



2022 – 2023
Co-Chair Handbook

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WELCOME MESSAGE FROM THE PRESIDENT

Welcome to the FCBA's 2022-23 year! On behalf of the officers and Executive Committee, I want to thank you for your willingness to serve the Tech Bar in a leadership role. The work of our committee and chapter co-chairs is essential to the FCBA's mission of offering our members a full complement of CLE programming, lunch and learns, social gatherings, and many other creative events that will take place over the next year.

Raising our Bar. You may have heard that I have coined the phrase "Raising our Bar" for this FCBA year (hopefully you aren't sick of it already!). More specifically, I want all of our members to embrace their role in the FCBA and **help us recruit new members**. You, as co-chairs, are particularly important to this effort. You are some of our most active members, and essentially serve as Tech Bar ambassadors. Every one of you can help Raise our Bar by recruiting just one new member. So please, ask a colleague in your firm; ask a friend from a peer company; ask a student in class; ask your fellow FCCer; ask your outside counsel; and **definitely don't forget to ask your CLE speakers**.

The Tech Bar. You can also help Raise our Bar as we continue to modernize our brand and highlight our status as the Tech Bar. We rely on our co-chairs to ensure that, as a bar, we retain our reputation for collegiality and strive to strengthen existing connections and build new ones. We also want to continue to take meaningful steps toward enhancing our outreach and programming for professionals whose practices go beyond a primary focus on the FCC. With your help, we can enhance the FCBA's value proposition across the tech sector and across the country, especially for those practitioners who live beyond the Washington, D.C. area.

Inclusion and Diversity. It cannot be emphasized enough that inclusion absolutely Raises our Bar. We are a bar of lawyers, engineers, economists, and policy wonks. We are a bar of seasoned broadcast attorneys and first year law school students. We can be found across eleven chapters. We are a bar of diversity; of cultures, ethnicities, abilities, gender, and sexuality, which is a collective foundation of Raising our Bar. We have made great progress on this front thanks to the work of many of you, and we will continue to do better. Please always ensure your panels and events reflect our bar's tremendous diversity.

As you plan CLEs, lunch and learns, happy hours, or other activities, please keep these three objectives very much front of mind. Thank you in advance, and if you have ideas on how you or your committee/chapter can help Raise our Bar, please don't hesitate to reach out to me, the FCBA staff, or anyone on the Executive Committee.

#raisingourbar

Barry Ohlson
FCBA President
2022-2023

FEDERAL COMMUNICATIONS BAR ASSOCIATION
OFFICERS AND EXECUTIVE COMMITTEE MEMBERS
July 1, 2022 – June 30, 2023

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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 throughout the year to further those goals.

On-the-Record Presumption

There is a presumption that all FCBA events will be held on-the-record, consistent with the Policy Statement on Open Meetings.

Committee CLE Obligations

Substantive committees are expected to plan at least two CLE seminars – one in the fall and one in the spring – in cooperation with the CLE Committee.

- **Each committee will choose a CLE date in August for the fall and in December for the spring.**
- The **CLE Committee**, as well as the Executive Committee, can help you generate ideas and identify speakers, as well as vet speaker materials prior to submission to state bar associations to receive CLE course credit.
- Detailed information about planning CLEs is included in the section of this Handbook below entitled “In-Depth Guidelines and Important Information for Planning a CLE.”

Other Committee Programming

Committees are encouraged to schedule social programs or non-CLE substantive programs (e.g., lunch and learns) throughout the year either for free or for a fee. Committee/chapter program dates for lunch and learns will be granted on a first-come, first-served basis. Availability options will depend on CLE scheduling and staff availability.

Programming Format

The past two years have shown us that virtual programming can offer tremendous benefits to a national bar association like the FCBA. In particular, because of the flexibility of the virtual format, our CLEs have drawn notable speakers from across the country, and we have seen robust participation from FCBA members nationwide. Moreover, countless members in the Washington, DC area have told us how much they value the convenience of logging into a CLE from their computer without having to devote additional time to travel. We also believe that all-virtual CLEs largely provide a smoother experience for speakers and attendees alike.

