



FEDERAL COMMUNICATIONS  
BAR ASSOCIATION

**2017 – 2018**  
**Co-Chair Handbook**

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# FEDERAL COMMUNICATIONS BAR ASSOCIATION

## Committee/Chapter Co-Chair Job Descriptions

### General

As a Committee/Chapter Co-Chair, your job is to provide leadership to your committee/chapter. You should develop goals, objectives, and priorities for your committee/chapter and, where applicable, hold meetings of your committee/chapter throughout the year to further those goals. Substantive committees also should plan at least six brown bag lunches and two CLE seminars in cooperation with the CLE Committee.

### Executive Committee

You may be asked to report on your committee's activities to the Executive Committee at its monthly meetings. The Chapter Representatives on the Executive Committee report on chapter activities at each Executive Committee meeting.

### FCBA Staff

At this point in time, Executive Director Kerry Loughney will be responsible for assisting you in planning committee/chapter events and coordinating all activities so that conflicts with other FCBA-related events are minimized. Also, you may contact Megan Tabri ([megan@fcba.org](mailto:megan@fcba.org)) for a list of your committee/chapter members at any time. The FCBA will be able to distribute notices to your committee/chapter members.

### Newsletter

Committees and chapters should highlight all meetings and other activities in the monthly newsletter, and it is essential to do so if you are planning an event such as a brown bag lunch or CLE seminar. The newsletter is emailed to all FCBA members at the beginning of each month and the **deadline for articles and notices of meetings is the 20<sup>th</sup> day of the prior month.** Although the FCBA office always tries to send reminder e-mails to committee/chapter members for meetings and events, those reminders will not reach non-committee/chapter members who might want to participate in your events. **Therefore, notices of all upcoming meetings and events should be publicized in at least one, and preferably two, newsletters in order to maximize attendance.**

Each committee/chapter also will be asked to submit an article for the *Committees/Chapters in the Spotlight* section of the newsletter (see schedule in the handbook – page 7). This should consist of a few paragraphs introducing the co-chairs and detailing the programs, past and future, for the year.

## **Committee/Chapter Meetings**

For committee/chapter meetings that do not require payment (*e.g.*, brown bag luncheon meetings at which participants bring their own lunches), newsletter notices and notices to committee/chapter members should at a minimum specify the date/time, location, and the subject matter/speaker(s) of the meeting, as well as whether “set ups” such as coffee and soft drinks will be provided. If a committee/chapter meeting or event requires payment (*e.g.*, luncheon meetings or receptions where food or CLE credit will be provided), instructions for remitting payment to the FCBA are also important, and Kerry will provide guidance on appropriate procedures. Regardless of whether a meeting or event requires payment, it is important to direct participants to “RSVP” to the FCBA website or register using a form so that a reasonable headcount can be obtained. Please check with Kerry if you have a conflict with location; she will try to find an appropriate venue for the type and size of the event.

Please try to accommodate participants by starting and ending your meetings and events on time. It is also suggested that you send thank you letters to speakers who attend your committee/chapter events and that you copy Kerry on such correspondence.

## **Filings and Other Statements on Behalf of the FCBA**

Comments and correspondence submitted to governmental entities on behalf of the FCBA must be approved by the Executive Committee, which meets monthly. If you wish to have the Executive Committee consider whether the FCBA should file comments or otherwise take a public position in correspondence, please advise the FCBA Executive Director, as well as the FCBA President, so that the issue can be placed on the next agenda. Copies of all such comments and correspondence should be sent to the Executive Director for the FCBA’s records.

## **Annual Committee/Chapter Reports**

At the end of the fiscal year, the co-chairs of each committee/chapter will be asked to prepare a written report to the President and President-Elect detailing the year’s activities. An email will be sent as a reminder and a copy of your report should be sent to the FCBA. These reports are useful for future committee/chapter planning.

	Mon	Tue	Wed	Thur	Fri
<b>1st</b>		Legislative	Engineering & Technical	International Telecom Practice	Judicial
<b>2nd</b>	Telehealth	Mass Media	Wireless	Privacy and Data Security	Intellectual Property
<b>3rd</b>	Video Programming and Distribution	Young Lawyers	Wireline	Transactional	State and Local Practice
<b>4th</b>	FCC Enforcement	Internet of Things	Executive Committee Meetings	Homeland Security and Emergency Communications	

**COMMITTEE CALENDAR PLANNING TOOL – PLEASE SCHEDULE YOUR BROWN BAGS LUNCHEES ON YOUR COMMITTEE ASSIGNED DAY OF EACH MONTH**

- Engineering & Technical ♦
- FCC Enforcement ♦
- HLS/Emergency Communications ♦
- Intellectual Property ♦
- International Telecommunications ♦
- Internet of Things ♦
- Judicial ♦
- Legislative ♦
- Mass Media ♦

- Privacy and Data Security ♦
- State & Local Practice ♦
- Telehealth ♦
- Transactional Practice ♦
- Video Programming and Distribution ♦
- Wireless Telecommunications ♦
- Wireline ♦
- Young Lawyers ♦

## Schedule of Committee/Chapter Highlights for the FCBA Newsletter 2017-2018

### August

### September

HLS/Emergency Communications  
International Telecommunications  
Professional Responsibility

### October

Intellectual Property  
Membership & Marketing  
Telehealth  
Atlanta

### November

Mass Media  
Wireline  
Rocky Mountain

### December

Engineering and Technical  
Moot Court  
Social Media  
State and Local Practice  
New England

### January

Conference Planning  
Legislative  
YLC/Auction  
Florida  
Southern California

### February

Diversity  
Internet of Things  
Video Programming & Distribution  
New York

### March

Law Journal  
Privacy and Data Security  
Relations w/ Other Bars  
Carolina

### April

Access to Government  
Commendations &  
Acknowledgements  
Transactional Practice  
Texas

### May

CLE  
FCC Enforcement  
International Chapters  
Northern California

### June

Wireless Telecommunications  
Judicial Practice  
Pacific Northwest

**July – FCBA writes up Nominations  
Results**



# **Federal Communications Bar Association**

## **Policy Statement on Invitations to US Government Speakers**

It is the policy of the FCBA that all speaking invitations for any Association event, including committee/chapter activities, to senior US Government officials, including FCC Chairman, Commissioners, and Bureau Chiefs, and the equivalent levels in any other US Government Agency, must be cleared by, and issued through, the FCBA headquarters office.

FCBA Committee/Chapter Co-Chairs may invite directly other US Government staff to speak at FCBA events.

Any travel expenses for US Government speakers to be reimbursed by the FCBA must be approved by FCBA headquarters office prior to the making of any commitment on reimbursement.

# **Federal Communications Bar Association**

## **Policy Statement on Open Meetings**

It is the policy of the FCBA that all Association meetings are open and on-the-record unless a speaker(s) request that his or her remarks be off-the-record.

FCBA Committee/Chapter Co-Chairs should inform speakers of this policy in advance of any meeting. If the speaker requests that his or her remarks be off-the-record, this should be announced at the beginning of the meeting and a sign placed outside the room.

If any press are present at a meeting where speaker(s) remarks will be off-the-record, Committee/Chapter Co-Chairs should make certain that members of the press are informed of this stipulation. If any members of the press refuse to honor the speaker(s) request that remarks are off-the-record, they should be asked to leave the meeting. If there are any questions regarding this policy or problems during a meeting, co-chairs should contact the FCBA Executive Director immediately and inform he/she of the situation.

(Adopted by the Executive Committee on February 26, 2003)

# FEDERAL COMMUNICATIONS BAR ASSOCIATION

## Policy Statement on Joint Sponsorship of Seminars and Other Programs/Events

This Policy Statement applies to Continuing Legal Education (“CLE”) seminars and other programs/events co-sponsored by the FCBA’s CLE Committee, another FCBA Committee, and/or any FCBA Chapter. All proposed joint sponsorships shall be coordinated with the Executive Director before the FCBA may be committed to participation. Any deviations from the policies established in this Policy Statement must be expressly approved by the Executive Committee.

The FCBA may jointly sponsor seminars and other programs/events with other organizations when the following criteria are satisfied:

1. The seminar or program/event is on a topic relevant to communications law and/or policy.
2. The content of a CLE seminar is approved by the CLE Committee Co-Chairs as meeting suitable quality standards for the FCBA.
3. The FCBA has meaningful input and participation in the development of the CLE seminar curriculum or other program/event.
4. The organization with which the FCBA shares sponsorship has a suitable reputation. Co-sponsorship with a for-profit or commercial organization requires the advance approval of the FCBA Executive Committee. For chapter events, the President or the Executive Director in consultation with the President or other appropriate officer, may approve a co-sponsorship and report on it at the next Executive Committee meeting for ratification.
5. The number of co-sponsored CLE seminars and other programs/events is limited so as not to interfere with the FCBA’s own CLE seminars and programs/events.
6. The time and place of the seminar or program/event are reasonably accessible to a substantial number of FCBA members.
7. The availability of the FCBA’s mailing list to the co-sponsor is limited to use for the purpose of promoting the co-sponsored seminar or program/event.
8. The fee for attending the seminar or event is not prohibitive to members or excessive when compared to the value of the seminar.
9. FCBA members are admitted to the program or program/event at a discounted rate.
10. The FCBA receives a fair share of the net revenue from the seminar or program/event, targeted at a one-half share or a share proportionate to the number of attendees who are FCBA members.

