

IN THE SUPREME COURT OF TEXAS

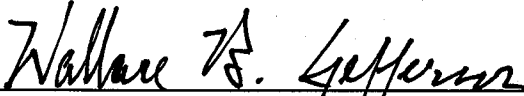
Misc. Docket No. 05-9011

APPROVAL OF AMENDMENTS TO STATE BAR RULES, ART. XII (MINIMUM CONTINUING LEGAL EDUCATION)


ORDERED that:

The following amendments to Article XII of the State Bar Rules concerning Minimum Continuing Legal Education are approved.

In Chambers, this 29th day of January, 2005.



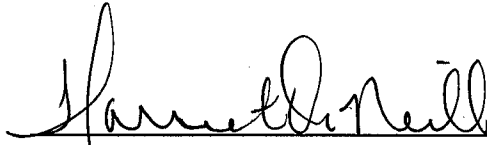
Wallace B. Jefferson, Chief Justice



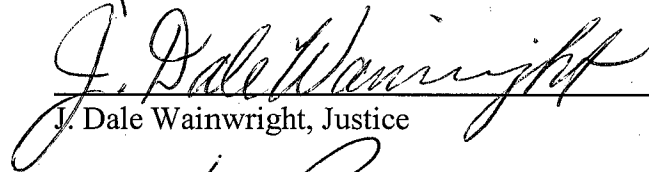
Nathan L. Hecht, Justice



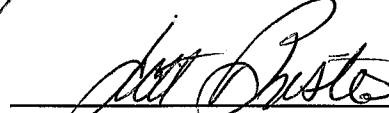
Priscilla R. Owen, Justice



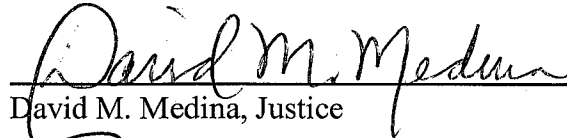
Harriet O'Neill, Justice



J. Dale Wainwright, Justice



Scott Brister, Justice



David M. Medina, Justice



Paul W. Green, Justice

ARTICLE XII—MINIMUM CONTINUING LEGAL EDUCATION

Section 1. Purpose

The purpose of minimum continuing legal education requirements is to ensure that every active member of the State Bar of Texas pursues a plan of continuing legal education throughout his or her career in order to remain current on the law in our rapidly changing society.

Section 2. Definitions

- ~~(A) "Committee" means the Committee on Minimum Continuing Legal Education.~~
- ~~(BA)~~ "MCLE" means Minimum Continuing Legal Education.
- (B) "Committee" means the Committee on Minimum Continuing Legal Education.
- (C) "Committee member" is a member of the Committee on Minimum Continuing Legal Education.
- (D) "MCLE Department" means the departmental staff of the State Bar of Texas with the responsibility of administering all aspects of the MCLE program as determined by this Article and any regulations established pursuant hereto.
- (E) "The Director" means the Director of the MCLE Department of the State Bar of Texas.
- (F) "Continuing legal education activity" means any organized legal educational activity accredited by the Committee.
- (G) "CLE Credit Hours" means the actual amount of instruction time for an accredited continuing legal education activity expressed in terms of hours rounded to the nearest one-quarter hour. The number of CLE credit hours shall be based on sixty (60) minutes of instruction per hour, unless otherwise specified herein.
- (H) "Self-study" includes individual viewing or listening to audio, video, or digital media, reading written material, or attending organized in-office educational programs, or such other activities as may be approved by the Committee.
- ~~(C) "Continuing legal education activity" means any organized legal, judicial or other educational activity accredited by the Committee.~~

~~(D) "Self-study" includes viewing videotapes, listening to audiotapes, reading written material, or attending organized in-office educational programs, or such other activities as may be approved by the Committee.~~

~~(E) "Committee member" is a member of the Committee on Minimum Continuing Legal Education.~~

(F) "Accredited sponsor" means any provider who receives presumptive approval of the Committee to conduct continuing legal education activities that satisfy the requirements of this Article.

(J) "Accredited CLE Activity" means any CLE activity that receives MCLE accreditation under the MCLE Rules, Regulations, and accreditation criteria adopted by the MCLE Committee.