At the same time, given the return to in-person work, the FCBA wants to actively promote in-person lunch and learns while maintaining hybrid options, and to encourage in-person social activities. We believe there is great value in holding certain events in person to allow for the type of personal engagement that is one of the hallmarks of our bar.

In short, we are striving for a balance that highlights the best features of all programming options. We realize that there is no perfect approach to event programming, but we believe the approach outlined below is optimal for the majority of our members—wherever they are located—and for the association as a whole. Consequently, please follow the guidelines below when planning your programming.

Regardless of the type of program, co-chairs still must contact the FCBA staff to secure a date to avoid any problematic overlaps and to invite certain government speakers as detailed in the speaker policy statement below.

CLEs To Remain All Virtual

- For now, all CLEs must be 100 percent virtual.
- The FCBA staff continues to be available to run virtual CLEs using the FCBA platform.
- If you are planning a CLE that you believe will benefit from an in-person component, please contact Kerry/Janeen and your CLE liaison (if applicable) and explain your request, including a detailed discussion of how the program will be conducted in a hybrid format. Requests to offer hybrid CLEs will require Officer approval.
- Where appropriate, we encourage committees to use a CLE meeting format that facilitates a collaborative event in which all participants have the option of engaging in chat, turning on their video and audio, and viewing other attendees. Please note that in selecting the meeting format, a co-chair likely will need to be available to specifically assist FCBA staff in helping manage attendee engagement, chat, use of presentation materials, etc.
- We recognize that certain events might lend themselves more naturally to a webinar format in which attendees aren't able to appear on camera or interact with the speakers. If your committee determines that a meeting format will not work for a planned event (e.g., based on a key speaker request), a webinar format is acceptable.

Lunch and Learns May Be Held In-Person with a Hybrid Option

- If your committee wants to hold an in-person lunch and learn, a hybrid option must be provided for attendees. This will ensure that even those not able to travel physically to the location of the lunch and learn will be able to participate.
- It is the sole responsibility of the committee co-chairs to find a venue for the in-person component of the event, host the platform for the virtual component of the event, and ensure the proper technology and technical staff are in place to hold a hybrid program. The contact information of the event organizer(s) will be shared with attendees in case of technical difficulties.
- FCBA staff will not attend the program but will assist with registration and dissemination of program information if the committee prefers.
- The FCBA staff will be available to facilitate an all-virtual lunch and learn if that is the committee's preference.
- If your committee wants to hold an in-person lunch and learn or similar program without a hybrid option, please contact Kerry/Janeen and your CLE liaison (if applicable) and explain your request in detail. Such requests will require Officer approval.

Social Events May Be Held In-Person, Hybrid, or Virtually

Social events may be organized in any format, and no prior approval is required, subject to the FCBA's current COVID policy.

Chapter Events May Be Held In-Person, Hybrid, or Virtually (except for CLEs)

Chapter events may be organized in any format, and no prior approval is required, subject to the FCBA's current COVID policy. A hybrid option is strongly encouraged for any events with substantive programming.

FCBA's COVID Policy as of August 25, 2022

Below is the FCBA's current COVID policy, which will apply to any FCBA event with an in-person component:

To promote safety and well-being, all attendees are required to be [fully vaccinated](#) under [CDC COVID-19 guidelines](#) prior to attending an FCBA event. On the day of the event, attendees are asked to complete the [CDC COVID-19 Facility Access Tool](#). If there is a circumstance preventing vaccination, the attendee should follow the protocols outlined in the CDC access tool consistent with the CDC's COVID-19 [Community Level](#) guidance. *In attending the event, you acknowledge that the FCBA cannot guarantee that attendees will not be exposed to or contract COVID-19 and that by attending you may be increasing your risk of contracting or spreading COVID-19.*

Note: Some venues may impose different COVID safety requirements. If you plan to hold an in-person event, the FCBA staff must be made aware of these requirements in order to clearly communicate them to registrants.