11. If expenses are deducted before the revenue is distributed, as is preferred, the FCBA's administrative expenses must be included in the expense reimbursement, including expenses incurred at the FCBA's office.
12. Anticipated expenses are disclosed by the co-sponsor in advance and are kept under reasonable control in relation to anticipated revenues.
13. There is little or no risk of financial loss to the FCBA if the CLE seminar or program/event is not successful (apart from the investment of staff and member time and space in the newsletter for publicity). The FCBA may not "invest" in a seminar by taking the risk of loss in return for the chance to make a profit.
14. If an outside organization administers the CLE seminar or program/event, a full accounting of revenues and expenses must be provided to the FCBA at the conclusion of the program.
15. If a CLE seminar or other program/event is presented "in cooperation with" the FCBA, rather than as a jointly sponsored program, the FCBA shall provide no support for the program other than making available the mailing list and publicizing the program in the newsletter (and possibly accepting reservations). No CLE seminar or program/event may be presented "in cooperation with" the FCBA unless it meets the criteria of Items 1, 2 and 4-9, above.

(Adopted by the Executive Committee on June 25, 2009)

# FEDERAL COMMUNICATIONS BAR ASSOCIATION CONFLICT OF INTEREST POLICY

## Article I

### Purpose

The purpose of this conflict of interest policy is to protect the interest of the Federal Communications Bar Association (the “FCBA”) when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an FCBA officer, Executive Committee member, or FCBA staff member. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to non-profit organizations and bar associations.

## Article II

### Definitions

1. **Interested Person**

Any FCBA officer, Executive Committee member, or staff member who has a direct or indirect financial interest, as defined below, is an interested person.

2. **Financial Interest**

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the FCBA has or is negotiating a transaction or arrangement, or
- b. A compensation arrangement with any entity or individual with which the FCBA has or is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.
- c. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the Executive Committee decides that a conflict of interest exists.

## Article III

### Procedures

1. **Duty to Disclose**

In connection with any actual or possible transaction of the FCBA, an interested person must disclose the existence of the financial interest and all material facts to the Executive Director and President of the FCBA, and any other FCBA member considering the proposed transaction or arrangement.

2. **Determining Whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, the interested person may refrain from participation in considering the matter. Should the interested person desire to remain involved in the matter, and should the President of the FCBA conclude that the interested person should continue to be involved in the matter, the Executive Committee shall meet to determine if a conflict of interest exists that should preclude such participation.

3. **Procedures for Addressing the Conflict of Interest**

a. An interested person may make a presentation at an Executive Committee meeting, but after the presentation, shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

b. The FCBA President shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

c. After exercising due diligence, the responsible FCBA staff member or officer, subject to review by the Executive Committee, shall determine whether the transaction or arrangement is in the FCBA's best interest and is fair and reasonable or whether the FCBA can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

4. **Violations of the Conflicts of Interest Policy**

a. If a member has reasonable cause to believe a member of the Executive Committee has failed to disclose an actual or possible conflict of interest, the member shall inform the Executive Committee member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

b. If, after hearing the Executive Committee member's response and after making further investigation as warranted by the circumstances, the member believes the Executive Committee member has failed to disclose an actual or possible conflict of interest, the member shall inform the President of the FCBA, who shall bring the matter before the Executive Committee, which shall take appropriate corrective action.

**Article IV**

**Records of Proceedings**

The minutes of the Executive Committee meetings shall contain:

a. The names of any persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible transaction or arrangement, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Executive Committee's decision regarding the transaction or arrangement.

b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken.

**Article V**

**Annual Statements**

Each FCBA officer, Executive Committee member, and staff member shall annually sign a statement which affirms such person:

a. Has received a copy of the conflict of interest policy,

b. Has read and understands the policy,

c. Has agreed to comply with the policy, and

d. Understands the FCBA is a non-profit organization and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

**Article VI**

**Periodic Reviews**

To ensure the FCBA does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits for FCBA staff are the result of arm's length bargaining.
  
- b. Whether arrangements with members and their organizations conform to the FCBA's written policies, are properly recorded, reflect reasonable payments for goods and services, and do not result in impermissible private benefit.

**Article VII**

**Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the FCBA may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Executive Committee of its responsibility for ensuring periodic reviews.

Acknowledged:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

## **FCBA Whistleblower Policy**

### **General**

The Federal Communications Bar Association (the “FCBA”) is an organization of attorneys involved in the development, interpretation, implementation, and practice of communications laws and policies. The FCBA is governed by an elected Executive Committee which acts as its board of directors, and by elected Officers which oversees its regular operations. The FCBA is managed and operated by its employees. Many of the functions of the FCBA are implemented by its members volunteering for such duties. The FCBA requires the Executive Committee, its Officers, its employees, and member volunteers to observe high standards of business and personal ethics in the conduct of their duties and responsibilities.

### **General Business Ethics Policy**

As employees and representatives of the FCBA, all members of the Executive Committee, Officers, employees, and volunteers are expected to practice honesty and integrity and comply with all applicable laws and regulations in fulfilling their responsibilities to and for the FCBA.

### **Reporting Responsibility**

It is the responsibility of all members of the Executive Committee, Officers, employees, and volunteers to report any violations or suspected violations of the FCBA’s General Business Ethics Policy in accordance with this Whistleblower Policy.

### **No Retaliation**

No member of the Executive Committee, Officer, employee, or volunteer who, acting in good faith, reports a violation of the General Business Ethics Policy shall suffer harassment, retaliation, or adverse employment consequence. Any member of the Executive Committee, Officer, employee, or volunteer who retaliates against someone who has reported a violation of this General Business Ethics Policy in good faith shall be subject to discipline by the Executive Committee, which may include termination of employment of an employee and/or being barred from further involvement with the any activities of the FCBA. This Whistleblower Policy is intended to encourage and enable employees and others to raise serious concerns within the FCBA of suspected conduct that is inconsistent with the FCBA’s business ethics prior to seeking resolution of such concerns outside the FCBA.

### **Reporting Violations**

The FCBA has an open door policy and suggests that members of the Executive Committee, Officers, employees, and volunteers share their questions, concerns, suggestions, or complaints with someone who can address them properly. In most cases, an employee’s supervisor is in the best position to address an area of concern, while the President or Executive Director of the FCBA will be in the best position to address an area of concern raised by any member of the Association. However, if any employee is not comfortable speaking with the supervisor or not satisfied with the supervisor’s response, or if the complaining party is not comfortable talking with the President or Executive Director, he or she is encouraged to speak with any other Officer or member of the Executive Committee who they feel comfortable approaching. For suspected fraud, individuals should raise this issue directly with the President or President-Elect, as the



reporting person feels appropriate. Anyone approached about a suspected violation of this General Business Ethics Policy is expected to report it to the FCBA's President-Elect, acting in his or her capacity as Compliance Officer, who has specific authority and responsibility to investigate all reported violations.

### **Compliance Officer**

The President-Elect shall be the FCBA's Compliance Officer and is responsible for investigating and resolving all reported complaints and allegations concerning violations and, at his/her discretion, shall advise the President and Executive Director. The Compliance Officer shall report to the Executive Committee at least twice annually on compliance activity.

### **Accounting and Auditing Matters**

The Treasurer, Assistant Treasurer, and Secretary of the FCBA shall act as a Finance Committee which shall address all reported concerns or complaints regarding corporate accounting practices, internal controls, or auditing. The Compliance Officer shall immediately notify the Finance Committee in the event of any such complaint and work with the Finance Committee until the matter is resolved.

### **Acting in Good Faith**

Anyone filing a complaint concerning a violation or suspected violation must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. Any allegations that prove not to be substantiated and which prove to have been made maliciously or knowingly to be false will be viewed as a serious disciplinary offense.

### **Confidentiality**

Violations or suspected violations may be submitted on a confidential basis by the complainant or may be submitted anonymously. Reports of violations or suspected violations will be kept confidential to the extent possible, consistent with the need to conduct an adequate investigation.

### **Handling of Reported Violations**

The Compliance Officer will notify the sender and acknowledge receipt of the reported violation or suspected violation within five business days. All reports will be promptly investigated and appropriate corrective action will be taken if warranted by the investigation.