~~(G) "CLE Credit Hours" means the actual amount of instruction time for an accredited continuing legal education activity expressed in terms of hours rounded to the nearest one-quarter hour. The number of CLE credit hours shall be based on sixty (60) minutes of instruction per hour, unless otherwise specified herein.~~

~~(H) "The Director" means the Director of the MCLE Department of the State Bar of Texas.~~

(I)

~~"MCLE Annual Verification Report" means the written report containing a listing of all CLE credit hours recorded in a member's MCLE compliance record for an MCLE compliance year. This report shall be furnished to each member annually by the MCLE Department.~~

~~(J) "MCLE Department" means the departmental staff of the State Bar of Texas with the responsibility of administering all aspects of the MCLE program as determined by the Article and any regulations established pursuant hereto.~~

(K) "MCLE compliance record" means the official record of a member's CLE credit hours earned during any MCLE compliance year that shall be maintained by the MCLE Department and used to verify a member's compliance with the MCLE requirements. It shall be the responsibility of each member to ensure that his/her MCLE compliance record is accurate and complete.

(L) "MCLE compliance year" means the twelve (12) month period that begins each year on the first day of an attorney's birth month and ends on the last date of the month that immediately precedes the attorney's birth month in the following year.

(M) "MCLE reporting month" means the birth month during which the attorney is required to show completion of CLE requirements. If an extension has been granted in accordance with the Article (Section 9), the reporting month shall mean the month immediately following the last date of the extension and shall replace the birth month for that current compliance year.

~~"MCLE compliance year" means the twelve (12) month period that begins each year on the first day of an attorney's birth month and ends on the last date of the month that immediately precedes the attorney's birth month in the following year.~~

(N) "MCLE Annual Verification Report" means the written report containing a listing of all CLE credit hours recorded in a member's MCLE compliance record for an MCLE compliance year. This report shall be furnished to each member annually by the MCLE Department.

(O) "Preferred Address" means the member's physical address, post office box, E-mail address or other address, that is on file with the State Bar of Texas Membership department and that is designated as the member's preferred address for receiving written notifications.

(P) "Secondary Address" means any or all of the member's physical addresses, post office boxes, E-mail addresses, or other addresses on file with the State Bar of Texas Membership department and that are not designated as the member's preferred address for receiving written notifications.

Section 3. Committee on Minimum Continuing Legal Education

(A) There is hereby established the Committee which shall be composed of twelve (12) members. Nine (9) of the members shall be residents of this State who are active members of the State Bar, at least two (2) of whom shall be under the age of thirty-six (36) years as of June 1 of the year being appointed. Of the nine (9) attorney members, not more than two (2) shall be judges. The remaining three (3) members of the Committee shall be residents of this State who are not attorneys. The President-Elect, with the approval of the Board, shall appoint any Committee members whose term will begin at the beginning of the bar year during which he or she will be President. Should a vacancy on the Committee occur during the bar year, the President, with the approval of the Board, shall appoint a successor to fill the unexpired term. Each member of the Committee shall continue to serve until his or her successor is appointed and qualified. The President-Elect shall designate one (1) of the attorney members of the Committee to serve as chairperson during his or her term as

President. The Board may remove a member of the Committee for good cause. No Committee member shall be appointed for more than two (2) terms. Committee members shall serve without compensation, but shall be reimbursed for reasonable and necessary expenses incurred in the performance of their official duties.

- (B) The State Bar shall employ such staff as may be necessary to perform the ~~recordkeeping~~ record keeping, auditing, reporting, accreditation, and other functions required by these rules.
- (C) The Committee, subject to these rules and such regulations as it may propose and may be adopted by the Board, shall administer the program of minimum continuing legal education established by this Article. It may propose regulations and prepare forms not inconsistent with this Article pertaining to its function and modify or amend the same from time to time. All such regulations, forms, modifications or amendments shall be submitted to the Board for approval and, upon such approval, shall be published in the Texas Bar Journal.