How to Schedule an Event

Janeen Wynn, FCBA's Senior Manager of Programs, is responsible for assisting you in planning your events and coordinating all activities in order to minimize conflicts with other FCBA-related events.

- **Be sure to check with Janeen before scheduling any program.**
- Janeen will be able to send you a list of your committee/chapter members, set up registration for events, and distribute upcoming event notices to your committee/chapter members.
 - **Mailing List Policy:** Committee member distribution lists are to be shared with fellow co-chairs only and should only be used for FCBA-related correspondence. Use of these lists for the purpose of any non-FCBA solicitation or advertising purposes is prohibited. Any abuse of this policy can result in your removal as a Co-Chair.

Kerry Loughney, FCBA's Executive Director, will be available for questions pertaining to speaker invitations, co-hosting events, FCBA policies and procedures, and other general inquiries.

- **Kerry should be consulted before inviting any member of federal agency leadership (e.g., Chairs, Commissioners, Administrators) to participate in your FCBA event, consistent with the FCBA Policy Statement on Invitations to U.S. Government Speakers.**
 - This is essential to streamlining outreach and coordinating calendars of officials who are often in high demand.

Diversity in Program Planning

Diversity and inclusion in all areas should play a central role in FCBA programming. Co-chairs should consider diversity at the very beginning of the planning process so that those aspects are integral to the programming, rather than added at the last minute. If you need help finding speakers, please reach out to your CLE or Executive Committee Liaisons. FCBA will not promote any programming without sufficient diversity.

Publicizing Committee/Chapter Events

The FCBA publicizes committee/chapter events on the website, via emails to members, on its social media sites, and in the monthly newsletter, which is emailed to all FCBA members at the beginning of each month. To maximize attendance, all events should be publicized as far in advance as possible.

- Please send Janeen the event details, including at a minimum:
 - Date/Time
 - Subject matter

- Speakers
- Twitter and LinkedIn handles for speakers and moderators and their employers
- Janeen will set up the event for registration in FCBA's online system. Please email her when you need an update on registrant counts, registrant names, or other information pertaining to the event.
- **The deadline for newsletter submission is around the 25th day of the prior month.** Kerry will email all co-chairs to remind them of the deadline each month. Although FCBA tries to send reminders to committee/chapter members for events, those reminders will not reach non-members who might want to participate. **Therefore, notices of all upcoming events should be publicized in at least one, and preferably two, newsletters in order to maximize attendance.**

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.

Filings and Other Statements on Behalf of the FCBA

Any comments or 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 Executive Committee meeting 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.

FEDERAL COMMUNICATIONS BAR ASSOCIATION

POLICY STATEMENT ON INVITATIONS TO U.S. GOVERNMENT SPEAKERS

It is the policy of the FCBA that all speaking invitations for any Association event, including Committee/Chapter activities, to senior U.S. Government officials, including the Chairs of the FCC or FTC, Administrators of NTIA, FCC/FTC Commissioners, and Bureau Chiefs, and the equivalent levels in any other U.S. Government Agency, must be cleared by, and issued through, the FCBA headquarters office.

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

Any travel expenses for U.S. 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 publicized as far in advance of the meeting as possible so that members of the press can be made aware. An announcement also should be made at the beginning of the meeting and, if applicable, 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 them 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 are 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

IN-DEPTH GUIDELINES AND IMPORTANT INFORMATION FOR PLANNING A CLE

The FCBA strives to present useful, educational, and substantive seminars that meet the CLE needs of the greatest possible number of FCBA members. The FCBA is responsible for assisting committees in planning CLE seminars and coordinating CLE programs with other FCBA events and activities.

