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MCLE: THE PERILS, PITFALLS, AND PROMISE OF REGULATION

Cheri A. Harris*

I. INTRODUCTION

For decades, various segments of the legal community have urged re-examination of the process of teaching and making lawyers. A common theme of these examinations is to describe legal learning as a lifetime endeavor in which continuing legal education (“CLE”) and mandatory continuing legal education (“MCLE”) play a significant role. The tension between the academic goal of teaching students how to “think like lawyers” and the pragmatic goal of ensuring that new lawyers have the skills necessary to practice law has been discussed in a variety of places.¹ Some describe this dichotomy as “education” versus “training.”² The more esoterically inclined might view it as a question of “being” versus “doing.”³ Either way, that dialogue provides interesting fodder for thinking about the role of CLE.

If an attorney’s education is like a stream that runs throughout the attorney’s career, CLE is situated downstream from the law school. As law school teaching evolves, whether in response to research about more effective educational methods or due to social and market pressures, CLE providers and regulators need to address similar issues. Lawyers coming from different educational backgrounds are likely to have differing needs for continuing education. As each law school class graduates and becomes subject to MCLE regulations, the ripple effects of

* Cheri A. Harris graduated from the Indiana University School of Law in Bloomington, Indiana, in 1988. She served as a law clerk to Chief Justice Shepard of the Indiana Supreme Court from 1988–1990. Currently she is executive director of the Organization of Regulatory Administrators of Continuing Legal Education (“ORACLE”). This Article reflects the opinions of the author and does not necessarily reflect ORACLE’s position on these matters.

¹ This conflict could also be viewed as a tension between theory and practice. See, e.g., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> [hereinafter MACCRATE REPORT]; Robert W. Gordon, *Legal Education in the United States: Origins and Development*, ISSUES OF DEMOCRACY, Aug. 2002, at 4, <http://usinfo.state.gov/journals/itdhr/0802/ijde/gordon.htm>; Carrie Menkel-Meadow, *Symposium on the 21st Century Lawyer: Narrowing the Gap By Narrowing the Field: What’s Missing from the MACCRATE REPORT—of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 598–99 (1994).

² See, e.g., Robert C. Cumbow, *Educating the 21st Century Lawyer*, 32 IDAHO L. REV. 407, 410 (1996).

³ See Menkel-Meadow, *supra* note 1, at 596, 600.

philosophical or structural changes at the school begin to arrive in the CLE pond. CLE providers and regulators can learn from the law school's decision-making process, can respond to these shifts, and would be well served by monitoring these debates in preparation for the next generation of challenges. Some examples of issues traveling through this fluid cycle include the move to assess law school outcomes, the need to address a variety of learning styles, and the need to accommodate expanding technology.

The legal community periodically invites law schools to reexamine their mission and determine how well they are accomplishing that mission. A common refrain in these discussions has been that the bench, bar, and academy must work together to create a continuum of legal education. CLE providers and regulators rightfully shoulder much of the responsibility for the quality of the formal training attorneys receive after law school. In fairness, it is time for the MCLE community to define its mission and measure its accomplishments as well.

This Article begins that analysis by reviewing the history, development, and original goals of CLE and MCLE; identifying weaknesses and strengths of the mandatory approach and considering whether goals are being met; discussing regional variations in the regulatory scheme; and suggesting mechanisms for improving relationships and communication within the MCLE community.

II. A HISTORY OF MCLE

Sir Walter Scott wrote: "A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect."⁴ That spirit informs this history of MCLE and the more detailed timeline that follows.⁵ This information may already be familiar to many readers, but it provides necessary context for the discussion.

CLE began as a voluntary scheme to assist attorneys returning from World War II in resuming practice after a lengthy military absence.⁶ In

⁴ Cumbow, *supra* note 2, at 12.

⁵ See Appendix, *infra*. This timeline is intended to provide context and aid in measuring progress to date by marking milestones surrounding the adoption and development of MCLE.

⁶ Lisa A. Grigg, Note, *The Mandatory Continuing Legal Education (MCLE) Debate: Is It Improving Lawyer Competence or Just Busy Work?*, 12 B.Y.U. J. PUB. L. 417, 418 (1998) (citing Rocio T. Aliaga, *Framing the Debate on Mandatory Continuing Legal Education (MCLE): The District of Columbia Bar's Consideration of MCLE*, 8 GEO. J. LEGAL ETHICS 1145, 1147 (1995)).

the 1930s, practicing attorneys gathered for two-hour lectures intended to keep them abreast of the federal regulations pouring out of Washington, D.C., in response to President Roosevelt's New Deal.⁷ In 1947, the American Bar Association joined with the American Law Institute to form ALI-ABA and create a structure to support state and local bar organizations in offering CLE.⁸ In 1958, ALI-ABA held the first of three national conferences on continuing education of the bar.⁹ Located at Arden House in Harriman, New York, these conferences became known as Arden I, II, and III.¹⁰

In 1973, Chief Justice Warren Burger delivered a speech, subsequently published in *Fordham Law Review*, addressing the poor quality of legal advocacy as a "problem of large scope and profound importance . . ." ¹¹ Some see Chief Justice Burger's comments as the catalyst of the modern MCLE movement.¹² Although his article, *The Special Skills of Advocacy*, never specifically mentioned CLE, his remarks emphasized that a significant amount of lawyer training happens after law school.¹³ Burger noted the challenge of developing competency in an "increasingly complex society and increasingly complex legal system."¹⁴ He suggested a system in which new law graduates specialize "under the tutelage of experts, not by trial and error at clients' expense."¹⁵ Burger pointed out that successful law firms develop their own in-house training because "good advocates are made . . . by study, by observation of experts and by training with experts."¹⁶

⁷ Linda Sorenson Ewald, *Professional Responsibility, Ethics and Professionalism: What Do They Mean in the Context of Mandatory Continuing Legal Education?* 2 (2005) (unpublished manuscript), <http://cleusa.com/jointsession2005.pdf>.

⁸ *Id.*; see also Grigg, *supra* note 6, at 418.

⁹ Ewald, *supra* note 7, at 2.

¹⁰ *Id.* at 2-3.

¹¹ Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 *FORDHAM L. REV.* 227, 227 (1973).

¹² See, e.g., Alan W. Ogden, *Mandatory Continuing Legal Education: A Study of Its Effects*, *COLO. LAW.*, Oct. 1984, at 1789.

¹³ See Burger, *supra* note 11.

¹⁴ *Id.* at 229. Describing how important staying abreast of ever-changing criminal law is to providing adequate criminal representation, Burger noted: "[I]n the past dozen or more years a whole range of new developments has drastically altered the trial of a criminal case. To give adequate representation, an advocate must be intimately familiar with these recent developments, most of them deriving from case law." *Id.* at 233. With the passage of time and the ever-increasing pace at which the law changes, this observation now seems to apply even more universally and to all areas of law.

¹⁵ *Id.* at 230.

¹⁶ *Id.* at 231.

362 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 40]

Two years later, in 1975, Minnesota became the first state to implement MCLE requirements, followed the next year by Iowa.¹⁷ By 1980, nine states mandated continuing legal education.¹⁸ That number was up to fifteen in 1985.¹⁹ By 1986, half of the states in the Union had adopted MCLE requirements.²⁰ Seven states, including Indiana, adopted regulatory programs that year.²¹ Those first twenty-five states have now been regulating CLE for twenty years or more, and the states that pioneered MCLE have reached 30th anniversaries. Together, they share about 530 years of regulatory experience.

With the growth in the number of MCLE states, MCLE administrators began to hold meetings to compare notes on issues of interest. The first meeting was held in 1986 in conjunction with the annual meeting of the Association of Continuing Legal Education ("ACLEA").²² A year later the group adopted the name AMCLEA, short for Association of MCLE Administrators. AMCLEA's earliest meetings focused on similarities and differences between the states, cooperation among the states, and funding sources. In 1992, AMCLEA changed its name to ORACLE, short for Organization of Regulatory Administrators for CLE, which continues to be the national association for CLE regulators.²³ Primary purposes of the current organization include providing an opportunity for the discussion and exchange of information among MCLE program administrators, as well as promoting and encouraging cooperation between MCLE organizations and CLE sponsors.²⁴

In 1992, the ABA issued the MacCrate Report, an inventory of the skills and values needed for competent practice and a blueprint for how

¹⁷ TERRY J. BROOKS, COMPARISON OF THE FEATURES OF MANDATORY CONTINUING LEGAL EDUCATION RULES IN EFFECT AS OF JULY 2005 II (N.Y. St. B. Ass'n 2005). Although both Minnesota and Iowa adopted MCLE rules in 1975, Iowa's rule did not take effect until 1976. *Id.* at 7.

¹⁸ *Id.* at 11.

¹⁹ *Id.* In the five years from 1985 to 1990, the number of states with MCLE programs more than doubled, reaching thirty-three.

²⁰ *Id.*

²¹ *Id.*

²² The organization first met February 2, 1986, but it did not choose a name until a year later. See Minutes, Association of Mandatory Continuing Legal Education Administrators (February 10, 1987) (on file with the author); Minutes of the February 2 and 3, 1986 MCLE Meeting (Feb. 2-3, 1980) (on file with author).

²³ See ORACLE Minutes, 1992 Annual Meeting (Aug. 5, 1992) (on file with the author).

²⁴ See Draft of ORACLE Bylaws (Aug. 1999) (on file with the author).

to acquire these skills and values.²⁵ The MacCrate Report, which served as another catalyst for expanding the role of MCLE, suggested that while law school lays a foundation, CLE plays a critical role in teaching the skills and values necessary for practice.²⁶ Randall T. Shepard, Chief Justice of Indiana, described the central contribution of the MacCrate Report as creating a vision of lawyer education as a “lifelong continuum in which various players take principal roles at different moments but which, in fact, ought to be one long and useful venture.”²⁷ The MacCrate Report added momentum to the already developing conclave movement.²⁸ Initiated by the Virginia State Bar in 1992, legal education conclaves were based on the idea that law schools, the bar, and the judiciary all share responsibility for legal education, and that a great deal could be accomplished if members of each could sit down in a non-threatening environment and discuss their mutual interests.²⁹ Among other recommendations, the Virginia Conclave suggested a need to re-examine the nature and goals of CLE.³⁰ The committee that developed the Virginia model urged planners to include participants of prominence who could help accomplish reform.³¹ In order to address the issues on a continuing basis and maintain the progress begun in the conclave, they considered it essential to develop a vehicle for ongoing work.³²

The Virginia Conclave became the model for many other states. Not long before the MacCrate Report was issued, the Virginia State Bar devoted an issue of its magazine to reporting on the conclave and sent that issue to law school deans and bar leaders around the country.³³ Although Virginia bar leaders intended to develop a forum for a broader range of issues, the timing of the MacCrate Report provided a “major

²⁵ MACCRATE REPORT, *supra* note 1. The committee that developed the MacCrate Report believed its basic mission was to suggest ways to build a better legal profession. Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 89 (1994).

²⁶ *Id.*; see also Randall T. Shepard, *From Students to Lawyers: Joint Ventures in Legal Learning for the Academy, Bench, and Bar*, 31 IND. L. REV. 445, 447 (1998).

²⁷ *Id.* at 447.

²⁸ *Id.* (citing William R. Rakes, *Conclaves on Legal Education: Catalyst for Improvement of the Profession*, 72 NOTRE DAME L. REV. 1119 (1997)).

²⁹ Rakes, *supra* note 28 at 1121, 1125.

³⁰ *Id.* at 1128. In 1997, Indiana became the twenty-fifth state to hold a legal education conclave. *Id.* at 1129–30 n.38; see also Shepard, *supra* note 26, at 452–53 (noting that Indiana’s conclave generated substantial changes to MCLE requirements in Indiana including the elimination of the three-year grace period during which new lawyers were not subject to MCLE and the imposition of a new lawyer skills program in its place).

³¹ Rakes, *supra* note 28, at 1126.

³² *Id.* at 1131.

³³ *Id.* at 1129.

364 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 40

stimulus of interest in the conclave concept,” and many subsequent conclaves primarily focused on implementing the recommendations of the MacCrate Report.³⁴

By 1993, the number of MCLE states reached forty and stayed at this number for a number of years. In late September of 2005, Illinois joined the fold, bringing the current number of MCLE states to forty-three.³⁵ The question of transitioning from a voluntary CLE program to a mandatory CLE requirement is currently under serious consideration in Alaska.³⁶

Historically, specialized CLE has been offered to attorneys practicing in a specific area of law in order to help them obtain better results representing their clients. Quite often, a statewide prosecuting attorneys’ organization will put together training for members of its group, while a statewide public defender group will provide training for its members. The same is true of the trial attorneys’ bar and the defense bar. However, recently this type of specialization by interest has taken a new twist. Groups pushing a specific political, social, or religious agenda, such as the Federalist Society, the Alliance Defense Fund, and Planned Parenthood, are providing free CLE in exchange for the attorney’s commitment to provide pro bono representation to further their causes.³⁷ Such activities suggest that elements of the presentation may be more focused on the group’s indoctrination rather than providing objective legal education.

³⁴ *Id.*

³⁵ ILL. SUP. CT. R. 790-97 (Minimum Continuing Legal Education Rules, effective Sept. 25, 2005), available at <http://www.state.il.us/court/SupremeCourt/Rules/Amend/2005/MRAMend092905.htm>. As of September, 2005, the eight states that do not have MCLE include: Alaska, Connecticut, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, and South Dakota. BROOKS, *supra* note 17, at III-V. However, South Dakota has obtained a high rate of voluntary compliance by funding free CLE through Bar Association dues. *Id.* at 4.

³⁶ In May of 2005, the Alaska Bar Board of Governors created an MCLE Task Force in cooperation with the Alaska Judicial Council and the Alaska Court System to look at the issue of MCLE for Alaska. E-mail from Barbara Armstrong, Alaska Bar Association CLE Director, to the Author (Oct. 18, 2005) (on file with the author). The Task Force plans to report to the Board in January 2006. *Id.*

³⁷ See Alliance Defense Funds Description of the National Litigation Academy, <http://alliancedefensefund.org/whatwedo/training/nla.aspx?cid=3151> (last visited Nov. 3, 2005) (“The attendee’s expenses are paid by ADF, including travel, lodging, and most meals. In return, each lawyer . . . commits to provide 450 hours of pro bono legal work on behalf of the Body of Christ.”).

