

CONTINUING LEGAL EDUCATION TASK FORCE EXECUTIVE SUMMARY

The Continuing Legal Education (CLE) Task Force was created by OBA President Charles W. Chesnut to examine all aspects of CLE programming including types of programming, delivery methods, and value to members.

Jack Brown of Tulsa served as Chair of the Task Force and President-Elect Susan Shields of Oklahoma City served as Co-chair. Other members of the Task Force are: Molly Aspan, Matthew Beese, Bradley Brown, Dietmar Caudle, Debra Charles, President Charles W. Chesnut, Valerie Couch, Kimberly Hays, Donna Jackson, Christopher D. Jones, Amber B. Martin, Michael Mordy, Brandi Nowakowski, Jimmy Oliver and D. Kenyon (Ken) Williams.

Staff liaisons: Joe Balkenbush, James Calloway, Susan Damron, Gina Hendryx, Beverly Petry Lewis and John Morris Williams.

The task force met monthly from January 2019 to June 2019. The June meeting was conducted jointly with the Mandatory Continuing Legal Education Commission (MCLEC).

The task force discussed a wide range of topics which are addressed in the discussion document attached as **Exhibit 1**.

Action is recommended on the following matters:

- Targeted CLE programs for new lawyers
- Greater coordination with sections and committees on CLE programs
- Increase number of mandatory legal ethics credits

Additional action to be taken:

1. Amendment of MCLE Rules to expand the definition of legal ethics credits and increase the number of required credits from one (1) to two (2) per year. The amendments are proposed in the form of a Joint Resolution of the Task Force and the MCLEC that is to be presented to the House of Delegates at the 2019 House of Delegates. **Exhibit 2**.
2. Amendment of the Guide for Section and Committees to provide for greater CLE program coordination and use of OBA resources. **Exhibit 3**.

Exhibit 1

AREAS OF DISCUSSION

The Task force reviewed the demographics of the OBA. It was found that the number of CLE providers available to OBA members is over one thousand. While the OBA has over 15,000 active members, only about 10,500 members are required to earn CLE credit annually. The OBA has many of out-of-state members, members who were grandfathered in prior to the MCLE Rule change eliminating the age 65 exemption, and members who are not actively practicing. These three areas make up a large percentage of those exempt from annual reporting.

The number of presumptive providers and the amount of free CLE being provided by OBA sections and committees and other providers was also discussed in some detail. It was recognized that CLE is a highly competitive market. Even though the OBA is still the largest provider to OBA members, its market share continues to decrease. Loss of market share and free and low-cost CLE programs have had an impact on the revenue generated by the OBA CLE Department. The OBA is experimenting with bundling programs to compete with other online providers who offer low cost CLE bundles.

There was lengthy discussion on increasing the overall number of required credits, that continued over several meetings. Information was submitted on the credits required in other states and different methods of obtaining credit. Although the Task Force did not reach a consensus on increasing the total number of credits, it did note that several states require more credits and allow credit to be earned by self-study and other delivery methods. Also, the Task Force took into consideration the concept of spreading out mandatory CLE compliance for a period of up to three years. No consensus was reached on that issue.

New lawyer training was discussed at length. Information from other states was reviewed. The Task Force looked at disciplinary information regarding new lawyers. The disciplinary information did not indicate that new lawyers frequently commit errors in their practice that lead to disciplinary actions. Although the Task Force did not think that mandating a prescribed course of study for new lawyers was necessary, it did recommend that OBA CLE Department present courses directly targeted to new lawyers. It was agreed that basic training, including the current New Lawyer Experience training offered by the Management Assistance Program was helpful and should be enhanced.

The Task Force spent a considerable amount of time discussing MCLE Rules and Regulations. Although the Task Force was assigned to review CLE it was necessary to discuss MCLE Rules and Regulations when looking at the number of credits required and the types of programming that qualified for MCLE credit. The Task Force did review the American Bar Association Model Rules for Continuing Legal Education and decided that considering its adoption was beyond the purview of the Task Force and was under the jurisdiction of the MCLEC.

Also, the number of presumptive approved providers was discussed in-depth and the amount of fees paid or not paid by third-party providers. This discussion also included moving to a longer reporting period with an increased number of required credits. The Task Force ultimately decided to leave the total number of required credits at 12 per year, expand the definition of what qualifies for legal ethics credits and increase the required number of legal ethics credits from one to two per year.

The discussion to expand legal ethics credit to include diversity and inclusion, mental health and substance use disorder training and professionalism was very thorough. It was decided that at this time not including diversity and inclusion was the better course to take. Ultimately, in a joint meeting with the MCLEC, a new definition of legal ethics was agreed upon and the increase from one to two legal ethics credits per year was put into the form of a resolution for the House of Delegates.