(Policy adopted by the FCBA Executive Committee on March 25, 2009)

## **A QUICK REFERENCE GUIDE FOR PLANNING A CLE SEMINAR**

### **At Least 60 Days before the CLE:**

- Topic/POC – choose the CLE topic and identify a point of contact on the committee to coordinate with the FCBA and your CLE Committee liaison throughout the process.
- Date – coordinate with the FCBA and choose a date to avoid conflict with other FCBA events (CLEs are typically held Monday, Tuesday, Wednesday, or Thursday from 6:00 – 8:15 p.m.)
- Location – coordinate with the FCBA regarding the event location; if none of the committee co-chairs has conference space available to accommodate the event, the FCBA will secure a venue.
- Program agenda – prepare a draft agenda/outline of the event (*e.g.*, title of the program, description of the subject, schedule and titles of the panels, names and affiliations of the speakers). The FCBA will send the agenda to the VA Bar to secure CLE credit for the event. Attorneys must apply for CLE credits in other states individually.
- Newsletter notice – draft an announcement for the FCBA newsletter (providing info from your event agenda). Aim to get your CLE in one or two newsletters (the deadline for newsletter submissions is the 20<sup>th</sup> of each month).

### **At Least 15 Business Days before the CLE:**

- Provide the FCBA with an updated agenda.
- The FCBA will arrange for the room set-up, name cards for the speakers, refreshments (sodas/snacks), audio-visual equipment requested, teleconference abilities for remote audience members, and FCBA audio-recording of the program.

### **At Least 4 Business Days before the CLE:**

- Provide the FCBA with handouts for the seminar, including the final agenda for the event, brief speaker and moderator biographies, and the speaker materials. These materials should not exceed 50 pages in total. The FCBA will have them copied, collated, and delivered to the venue.

### **Day of the Event:**

- Ask the audience to complete the evaluation form distributed at the event.

### **Tips on Selecting and Coordinating Speakers and Moderators:**

- Select speakers who are knowledgeable, balanced, and who will be engaging and interesting.
- Limit the number of speakers to five. Attendee feedback indicates that they appreciate and benefit more hearing from fewer speakers for more time and focus from each.
- Have a conference call with speakers to divide up the topics and agree on format (*e.g.*, panel, series of individual speakers, when to have Q&A).
- Diversity – consider the age, gender, and racial diversity of your speakers.
- Pay it forward – think about ways to involve younger members of the FCBA (*e.g.*, in planning roles, introducing speakers, or moderating panels).

### **Things Your Speakers Need to Know:**

- CLEs are audio-recorded and speakers must sign a release form before the event.
- All events are open and on-the-record. If a speaker feels very strongly to have his/her remarks off-the-record, notify the FCBA so that they can publicize it as such. If it is approved to be off-the-record, it should be announced at the beginning of the event.
- Speakers should have brief written materials. Copyrighted material should not be provided unless it is accompanied by the proper permission.
- The FCBA generally does not reimburse speakers for travel, lodging, or meal expenses.

### **Notes on Inviting Government Speakers:**

- FCC speakers, typically, must secure the approval of their Bureau Chief. Allow time for this; consider contacting the Bureau Chief to solicit suggestions before extending invitations.
- Speaking invitations to senior US Government officials (*e.g.*, FCC Chairman, Commissioners, and Bureau Chiefs, and the equivalent level in any other US Government agency) must be cleared by, and issued through the FCBA.

### **Co-Sponsorships:**

- If you are approached about a co-sponsorship opportunity, please consult the FCBA's co-sponsorship policy in your FCBA handbook.

# FEDERAL COMMUNICATIONS BAR ASSOCIATION

## Guidelines and Important Information for Planning A CLE Seminar

The following guidelines are designed to assist FCBA members in organizing FCBA CLE seminars. The principal objective is to present useful, educational, and substantive seminars that meet the CLE needs to the greatest possible number of FCBA members. The FCBA is responsible for assisting the CLE Committee and other committees in planning CLE seminars and coordinating CLE programs with other FCBA events and activities.

**Committees are encouraged to plan ahead and pick dates to hold their CLEs as soon as possible to avoid clumping at certain times in the year.**

### TIMETABLE

#### **At Least 60 Days before the Seminar:**

- The committee should choose a topic, a preferred date to hold the seminar, and a primary contact person (in most cases the seminar moderator) to be responsible for coordinating the content of the seminar and the logistics of the seminar with the FCBA and the CLE Committee. The contact person also is responsible for ensuring that the speaker release forms, included in the handbook and emailed to the co-chairs before the event, are signed and returned to FCBA before the CLE and that any completed evaluation forms are sent to the FCBA.
- The FCBA will contact the location to reserve the date. A room will be chosen based on the anticipated audience size.
- Draft a notice for the newsletter. CLE seminars should be publicized in at least one, preferably two, newsletters. **The deadline for each issue of the newsletter is the 20<sup>th</sup> day of the prior month.** The first article should contain as much information as possible about the seminar, including a detailed description of the subject matter and the names and affiliations of the speakers, if possible. The second article should expand on the information included in the first newsletter article if the first article was incomplete or if changes have occurred. The FCBA will format the article for the newsletter, set up the event for online registration, and prepare the physical registration form.
- Prepare a draft agenda and/or outline, which the FCBA, in addition to putting in the newsletter article, will submit to the Virginia State Bar to obtain CLE credit. The FCBA is an accredited sponsor in Virginia and California and the number of CLE credits approved equals the total hours for the program. The FCBA does not obtain CLE credit for other states. The FCBA will, however, assist with applications to other states, but attorneys must apply individually for credit for courses and submit any forms and payments necessary directly to the state bar.
- Choose seminar topics that will appeal to a significant number of FCBA members. Select speakers who are knowledgeable about their given fields and who also will be able to present their topics in such a way so as to keep the attention of the audience. **Limit the number of speakers to five.** Attendee feedback indicates that they appreciate and

benefit more hearing from fewer speakers for more time and focus from each. When requesting speakers from the FCC, permission usually will need to be obtained from the relevant Bureau Chief. Allow time for getting such approval, and consider asking the Bureau Chief for speaker suggestions before contacting specific staff members with an invitation to be a speaker. Carefully consider the format of the seminar and select a moderator who can control the speakers and keep the program moving.

- Once the list of speakers has been finalized, write to them to confirm the date, time, and location of the seminar and to solicit biographies and materials for handouts (which should not be more than 50 pages total). **Please make sure the speakers are aware ahead of time that the CLE seminar is on-the-record, will be audio-recorded, and that each one will be required to sign a release form.**

#### **At Least 15 Business Days before the Seminar:**

- The Committee Co-Chair(s) organizing the CLE should inform the FCBA of the final names of the speakers and any special requirements regarding the set-up of the room, including audio-visual needs.
- The FCBA will make arrangements for the set-up of the room, refreshments (*i.e.*, sodas/snacks), audio-visual equipment, and the FCBA's audio-recording of the program. FCBA staff must confirm these arrangements with the location prior to the seminar.
- FCBA will prepare the name cards for the speakers.

#### **At Least Four Business Days before the Seminar:**

- Provide the FCBA with the handouts for the seminar, including the final agenda for the event, brief speaker and moderator biographies, and the speaker materials. These handouts are a **requirement for CLE credit** approval from the Virginia Bar. The total number of pages generally **should not exceed 50 pages**. It may not be necessary to provide participants with all 160 pages of a Court's decision on a particular case, when a synopsis of the case and selected relevant pages are all that is needed in many cases. PowerPoint presentations, printed out and provided to the participants, are considered to be handouts by the VA Bar. Copyrighted materials cannot be duplicated for handouts without proper copyright clearance or permission. The FCBA will have the handouts copied, collated, and delivered to the venue. [Click here](#) for a more detailed description of the VA Bar required written materials.

#### **At the Seminar:**

- Evaluation forms will be given to all attendees. The seminar moderator should encourage attendees to complete the evaluation form at the end of the seminar and return it to the moderator or send it to the FCBA.

#### **After the Seminar:**

- After the seminar, it is suggested that you send thank you letters to speakers and that you copy FCBA on such correspondence.

### **OTHER GENERAL ISSUES**

- Generally, dates in the middle or the end of the month are preferred in order to maximize the publicity generated by the newsletter which is mailed at the beginning of each month. Seminars are generally held on Monday, Tuesday, Wednesday, or Thursday and can be held in the afternoon at varying times or evenings from 6:00 – 8:15 p.m. They should be scheduled for 2 full hours.
- Seminars are offered to members outside of the metropolitan area via teleconference. Seminar handouts are emailed to these participants the day of. Seminars are also audio-recorded and are available for purchase after the event.
- The FCBA generally does not reimburse speakers for travel, lodging, and meal expenses.
- The moderator and speakers should arrive at least 15 minutes prior to the starting time.
- The seminar should start and end on time. The moderator should enforce time limits on individual speakers and should leave sufficient time for audience questions.
- The current registration fees for most CLE seminars are as follows:
  - \$135 for Private Sector members
  - \$50 for Government/Academic/Transitional members
  - Complimentary for Law Student members
  - \$205 for Non-members

## FEDERAL COMMUNICATIONS BAR ASSOCIATION SPEAKER RELEASE FORM

Name of Speaker:

Title:

Date/Time:

Location:

The above-named speaker/panelist ("Panelist") has been informed that his/her appearance at the above-referenced Federal Communications Bar Association ("FCBA") sponsored event ("Event") will be audio and/or video recorded for use by the FCBA and any other organization that co-sponsors this event in conjunction with the FCBA. Panelist understands, acknowledges and agrees that any reference to the FCBA herein includes and extends to any co-sponsoring organization.