Substantive committees should plan at least two CLE seminars – one in the fall and one in the spring. Each committee should contact Janeen Wynn to choose a CLE date in August for the fall and in December for the spring. Committees are encouraged to plan ahead in order to successfully hold the CLE on its assigned date.

Because CLEs are a **membership benefit** and are **critical revenue-producing programs** for the FCBA, it is of utmost importance that committees adhere to the timeline and requirements for planning. The earlier events are publicized, the greater the likelihood that the event will be well-attended.

The FCBA staff will host all virtual CLE programming on the Zoom platform, set up the CLE for online registration, and email the program login information to attendees.

Committees should work with FCBA staff and their assigned CLE and Executive Committee liaisons on all aspects of planning to ensure adequate assistance is available when necessary.

TIMELINE

August (for the fall) and December (for the spring):

- Committees should contact Janeen Wynn to request a date and identify a tentative topic for a CLE. Committees should adhere to their CLE dates once they are on the calendar. Canceling a CLE takes away a program date from another committee and could result in a substantial lost revenue opportunity for the FCBA.
- CLEs are generally held Monday through Thursday starting anytime between 12:00 p.m. ET and 4:00 p.m. ET. CLEs should be scheduled for two (2) full hours in order to obtain the standard CLE credit approval.

60 Days Before the CLE:

- **Update the FCBA staff and your assigned CLE and Executive Committee liaisons regarding topic and speakers.**
 - It is important to confirm that you will be holding a CLE on the assigned date.
 - If you are having trouble settling on a topic or finding speakers, the CLE and Executive Committee liaisons will be able to assist you.
- **Prepare a draft agenda**, which should include:
 - Program title,
 - Description of the topics to be covered,
 - Schedule and titles of the panels, and
 - Speaker names and affiliations, as well as Twitter/LinkedIn handles for speakers and their affiliated institutions.

In addition to using this material for publicity purposes, the FCBA staff will submit this information to the Virginia State Bar to apply for CLE credit. Because the process for obtaining CLE credit may take up to six weeks, receiving this draft agenda in a timely manner is critical.

- **Choose a primary contact person** (in many cases the seminar moderator), who will:
 - Be responsible for coordinating logistics of the seminar with the FCBA staff.
 - Work with the speakers on the program.
 - Work with FCBA staff to arrange a practice session in Zoom.
 - Collect speaker materials.

- **Draft a notice for the newsletter.** CLE seminars should be publicized in at least one newsletter.
 - The deadline for each issue of the newsletter is approximately the 25th day of the prior month.
 - The 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.
 - The FCBA staff will format the article.

- **Choose seminar topics and speakers that will appeal to a significant number of FCBA members.**
 - Select speakers who are knowledgeable, balanced, and will be engaging and interesting. **Please make sure the speakers are aware ahead of time that the CLE seminar is on-the-record and will be recorded.**
 - Limit the number of speakers to no more than five per panel, though fewer is preferred to allow maximum panel participation.
 - Carefully consider the format of the seminar and select a moderator who can maintain control and keep the program moving.
 - **Diversity and inclusion in all areas should play a central role in all FCBA programming. Programs lacking proper representation may be cancelled by the FCBA.**

At Least 15 Business Days before the Seminar:

- Provide the FCBA staff with an updated agenda.
- Arrange for a Zoom practice session with the FCBA staff and all speakers.
 - This is a requirement. All speakers need to be familiar with the software and run of show BEFORE the day of the CLE.
 - Speakers are able to share slides, other documents, or video, but are responsible for controlling their own.
 - The FCBA staff will assist with training speakers on how to use these visuals in Zoom during the practice session.
- Moderators of each panel should set up a call with the speakers to discuss speaking order, topics, and questions that will be covered during the CLE.
 - This should NOT be done during the practice session with FCBA staff.

At Least Five Business Days before the Seminar:

- Provide the FCBA and your CLE Committee Liaison with handouts for the seminar, including the final agenda, brief speaker and moderator biographies, and speaker materials.
 - [Click here](#) for detailed information from the Virginia Bar website on handout requirements. Among other things, handouts need to contain sufficient legal information to qualify for CLE credit.
 - The VA Bar requires one handout per panel created specifically for that CLE.
 - Power Points are the most frequently accepted materials.
 - Copyrighted material should not be provided unless it is accompanied by the proper permission.

Day of the Event:

- All panelists MUST log into Zoom 20 minutes before the scheduled time for an audio and video check.
- Seminar handouts are emailed to attendees the day of the CLE by the FCBA staff.
- Seminars are recorded and may be made available for purchase after the event.
- 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.

After the Seminar:

- After the seminar, it is suggested that you send thank you letters/emails to speakers and that you copy FCBA on such correspondence. Please also include a link to [FCBA membership](#) when corresponding with non-members.

OTHER GENERAL ISSUES

- The FCBA is an accredited sponsor in Virginia and California and the number of CLE credits approved equals the total substantive hours for the program.
- The FCBA does not obtain CLE credit for states other than Virginia and California. The FCBA will, however, supply a generic certificate of attendance that may be used for applications to other states. Attorneys must apply individually for credit for courses and submit any forms and payments necessary directly to the state bar.
- **Please think about ways to involve Chapters outside of DC.** Because we are utilizing a virtual format for CLEs, there are more opportunities to involve the Chapter co-chairs in programming. Feel free to work with them directly or to discuss with your CLE or Executive Committee Liaison.

Tips on Selecting and Coordinating Speakers and Moderators:

- Select speakers who are knowledgeable, balanced, and will be engaging and interesting.
- Diversity and inclusion in all areas should play a central role in FCBA programming—please make sure *all* panels reflect the diverse nature of FCBA membership. If you need help finding speakers, please reach out to your CLE or Executive Committee Liaisons.
- Limit the number of speakers per panel to five. Attendee feedback indicates that they appreciate and benefit more from listening to fewer speakers for a longer period of time.
- Have a call with speakers to divide up the topics and agree on format (*e.g.*, panel, series of individual speakers, when to have Q&A).

- 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 recorded. FCBA has an automatic speaker opt-in policy, and it is the responsibility of the organizers to distribute the speaker release form to every speaker (including moderators and those who are giving opening remarks) and ensure they have read it, but no signature is required.
- All events are open and on-the-record. If a speaker feels very strongly to have his/her remarks off-the-record, please contact FCBA Executive Director. If the event is approved to be off-the-record, this information should be publicized in writing well before the event and announced at the beginning of the event, before the speaker presents.
- Speakers should have brief written materials. Documents must be created specifically for the CLE; there must be at least one document per panel. Power Points are recommended. 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:

- Speaking invitations to senior US Government officials (*e.g.*, Chairs of the FCC/FTC, Administrator of NTIA, FCC/FTC Commissioners, and Bureau Chiefs, and the equivalent level in any other US Government agency) must be cleared by and issued through the FCBA.
- FCBA Co-Chairs may directly invite other US Government staff to speak at FCBA events.

FEDERAL COMMUNICATIONS BAR ASSOCIATION SPEAKER RELEASE

By agreeing to speak or participate as a speaker/panelist/moderator (“Speaker”) in a Federal Communications Bar Association (“FCBA”) sponsored event (“Event”), Speaker agrees to the following:

Speaker grants the FCBA (including its successors, assigns, and/or licensees or any organization that co-sponsors the Event) an irrevocable, non-exclusive right to audio and/or video record their voice and likeness during the Event, and to own and control any resulting recordings (“Recording”).

Speaker grants to the FCBA the full and irrevocable nonexclusive right to produce, edit, copy, distribute, sell, transmit, or exhibit the Recording, in whole or in part, alone or with other materials, throughout the world, in any medium (including, but not limited to, Internet streaming, film, video, or cablecast or any similar electronic or mechanical method).

Speaker acknowledges that any photograph or audio or video recording taken of the Speaker pursuant to this release becomes the sole and exclusive property of the FCBA. Speaker further acknowledges and agrees that members of the press may be invited to the Event which, unless otherwise agreed to in advance between Speaker and FCBA, is presumed to be “on the record,” which means journalists attending the Event may quote or paraphrase what you say, and attribute certain reporting to you.

Speaker understands 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 or professional development, to FCBA members, prospective members, and other interested individuals.

Speaker represents and warrants that they have the full right and authority to use any and all materials contained in the Work, and that publication, distribution, and/or transmission of the Work will not infringe the rights of others.

Speaker authorizes the FCBA to use Speaker’s name, biography, voice, and likeness to publicize both the FCBA and the Event (including the availability of any Recording) via any technology or medium (including the FCBA newsletter, electronic mail, or via Internet websites, applications, or services) for whatever time period is chosen by the FCBA. The FCBA warrants that it will authorize no commercial or other use of any Recordings or Works mentioned herein except as specified in this release.

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

Speaker understands this release does not obligate the FCBA to record, broadcast, or distribute any part of an Event, Work, or other materials.

Speaker represents and warrants that they have authority to accept the conditions and grant the rights in this release.

If you have any concerns or questions about this release, please contact Executive Director Kerry Loughney at kerry@fcba.org.

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

FEDERAL COMMUNICATIONS BAR ASSOCIATION
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)

IMPORTANT FCBA DATES 2022-2023

July 27, 2022	Executive Committee Meeting
August 24	Executive Committee Meeting
September 20	FCBA Foundation Golf Tournament
September 28	Executive Committee Meeting
October 26	Executive Committee Meeting
November 3	FCBA / FCBA Foundation Charity Auction
November 30	Executive Committee Meeting
December 15	FCBA Annual Dinner featuring FCC Chairwoman Rosenworcel
December 21	Executive Committee Meeting
January 25, 2023	Executive Committee Meeting
February 22	Executive Committee Meeting
March 29	Executive Committee Meeting
April 26	Executive Committee Meeting
April 28-30	FCBA Annual Seminar at Kingsmill Resort in Williamsburg, VA
May 31	Executive Committee Meeting
June 28	Executive Committee Meeting

VIRGINIA STATE BAR PROFESSIONAL GUIDELINES
MANDATORY CONTINUING LEGAL EDUCATION REGULATIONS

Effective November 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 9
COURSE APPROVAL

The board will not approve for MCLE credit activity that essentially is law reform or other public interest work. Such work includes that done by such elected bodies as the General Assembly, work done by such appointed boards as the National Conference of Commissioners on Uniform State Laws or the Virginia Code Commission, and work done by such voluntary groups as the Virginia State Bar sections where law reform or need for redrafting or enacting new legislation is the topic. Work done by such groups either voluntarily or because of acceptance of an appointment, has educational value, as does many other kinds of work. Such work, however, is not the kind in continuing legal study contemplated, or CLE courses or programs required, by the MCLE Program established by the Virginia Supreme Court. [Paragraphs 17.C and 17.G of Section IV, Part Six, Rules of the Supreme Court of Virginia and MCLE Regulations 101(g), and 103].

10/15/86

VIRGINIA STATE BAR MCLE OPINION 10
COURSE APPROVAL

Regulation 103(b) and (c) require that courses to be approved must have "significant intellectual or practical content," a "primary objective" of increasing "professional competence and skills as an attorney" and "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." The board has encountered instances where it has received applications for course approval of subjects which are not law related, for example, courses involving engineering, accounting or construction to name a few. These course applications have been received by various sponsoring organizations as well as Virginia State Bar members who attended such courses and subsequently sought approval.

When such course applications are received from a sponsoring organization, the board has no alternative in determining whether the course is beneficial for practicing attorneys except to apply an objective standard. Consequently, the course will not be approved unless it obviously pertains to a recognized legal subject or to the practice of law. Likewise, credit for teaching will be given only where the course pertains to the practice of law. Additionally, where a Virginia State Bar member teaches at a course which does not objectively pertain to the practice of law, credit for teaching, see Regulation 102(d), will not be given. However, where an application for course approval is received from a Virginia State Bar member, and the course does not pertain to a recognized legal subject, the board will give great weight to the obvious subjective determination of the member that the subject matter enhances his professional responsibility. For example, the member may have a product liability case where an engineering course would be very helpful.

The board recognizes that application of its rules in this manner may create an inconsistency - a Virginia State Bar member receiving credit for attendance at a course for which the sponsoring organization failed to receive approval. It is felt, however, that this manner of approval ensures that course sponsors will structure their programs to fully enhance the practice of law, while individual members are allowed wide flexibility in attending for credit courses unique to their practice needs.

6/19/87

Updated: Jul 27, 2006

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 PROFESSIONAL GUIDELINES
MANDATORY CONTINUING LEGAL EDUCATION REGULATIONS

Effective August 2017

VIRGINIA STATE BAR MCLE OPINION 14
REQUIREMENT FOR WRITTEN MATERIALS - IMPORTANT

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 fourfold. First, it ensures thorough course preparation by the provider. Second, it minimizes the need for attendees to take extensive notes, whether written or electronic, during the presentation thereby allowing attendees to focus their attention on the presentation. Third, it ensures that the attendees will be provided with materials that 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 fourth 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 ensures that the topics addressed are appropriate for accreditation purposes.

The phrase “[t]horough, high quality instructional written materials which appropriately cover the subject matter” as used in Regulation 103 means current and up-to-date materials that directly, concisely, and adequately cover the subject matter in such a way as to effectively and thoroughly instruct attendees on the topics covered during the program and assist course participants in improving their legal competence. These materials can include, by way of example and not limitation, the following:

- a. Materials prepared specifically for the course; or
- b. A book, chapter of a book, article, or other writing directly on point to the presentation.

Distribution of primary sources, such as statutes, regulations, cases, briefs, pleadings, or motions may supplement thorough, high quality instructional written materials; however, such primary sources alone are not adequate to satisfy the written materials requirement. Similarly, compilations of articles and informational resources may also supplement thorough, high quality instructional materials; however, such compilations alone, which require the attendee to research through the documentation in order to discern, ascertain or search for, the information conveyed during the program, will not satisfy the written materials requirement.

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. However, in all such cases, high quality instructional materials must be provided.

The following recurring issues regarding the provision of instructional materials have come to the Board's attention:

a) Presentation Slides: Presentation slides, such as PowerPoints, will satisfy the requirement for high quality written materials so long as the other requirements set forth in this opinion have been met. To be considered as written materials, an electronic or paper copy of the presentation slides must be distributed to the individual attendees at or before the presentation. Presentation slides which were not distributed to attendees at or before the presentation will not be considered when evaluating instructional materials.

b) Hypotheticals: 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.

c) Lists of Reference Materials: Bibliographies or a list of other reference materials, such as internet sites, standing alone, will not suffice as thorough, high quality instructional material.

d) Late Materials: Instructional materials provided after the course do not comply with Virginia's MCLE requirement.

The written materials requirement must be satisfied for each segment of a program. For any segment not meeting the written materials requirement, no credit will be granted. The requirement to distribute 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. To ensure easy access and identification by the attendee and the MCLE Board as they relate to the course agenda, instructional materials (whether in written or electronic format) must be readable, and user friendly. For example, a linear PDF file of documents without bookmarks to identify the agenda segment to which they apply would not be acceptable.

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

Effective 07/01/95

Revised 02/11/02

Revised 8/15/13 to change reference to MCLE Regulation 103(f) to 103(g).

Revised 8/21/17