LEGAL MALPRACTICE CLAIMS: 2008-2011 (2012) [hereinafter 2011 LEGAL MALPRACTICE STUDY].

116. At a Feb. 17, 2011 panel discussion on "The Insurance Marketplace and Considerations," moderator Victoria L. Orze of Hinshaw & Culbertson, Phoenix, and two insurance experts explored the current market concerning lawyers' professional liability ("LPL") coverage, along with changes in the legal industry that are affecting the insurance market. The panelists noted a "noticeable uptick in frequency" in claims in 2010. Joan C. Rogers, *Experts on Insurance Marketplace See Low Prices, but High Costs, Cuts in Limits*, ABA/BNA LAW. MANUAL ON PROF. CONDUCT, CURRENT REPORTS (Mar. 2, 2011).

117. A.B.A. STANDING COMM. ON LAW. PROF'L LIAB., PROFILE OF LEGAL MALPRACTICE CLAIMS: 2000-2003 4 (2005).

118. 2011 LEGAL MALPRACTICE STUDY, *supra* note 115, at 5.

119. In 2000, there were 1,022,462 attorneys in the United States. In 2011, there were 1,225,452. In 2015, there were 1,300,705. A.B.A. *National Law. Population Surv. 1878-2018* (AM. B. ASS'N 2018).

120. *Supra* notes 1 & 2 and accompanying text.

121. See Herbert M. Kritzer & Neil Vidmar, *When the Lawyer Screws Up: A Portrait of Legal Malpractice Claims and Their Resolution* 25 (Duke L. Sch. Pub. L. & Legal Theory Series No. 2015-29, 2015).



claims in Florida from 1981 to 2014.<sup>122</sup> Florida adopted MCLE in 1988.<sup>123</sup> The significantly upward sloping trend for both the median and the mean do not show any positive impact from the adoption of MCLE.<sup>124</sup>

Starting with data from 2010, Ames & Gough, a legal risk management and insurance consulting firm, has prepared an annual report on trends in legal malpractice claims.<sup>125</sup> The 2014 report used 2013 data from eight major insurers which represented eighty percent of the AM Law 100 firms.<sup>126</sup> The survey notes that there was a sharp uptick in both claims volume and the cost of claims following the economic crash of 2008.<sup>127</sup> By 2013, the report indicates that while the volume of claims has moderated, the cost of claims has continued to increase sharply.<sup>128</sup> Again, attorney incompetence was not cited as a significant concern.<sup>129</sup> The key risk was “conflict of interest” claims, mostly driven by increased lateral hires among law firms and mergers of law firms.<sup>130</sup> The Ames & Gough report based on 2014 data mirrors the prior year report, although it included data from nine major insurers, which again represented about eighty percent of the AM Law 100 firms.<sup>131</sup> Even from 2013 to 2014, the report found an increase in cases with reserves greater than \$500,000 and noted: “Claims Paid Over \$20M: In the past two years, six insurers participated in paying a claim of \$20 million or more, including three that participated in a claim of \$50 million–100 million, and one involved in a claim exceeding \$100 million.”<sup>132</sup> Ames & Gough’s 2018 report summary states:

Overall claim frequency stabilizes, as severity continues to rise. Although seven of nine insurers in the survey reported claim frequency in 2017 was similar to or less than the prior year, claim severity remains on the rise. In 2017, all nine insurers surveyed had claims with reserves over \$500,000. Five of the insurers reported having twenty-one or more such claims. The same number participated in paying a claim of \$50 million or more, including one with a claim exceeding \$100 million, and one, over \$150 million.<sup>133</sup>

The most recent report notes that while conflicts of interest dominate claims activity in the current era, the size of claims reflects the large number of mergers

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122. *Id.* at 47.

123. THE FLA. BAR, *CLE Requirements FAQ*, <https://www.floridabar.org/member/cle/cle-faq/> [<https://perma.cc/T4LQ-3T28>] (last visited Feb. 2, 2020).

124. Kritzer & Vidmar, *supra* note 121, at 48.

125. See, e.g., *Lawyers’ Professional Liability Claims Trends: 2014*, AMES & GOUGH (2014).

126. *Id.* at 1–2.

127. *Id.* at 2.

128. *Id.* at 5.

129. See *id.* at 4.

130. *Id.*

131. *Id.*

132. *Id.* at 2.

133. News Release, *2018 LPL Insurer Survey*, AMES & GOUGH (2018).

and acquisitions activity, which are large dollar transactions.<sup>134</sup> When those transactions fail, the attorneys involved are often the target of malpractice actions by disappointed clients.<sup>135</sup>

### C. MCLE DOES NOT IMPROVE THE PUBLIC PERCEPTION OF ATTORNEYS

There are many opinions as to how well attorneys stand in the public eye.<sup>136</sup> One potential source for data is the annual *Gallup Poll of Honesty and Ethics in the Professions*.<sup>137</sup> Conveniently, data is available from 1976, near the beginning of MCLE.<sup>138</sup> The 1976 poll showed that attorneys were rated very high or high by only twenty-five percent of the public who were surveyed.<sup>139</sup> Gallup's 2018 update found lawyers still at nineteen percent on the positive side, but with a substantial twenty-eight percent of the public who were polled ranking lawyers as "Very Low or Low."<sup>140</sup> If MCLE was designed to improve the image of attorneys with the public, this objective has not been met.