Panelist, by executing this release, assigns to the FCBA the right to record Panelist's voice and likeness and grants to the FCBA and to all its successors, assigns and licensees the full and irrevocable nonexclusive right to produce, edit, copy, distribute, exhibit and transmit the Panelist's voice and likeness in connection with the Event by means of broadcast, satellite, cablecast, Internet, audio or video recording, film or any similar electronic or mechanical method.

The Panelist acknowledges that any picture, audio or video recording taken of the Panelist under the terms of this release become the sole and exclusive property of the FCBA.

Panelist has further been informed that the Event, including formal presentations and question/answer periods, and copies of any materials, in any format, distributed in connection with the Event ("Work") will be made available by the FCBA, for the sole purpose of fostering continuing education, to FCBA members, prospective members, and other interested attorneys, law firms and legal professionals. Panelist represents and warrants that he/she has the full right and authority to use any and all materials contained in the Work, that publication, distribution and transmission of the Work will not infringe the rights of others.

Panelist authorizes the FCBA to use Panelist's name, biography, voice, and likeness for the purpose of publicizing the availability of audio and/or video replays of the Event in whatever technology, duration and number chosen by the FCBA. The FCBA warrants that it will authorize no commercial or other use of any video or audio recordings and materials mentioned herein, except as specified in this release.

Panelist waives any and all rights in, or claims for compensation for all uses of the Event by the FCBA, including but not limited to the reproduction, sale, distribution and use of the recorded Event and associated materials by, or as licensed by, the FCBA.

Panelist understands that execution of this Agreement does not obligate the FCBA to record, broadcast, or distribute any part of an Event, the Work or other materials.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**VIRGINIA STATE BAR PROFESSIONAL GUIDELINES**  
**MANDATORY CONTINUING LEGAL EDUCATION REGULATIONS**

**Effective November 1, 2011**

**Purpose**

The Virginia Supreme Court has established, by Rule of Court, a mandatory continuing legal education program in the Commonwealth of Virginia, which requires each active member of the Virginia State Bar annually to complete a minimum of twelve (12) hours of approved continuing legal education courses, of which at least two (2) hours shall be in the area of legal ethics or professionalism, unless expressly exempted from such requirement.

The Virginia Supreme Court has established a Continuing Legal Education Board to administer the program and has given to it those general administrative and supervisory powers necessary to effectuate the purposes of the Rule, including the power to adopt reasonable and necessary regulations consistent with the Rule.

Pursuant to this authority, these regulations have been adopted by the Continuing Legal Education Board.

**Regulation 101**

**Definitions**

As used in these regulations, the following definitions shall apply:

- (a) The "Rule" shall mean the provisions of the Mandatory Continuing Legal Education (also referred to as "MCLE") Rule established by Paragraph 17 of Section IV, Part Six, Rules of Virginia Supreme Court.
- (b) The "Board" shall mean the Virginia State Bar Mandatory Continuing Legal Education Board established by Paragraph B of the Rule.
- (c) A "Member" as defined by Paragraph 2 of Section IV, Part Six, Rules of Virginia Supreme Court, shall comprise all attorneys-at-law in this commonwealth.
- (d) An "Active Member," shall mean an Active or Emeritus Member as defined by Paragraph 3 of Section IV, Part Six, Rules of Virginia Supreme Court.
- (e) A "newly-admitted member" shall mean a person first admitted to practice during the current completion period.
- (f) A "program sponsor" or "sponsor" is any person or entity presenting or offering to present one or more continuing legal education programs.
- (g) The terms "course" and "program" mean a discrete continuing legal education (also referred to as "CLE") offering, regardless of length or daily schedule, provided that the course or program is a minimum of 30 minutes in length.
- (h) An "accredited sponsor" shall mean an organization which, based on a history of providing approved courses and pursuant to Regulation 105, has been granted approval for its programs. The programs must meet the approval standards of Regulation 103 and are not subject to the individual course application procedures of Regulation 104(a).
- (i) An "approved course" means a course expressly approved by the Board for the relevant completion period or a course offered by an accredited sponsor during the completion period for which the sponsor is accredited and meets the approval standards of Regulation 103.
- (j) A "pre-recorded course" means a program where a live presentation has been recorded and presented via any electronic media (e.g. videotaped, DVD or CD-ROM presentations, audiotaped or CD presentations, pre-recorded telephone seminars or webcasts, on-demand online courses, etc.) that does not include simultaneous, live interaction with the presenter.
- (k) A "specially approved course or program" means a course which does not meet the standards of regulation 103(b) and (c) but which, because of its significant value to the practice of a member who has sought approval, has been approved by the Board for such member. As to such member, the term "approved course" includes a specially approved course or program.
- (l) The term "panel(s)" shall mean a committee or committees organized by the Board for the purpose of expeditiously considering and deciding matters arising under the Rule and these regulations.

- (m) The term “Director of MCLE” or “MCLE Director” shall mean the head of the Mandatory Continuing Legal Education Department of the Virginia State Bar who acts as the liaison and administrative staff for the Board.
- (n) A course or program offered "in-house" means one sponsored by a single private law firm, a single corporate law department or a single federal, state or local governmental agency or military branch for lawyers who are members or employees of the firm, department, agency or branch.
- (o) The term "completion period" shall mean a period of one year beginning on November 1, of one year and ending on October 31 of the next year; provided, however, that the next completion period following June 30, 2001, shall be July 1, 2001, to October 31, 2002.
- (p) The term "faculty member" shall mean a person qualified by practical or academic experiences to teach the subject he or she covers.
- (q) "Credit hours" (also referred to in context as "hours," "credits," and "hours credit") are the 60-minute units used for measuring completion of Mandatory Continuing Legal Education as required by the Rule.
- (r) "Ethics credits" are credit hours which apply toward Mandatory Continuing Legal Education in the area of legal ethics or professionalism as required by the Rule.
- (s) A "qualified ethics course or component" is a clearly identified segment of a course or program which meets the requirements of Regulation 103(d) and is devoted to one or more topics embraced in recognized formulations of rules of professional conduct or codes of professional responsibility applicable to attorneys and/or to the systems and procedures which have been established for enforcement and interpretation of those rules or codes. An ethics component in a course or program involving a substantive area of law may constitute a “clearly identified segment” if the integration of the substantive material is necessary to understand the ethical topic, and if the ethical topic is the primary focus of the segment. Such a segment must be appropriately described or entitled in the course materials and must have a defined duration in the course or program schedule.
- (t) A "qualified professionalism course or component" is a clearly identified segment of a course or program which meets the requirements of Regulation 103(d) and is devoted to one or more topics designed to educate and encourage attorneys to aspire to and achieve higher and more noble standards of professional conduct than the minimum standards set forth in recognized formulations of rules of professional conduct or codes of professional responsibility. All or part of a malpractice program may qualify as a professionalism course or component if it is devoted to one or more topics designed to educate and encourage attorneys to take measures in the conduct of the practice of law to serve the interests of the client, consistent with the attorney’s fiduciary duty to the client, and to endeavor to maintain an appropriate standard of care in the practice of the profession. Such a course or component will not be approved if the primary focus is malpractice litigation tactics or strategy. A professionalism component in a course or program involving a substantive area of law may constitute a “clearly identified segment” if the integration of the substantive material is necessary to understand the professionalism topic, and if the professionalism topic is the primary focus of the segment. Such a segment must be appropriately described or entitled in the course materials and must have a defined duration in the course or program schedule.
- (u) A “course presented by distance learning methods” includes any course in which the participant seeking credit received the instruction at a location different from the location from which the instruction was presented or at a time different from the time when the instruction was presented. Thus, all courses presented to participants from pre-recorded media (e.g. videotape, DVD or CD-ROM presentations, audiotape or CD presentations, pre-recorded telephone seminars or webcasts, on-demand online courses, etc.) are “courses presented by distance learning methods.” Similarly, any course taken by a participant at a location separate from the instructor (e.g. live telephone seminars, live webcasts, live videoconferences, etc.) are “courses presented by distance learning methods.” (Comment: See MCLE Board Opinion 16.)
- (v) The term “online MCLE record” shall mean the electronic access to the individual attorney's MCLE record maintained by the MCLE Department of the Virginia State Bar.