Each of the discussions regarding MCLE changes also included a discussion on the amount of programming costs and additional staff time that would be associated with changes in the compliance tracking software. It was determined with certainty that increasing the number of overall credits per year or increasing the number of credits spread out over multiple years would result in significant programming costs and additional staff time. Although this was not the absolute determining factor, it did play a significant role in the decision-making process.

A discussion was had regarding the costs of CLE and whether the OBA should remain in the CLE business. The consensus was that the OBA should remain in the CLE business providing high quality training to OBA members. This discussion also raised the idea of rolling free CLE into the dues structure. It was determined that at the current time leaving the current pricing structure and purchasing courses on an individual basis was the best method.

There was also considerable discussion regarding Section and Committee CLE courses and the need for greater coordination between them and the OBA CLE Department. Although the current policy mandates coordination, not all sections or committees are following the policy. This has resulted in duplication of programming and attendance at the competing programs has suffered. Because of the policy not being strictly adhered to, the Task Force considered several enforcement ideas. However, the Task Force decided that amending the current Guide for Committees and Sections and providing incentives for compliance was the better route to follow.

It was acknowledged that online CLE delivery is the overwhelming current trend and that the OBA allowing all 12 CLE credits to be earned online is not out of line with current practice. The Task Force recognized the need for continued live programming and made no recommendations to change current practices in that area. Along those lines the Task Force recommends that the OBA amend current policy and assist Sections and Committees in providing online programming even when the program is not co-sponsored with OBA CLE Department. Such assistance should be provided when

resources are available, and the OBA should be provided a means to recoup its costs in providing such assistance.

The Task Force did not spend considerable time reviewing cost structure for OBA CLE programs. However, the information provided by staff indicated that pricing is in line with the market and the quality of OBA CLE provides good value to the members. There was concern over the quality of some of the programs provided by other providers. That issue was found to be within the purview of the MCLEC and not within the scope of the Task Force.

Overall, the Task Force recognized the challenges of today's CLE marketplace and found that OBA staff is performing well, given the dynamics. The marketing of CLE products is an important role of the CLE Department and the Task Force acknowledges that a significant task for management of this department is the development of marketing plans and advertising. The OBA should strive to maintain its position as the most significant CLE provider to OBA members and the OBA should use its best efforts to continue to provide high quality, good value, programs to its members both in person and online.

Exhibit 2

RESOLUTION NO. ONE: Amendment to Rules of the Supreme Court of Oklahoma for Mandatory Continuing Legal Education.

Whereas the Continuing Legal Education Task Force of the Oklahoma Bar Association (OBA) was charged with studying and evaluating the quality and delivery of education programs to OBA members;

Whereas the Continuing Legal Education Task Force and the OBA Mandatory Continuing Legal Education Commission met in joint session on June 20, 2019, to discuss the potential amendment of Mandatory Continuing Legal Education Rules relating to the number of ethics credits that should be required;

Whereas the enhancement of Continuing Legal Education programs for OBA members on issues related to the fitness to practice law and recognizing and assisting clients and others in the profession with substance use disorders and mental health challenges is significant to providing quality legal services to the public;

Whereas OBA members currently are required to obtain one (1) legal ethics credit each year.

Whereas expanding the definition of legal ethics under the existing Mandatory Continuing Legal Education Rules and requiring an additional legal ethics credit each year will give OBA members greater opportunity for educational programs that address serious issues that impact the legal profession and the public.

Whereas the suggested change to the Mandatory Continuing Legal Education Rules **will not increase the total number of credits** from the currently required twelve (12) total credits per year but will only require that an additional legal ethics credit be obtained each year by OBA members who are required to annually report their Mandatory Continuing Legal Education hours.

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association amend Rule 7, Regulations 3.6 and 4.1.3 of the Rules of the Supreme Court of Oklahoma for Mandatory Continuing Legal Education, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org. (*Requires sixty percent (60%) affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5.*) (*Submitted by OBA Continuing Legal Education Task Force and Mandatory Continuing Legal Education Commission.*)

PROPOSED CHANGES TO THE RULES OF THE SUPREME COURT OF OKLAHOMA FOR MANDATORY CONTINUING LEGAL EDUCATION

RULE 7. REGULATIONS

The following Regulations for Mandatory Continuing Legal Education are hereby adopted and shall remain in effect until revised or amended by the Mandatory Continuing Legal Education Commission with approval of the Board of Governors and the Oklahoma Supreme Court.