## IV. MCLE TODAY

### A. THE CHANGING LEGAL MARKETPLACE

It is plainly evident that making CLE mandatory has not met a single goal when measured by available objective metrics for the modern U.S. legal profession. The likelihood that the current MCLE model will in any way meet the changing demands of the 21st century United States legal profession is quite low. Various authors credit the "Great Recession" with causing or expediting changes in the legal profession.<sup>141</sup> However, even before this significant event for the U.S. economy, major changes were being discussed. Yale Law School professor Quintin Johnstone suggested in 2006, and published in 2008, that some of the underlying causes of the changes in the U.S. legal profession were: recent changes in consumer demand for legal services, the increase in number of

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134. *Id.*

135. *Id.*

136. See, e.g., Staci Zaretsky, *Lawyers: The Most Despised Profession in America*, ABOVE THE LAW (Jul. 15, 2013), <https://abovethelaw.com/2013/07/lawyers-the-most-despised-profession-in-america/> [<https://perma.cc/FX4D-JJXL>] (last visited Feb. 2, 2020); *Are Lawyers Trusted?*, RASMUSSEN REPORTS (Aug. 10, 2018), [https://www.rasmussenreports.com/public\\_content/politics/general\\_politics/july\\_2018/are\\_lawyers\\_trusted](https://www.rasmussenreports.com/public_content/politics/general_politics/july_2018/are_lawyers_trusted) [<https://perma.cc/6W76-V6FN>] (last visited Feb. 2, 2020).

137. See *Honesty and Ethics in the Professions*, GALLUP POLL, <http://www.gallup.com/poll/1654/honesty-ethics-professions.aspx> [<https://perma.cc/68MZ-K4ZD>] (last visited Feb. 2, 2020).

138. *Id.*

139. *Id.*

140. *Id.*

141. See Eli Wald, *The Economic Downturn and the Legal Profession, Foreword: The Great Recession and the Legal Profession*, 78 *FORDHAM L. REV.* 2051 (2010); Marc A. Cohen, *How Will Legal Providers Be Affected By The Next Recession?*, *FORBES* (Jan. 23, 2019), available at <https://www.forbes.com/sites/markcohen1/2019/01/23/how-will-legal-providers-be-affected-by-the-next-recession/#761ff7545983> [<https://perma.cc/67QG-99LB>] (last visited Feb. 2, 2020).

lawyers and non-lawyer legal service providers in the United States, increased competition among legal service providers, and recent changes in regulation of legal service providers.<sup>142</sup> Some of the challenges regarding demand for legal services highlighted by Professor Johnstone included the increased need for interstate legal services for both individuals and businesses.<sup>143</sup> He specifically noted the difficulty with getting legal help in rural areas and for the impoverished, despite the surplus of law graduates.<sup>144</sup> Given the high debt burden for new law graduates,<sup>145</sup> it is not surprising that they are either unable or unwilling to work at low wages providing legal services to the poor.<sup>146</sup>

Johnstone continued by noting that not only has the U.S. produced far more law graduates than the legal marketplace can absorb, but also the growth of non-lawyer legal service providers has put even more pressure on this market.<sup>147</sup> In many cases, non-lawyer legal services have significantly expanded, including document preparation firms, accounting firms, real estate practitioners, banks, and tax preparation firms, to name just a few.<sup>148</sup> Therefore, there is increased competition among lawyers and between lawyers and non-lawyers.<sup>149</sup> Further, Johnstone adds that the changes in regulation of legal services increases the impact to the changes addressed above.<sup>150</sup>

#### B. THE IMPACT OF THE GREAT RECESSION

The changes in the legal profession discussed immediately above have accelerated following the 2008 economic crisis. One author wrote:

According to the 2014 *Law Firms in Transition Survey* recently released by Altman Weil, a large majority of law firm leaders are reporting that greater pricing competition, practice efficiency, commoditization of legal work, competition from nontraditional legal service providers, and non-hourly billing arrangements are all permanent changes in the legal landscape. In the same

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142. See Quintin Johnstone, *An Overview of the Legal Profession in the United States, how that Profession Recently has been Changing, and Its Future Prospects*, 26 QUINNIPIAC L. REV. 737, 738–59 (2008).

143. See *id.* at 769.

144. See *id.* at 791.

145. See *supra* Section I.

146. See Barbara A. Curran, *American Lawyers in the 1980s: A Profession in Transition*, 20 LAW & SOC'Y REV. 19, 19–52 (1986); ABA STANDING COMM. ON LOAN REPAYMENT FORGIVENESS, *Lifting the Burden: Law Student Debt as a Barrier to Public Service (The Final Report of the Committee)* (2003); Rebecca Buckwalter-Poza, *Making Justice Equal*, Center for American Progress (Dec. 8, 2016), <https://www.americanprogress.org/issues/criminal-justice/reports/2016/12/08/294479/making-justice-equal/> [<https://perma.cc/4MGK-CLNA>] (last visited Feb. 2, 2020); Legal Serv. Corp., *The Unmet Need for Legal Aid*, <https://www.lsc.gov/what-legal-aid/unmet-need-legal-aid> [<https://perma.cc/VLA8-WGRG>] (last visited Feb. 2, 2020).

147. See Johnstone, *supra* note 142, at 791.

148. See *id.*

149. See *id.*

150. *Id.*

survey, two-thirds of law firm leaders think the pace of change in the profession is still increasing.<sup>151</sup>

Adapting to the realities of the twenty-first century, attorneys and law firms will need to work more efficiently and be more connected to their clients than ever before. Obtaining the needed CLE to be responsive to client needs, and thereby be competitive in an increasingly competitive legal services market, will require greater flexibility. The need to obtain MCLE under the arbitrary supervision of state bar associations hardly fits with the new realities.

### CONCLUSION AND PLAN FOR THE FUTURE

As the reporting of the latest court decisions and statutory developments flows nearly instantaneously through the Internet, the need for mandatory CLE becomes even less defensible. Given the criticism of law school education and its disconnect from “real” law practice, the rationale for requiring either clerkships or “boot camps” of some kind may continue to be supported for new lawyers.<sup>152</sup> The need to make CLE mandatory, never supported by rational data, is even less supported in the modern era.

The persistence of MCLE in the face of both failed objectives and the changing law profession leads one to question what forces favor its continuation. In fact, two forces appear to be at work preserving the status quo. First, the various state bar associations search for relevance in an era where they are less relevant. There may be a logical concern on behalf of state bar leaders that if CLE is not mandatory, attorneys will not flock to annual meetings and similar events. Such meetings often provide an economical way to network with other attorneys, however, which is an escalating need in an era of increased competition and specialization by attorneys. Attorneys attended such meetings before CLE became mandatory and it is likely they will continue to do so. The programs and structure of such meetings should indeed change to meet the demands of a changing legal profession.

The second major force in favor of MCLE is rather obviously the ranks of independent providers of continuing education courses. Again, there were some of these providers before CLE became mandatory.<sup>153</sup> But the profusion of such

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151. Frederick J. Esposito, Jr., *The New Landscape: Challenges and Opportunities Facing Law Firms*, LAW PRACTICE TODAY (June 13, 2014), available at <http://www.lawpracticetoday.org/article/new-landscape-challenges-opportunities-facing-law-firms/> [https://perma.cc/Z95X-N5LH] (last visited Feb. 2, 2020); see also Richard Susskind, *Tomorrow's Lawyers*, LAW PRACTICE MAG., Vol. 39, No. 4, July/Aug. 2013, at 34–38, available at <http://dashboard.mazsystems.com/webreader/31885?page=36> [https://perma.cc/Y6SJ-FBFBK] (last visited Feb. 2, 2020); STATE BAR OF WIS., BD. OF GOVERNORS' CHALLENGES TO THE PROFESSION COMM., *The New Normal: The Challenges Facing the Legal Profession* (July 2011).

152. See THE FLA. BAR, *Frequently Asked Questions About Basic Skills Course Requirement*, available at <https://www.floridabar.org/member/cle/bscr-faq/> [https://perma.cc/368V-RXKR] (last visited Feb. 2, 2020).

153. For a sample list of CLE providers, see Tim Baran, *Top CLE Providers*, ROCKET MATTER'S LEGAL PRODUCTIVITY (Jan. 27, 2015), <https://www.rocketmatter.com/practice-management/top-cle-providers/> [https://perma.cc/S7VK-HH6C] (last visited Feb. 2, 2020).

offerings, with a wide variation in quality and content, has paralleled the move to MCLE. While a state bar may offer an entire year of required CLE for a few hundred dollars for attending an annual meeting,<sup>154</sup> private vendors sometimes offer as little as one hour of MCLE for the same price.<sup>155</sup> Certainly, state bar associations can get past this obstacle by renewing their commitment to their members and to reducing the cost of maintaining a bar card.

In 1977, during the early days of the implementation of MCLE in the United States, U.S. District Judge Marvin E. Frankel opined:

As to those who are not conscientious, nobody has adduced the slightest reason to believe that inadequate service by lawyers and judges would or will be improved by fifteen hours a year of presence at miscellaneous lectures of some sort or other. All agree that competent professionals don't need the compulsion; the thought that incompetents will benefit is so improbable on its face as to make the across-the-board command a fantastic species of overkill. To be sure, some will take courses they would not have taken, and some will learn something. The price, however, is unacceptable.<sup>156</sup>

Sadly, the admonition of Judge Frankel forty years ago was not heeded; he was all too correct in his prediction.

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154. As an example, see the *State Bar of Texas Annual Meeting 2019*, [https://www.texasbar.com/AM/Template.cfm?Section=Annual\\_Meeting\\_Home&Template=/CM/HTMLDisplay.cfm&ContentID=40322](https://www.texasbar.com/AM/Template.cfm?Section=Annual_Meeting_Home&Template=/CM/HTMLDisplay.cfm&ContentID=40322) [<https://perma.cc/8G8H-SJW6>] (last visited Feb. 2, 2020).

155. Matthew Hickey, *How to Find Good Continuing Legal Education Courses*, ROCKET LAWYER (Aug. 27, 2012), available at <https://www.rocketlawyer.com/blog/how-to-find-good-continuing-legal-education-courses-98777> [<https://perma.cc/7W85-JJQH>] (last visited Feb. 2, 2020).

156. Marvin E. Frankel, *Curing Lawyers' Incompetence: Primum Non Nocere*, 10 CREIGHTON L. REV. 613, 630 (1977).

APPENDIX  
MCLE JURISDICTIONS, STATES AND TERRITORIES

The information included in this table can be found on your State Bar website, or on the websites of the American Bar Association and the American Law Institute.

- ‡ Exemptions are not fully reprinted in this table. This appendix instead gives a quick overview of the exemptions available in each jurisdiction. Numbers provided are for use in this table only and do not correlate to numeration in original rules and regulations. For more information, reference the rule (or source) cited in the exemption column for that jurisdiction.
- \* Denotes that a credit hour is 50 minutes in that jurisdiction.

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions‡
<i>Alabama</i> 1982	12 hours	1 hour of ethics	1 year	ALL	On-Demand Online Courses	Not approved/recognized	1. Newly admitted within reporting period; 2. Public servants during their term in office, including members of the United States Senate, the United States House of Representatives, the Armed Forces, and the State Legislature. Does not apply to those serving as assistant or deputy attorneys general and district attorneys, assistant or deputy district attorneys, and public defenders; 3. Age 65+.
<i>Alaska</i> 2008	3 hours	9 hours of general voluntary CLE encouraged	1 year	ALL	ALL	No limit	Ala. State Bar Rules for Mandatory Continuing Legal Education R. 2. Newly admitted within reporting period. Alaska State Bar Rules R. 65(f).
<i>Arizona</i> 1989	15 hours	3 hours of professional responsibility	1 year	ALL	ALL	Limited to 5 hours per year, no limitation if a recorded program is interactive	1. Newly admitted within reporting period; 2. Court personnel: retired judges subject to assignment to judicial service; 3. Active members at least 70 years old before 01/01/2009; 4. Inactive and retired members; 5. Active member of the Bar who resides in another MCLE jurisdiction, and who is subject to and complying with the requirements for that jurisdiction; 6. Upon application and showing of undue hardship. Ariz. Sup. Ct. Rules R. 45(b).

157. Ethics or other requirements  
158. Live, in-person meetings, Webinars & Teleconference  
159. CDs, CD-ROM, DVDs, On-Demand Online Courses, CLE Downloads

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>‡</sup>
<i>Arkansas</i> 1989	12 hours	1 hour of ethics	1 year	ALL	Not Approved	Not approved/recognized	1. Age 70+ or Licensed 40+ years; 2. Attorney on inactive status. Ark. Rules for Minimum Continuing Legal Education R. 2.
<i>California</i> 1990	25 hours	4 hours of ethics; 1 hour of competence issues; 1 hour of elimination of bias in the profession	3 years	ALL	ALL	Up to 12.5 hours; all ABA CLE product formats counts as self-study in California	1. Officers and elected officials; 2. Full-time professors at law schools accredited by the State Bar, ABA, or both; 3. Members employed full-time by the State of California and by the United States government as attorneys or administrative law judges. Cal. Rules of Court R. 9.31.
<i>Colorado</i> 1978	45 hours*	7 hours of ethics	3 years	ALL	On-Demand Online Courses	No limit for home study; 9 credit limit for individual study	1. Inactive status, disability inactive status, or under suspension during his or her entire CLE compliance period; 2. Age 72+. Colo. Sup. Ct. Rules R. 250.2 (7).
<i>Connecticut</i> 2017	12 hours	2 hours of ethics/ professionalism	1 year	ALL	ALL	No limit	1. State and federal court judges including trial referees and magistrates; referees, federal administrative law judges and federal bankruptcy judges; 2. Disbarred, resigned, inactive, or retired attorneys; 3. Active duty in the Armed Forces of the United States for more than 6 months in a year; 4. Attorneys newly admitted within the reporting year; 5. Attorneys who earn less than \$1000 in compensation for the provision of legal services in such year; 6. Attorneys who, for good cause shown, have been granted temporary or permanent exempt status by the statewide grievance committee. Conn. Rules of Professional Conduct Sec. 2-27A.
<i>Delaware</i> 1986	24 hours	4 hours of ethics	2 years	Live, in-person meetings	On-Demand Online	Not approved/recognized	1. Retired; 2. Any attorney holding an elected public office of this state or the United States upon approval; 3. Inactive status; 4. Members of the federal judiciary; 5. Any attorney suspended by the Court. Del. Rules for Continuing Legal Education R. G.

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>57</sup>	Reporting Periods	ABA Live Program Formats <sup>58</sup>	ABA CLE Product Formats <sup>59</sup>	Limits on Self-Study Credits	Exemptions <sup>6</sup>
<i>District of Columbia</i>	N/A	NA	N/A	N/A	N/A	N/A	N/A
<i>Florida</i> 1988	33 hours*	5 hours in the area of ethics, professionalism, substance abuse, or mental illness awareness per reporting period; 3 credits in approved technical programs	3 years	ALL	ALL; these product formats have an expiration date	No limit	1. Active military service; 2. Undue hardship; 3. Nonresident members not delivering legal services or advice on matters or issues governed by Florida law; 4. Members of the full-time federal judiciary; 5. Justices of the Florida Supreme Court and judges of the district courts of appeal, circuit, and county courts, and such other judicial officers and employees as may be designated by the Supreme Court.  Rules Governing the Fla. Bar R. 6-10.3.
<i>Georgia</i> 1984	12 hours	1 hour of ethics credit; 1 hour of professionalism credit; 3 hours of trial practice credit for trial attorneys only	1 year	ALL	ALL	6 hours per year can be taken in a distance-learning format	1. A judge prohibited by law, statute, or ordinance from engaging in the practice of law; 2. The governor, lieutenant governor, member of the Georgia Senate or the Georgia House of Representatives, other constitutional executive officer elected statewide, United States Senator or Representative; 3. Active member of the Georgia Board of Bar Examiners; 4. Age 70+; 5. Active members residing outside of Georgia and, during the prior year, have neither practiced in Georgia nor represented Georgia clients; 6. Active members residing outside of Georgia and, during the prior year, have complied with the mandatory CLE requirements of resident state; 7. Active members serving on active duty with the United States Armed Forces.  State Bar of Geo. Rules R. 8-104.
<i>Guam</i> 2002	10 hours*	2 hours of ethics or professionalism	1 year	ALL	ALL	No limit; attorneys can earn all CLE hours via recorded programs	1. Newly admitted in reporting period; 2. Waivers.  Guam Sup. Ct. Rule Governing Mandatory Continuing Education Sec. 15.



STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>§</sup>
<i>Hawaii</i> 2010	3 hours	1 hour of ethics credit every 3 years	1 year	ALL	ALL; these product formats have an expiration date	No limit	1. Full time judges; federal judges, magistrate judges, bankruptcy judges, United States Court of Federal Claims Judges, and Administrative Law Judges are exempt from CLE requirements; 2. Newly licensed within reporting period; 3. Inactive members; 4. Good cause.
<i>Idaho</i> 1979	30 hours	2 hours of ethics	3 years	ALL	ALL	15 credit maximum; self-study can include up to 2 participants	Haw. Sup. Ct. Rules R. 22 Special circumstances constituting undue hardship (granted by the executive director). Idaho Bar Commission Rules Sec. IV R. 402(c).
<i>Illinois</i> 2005	30 hours	6 hours of professional responsibility	2 years	ALL	ALL; these product formats have an expiration date	No limit	1. Inactive, disability inactive or retired; 2. Attorneys serving in office of justice, judge, or magistrate in federal or state court; 3. Attorneys serving in support function to State Supreme Court 4. Active duty in Armed Forces; 5. In full compliance with CLE of another state in which she is a member of the Bar and in which her residence or primary office is located; 6. Good cause. Ill. Sup. Ct. Rules R. 791.
<i>Indiana</i> 1987	36 hours with a min. of 6 hours per year	3 hours of ethics	3 years; some annual requirements	ALL	The ABA does not seek accreditation of ABA recorded programs in this state	No approved/ recognized	Elected members of the executive branch of the United States Government; members of the United States Senate and House of Representatives while working in such capacity. Ind. Sup. Ct. Rules R. 29 Sec. 3(e).

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>160</sup>
<i>Iowa</i> 1976	15 hours	3 hours of ethics credit every 2 years ending on the odd-numbered year; ethics includes instruction regarding substance abuse and mental health	1 year	ALL	Not Approved	Not approved/ recognized	Inactive practitioners are exempt, so long as they are granted a waiver of compliance and obtain a certificate of exemption upon submitting a written application to the commission.  Regulations of the Commission on Continuing Educ. R. 42.6 (2017).
<i>Kansas</i> 1985	12 hours*	2 hours of ethics credit per reporting	1 year	ALL	The ABA does not seek accreditation of ABA recorded programs in this state	Up to 5 hours of non-traditional programming per compliance period	1. Newly admitted within reporting period; 2. Inactive, retired, or disabled due to mental or physical disability; 3. All active and retired federal and state judges or justices, bankruptcy judges, and full-time magistrates (but not federal and state administrative judges); 4. Good cause.  Kan. Continuing Legal Education R. 803.
<i>Kentucky</i> 1984	12 hours*	2 hours of ethics	1 year	ALL	The ABA does not seek accreditation of ABA recorded programs in this state	Non-live activity will be granted a maximum of 6 credits applied to meet the annual requirement	1. Federal judges or magistrates; 2. Full-time state or federal administrative law judges; 3. Newly admitted within reporting period; 4. Age 75+ or have been member of the Kentucky Bar for 50 years; 5. Disabled inactive status.  Ky. Sup. Ct. R. 3.665.



STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>‡</sup>
Minnesota 1975	45 hours	3 hours of ethics; 2 hours of elimination of bias	3 years	ALL	The ABA does not seek accreditation of ABA recorded programs in this state	A course presented via video, teleconference, audiotope, on-demand or by podcast, may be approved provided that it complies with Rule 6E and a faculty member or moderator is accessible to all participants	None
Mississippi 1985	12 hours	1 hour of legal ethics, professional responsibility, professionalism, malpractice prevention, substance abuse or mental health per reporting period	1 year	ALL	On-Demand Online Courses	Up to 6 CLE hours via live webinars and teleconferences and on-demand online courses	<ol style="list-style-type: none"> <li>1. All attorneys licensed to practice law in the State of Mississippi residing outside of the state and not engaged in the practice of law in Mississippi;</li> <li>2. All full-time members of the United States Armed Forces;</li> <li>3. All state and federal judges, including magistrates;</li> <li>4. The governor of the State of Mississippi;</li> <li>5. All members of the United States Senate and the United States House of Representatives;</li> <li>6. Age 70+.</li> </ol> <p>Miss. Rules for Mandatory Continuing Legal Educ. R. 2.</p>

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>‡</sup>
<i>Missouri</i> 1987	15 hours*	2 hours of ethics, professionalism, or malpractice prevention	1 year	ALL	ALL; these product formats have an expiration date	Up to 6 CLE hours via recorded programs; however, specialized ethics credits must be earned via live programs only	<ol style="list-style-type: none"> <li>1. Visiting attorneys;</li> <li>2. Non-practicing lawyers;</li> <li>3. Government officials (excluding judges);</li> <li>4. Hardship.</li> </ol> Mo. Continuing Legal Education Requirements Reg. 15.05(2).
<i>Montana</i> 1982	15 hours	2 hours of ethics professionalism	1 year	ALL	ALL	Up to 5 CLE hours via recorded programs (classified as other credit)	<ol style="list-style-type: none"> <li>1. Inactive members;</li> <li>2. A state legislature member or the governor of the State of Montana during his or her term of office;</li> <li>3. A full-time judge or retired judge;</li> <li>4. Extenuating circumstances.</li> </ol> Mont. Rules for Continuing Education R. 4.
<i>Nebraska</i> 2009	10 hours	2 hours of ethics or professional responsibility	1 year	The ABA is not an accredited CLE provider in Nebraska and does not currently submit individual program applications to Nebraska; a Nebraska attorney may submit a program for approval after attending the program	The ABA is not an accredited CLE provider in Nebraska and does not currently submit individual program applications to Nebraska; a Nebraska attorney may submit a program for approval after attending the program	Up to 5 hours may be obtained through completion of computer-based legal education	<ol style="list-style-type: none"> <li>1. Inactive status;</li> <li>2. Members of the United States Armed Forces under certain circumstances;</li> <li>3. All persons subject to mandatory judicial branch education pursuant to including judges and attorneys;</li> <li>4. Attorneys who have been disbarred from the practice of law by order of the Nebraska Supreme Court;</li> <li>5. Newly admitted attorneys before start of next calendar year.</li> </ol> Neb. Sup. Ct. Rules § 3-401.5(F).

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>‡</sup>
<i>Nevada</i> 1982	13 hours	2 hours of ethics credit per reporting period; 1 hour of substance abuse, addictive disorders, and/or mental health credit every 3 years	1 year	ALL	ALL; these product formats have an expiration date	No limit	<ol style="list-style-type: none"> <li>1. Newly admitted within reporting period;</li> <li>2. Full-time member of the federal judiciary;</li> <li>3. Full-time active duty in the Armed Forces;</li> <li>4. Exceptional, extreme, undue hardship.</li> </ol> Nev. Sup. Ct. Rules R. 214.
<i>New Hampshire</i> 1992	12 hours	At least 2 of the 12 hours must be of legal ethics, professionalism, substance abuse, prevention of malpractice, or attorney-client disputes	1 year	ALL	ALL; these product formats have an expiration date	Up to 6 CLE hours via recorded programs	<ol style="list-style-type: none"> <li>1. Nonactive status (i.e. inactive, inactive retired, honorary inactive, military inactive) for more than 3 months in a reporting period;</li> <li>2. Lawyers on active duty for the United States Armed Forces stationed outside the State of New Hampshire for more than 3 months of the reporting period;</li> <li>3. State and federal judges, including state part-time judges, judges retired from a full-time judgeship, full-time magistrates, marital masters, the state reporter, and full-time clerks and deputy clerks of court, who are not engaged in the practice of law;</li> <li>4. Lawyers who are elected state or federal officials, who are not engaged in the practice of law;</li> <li>5. Good cause such as physical or other disability.</li> </ol> N.H. Sup. Ct. Rules R. 53.
<i>New Jersey</i> 2010	24 hours*	4 hours in ethics and professionalism	2 years	The ABA is not an accredited CLE provider in New Jersey and does not submit individual program applications to New Jersey; New Jersey attorneys may be eligible to receive credit for ABA programs through the New Jersey reciprocity provision		Courses taken through alternative verifiable learning formats shall account for no more than one-half of the total credit hour requirement per compliance period	<ol style="list-style-type: none"> <li>1. Admitted for 50+ years;</li> <li>2. Age 75+;</li> <li>3. Full-time active military duty, Americorps VISTA or Peace Corps;</li> <li>4. Retired;</li> <li>5. Good cause.</li> </ol> Board of Continuing Legal Education Regulation 202.1.

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>‡</sup>
<i>New York</i> 1998	24 hours*	4 hours ethics and professionalism; 1 hour diversity and inclusion credit per reporting period	2 years	ALL	ALL; these product formats have an expiration date	For newly experienced attorneys, credit not available for ethics and professionalism and skills	1. Attorneys who do not practice law in New York; 2. Full-time active members of the United States Armed Forces; 3. Attorneys who are temporarily admitted to practice in a court within New York for a case or proceeding; 4. Attorneys who certify that they are retired.  Continuing Legal Education Program Rules, Joint R. App. Div. 22 NYCRR § 1500.20(18).
<i>New Mexico</i> 1990	12 hours	2 hours of ethics or professionalism	1 year	ALL	ALL; these product formats have an expiration date	Up to 4 CLE hours per reporting period via recorded programs	1. Inactive members of the State Bar; 2. An active, licensed member of the State Bar who is in the armed services of the United States and serves at least 180 days per year on full-time active duty.  N.M. Rules for Mandatory Continuing Legal Education, R. 18-20 BCLE Reg. 202-1.
<i>North Carolina</i> 1988	12 hours	2 hours of professional responsibility and/or professionalism credit per reporting period; 1 hour of technology training per reporting period; 1 additional hour on substance abuse awareness or debilitating mental conditions every 3 years	1 year	ALL	On-Demand Online Courses	Up to 6 CLE hours via on-demand online courses	1. Government officials and members of the Armed Forces; 2. Judiciary and clerks; 3. Nonresidents; 4. Law teachers; 5. Nonresident attorneys from another jurisdiction who are temporarily admitted to practice in a particular case or proceeding; 6. Seniors (65+) who do not render legal advice to or represent a client without another active member to assume responsibility for the advice or representation; 7. Attorneys with a permanent disability that makes attendance at CLE programs inordinately difficult can file a request for a substitute program tailored to their needs; 8. Bar examiners.  27 N.C.A.C. Chapter 1D § 1500.

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>‡</sup>
North Dakota 1995	45 hours	3 hours of ethics credit per reporting period	3 years	ALL	North Dakota does not pre-approve self-study; attorneys must request and report self-study CLE credit hours	Up to 15 CLE hours via recorded programs	Judges (federal judges, full-time magistrate judges, and federal administrative law judges) are exempt. N.D. CLE Policies, Policy 4.3.
Northern Mariana Islands 2005	20 hours	No biennial requirement; every attorney admitted after July 1, 2002 must complete a course in professionalism sponsored jointly by the Commonwealth Supreme Court and CNMI Bar Association	2 years	ALL	ALL	No limit; attorneys can earn all CLE hours via recorded programs	Full time judges or justices of the courts of the Commonwealth of the Northern Mariana Islands. N. Mar. I. Commonwealth Rules for Continuing Legal Education Sec. 3.
Ohio 1989	24 hours	2.5 hours of professional conduct credit per reporting period	2 years	ALL	On-Demand Online courses	Maximum of 6 hours of self-study credit in reporting period	1. A person certified to practice law temporarily in Ohio under Gov. Bar R. IX; 2. A foreign legal consultant registered under Gov. Bar R. XI Ohio Sup. Ct. Rules R. X Sec. 9.



STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>‡</sup>
<i>Oklahoma</i> 1986	12 hours*	1 hour of ethics credit per reporting period	1 year	ALL	ALL	Not approved/ recognized	<ol style="list-style-type: none"> <li>1. Newly admitted in reporting period;</li> <li>2. Judges, federal and state legislators, and the Attorney General of Oklahoma;</li> <li>3. Members of the Armed Forces on full-time active duty;</li> <li>4. Members of the Board of Governors of the Oklahoma Bar Association, members of the Professional Responsibility Commission and members of the Professional Responsibility Tribunal, during their year(s) of service;</li> <li>5. A nonresident of the State of Oklahoma who did not practice law in the State of Oklahoma.</li> </ol> <p>Okla. Sup. Ct. R. 2.</p>
<i>Oregon</i> 1988	45 hours	5 hours of ethics or professionalism and 1 hour on lawyers' statutory duty to report child abuse; in alternate reporting periods, at least 3 additional hours must be in programs accredited for access to justice (elimination of bias)	3 years	ALL	ALL; these product formats have an expiration date	No limit as long as there is completion of an examination about specific material	<p>Case by case consideration for good cause by MCLE Administrator.</p> <p>Or: State Bar Minimum Continuing Legal Education Rules R. 9.</p>
<i>Pennsylvania</i> 1992	12 hours	1 hour of ethics for 2014 compliance deadlines; 2 hours of ethics beginning with 2015 compliance deadlines	1 year	ALL	On-Demand Online Courses	Not approved/ recognized	<ol style="list-style-type: none"> <li>1. Members of the judiciary;</li> <li>2. Active duty military lawyers, assigned outside the Commonwealth of Pennsylvania, have their CLE requirements waived for any compliance period of their active duty, upon written request;</li> <li>3. Newly admitted lawyers;</li> <li>4. Inactive status.</li> </ol> <p>Pa. Continuing Legal Education Regulations Sec. 6.</p>

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>57</sup>	Reporting Periods	ABA Live Program Formats <sup>58</sup>	ABA CLE Product Formats <sup>59</sup>	Limits on Self-Study Credits	Exemptions <sup>6</sup>
<i>Puerto Rico</i> 1998	24 hours	4 hours of ethics; for attorneys with active notary status, 6 hours of the total required hours must be notary credits	2 years	ALL	ALL	May not exceed 1/3 of the total CLE credit hours required	<ol style="list-style-type: none"> <li>1. Judges of the federal and Puerto Rico judiciary;</li> <li>2. Inactive status;</li> <li>3. Good cause;</li> <li>4. Members serving on committees of the Supreme Court (Tribunal Supremo).</li> </ol> P.R. Rules for Continuing Education R. 4.
<i>Rhode Island</i> 2008	10 hours*	2 hours of ethics credit per reporting period	1 year	ALL	On-Demand Online Courses	Up to a 3 credit limit per year via interactive online on-demand, audio or video seminar	<ol style="list-style-type: none"> <li>1. Newly admitted in reporting period;</li> <li>2. Good cause;</li> <li>3. Inactive or retired status;</li> <li>4. Attorneys holding a full-time municipal, state, or federal office, who are not engaged in the practice of law, shall be exempt during their term(s) of office;</li> <li>5. State and federal court judges, magistrates, and masters whose judicial duties are full-time and who are not engaged in the practice of law shall be exempt;</li> <li>6. Physical disability;</li> <li>7. Age 70+;</li> <li>8. Attorneys who are active full time, military personnel are exempt from the requirement, but must certify said status on the summary reporting form (Appendix G).</li> </ol> R.I. Sup. Ct. Rules R. 5.