**Regulation 102**  
**Requirements and Computations**

- (a) Each active member, other than a newly-admitted member as defined in Regulation 101, shall complete, during each completion period in which he or she is an active member for any part thereof, a minimum of twelve (12) credit hours of approved continuing legal education (also referred to as CLE) courses, of which at least two (2) hours shall be in the area of legal ethics or professionalism. Of the twelve credit hours required, no more than eight (8) may be earned from pre-recorded courses. Credit must be obtained in the manner hereinafter provided, unless expressly exempted therefrom pursuant to the provisions of Regulation 110 or waived pursuant to Regulation 111.
- (b) Credit will be given to a member who personally attends an approved course and to a member who prepares written materials for an approved course and to a member who personally participates as an instructor for such course. Credit in the area of legal ethics or professionalism will be given a member who attends a course approved for credit in such area and to a member who personally prepares materials for a qualified ethics or professionalism component of such course and to a member who personally participates as an instructor for such a component.
- (c) Credits for attendance will be awarded on the basis of time spent in personal attendance at an approved course which meets the standards of these regulations. Credits for teaching will be awarded on the basis of time spent in personal participation as an instructor at an approved course. However, no credit will be awarded for teaching and preparation of a "specially approved course or program." Credit hours will be computed by calculating the total instructional minutes attended or taught for the course, rounded to the nearest half hour. Credit will not be given for time spent in meal or coffee breaks. Credit will not be given for keynote speeches or introductory remarks or time spent on any subject matter which is not directly related to instruction pertinent to that course.
- **EXAMPLES:**
  - (1) A member attends a one-day course or seminar with seven (7) segments, each lasting 50 minutes. Two of the segments are in the area of legal ethics or professionalism under the standards set forth in Regulation 103. Credit hours will be computed by calculating the total instructional minutes rounded to the nearest half hour. Since there are 350 total instructional minutes (5 hours, 50 minutes) the Board will round this time to the nearest half hour and the member will receive six (6) hours credit, not seven (7). Of such six (6) hours credit, one and one-half (1 1/2) hours (100 minutes rounded to the nearest half hour) will be in the area of legal ethics or professionalism.
  - (2) A member attends a course or program which is presented all day Friday and on Saturday morning. The member attends a 3 hour, 15 minute Friday morning session; a 2 hour, 15 minute Friday afternoon session; and a 3 hour, 10 minute Saturday morning session. Since the total instruction time is eight (8) hours and 40 minutes for the two-day program, the Board will round this time to the nearest half hour and the member will receive 8 1/2 hours of credit.
  - (3) A member attends a course or program which is advertised as having been "approved by the Virginia Mandatory Continuing Legal Education Board" for six (6) credit hours, of which one and one-half (1 1/2) apply in the area of legal ethics or professionalism. No further computation need be made by the member if he attends the entire course or program.
  - (4) A member personally teaches any of the courses in the previous examples. The teaching member will receive credit hours for teaching time computed in the same fashion as the credit hours are computed for the attending member.
  - (5) A member is a teacher at a one-day course or program with seven (7) segments, each lasting 50 minutes. Application forms are filed certifying that the member taught one segment and also attended one segment. The member did not attend or teach the other five segments. Since the member attended or taught 100 total instructional minutes for the course, the Board will round this time to the nearest half hour and the member will receive 1 1/2 hours of credit. The member does not receive one credit hour for 50 minutes teaching plus one credit hour for the other 50 minutes attending.
- (d) Credits for preparation will be awarded on the basis of time spent by a member (i) in preparing written materials which meet the standards of these regulations for use in the presentation of an approved course; and (ii) in preparing a personal presentation as an instructor for an approved course. The number of preparation minutes eligible for credit shall not exceed four times the number of instructional minutes in the presentation which is being prepared. Credit hours will be computed by calculating the

total minutes spent in preparation for the course, rounded to the nearest half hour. In no event shall more than eight (8) hours of credit be awarded for preparing a single course or program.

**EXAMPLES:**

- (1) A member prepares thorough, high-quality instructional written materials which appropriately cover the subject matter for an approved program which lasts 120 minutes. The member certifies that eight (8) hours or more was spent preparing the written materials. The Board will award eight (8) credit hours for preparation time. This does not exceed the maximum limit of four times the presentation time of the program and is consistent with the maximum limit of eight (8) hours of credit for preparing a single course or program.
- (2) Same as example 1 above except the member also taught the entire program and certifies that an additional eight (8) hours or more was spent preparing for the presentation as an instructor. This is a total preparation time of sixteen (16) hours. The Board will still award eight (8) credit hours for preparation time because this is the maximum limit of four times the presentation time and also because this is the maximum limit of credit for preparing a single course or program. However, the member will be awarded two (2) credit hours for teaching time and will therefore receive a total of ten (10) credit hours for the activities in preparing and teaching the program.
- (3) A member teaches at a course approved for five (5) credits including one (1) ethics credit. The member certifies that he taught the morning ethics segment of twenty (20) minutes. The member further certifies that one hour and twenty minutes was spent preparing for the presentation. Since the member taught twenty (20) minutes eighty (80) minutes (four (4) times the presentation time) of the member's preparation time is eligible for credit. The Board will total the minutes and round this time to the nearest half hour and the member will therefore receive a total of one and one half (1.5) hours CLE credit including one and one half (1.5) hours ethics credit for teaching and preparing the ethics segment.
- (e) A one-year carryover of credit hours will be permitted, so that accrued credit hours in excess of one year's requirement may be carried forward to meet the requirement of the following year. A member may carry forward a maximum of twelve (12) credit hours, not more than two (2) of which, if earned in the area of legal ethics or professionalism, may be counted toward credit hours required in such area. No more than eight (8) credit hours, of which not more than two (2) ethics or professionalism credit hours, may be carried forward from pre-recorded programs.
- (f) A member shall not receive credit for any course attended in preparation for admission to practice law in any state. A member shall not receive credit for teaching that is directed primarily to persons preparing for admission to practice law. Regular full time, part-time and adjunct academic faculty shall not receive credit for teaching any law school courses (undergraduate or graduate) or bar review courses. A member attending law classes, for a purpose other than preparing for admission to practice law, may receive credit in accordance with the manner described in Regulation 102(c). A member may not receive credit for any course which is not materially different in substance from a course for which the same member received credit during the same completion period or the completion period immediately prior to the one for which credit is sought.
- (g) A member may receive credit for attending a course delivered by distance learning methods which otherwise satisfies the requirements of these Regulations. No more than eight (8) credit hours may be earned in any twelve hour period attending pre-recorded courses. (Comment: See MCLE Board Opinion 16.)

**Regulation 103**

**Standards for Approval of Programs**

- (a) Subject to the provisions of Regulation 105(d), a course is approved for credit if it has been specifically approved by the Board or is presented by an accredited sponsor previously designated by the Board under the provisions of Regulation 105. A course is approved for credit in the area of legal ethics or professionalism if and to the extent specifically approved by the Board. Subject to the provisions of Regulation 105(d), a course presented by an accredited sponsor is also approved for credit in the area of legal ethics or professionalism if and to the extent so represented by such sponsor.
- (b) The course must have significant intellectual or practical content. Its primary objective must be to increase the attendee's professional competence and skills as an attorney, and to improve the quality of legal services rendered to the public.

- (c) The course must pertain to a recognized legal subject or other subject matter which integrally relates to the practice of law, or to the professional responsibility or ethical obligations of the participants.
- (1) A course which addresses law practice management may be approved so as to promote the efficient, economical and competent delivery of legal services. The course must cover topics that teach attorneys how to organize and manage their law practices and other law practice issues, which if improperly handled, could result in malpractice, disciplinary complaints or client dissatisfaction. A course which primarily focuses on marketing techniques, client development or other general business topics applicable to any business shall not be approved. (Comment: See MCLE Board Opinion 17.)
- (2) A course which addresses substance abuse, stress management, or work/life balance issues may be approved if the topics relate to the practice of law and the quality of legal services rendered to the public. (Comment: See MCLE Board Opinion 19.)
- (3) A course which addresses general skills topics such as time management, writing, communication or presentation skills may be approved provided the topics are specifically directed to an attorney audience and are covered in the context of the practice of law.
- (d) A course may be approved for credit in the area of legal ethics or professionalism only to the extent that the course constitutes or contains one or more qualified ethics or professionalism components as defined in Regulation 101. Topics which will not generally be approved for ethics credit include ethics standards of conduct applicable to other professions such as government employees, government contractors, accountants and businesses including corporate compliance. Also, rules of procedure, rules of evidence and litigation tactics will not generally be approved for ethics credit. (Comment: See MCLE Board Opinion 13.) A minimum scheduling of thirty (30) minutes in the aggregate of one or more qualified ethics or professionalism components is required before an approved course can be approved for credit in the area of legal ethics or professionalism.

EXAMPLES:

- (1) A sponsor's application for approval of a one-day program comprising seven 50 minute segments states in relevant part "each speaker will devote ten minutes of allotted time to ethical considerations." The program does not contain a qualified ethics component and is not eligible for approval for credit in the area of legal ethics. The requirement that a qualified component be a "clearly defined segment" is not met. Such segment must be capable of identification on the schedule and have a defined beginning and end.
- (2) A sponsor's application for approval of a one-day program reveals in relevant part that the opening 30 minute morning segment is clearly identified as devoted to ethical considerations and that the concluding 20 minutes of the afternoon session is also clearly identified as devoted to ethical considerations. Assuming that other requirements for course approval are met, the Board will approve the program for one (1) hour credit in the area of legal ethics or professionalism. (See Regulation 102.)
- (e) Courses must be conducted in a setting physically suitable to the educational course or program, free from distractions and conducive to learning.
- (f) No credit will be allowed (or "be granted") for any course or part thereof taken simultaneously with any other course or part thereof.
- (g) Thorough, high quality instructional written materials which appropriately cover the subject matter must be distributed to all attendees at or before the time the course is presented. A mere agenda or topical outline will not be sufficient. (Comment: See MCLE Board Opinion 14.)
- (h) Each course shall be presented by a faculty member or members qualified by academic or practical experience to teach the subjects covered. Consistent with Virginia State Bar policy, course sponsors should exercise care to ensure that faculty members, where possible, reflect the racial and gender diversity of the State Bar as a whole.
- (i) A course presented by distance learning methods which otherwise satisfies the requirements of these Regulations may be approved provided the speakers and attendees are participating simultaneously. Pre-recorded courses in any electronic form which otherwise satisfy the requirements of these regulations may be approved however no other form of self-study will be approved. (Comment: See MCLE Board Opinion 16.)

- (j) A program offered "in-house" may be approved by the Board provided the subject matter of the program does not primarily focus on internal policies, practices and procedures. An in-house program will be approved if it otherwise meets the standards of these regulations and if the approval procedures prescribed by these regulations are followed. (Comment: See MCLE Board Opinion 17.)
- (k) Participation in deliberative groups concerned with political activism, law reform, judicial administration, or regulation of the profession generally will not be approved for credit. Activities associated with membership or attendance at committee meetings, business meetings or work sessions will generally not be approved for credit.
- (l) To be accredited, a course must have no attendance restrictions based on race, color, national origin, religion, creed, gender, age, disability, sexual orientation or marital status.
- (m) No credit will be given for any course primarily focused on marketing a particular product or service. (Comment: See MCLE Board Opinion 15.)
- (n) A course that does not meet the requirements of subsections (b) and (c) of this Regulation may, on application of a member, be approved as a "specially approved course or program" for the applicant where the Board is satisfied that the course has significant value to the applicant's practice. Thus, for example, in appropriate cases courses on engineering, accounting or medical topics may be approved for a particular member.

### **Regulation 104**

#### **Procedure for Approval of Programs**

- (a) A member or course sponsor desiring approval of a course or program shall submit to the Board all information called for by the "Application for Approval of a Continuing Legal Education Course." The content of this application has been promulgated by the Board and may be changed from time to time. A member seeking approval of a course as a "specially approved course or program" should include on the Application for Approval of a Continuing Legal Education Course, or as an attachment thereto, a statement of why the course has significant value to the member's practice. The Board shall then determine whether or not the course or program satisfies the requirements of Regulation 103. If the course or program is approved, the Board also shall determine the number of credit hours to be awarded. The Board shall notify the requesting member or sponsor of its decision within 90 days after receipt of the completed application. The Board shall maintain and make available a list of all approved courses and programs for each completion period. An approved course or program is accredited only for the completion period for which it is approved. A "specially approved course or program" is accredited only for the member for whom approved.
- (b) The sponsor of an approved course or program should include in its brochures or course descriptions the information contained in the following illustrative statement: "This course or program has been approved by the Virginia Mandatory Continuing Legal Education Board for \_\_\_\_ hours of credit, of which \_\_\_\_ hours will also apply in the area of legal ethics or professionalism." An announcement is permissible only after the course or program has been specifically approved pursuant to an application submitted directly by the sponsor.
- (c) The sponsor of an approvable course or program that has not yet been approved after application should announce: "Application for approval for this course or program is pending with the Virginia Mandatory Continuing Legal Education Board."
- (d) At each presentation of an approved course or program or one for which approval is pending, the sponsor shall make available copies of the Board's Certification of Attendance for completion by the attendees and the Board's Certification of Teaching for completion by the instructors, copies of which will be provided by the Board with the course approval notification. The content of these certifications has been promulgated by the Board and may change from time to time. Where some portion of the program has not been approved for CLE or ethics credit, the sponsor shall provide that information to the attendees with the certification of attendance.
- (e) In the instance of a course or program presented while an application for approval is pending, it will be the responsibility of the sponsor to provide the attendees with the Board's Certification of Attendance or Teaching as required in Regulation 104(d) immediately upon receipt of the approval notification. If such course or program is not approved, the sponsor shall immediately notify the attendees that credit for the course has been denied. Under certain circumstances a member may seek

approval for a specially approved course or program as defined in Regulation 101(k) in the manner specified in Regulation 104(f).

- (f) Any member seeking credit for attendance at a course or program shall submit to the Board immediately following such attendance all information called for on the Application for Approval of a Continuing Legal Education Course. The Board will then determine whether the program qualifies under these Regulations and, if so, how many credit hours are approved. The Board will promptly notify the applicant of its decision. Applications received more than 90 days following the date of the program shall be subject to a late application fee.
- (g) Any sponsor seeking approval after presenting a course or program, shall submit to the Board within 30 days after the date of the program all information called for on the Application for Approval of a Continuing Legal Education Course. The Board will then determine whether the program qualifies under these Regulations and, if so, how many credit hours are approved. The Board will promptly notify the applicant of its decision.
- (h) Failure to comply with the sponsor requirements of Regulation 104 or Regulation 105 may result in fines; revocation of course approval; denial of future course credit; suspension or revocation of accreditation; or any other sanction deemed fit by and in the discretion of the Board.

### **Regulation 105**

#### **Procedure for Accreditation of Sponsors**

- (a) Any sponsor may apply for approval of individual courses by complying with the criteria of Regulation 103 and the procedures of Regulation 104.
- (b) If the Board determines that a sponsor regularly provides a significant volume of continuing legal education courses, that these courses uniformly meet the approval criteria of Regulation 103, and that the sponsor will maintain and submit the records directed by these Regulations, the Board may designate such a course provider as an "accredited sponsor" under the Rule. Such designation shall be effective for a period of no more than two years unless renewed.
- (c) A sponsor applying for status as an accredited sponsor shall submit to the Board all information called for on the Application for Status as Accredited Sponsor of Continuing Legal Education.
- (d) An accredited sponsor shall be subject to and governed by the applicable provisions of the Rule and these regulations, including the quality standards of Regulation 103 and the record-keeping and reporting requirements of this Regulation 105. The Board may at any time review an accredited sponsor program and reserves the right to deny CLE or ethics credit when the standards for approval are not met. Accordingly, for example, an accredited sponsor may represent in its descriptive literature that a course or program generates credits in the area of legal ethics or professionalism only to the extent the course contains one or more qualified ethics components as provided in Regulation 103.
- (e) The approval procedure of Regulation 104 does not apply to accredited sponsors. An accredited sponsor shall provide the Board at least thirty days in advance of a program with a descriptive course agenda or brochure which includes the name, date, location and credit hours requested for a particular course pursuant to the approval standards of Regulation 103, including, where appropriate, credit hours requested in the area of legal ethics or professionalism and a description of the content of the ethics session(s). The Board may request additional information regarding a course or program. The Board will provide the sponsor with copies of the Board's Certification of Attendance and Certification of Teaching for each course or program and the sponsor shall make available, collect and transmit such forms in accordance with the requirements of Regulation 104(d).
- (f) The Board may at any time reevaluate and revoke the status of an accredited sponsor. If the Board finds there is a basis for revocation of the accreditation granted to an accredited sponsor, the Board shall send notice by certified mail to that sponsor of the revocation within thirty (30) days of the Board's decision.
- (g) Law firms, professional corporations, and corporate law departments are not eligible to become accredited sponsors.

## **Regulation 106**

### **Delegation**

- (a) The Board may organize itself into panels to facilitate course approval, sponsor accreditation, interpretation of these regulations and to consider and decide matters arising under the Rule and under these regulations.
- (b) To facilitate the orderly and prompt administration of the Rule and these regulations, and to expedite the processes of course approval the Board may, under its supervision and direction, delegate to the Director of MCLE (hereafter referred to as the MCLE Director) general authority to act on behalf of the Board to review applications and approve or deny programs for credit pursuant to the approval standards of Regulation 103.

## **Regulation 107**

### **Board's Determination and Review**

- (a) Pursuant to directions established by the Board, a panel or the MCLE Director on behalf of the Board shall, in response to written requests for approval of courses or programs or for awarding of credit for the attendance at or teaching in approved courses, waivers, extensions of time deadlines and interpretations of these regulations, make a written response describing the action taken. A Panel or the MCLE Director may seek a determination of the Board before taking action. Upon request of the Board, the panel or MCLE Director shall report on all determinations made since the last meeting of the Board.
- (b) An aggrieved party may file with the Board a written appeal of an adverse decision by a panel or the MCLE Director within thirty (30) days after notice of the adverse decision has been mailed to him or her. No form of appeal is required but the affected person or program sponsor shall state in narrative form the action complained of and all of the reasons he or she believes the decision is erroneous.
- (c) The Board shall review any adverse determination of a panel or the MCLE Director which has been appealed to it pursuant to Regulation 107(b). The aggrieved party may present information to the Board in writing or in person, and at such time and place as the Board may direct. If the Board finds that a panel or the MCLE Director has incorrectly interpreted the facts, the provisions of the Rule or the provisions of these regulations, it may take such action as may be appropriate. The Board shall advise the affected party or program sponsor of its findings and any action taken.
- (d) Pursuant to Paragraph 17 of Section IV, Part Six, Rules of the Virginia Supreme Court, the Virginia State Bar may from time to time establish fees for processing applications, approving courses and accrediting sponsors; the remittance of any of these may be required before action is taken by the Board.
- (e) All decisions of the Board under this Regulation 107 and any other of these regulations shall be final and binding on all persons affected thereby and no appeal or other relief therefrom shall lie, except as specifically provided in Regulation 109.

## **Regulation 108**

### **Reporting of Certification Procedures**

- (a) Where a sponsor makes copies of the Certification of Attendance and the Certification of Teaching available at a course or program, each active member who wishes credit may certify attendance electronically as instructed on the MCLE attendance reporting site of the Virginia State Bar's internet website.
- (b) Where a member attends a course or program, and for any reason the member is unable to certify his or her attendance or teaching credit electronically, the member who wishes the Board to record credit may obtain a copy of the Certification of Attendance or Certification of Teaching from the sponsor, complete it and forward it to the Board.
- (c) On or before October 31 of each year each active member shall certify attendance online or submit the Certification of Attendance or Certification of Teaching for the minimum educational requirement.
- (d) The MCLE Board shall provide ongoing access to each individual attorney's MCLE record for the current compliance year on the Virginia State Bar's internet website. The record shall include carryover hours from the previous reporting period, identifying course information including the number

of hours reported for each course and the total hours of CLE, including the totals for those CLE hours designated as ethics or professionalism and those hours for pre-recorded courses which are limited to eight (8) hours per reporting period. Attorneys shall periodically review this online MCLE record to ensure accuracy and timely compliance.

- (e) Following the end of each completion period, the Board shall advise each active member of his or her status respecting completion of the annual educational requirements. This notice shall be entitled the "MCLE END OF YEAR REPORT" and shall include the information reflected on the individual attorney's MCLE record as of October 31 and instructions for completion and timely compliance.
- (f) If the active member accepts the MCLE END OF YEAR REPORT as accurately reflecting his or her credit hours for the period, including any carryover hours from the previous reporting period, and the form lists 12.0 or more CLE credits of which 2.0 or more are ethics or professionalism credits, the member does not need to file his form with the MCLE Board. If a member believes that the information reflected on the Board's records is erroneous or incomplete, then additions and corrections to the MCLE END OF YEAR REPORT must be filed as instructed and received by the MCLE office no later than close of business on December 15 of the year in which the credit is sought.
- (g) To the extent not completed online, the MCLE End of Year Report must accompany any request for credit or corrections submitted after October 31.
- (h) Delinquency fees for failure to timely complete the MCLE requirements are set forth in Paragraph 19 of Section IV, Part Six, Rules of Virginia Supreme Court. Members who have attended an insufficient number of required credits by the October 31 deadline shall remit a delinquency fee hereto referred to as a "noncompliance fee." Members who certify attendance after the December 15 certification deadline shall remit the appropriate delinquency fee hereto referred to as a "late filing fee." The late filing fee amount shall be doubled for members who fail to comply with the certification requirements by February 1 following the completion period.
- (i) After December 15, a member who wishes to receive credit for credit hours earned during the previous completion period whether for compliance or additional carryover credit may forward to the Board a certification on the appropriate forms together with remittance of the late filing fee. Any credits approved shall be recorded for the previous completion period and shall be eligible for the one year carryover into the current completion period in the same fashion as other credits. A member may not apply for credits earned earlier than the next preceding completion period.

### **Regulation 109**

#### **Noncompliance, Restoration and Reinstatement**

- (a) Noncompliance
  - (1) An active member who fails to comply with the educational and certification requirements of the Rule and these regulations, including payment of any required fees, and has not obtained a waiver or extension for good cause shown by December 15 of each year, shall be subject to suspension of such active member's license to practice law as is provided by Paragraph 13.2 of Section IV, Part Six, Rules of Virginia Supreme Court.
  - (2) Pursuant to Paragraph 13.2 of Section IV, Part Six, Rules of Virginia Supreme Court, whenever the Board determines that an active member has failed to (i) complete the mandatory continuing legal education requirements as required by Regulation 102 and/or (ii) failed to certify attendance and pay any required fees as required by Regulation 108 without first obtaining a waiver or extension in accordance with Regulation 111, the member shall be deemed to be delinquent.
- (b) Restoration and Reinstatement
  - (1) A delinquent member may be restored to good standing only following (i) his or her certifying to the Secretary-Treasurer of the Virginia State Bar of compliance with the requirements of the Rule in the manner provided by Regulation 108 and as instructed in the notice of impending suspension provided pursuant to Paragraph 19 of Section IV, Part Six, Rules of Virginia Supreme Court, and a determination by the Board that he or she has completed the mandatory continuing legal education requirements of the Rule and paying any required fees, or (ii) the obtaining of a waiver or extension in accordance with Regulation 111.

- (2) A delinquent member who is suspended pursuant to Paragraph 13.2 shall not further engage in the active practice of law until he or she has been reinstated. A suspended member may be reinstated only after paying any required fees and certifying compliance with the Rule as provided in Paragraph 13.2 and these regulations.
- (3) Where a default in compliance is cured by earning credit hours in a subsequent completion period, credit hours applied to correct the default shall not be applied to satisfy the requirements of any other period.
- (4) A member suspended for an entire completion period must show attendance at 12.0 CLE credit hours including 2.0 ethics credits earned within the previous 12 months. This member cannot rely on credits earned through carryover in the previous completion period or credits used to satisfy the requirement of any previous compliance year.

### **Regulation 110**

#### **Exemptions**

The Rule exempts from the certification requirement a newly admitted member for the completion period in which he or she is first admitted to practice in Virginia. A newly admitted member will not receive credit under these regulations for attending or teaching any course prior to his or her admission to the Virginia State Bar.

**EXAMPLE:**

Attorney A is first licensed to practice law in October 2009. Attorney A is not required to comply with the minimum continuing legal education requirement of the Rule and these regulations by taking or teaching approved courses until on and after November 1, 2009. Attorney A also shall not be required to file the certification required by Regulation 108 until December 15, 2010. If Attorney A attends or teaches approved courses between October 2009 and November 1, 2009, he may "carry over" to the next completion period credits in accordance with Regulation 102. Attorney A, beginning on November 1, 2009, will be subject to said requirement as long as he or she is an active member of the Virginia State Bar.

### **Regulation 111**

#### **Waivers, Extensions and Deferrals**

- (a) Waivers
  - (1) A waiver of the MCLE requirement or of any fees associated with MCLE noncompliance may be sought by filing a request with the Board, together with any appropriate or required supporting material or documentation (e.g. doctors' letters, medical records). The filing of any waiver request does not toll the running of any time limit set forth in these regulations or the Rule regarding suspension.
  - (2) A waiver shall be valid for a single completion period, unless renewed or extended by the Board. A waiver will be granted only for good cause.
  - (3) If the waiver is based on medical reason, condition, illness or hospitalization, then the application for waiver shall be a completed form entitled "Request for Waiver Based on Hospitalization, Illness or Medical Reason." It must be completed and signed by the admitting, family or attending health care provider and it must set forth the medical condition, hospitalization or illness which prevents the member from completing the required MCLE courses for the period for which the Waiver is being requested and have attached to it any appropriate supporting material or documentation.
  - (4) If the waiver is based on non-medical reasons, then the grounds shall be stated in a letter to the Board and any appropriate supporting material or documentation shall be attached.
  - (5) A member who is unable to satisfy the MCLE requirement due to extraordinary or extenuating circumstances beyond the control of the member may apply as prescribed in Regulation 111(a)(1) to have all or part of the eight-hour limitation on pre-recorded courses waived.
  - (6) All waiver requests should be promptly submitted when the grounds for the waiver request become known to the applicant or applicant's representative. Failure to file a waiver request in a timely manner may be considered by the Board in determining whether to grant a waiver. A prudent lawyer will use the carryover of credits provision of the Rule to avoid most nonmedical based waiver requests.