~~3.6—The number of hours required means that the attorney must actually attend twelve (12) instructional hours of CLE per year with no credit given for introductory remarks, meal breaks, or~~

~~business meetings. Of the twelve (12) CLE hours required the attorney must attend and receive one (1) instructional hour of CLE per year covering the area of professional responsibility or legal ethics or legal malpractice prevention. An instructional hour will in all events contain at least fifty (50) minutes.~~

3.6 Instructional Hour. Each attorney must complete 12 instructional hours of CLE per year, with no credit for meal breaks or business meetings. An instructional hour must contain at least 50 minutes of instruction.

Legal Ethics and Professionalism CLE. Effective January 1, 2021, of the 12 required instructional hours of CLE each year, at least two hours must be for programming on Legal Ethics and Professionalism, legal malpractice prevention and/or mental health and substance use disorders.

PROGRAM GUIDELINES FOR LEGAL ETHICS AND PROFESSIONALISM CLE
Legal Ethics and Professionalism CLE programs will address the Code of Professional Conduct and tenets of the legal profession by which a lawyer demonstrates civility, honesty, integrity, fairness, competence, ethical conduct, public service, and respect for the Rule of Law, the courts, clients, other lawyers, witnesses and unrepresented parties. Legal Ethics and Professionalism CLE may also address legal malpractice prevention and mental health and substance use disorders.

Legal Malpractice Prevention programs provide training and education designed to prevent attorney malpractice. These programs focus on developing systems, processes and habits that reduce or eliminate attorney errors. The programs may cover issues like ensuring timely filings within statutory limits, meeting court deadlines, properly protecting digital client information, appropriate client communications, avoiding and resolving conflicts of interest, proper handling of client trust accounts and proper ways to terminate or withdraw from client representation.

Mental Health and Substance Use Disorders programs will address issues such as attorney wellness and the prevention, detection and/or treatment of mental health disorders and/or substance use disorders which can affect a lawyer's ability to provide competent and ethical legal services.

Programs addressing the ethical tenets of other disciplines and not specifically pertaining to legal ethics are not eligible for Legal Ethics and Professionalism CLE credit but may meet the requirements for general CLE credit.

Regulation 4.1.3

The program must deal primarily with matters related to the practice of law, professional responsibility, ~~or ethical obligations of attorneys~~ legal ethics, professionalism, mental health or substance use disorders related to attorneys. Programs that address law practice management and technology, as well as programs that cross academic lines, may be considered for approval.

Exhibit 3

Approved amendments by CLE Task Force on June 20, 2019.

Committee & Section Guide: (Appendix 2) Cosponsorship of Seminars

POLICY OF BOARD OF GOVERNORS ON COSPONSORSHIP OF SEMINARS BY OBA/CLE DEPARTMENT AND OBA SECTIONS

1. COSPONSORSHIP

~~1.1 The Sections of the Oklahoma Bar Association (“Sections”) and the Continuing Legal Education Department of the Oklahoma Bar Association (“OBA/CLE”) may agree to serve as cosponsors of seminars. The terms of co-sponsorship and division of finances are listed below.~~

1.1 The Board strongly encourages each Section (“Sections”) of the Oklahoma Bar Association to cosponsor a continuing legal education (“CLE”) program every two (2) years in that Section’s field of law with the Continuing Legal Education Department of the Oklahoma Bar Association (“OBA/CLE”). The purpose of a cosponsored CLE is to ensure that the CLE is available to all Bar members by using video recording, webcast capabilities, and archiving of the program in OBA/CLE’s online catalog. This CLE must be coordinated through the Director of Educational Programs. OBA/CLE and Sections may also agree to serve as cosponsors of additional seminars. The terms of cosponsorship and division of finances are listed below.

~~1.2 Sections presenting seminars not involving co-sponsorship with OBA/CLE are required to coordinate dates and topics with the Director of Educational Programs to avoid duplication of effort and scheduling conflicts. Sections are fully responsible for receipt of all monies and payment of all expenses for programs OBA/CLE does not cosponsor.~~

1.2 Sections presenting seminars not involving cosponsorship with OBA/CLE and that exceed 90 minutes in length shall coordinate dates and topics with the Director of Educational Programs to avoid duplication of effort and scheduling conflicts. Section leaders must obtain prior approval from the MCLE Department for any MCLE credit sought to be awarded for attendance at the CLE and must obtain such approval prior to advertising MCLE credit has been approved. Sections are fully responsible for receipt of all monies and payment of all expenses for programs OBA/CLE does not cosponsor.

1.3 Complimentary registration to cosponsored seminars is limited to speakers and up to six (6) Section members for a full-day seminar or four (4) for a half-day seminar. Other proposed complimentary or reduced seminar registration fees must be approved by the Director of Educational Programs.