Section 4. Accreditation

- (A) The Committee shall develop criteria for the accreditation of continuing legal education activities and shall designate the number of hours to be earned by participation in such activities, as approved by the Committee. In order for an activity to be accredited, the subject matter must directly relate to legal subjects and the legal profession, including professional responsibility, legal ethics, or law ~~office~~ practice management. The Committee may, in appropriate cases, extend accreditation to qualified ~~activities which~~ activities that have already occurred. The Committee shall not extend credit to activities completed in the ordinary course of the practice of law, in the performance of regular employment, as a volunteer service to clients or the general public, as a volunteer service to government entities, or in a member's regular duties on a committee, section, or division of any bar-related organization. The Committee may extend accredited status, subject to periodic review, to a qualified sponsor for its overall continuing legal education curriculum. No examinations shall be required.
- (B) Self-study credit may be given for ~~individual viewing or listening to~~ audio, videotapes, ~~listening to audiotapes~~ or digital media, reading written material, attending organized in-office educational programs or such other activities as may be approved by the Committee. No more than five (5) hours of credit may be given during any ~~reporting period~~ compliance year for self-study activities. Time spent viewing or listening to audio, videotapes or digital media ~~as an organized CLE activity approved by the Committee counts as conventional continuing legal education and is not subject to the self-study limitation.~~

- (C) Credit may be earned through teaching or participating in an accredited CLE activity. Credit shall be granted for preparation time and presentation time, including preparation credit for repeated presentations.
- (D) Credit may be earned through legal research-based writing upon application to the Committee provided the activity (1) produced material published or to be published in the form of an article, chapter, or book written, in whole or in part, ~~to by~~ the applicant; (2) contributed substantially to the continuing legal education of the applicant and other attorneys; and (3) is not done in the ordinary course of the practice of law, ~~or the performance of regular employment, or as a service to clients.~~
- (E) The Committee may, in appropriate cases charge a reasonable fee to the sponsor for accrediting CLE activities.
- (F) A member who holds a full-time faculty position in any law school which is approved by the American Bar Association may be credited as fulfilling the requirements of this article, except as to the minimum requirements for CLE in legal ethics and professional responsibility. A member who holds a part-time faculty position in any such law school may claim participatory credit for the actual hours of class instruction time not to exceed twelve (12) hours per compliance year, except as to the minimum requirements for CLE in legal ethics and professional responsibility.
- (G) The Committee shall grant exemption from this Article to any emeritus member of the State Bar of Texas. (Emeritus as defined by the State Bar Act, Section 81.052 (e)).
- (H) Credit to meet the minimum educational requirement shall be extended to attorneys who are members of the Senate and House of Representatives of present and future United States and Texas Legislatures for each regular session in which the attorney member shall serve.
- (I) No credit shall be given for activities directed primarily to persons preparing for admission to practice law.
- (J) Credit, not to exceed thirty 30 hours in any reporting compliance year, may be earned for attending a law school class after admission to practice in Texas provided (1) that the member officially registered for the class with the law school; and (2) that the member completed the course as required by the terms of registration. Credit for approved attendance at law school classes shall be for the actual number of hours of class instruction time the member is in attendance at the law school course.

Section 5. Reporting Period Compliance Year

- (A) Each member's reporting period compliance year shall begin on the first day of the month in which his or her birthday occurs.
- (B) The initial reporting period compliance year for each member shall be the 24-month period that begins on the first birth month following the effective date of this Article or the date of admission, whichever occurs later.

Section 6. Minimum Educational Requirements

- (A) Every member shall complete fifteen (15) hours of continuing legal education during each reporting period compliance year as provided by this article. No more than five (5) credit hours may be given for completion of self-study activities during any reporting period compliance year.
- (B) At least three (3) hours of the fifteen (15) hours shall be devoted to legal ethics/professional responsibility subjects. One (1) of the three (3) legal ethics/professional responsibility hours may be completed through self-study.
- (C) ~~After the effective date of this Article,~~ All persons admitted, and any person who has been suspended, disbarred, or who has resigned pursuant to Article X of the State Bar Rules, or who has resigned pursuant to Article III of the State Bar Rules, or who has been suspended pursuant to Section 8 of this Article, or who has taken inactive status pursuant to Section 81.052, Texas Government Code, and who desires to return to active status shall be required, in addition to such other requirements as the State Bar Rules may contain, to comply with the requirements of Section 6(A) and 6(B) hereof.
- (D) Accredited continuing legal education and self-study completed within a ~~one (1) year~~ 12-month period immediately preceding a member's initial reporting period compliance year may be used to meet the educational requirement for the initial compliance year. Exception: Credit for the educational activity entitled "The Guide to the Basics of Law Practice," sponsored by the Texas Center for Legal Ethics and Professionalism, completed anytime during the third year of law school or during the initial compliance year, may be used toward meeting the educational requirements for the initial compliance year.
- (E) Accredited continuing legal education and self-study completed during any reporting period compliance year in excess of the minimum fifteen (15) hour requirement for such

period ~~may~~ will be applied to the following ~~period's~~ compliance year's requirement. This carryover provision applies to one (1) year only.

Section 7. Credit Computation

- (A) Credit for attending accredited continuing legal education activities shall be based on net actual instruction time, which may include organized lecture, panel discussion, audio, video, and digital media presentations and organized question-and-answer periods; ~~and video or film instruction in an organized presentation.~~ Sponsors are encouraged to calculate the number of hours of credit ~~which that~~ should be given for any activity offered, using the above guide, and indicate the number on the activity brochure. Fractional hours should be stated as decimals.
- (B) Credit for viewing or listening to audio, videotapes or listening to audiotapes, or digital media ~~shall be based on the running time of the tapes~~ recordings.
- (C) Credit for reading approved material or attending in-office educational programs shall be based on actual time spent.

Section 8. Compliance

- (A) ~~On or about the beginning of month ten (10)~~ Two months prior to the end of ~~each~~ the MCLE compliance year, the Director shall ~~cause to be sent mailed~~ an preliminary MCLE Annual Verification Report to each member's Preferred Address for ~~whom~~ said MCLE compliance year applies, ~~who is not in one of the exempt or special case categories, and whose MCLE compliance record shows that the minimum CLE credits for said MCLE compliance year have not yet been obtained.~~ Upon receipt of the MCLE Annual Verification Report, the member shall review the report for accuracy and completeness. If the report accurately reflects the member's MCLE compliance record for the current MCLE compliance year, and if it shows that the minimum CLE credit hours requirements have been met, then no additional action is required by the member. If the Report does not accurately and completely reflect a member's CLE credits, then the member shall correct his or her record according to the instructions ~~it should be annotated in accordance with the instructions on~~ the Report. To avoid fines and/or suspension, all CLE credit hours, corrections and additions to the MCLE record shall be ~~and returned to~~ completed, filed and received by the MCLE Director ~~Department~~ on or before the end of the compliance year. ~~However, a member is not subject to fine or suspension for failure to file or correct this report.~~

- (B) On or about the first day of the birth month, ~~The Director shall cause to be mailed~~ make available to the member, a report of amendments that have been made to the MCLE record for the compliance year that ended immediately prior to said birth month.
- ~~(2)~~ The Director shall also notify any member who has not completed MCLE requirements for the compliance year that ended immediately prior to said birth month. A member, who has not completed his or her CLE requirements by the first day of the birth month, will receive an automatic grace period through the last day of the birth month to complete and report any remaining CLE credits. Members shall not be fined or penalized for completing and reporting CLE credits by the last day of the birth month (grace period). ~~an MCLE Annual Verification Report to each member on or about the first day of the month in which such member's birthday occurs. Such MCLE Annual Verification Report shall be for the MCLE compliance year that ended immediately prior to said birth month.~~
- ~~(C)~~ Upon receipt of the MCLE Annual Verification Report, each member shall review the report for accuracy and completeness. If the report accurately reflects the member's MCLE compliance record for the MCLE compliance year just ended, and if it shows that the minimum CLE credit hours requirements have been met, then no additional action is required by the member. The Report should NOT be returned to the MCLE Department unless the Report does not accurately and completely reflect a member's MCLE Compliance record, in which event it should be annotated in accordance with the instructions on the Report and returned to the MCLE Department. After the additions or modifications are made to the member's MCLE compliance record, the MCLE Department shall mail a revised MCLE Annual Verification Report to the member.
- ~~(D)~~ On or about the ~~fifteenth~~ twelfth (12th) day of the month immediately following a member's birth month, the Director shall ~~cause to be mailed a written notice to notify~~ all members who are in non-compliance for the MCLE ~~c~~compliance year just ended to advise such members of their non-compliance status. Such notice shall be ~~mailed in the form of a written notice, and sent to each member at at the Preferred Address and his or her preferred and via one (1) alternate~~ Secondary Address (if any) (if any) mailing addresses that ~~are~~ is then on file with the Membership Department of the State Bar.
- ~~(E)~~ On or about the first (1st) day of the third month immediately following a member's birth month, the Director shall send final notice to ~~Any~~ member who has not cured their non-compliance status. Such notice shall be in the form of a written notice, and sent to each

member at the Preferred Address and via one (1) Secondary Address (if any) that is then on file with the Membership Department of the State Bar.