- (b) Extensions
  - (1) An extension may be sought by filing with the Board a request, together with any appropriate or required supporting material or documentation (e.g. physicians' letters, medical records, military deployment orders). The filing of an extension request does not toll the running of any time limit set forth in these regulations or the Rule regarding suspension.
  - (2) An extension shall be valid for the specific time period granted by the Board unless renewed or extended. An extension will be granted only for good cause.
  - (3) If the extension is based on medical reason, condition, illness or hospitalization, then the application for extension shall be a completed form entitled "Request for an Extension Based on Hospitalization, Illness or Medical Reason." It must be completed and signed by the admitting, family or attending health care provider and it must set forth the medical condition, hospitalization or illness which prevents the member from completing the required MCLE courses for the period for which an extension is being requested and have attached to it any appropriate supporting material or documentation.
  - (4) If the extension is based on non-medical reasons, then the grounds should be stated in a letter to the Board and any appropriate supporting material or documentation should be attached.
  - (5) All extension requests should be promptly submitted when the grounds for the extension request become known to the applicant or the applicant's representative. Failure to file an extension request in a timely manner may be considered by the Board in determining whether to grant an extension. A prudent lawyer will use the carryover of credits provision of the Rule to avoid most non-medical based extension requests.
- (c) Deferrals
  - (1) Members who change their class of membership from Active or Emeritus Member to any other class of membership, as defined in Paragraph 3 of Section IV, Part Six, Rules of Virginia Supreme Court, during the course of the compliance year may defer the completion of any remaining MCLE requirements (including payment of any outstanding MCLE delinquency fee obligations) for that compliance year including any MCLE deficiencies for any previous year(s). Prior to reactivation of their membership status, members shall satisfy all deferred MCLE requirements in addition to the requirement for the current compliance year. Credit hours reported for compliance with the current year's requirement must have been completed within the previous twelve months prior to reactivation.

**Regulation 112**  
**Representations by Members**

A member who makes a materially false statement in any document filed with the Board shall be subject to appropriate disciplinary action.

Effective November 1, 2011

## VIRGINIA STATE BAR MCLE OPINION 13

### LEGAL ETHICS

The Virginia Supreme Court has required by Rule of Court that each active member of the Virginia State Bar complete a certain minimum amount of continuing legal education "in the area of legal ethics or professionalism." MCLE Regulations provide that an approved or program may provide credit toward this requirement by addressing "topics embraced in recognized formulations of rules of professional conduct or codes of professional responsibility applicable to attorneys." The board has encountered instances where it has received applications for approval of ethics credits for topics which do not objectively pertain to or specifically address rules of professional conduct or codes of professional responsibility specifically applicable to attorneys.

The following are examples of some of the topics and types of courses which DO NOT qualify for ethics credits:

**Ethics in Government** Programs or components which, although presented to attorneys, focus on standards of conduct applicable to non-attorney employees including those dealing with:

- i) the ethical standards applicable to governmental employees, federal legislators, governmental contractors;
- ii) United States' employees' compliance with the President's Executive Order requiring a standard of conduct higher than the bare ethical rules might require;
- iii) educating the government attorney in these standards to enable that attorney to better advise a legislative and/or executive branch client on the applicable standards.

**Medical Ethics** Programs or components which, although presented to lawyers, focus on:

- i) an analysis or the application of medical ethics, "bioethics," or "biomedical" ethics;
- ii) statutory options involving "living wills," the right to die, and "informed consent";
- iii) educating the lawyer in these subjects to enable that lawyer to better advise a client.

**Ethics of other Professions** Programs or components which although presented to lawyers, focus on:

- i) an analysis or the application of ethical standards governing members of a profession other than the legal profession, e.g. ethics for museum administrators, accountants, realtors, architects, engineers, chemists, etc.;
- ii) educating the lawyer in these standards to enable that lawyer to better advise a client on the applicable standards.

**Business or Corporate Ethics** Programs or components which, although presented to lawyers, focus on:

- i) an analysis or the application of ethical standards appropriate for executives, corporate officers and employees;
- ii) educating the lawyer in these standards to enable that lawyer to better advise a client on the applicable standards.

**Rules of Procedure, Rules of Evidence and Litigation Tactics** Programs or components which focus on rules of procedure or rules of evidence, unless the focus of the programs or components also provides a substantial treatment of applicable rules of professional conduct or codes of professional responsibility. In particular, malpractice prevention programs or components which focus primarily on malpractice litigation, tactics, or strategy will not be approved for ethics credit.

Programs or components devoted to or including these topics may meet the requirements for general MCLE credit. The board is of the opinion that such topics do not fulfill the requirement for continuing legal education in the area of legal ethics or professionalism. The board will therefore not assign ethics credits to such topics.

*[Paragraph 17.C.(1) of Section IV, Part Six, Rules of the Supreme Court of Virginia and MCLE Regulations 101(q), 101(r) and 103(d)]. (12/92)*

Amended effective 7/1/07

Amended effective 11/1/09

Updated: October 29, 2009

## **VIRGINIA STATE BAR MCLE OPINION 14**

### **REQUIREMENT FOR WRITTEN MATERIALS**

The Supreme Court of Virginia has required by Rule of Court that courses or programs qualifying for MCLE credit must provide attendees with written educational materials which reflect a thorough preparation by the provider of the course and which assist course participants in improving their legal competence. Paragraph 17(H)(3) of Section IV, Part Six, Rules of the Supreme Court of Virginia. In compliance with this mandate, the MCLE Board has promulgated Regulation 103(g). That provision provides:

Thorough, high quality instructional materials which appropriately cover the subject matter must be distributed to all attendees at or before the time the course is presented. A mere agenda or topical outline will not be sufficient.

Although courses of shorter duration may require less lengthy materials, this requirement must be satisfied by courses of any length in order for MCLE credit to be granted.

The purpose of the requirement of written materials is threefold. First, it insures thorough course preparation by the provider. Generally, the provider must furnish materials prepared specifically for the course and the subject matter addressed. The distribution of copies of cases or statutes without customized materials is not acceptable. A second purpose of this requirement is to insure that the attendees will be provided with materials which are useful after the course is completed. Materials provided should be sufficient to assist the attendee when questions regarding the particular subject matter covered are raised at a later date and to serve as a general resource after course completion. The third reason for this requirement is to allow the MCLE Board to evaluate the quality and nature of the course and the actual subject matter being covered. Occasionally neither the title of the course submitted on an application nor the agenda for the presentation provides sufficient information about course content to allow evaluation. The review of the written materials provided to course attendees allows the Board to assess the quality and subject matter of the course and to insure that the topics addressed are appropriate for accreditation purposes.

In determining whether written materials are adequate, the Board will also consider the teaching method employed. For example, materials appropriate to participatory skills development courses, such as a trial advocacy course, will differ from a course where a straight lecture method is employed. Moreover, courses in which role-playing or other interactive teaching methods are employed will have varied materials.

Several recurring problems regarding the provision of instructional materials, however, have come to the Board's attention.

a) Written materials which contain only hypotheticals will not satisfy this requirement. While the discussion of hypotheticals can be an appropriate teaching method, written materials including only hypotheticals to be discussed will not suffice as thorough, high quality instructional material. On the other hand written materials in which the hypotheticals are accompanied by (1) course materials which assist the understanding of the subject matter and have reference value to the participants or (2) course materials which provide a thorough written discussion and/or responses to such hypotheticals may satisfy this requirement. Such written discussion or

responses to hypotheticals may be provided to the participants separately at any time up to the time of the conclusion of the course.

b) Bibliographies or a list of other reference materials, such as internet sites, standing alone, will generally not suffice as thorough, high quality instructional material. Similarly, sample pleadings, without instructional materials are inadequate to satisfy this requirement. The requirement to provide written materials can be satisfied by providing printed copies or copies stored on electronic media. It may also be satisfied by allowing attendees access to a web site or other area where electronic copies are available for downloading. In the event that a provider does not provide printed copies to all course participants, such copies must be made available to any attendee who requests them.

[Paragraph 17(H)(3) of Section IV, Part Six, Rules of the Supreme Court of "Virginia; MCLE Regulation 103(g)].

Revised 02/11/02

Revised 08/15/13 to change reference to MCLE Regulation 103(f) to 103(g).

*Updated: Aug 15, 2013*

## **Important FCBA Dates 2017-2018**

July 26, 2017	Executive Committee Meeting
September 27	Executive Committee Meeting
October 25	Executive Committee Meeting
November 2	28 <sup>th</sup> Annual Charity Auction
November 29	Executive Committee Meeting
December 7	31 <sup>st</sup> Annual Chairman's Dinner
December 20	Executive Committee Meeting
January 31, 2018	Executive Committee Meeting
February 28	Executive Committee Meeting
March 28	Executive Committee Meeting
April 25	Executive Committee Meeting
May 4-6	Annual Seminar, Kingsmill, Williamsburg, VA
May 23	Executive Committee Meeting
June 27	Executive Committee Meeting