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>67</sup>	Reporting Periods	ABA Live Program Formats <sup>68</sup>	ABA CLE Product Formats <sup>69</sup>	Limits on Self-Study Credits	Exemptions <sup>7</sup>
South Carolina 1981	14 hours	2 hours of legal ethics or professional responsibility; at least once every 2 years, 1 additional hour must be devoted to instruction in substance abuse or mental health issues	1 year	ALL	On-Demand Online Courses	Up to 8 hours	<ol style="list-style-type: none"> <li>1. Bar members who are at least 60 years old and have been admitted to practice law for 30 or more years;</li> <li>2. Inactive members, military members, and retired members;</li> <li>3. Judicial members who are subject to the CLE requirements of Rule 504, SCACR;</li> <li>4. Members who are federal judges or federal administrative law judges, S.C. Sup. Ct. Rules R. 408(a)(2).</li> </ol>
South Dakota	N/A	N/A	N/A	N/A	N/A	N/A	<ol style="list-style-type: none"> <li>1. Nonresident attorneys from other jurisdictions who are temporarily admitted to practice for a case or proceeding;</li> <li>2. Members of the Armed Forces on active duty;</li> <li>3. Age 70+;</li> <li>4. An attorney who is licensed to practice law in Tennessee but who resided outside of the state and did not practice Tennessee law during the compliance year;</li> <li>5. Full time Tennessee law school professors who did not engage in the practice of law during the compliance year;</li> <li>6. An attorney holding an elective office in the executive or legislative branches of government and who is prohibited by law from practicing law or who certifies that s/he has not practiced law during the compliance year;</li> <li>7. All justices, judges, and magistrate judges of the federal system;</li> <li>8. An attorney who is no longer practicing law in any United States jurisdiction and who has placed his/her Tennessee law license on inactive statute.</li> </ol>
Tennessee 1986	15 hours	3 hours of ethics and professionalism credit per reporting period	1 year	ALL	On-Demand Online Courses	Up to 8 CLE hours via recorded programs per reporting period	<p>Tenn. Rules for Mandatory Continuing Education R. 21 Sec. 2.03.</p>

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>160</sup>
Texas 1986	15 hours	3 hours legal ethics or legal professional responsibility credit per reporting period	1 year for attorneys licensed 2+ years	ALL	ALL; these product formats have an expiration date	A maximum of 3 self-study credit hours can be applied toward each reporting period; of the 3-hour ethics requirement, 1 hour may be completed via self-study	1. Full-time faculty members of ABA accredited law schools; <sup>160</sup> 2. Federal judges; 3. Non-practicing or inactive status; 4. Disbarred or resignation; 5. Member of State Legislature or Congress; 6. Legislature attorney; 7. Good cause (hardship). Tex. Mandatory Continuing Legal Education Regulations § 5.
Utah 1990	24 hours	2 hours of legal ethics or professional responsibility; 1 hour of professionalism and civility	2 years	ALL	ALL	Participation in webinars and teleconferences is limited to 12 credit hours per reporting period	1. Inactive status exemption; 2. Active military duty exemption. Utah Sup. Ct. Rules R. 14.
Vermont 1999	20 hours	2 hours of legal ethics credit per reporting period	2 years	ALL	ALL	Up to 10 CLE hours via recorded programs	Inactive attorneys. Vt. Sup. Ct. Rules for Mandatory Continuing Legal Education § 11.
Virgin Islands (U.S.) 2008	12 hours*	2 hours ethics or professionalism	1 year	ALL	ALL	No limit	New members in reporting period in which they were admitted. V.I. Mandatory Continuing Legal Education Rules, R. 208.

<sup>160</sup>“Full-time Faculty Members of ABA accredited law schools may be granted course credit equal to the minimum requirements . . . except for the minimum requirement for CLE in legal ethics or professional responsibility.” § 5.1.

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>‡</sup>
<i>Virginia</i> 1987	12 hours	2 hours of professionalism or legal ethics credit per reporting period	1 year	ALL	The ABA does not seek accreditation of ABA recorded programs in this state	Limited to 8 hours from pre-recorded programs	Newly admitted within reporting period. Va. Mandatory Legal Education Regulations § 110.
<i>Washington</i> 1977	45 hours	6 hours of legal ethics, professionalism, or professional responsibility credit per reporting period	3 years	ALL	ALL; these product formats have an expiration date	Up to 22.5 CLE hours via recorded programs per reporting period	1. Judicial members of the Bar, except for administrative law judges; 2. The Supreme Court clerk and assistant clerk(s) who are prohibited by court rule from practicing law; 3. Legislative exemption: members of the Washington State Congressional Delegation or the Washington State Legislature; 4. Gubernatorial Exemption: the governor of Washington State. Wash. Admission and Practice Rules R. 11.
<i>West Virginia</i> 1986	24 hours*	3 hours of legal ethics, office management, substance abuse and/or elimination of bias in the legal profession per reporting period	2 years	ALL	ALL	Up to 12 CLE hours via recorded programs per reporting period	None

STATE Effective or Adopted Year	Credit Hours Required	Additional Requirements <sup>157</sup>	Reporting Periods	ABA Live Program Formats <sup>158</sup>	ABA CLE Product Formats <sup>159</sup>	Limits on Self-Study Credits	Exemptions <sup>‡</sup>
<i>Wisconsin</i> 1977	30 hours	3 hours ethics and professional responsibility credit per reporting period	2 years	ALL	On-Demand Online Courses; these product formats have an expiration date	Up to 10 CLE hours via recorded online programs; attorneys cannot earn ethics or professional responsibility CLE hours via recorded programs	A lawyer who does not engage in the practice of law in Wisconsin at any time during the reporting period is exempt from the attendance requirement.  Wis. Sup. Ct. Rules R. 31.04.
<i>Wyoming</i> 1978	15 hours	2 hours of legal ethics credit per reporting period	1 year	ALL	The ABA does not seek accreditation of ABA recorded programs in this state	A maximum of six hours of CLE credit for self-study programs where audio, video or online material is used	1. Newly admitted in reporting period; 2. Inactive status (honorary, inactive, honorary retired or retired) according to Art. 1, Sec. 3 of the Bylaws of the Wyoming State Bar; 3. An attorney who is elected to state or national executive or legislative office upon written request; 4. A member of the Board of Law Examiners is exempt upon written request.  Wyo. Sup. Ct. Rules R. 8.