1.4 Speaker expenses are intended to cover mileage or other transportation costs, including parking and overnight accommodations for speakers residing more than 90 miles from the seminar site. Anticipated expenses beyond these guidelines must be approved by the Director of Educational Programs. The standard appreciation gift is a \$10 gift card. OBA/CLE does not pay honorariums or speaker fees for non-OBA members speaking at cosponsored events. Sections, subject to applicable Board bylaws regarding the use of Section funds, may provide speaker honoraria, dinners, fees, travel upgrades, or additional gifts as a separate Section expense.

1.5 Registration fees for cosponsored seminars are set by OBA/CLE. Sections may use Section funds for full or partial registration scholarships or other seminar-related expenses to encourage attendance.

2. TERMS OF CO-SPONSORSHIP

2.1 Section Responsibilities and Duties:

(a) Develop program title, learning objectives, outline and faculty list by deadline established by OBA/CLE. The Section will designate one of their Section members to serve as the program moderator for the event.

2.2 OBA/CLE Responsibilities and Duties:

(a) Market the program in a variety of ways which may include one or more of the following: designing and placing ads in the OBA/CLE magazine mailed to all active members and also available digitally and in an App; placing the ad on the OBA/CLE website; setting up online registration; running the ad in one or more editions of the Bar Journal and/or E-News, and direct email to appropriate members.

(b) Send necessary information to faculty, including presentation focus sheet, faculty consent form for use of materials, guidelines for writing materials, PowerPoint tips, audio visual request form, and biographical information form. OBA/CLE will assist with any necessary hotel reservations and provide a form for reimbursement of expenses.

(c) Set deadlines in order to receive the materials in advance of the seminar. Materials will be prepared to include a title page, table of contents, agenda and faculty biographies. The materials will be uploaded to enable registrants to access them electronically in their MyOKBar account or online classroom. Hard copies of materials ~~will~~ may also be available for purchase.

(d) Handle registrations that will be maintained in the OBA association management system or other software program, and provide MCLE sign-in sheets at each seminar. Receive and handle all seminar-related correspondence.

(e) OBA/CLE will handle all ~~of the~~ logistics for the seminar including room reservation and set up, food and beverage, audio/visual equipment and speakers'/staff sleeping room arrangements.

(f) OBA/CLE staff will work registration and monitor the seminar throughout the day as needed.

(g) ~~Maintain~~ Report attendance records as required under MCLE Rules.

2.3 Division of Finances for Co-sponsorship: OBA/CLE will collect all registration fees and pay all expenses. Upon final accounting, twenty percent (20%) of the net profit for the in-person seminar and live webcast will be transferred to the Section's account. Net profit is the difference between the total income received from seminar registrations and total expenses directly incurred from the seminar(s). The expenses incurred refer to out-of-pocket, direct expenses and not indirect expenses, such as labor, employee or attorney time. In the event of a net loss, the Section shall be responsible for 20% of the net loss, payable to OBA/CLE out of Section funds.

3. OBA/CLE SERVICES AVAILABLE TO SECTIONS FOR PURCHASE

3.1 Administrative Services:

- (a) Sections and OBA Committees may request OBA/CLE to provide administrative services for non-cosponsored events with six-months advance notice. The Director of Educational Programs may waive the request time period based on extenuating circumstances and availability of resources. When resources are available, these services may be purchased for a flat fee starting at \$525.00. Fees may be increased or reduced at the discretion of the Director of Educational Programs.
- (b) OBA/CLE will handle registrations that will be maintained in the OBA association management system or other software program and provide MCLE sign-in sheets for the seminar.
- (c) OBA/CLE will handle all logistics for the seminar including room reservation and setup, food and beverage orders, audio/visual equipment and any necessary sleeping room arrangements. Note that availability of Emerson Hall may be limited and will be reserved on a first-come, first-served basis.
- (d) OBA/CLE staff will work registration and monitor the seminar throughout the day as needed.
- (e) Report attendance records as required under MCLE Rules.

3.2 Webcast Services:

- (a) Sections may request live webcasting services or recording from OBA/CLE with at least forty-five days advance notice of the event. The Director of Educational Programs may waive the request time period based on extenuating circumstances and availability of resources. Services will be provided based on availability of staff and equipment at a rate of \$50 per hour to include pre and post production. At the conclusion of the seminar, OBA/CLE will retain the program in the OBA/CLE online catalog and sell as an on-demand program. Revenue generated from online sales will be accounted for on a quarterly basis for one year from the time the program is available in the online catalog. Ten percent (10%) of the revenue from online sales will be transferred to the Section's account.

(b) Sections not utilizing OBA/CLE administrative services in conjunction with live webcast services must provide a list of names and Bar numbers of those wanting to participate in the webcast no later than 48-hours in advance of the program. Speaker biographies, materials, and PowerPoints must also be provided no later than 48-hours in advance. Video embedded in a PowerPoint must be provided in a separate file.

Approved: