



Commission on Minimum Continuing Legal Education (MCLE)

State of Connecticut Judicial Branch

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COUNSEL TO COMMISSION:

Elizabeth M. Rowe, Esq.

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Opinion 22

Whether Receiving Mandatory Diversity Training as Part of a Job Responsibility Qualifies as Minimum Continuing Legal Education (MCLE)

The Commission on Minimum Continuing Legal Education (Commission) received a request from the Chief Public Defender for an opinion about whether its mandatory diversity and racial equity training qualifies for MCLE credit. The Commission was invited to review the content of the course prior to offering an opinion on the merits. The unanimous opinion of the Commission is that the majority of the content does not qualify for MCLE credit, as it does not meet the requirements of a legal education course. The question as to whether the identified portions of the course, prepared by the American Bar Association (ABA), meet the three-part content requirement of Practice Book Section 2-27A(c)(6) is left to each individual attorney's good faith judgment.

A subcommittee of the Commission reviewed the materials available for the first seven sessions of the course entitled "Changing Lanes". Each session consists of a multimedia component, followed by a one-hour breakout session to discuss the material. The course consists

of a basic introduction to the tenets of diversity, equity and inclusion, including TED talks, PBS videos and interviews, documentaries on American history and the prison system, as well as some self-study lectures from the American Bar Association, in which a legal professional speaks to a group of prosecutors and public defenders about history and how it applies to modern interracial legal representation. In addition, there is an interactive session in which viewers are asked to look for implicit bias in client intake that is then later discussed in the break-out session questions. The Commission was also provided with the questions that are asked during the break-out sessions. It should be noted that the second half of the course is taught by a non-attorney and that the Commission was not provided with a syllabus of this curriculum to review.

To be eligible for continuing education credit, the course or activity must satisfy the delivery and content requirements of Practice Book §2-27A. The rule clearly provides that the government is an approved entity for the delivery of legal education courses, however, the course must still meet the content requirements of the rule. Practice Book Section 2-27A(c)(6) requires the course or activity to:

- (A) Have significant intellectual or practical content designed to increase or maintain the attorney's professional competence and skills as an attorney;
- (B) Constitute an organized program of learning dealing with matters directly related to legal subjects and the legal profession; and
- (C) Be conducted by an individual or group qualified by practical or academic experience.

We consider each requirement in turn:

(A) Does the proposed course have “significant intellectual or practical content designed to increase or maintain the attorney’s professional competence and skills as an attorney”?

The Commission has opined in the past that the mandatory two hours of ethics/professionalism can include legal education on bias, diversity and inclusion, as long as the activity is provided by an approved deliverer of CLE and is consistent with the content requirement found in Practice Book §2-27A(b)(2) and §2-27A(c)(6). This opinion also notes that “the two-hour ethics/professionalism requirement should be fulfilled by courses or portions of courses that are designed to maintain the integrity of the bar by ensuring that attorneys act with the highest degree of ethical and professional conduct.” (Please see Opinion 21.)

Whether a particular program meets the three-part content requirement of Practice Book §2-27A(c)(6) is left to the individual attorney’s good faith judgment. (Please see Opinion 15.) However, the Commission has reviewed the course material and offers its guidance to assist the attorneys working for the Division of Public Defender Services. The Commission is of the opinion that most of the material does not have significant intellectual or practical content designed to increase or maintain an attorney’s professional competence and skills as an attorney. Most of the material reviewed discusses the tenets of diversity, equity and inclusion, but does not translate into practical content that lawyers can use to enhance their skill level, knowledge, ethics and competence.

There is some content in the course that may be beneficial to lawyers, such as the ABA lectures to attorneys and the client-interaction review for implicit bias. Accordingly, the Commission leaves it up to the individual attorney to determine whether those lectures qualify for MCLE.

(B) Does the proposed course “constitute an organized program of learning dealing with matters directly related to legal subjects and the legal profession”?

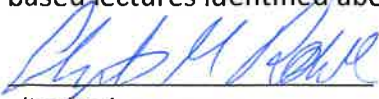
The Commission next considered whether the course materials meet the definition of an organized program of learning. As part of the course, all employees of the Division of Public Defender Services are required to read materials and to view documentaries and interviews. While the content may be high-quality, the Commission has never approved the time spent reading articles or watching movies as a substitute for legal education. Accordingly, the course material would, by itself, have to meet the self-study provision to constitute an organized program of learning. As noted previously, the only material provided that would meet this level of self-study are the ABA lectures that are designed for prosecutors and public defenders.

(C) Is the proposed course “conducted by an individual or group qualified by practical or academic experience”?

The lectures provided by the ABA appear to be taught by an individual qualified by his experience to teach the lectures.

The Commission was not provided with enough information about the breakout sessions, the course syllabus, or materials for the second course taught by a non-lawyer to offer an opinion as to whether the instructors are qualified to teach MCLE.

In conclusion, after reviewing the provided course materials, the Commission determined that the majority of the course materials would not qualify for MCLE credit, for the reasons stated above, and we leave it to the individual attorneys to determine in good faith, whether the legal-based lectures identified above, qualifies for part of their MCLE requirement.



Elizabeth M. Rowe
Counsel to the Commission