- (5) ~~If by the last business day of the third fourth month following the birth month (or reporting month if the member has been granted an extension in accordance with this article for completion of CLE requirements) the member has still not cured his or her non-compliance, the member shall be automatically suspended from the practice of law in Texas as directed by Order of the Supreme Court dated December 23, 2002. following their birth month shall be included in a petition to the Supreme Court to suspend the member's license to practice law. The Supreme Court shall thereupon execute an order suspending the license to practice law in Texas of each such attorney.~~
- (F) Upon the execution of ~~such suspension order~~, the Director shall cause to be ~~mailed sent a true and correct copy of said order~~ written notification to each member who is suspended from practice by the order. Said ~~order~~ notification shall be ~~mailed sent~~ to each member at ~~their~~ his or her Preferred Address and via one (1) Secondary Address ~~preferred and alternate~~ (if any) ~~mailing addresses that are~~ is then on file with the Membership Department of the State Bar.

Section 9. Review and Appeal

- (A) A member may file a written request for exemption from compliance with any of the requirements of this Article, an extension of time for compliance, an extension of time to comply with a deficiency notice, or an extension of time to file an annual activity report. Such request for excuse or for extension shall be reviewed and determined by the Committee or by such members as the chairperson may, from time to time, designate. The member shall be promptly notified of the ~~Committee's decision by the Committee~~.
- (B) "Good cause" shall exist when a member is unable to comply with this Article because of illness, medical disability, or other extraordinary hardship or extenuating circumstances ~~which that~~ were not willful on the part of the member and were beyond his or her control.
- (C) Should the decision of the Committee be adverse to the member, the member may request the Board of Directors of the State Bar to review the decision by making such request in writing to the Executive Director of the State Bar within thirty days of notification of the decision of the Committee. The Chairman of the Board may appoint a committee of the Board to review the decision of the Committee and make a recommendation to the Board. The decision shall be made by the Board.
- (D) Should the decision of the Board be adverse to the member, the member may appeal such decision by filing suit within thirty (30) days of notification of the Board's action, failing which the decision of the Board shall be final. Such suit shall be brought against the State Bar, and shall be filed in a district court in Travis County, Texas. Trial shall be de novo, but (1) the burden of proof shall be on the member appealing; (2) the burden shall be a preponderance of the evidence; and (3) the member shall prove the existence of "good cause" as defined herein. The trial court shall proceed to hear and determine the issue without a jury. Either party shall have a right to appeal.
- (E) Any suspension of a member under this Article shall be vacated during the administrative review process and while any suit filed is pending.

Section 10. Return to Former Status

Any member whose license to practice law has been suspended under the terms of this Article who after the date of suspension files an activity report or deficiency report with the State Bar MCLE Director showing compliance and who has paid all applicable fees associated with non-compliance and suspension, shall be entitled to have such suspension promptly terminated and be returned to former status. Return to former status shall be retroactive to the inception of suspension, but shall not affect any proceeding for discipline of the member for professional misconduct. The State Bar MCLE Director shall promptly notify the Clerk that a member formerly suspended under this Article has now complied with this Article.

Section 11. Exemption of Certain Judges

Judges subject to Supreme Court Order for Judicial Education dated August 21, 1985, Supreme Court Order for Judicial Education for Retired or Former District Judges dated July 2, 1986, and federal judicial officers, shall be exempt from these requirements.

Section 12. Confidentiality

A member who reports attendance credits individually to the MCLE Director, without the sponsoring organization's knowledge, automatically consents to release of his or her name to the sponsoring organization for the sole purpose of reconciling attendance records. Otherwise, the files, records and proceedings of the Committee, as they relate to the compliance or noncompliance of any member with the requirements of this Article, shall be confidential and shall not be disclosed except upon consent of the member affected or as directed in the course of judicial proceeding by a court of competent jurisdiction.

Section 13. Effective Date

~~The effective date of this Article shall be June 1, 1986.~~

The effective date of amendments to this Article shall be January 1, 2005.