Most recently, CLE has been cited as a way to maintain and spread the rule of law. In an article published in the State Department's online journal, *Issues of Democracy*, the authors describe the importance of lifelong learning, renewing one's knowledge and skills, and reinvigorating professional values as fundamental tenets in the life of a lawyer that are important to safeguarding the United States' system of justice.³⁸ The National Judicial College ("NJC") has hosted and provided legal education and professional development opportunities to 58,000 judges worldwide.³⁹ The State Department, U.S. Agency for International Development ("USAID"), and the World Bank have supported efforts to bring foreign judges from 150 countries to the United States.⁴⁰ NJC has created special courses for judges from emerging democracies. The National Center for State Courts ("NCSC") created an International Programs division in 1992 to improve the administration of justice and the rule of law worldwide.⁴¹ Working with USAID, they provide technical assistance and training projects, and each year they bring 300 to 400 foreign judges to visit American courts.⁴² One State Department publication suggests that the opportunities for continuing judicial education provided by NJC and NCSC "ensure that the world's citizenry is afforded the best protection possible under the rule of law."⁴³

In a paper delivered in 2005 at a joint meeting of the ACLEA and ORACLE, Professor Linda Sorenson Ewald pointed out that for decades ABA committee and conference reports have reflected concern over the state of the profession and recommended MCLE as part of the solution.⁴⁴ She describes this as a "unanimous belief that continuing [legal] education has a role to play in addressing these concerns."⁴⁵

³⁸ Macarena Tamayo-Calabrese, Annette Cook & Shirley Meyer, *Continuing Legal Education in the United States*, ISSUES OF DEMOCRACY, Aug. 2002, at 2, <http://usinfo.state.gov/journals/itdhr/0802/ijde/calabrese.htm>.

³⁹ Stuart Gorin & David Pitts, *Continuing Legal Education: Three Organizations that Fulfill the Need*, ISSUES OF DEMOCRACY, Aug. 2002, at 2-3, <http://usinfo.state.gov/journals/itdhr/0802/ijde/gorinpitts.htm>.

⁴⁰ *Id.* at 3-4.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 5.

⁴⁴ Ewald, *supra* note 7, at 6.

⁴⁵ *Id.*

III. MCLE: A LOVE-HATE RELATIONSHIP

While the ABA and participants in its various education committees and conferences have shown unwavering support for MCLE, lawyers subject to the requirements have not always agreed. Additionally, some sponsors, while reaping benefits from the larger market created by mandatory requirements, object to the inconvenience of complying with multiple states' regulations.

In some jurisdictions, the bar has spent years debating the adoption of MCLE. In New York the process took twelve years, but it resulted in a comprehensive plan to improve the public perception of the legal profession in a move one analyst likened to "what New York City Mayor Rudy Giuliani did for cab drivers."⁴⁶ In addition to instituting MCLE, New York's plan included developing a code of civility and a statement of client rights.⁴⁷ After years of discussion in Florida, it took four years to establish MCLE, from approval of the concept by the board of Governors of the Florida Bar in September of 1984, to final approval by the Florida Supreme Court in July of 1987, which took effect January 1, 1988.⁴⁸

Statements identifying the strengths and weaknesses of MCLE have run the gamut from outlandish to inspired. Support for and objections to MCLE fall into these categories: the effect on attorneys; the effect on the profession; the effect on CLE courses offered; opinions on mandates in general; the importance of statistical data; and opinions about the entity regulating compliance. The effect on the public seems to be accounted for by the comments listed under Parts III.A. and B.

A. *The Effect on Attorneys*

1. Opposed

Cost increases will result in hardship to many lawyers, and the financial burden will be particularly hard on government and out-of-state attorneys.⁴⁹ The cost is not just the tuition for CLE courses, but the opportunity cost of sacrificing a day of work to attend. If there is a

⁴⁶ Rose-Robin Pedone, *Legal Ed. Rules Face Dec. Debut*, LONG ISLAND BUSINESS NEWS, Nov. 20, 1998, at 5A.

⁴⁷ *Id.*

⁴⁸ Florida Bar, *Bar-Related Issues Background Papers: Continuing Legal Education Requirement* (Aug. 2004), available at www.flabar.org [hereinafter Florida Background Paper].

⁴⁹ *Id.*

lawyer incompetence problem, we must first define the problem and its scope before we can conclude that MCLE is the solution.⁵⁰ Some doubt that MCLE would really affect the level of lawyer competence.⁵¹

2. In Favor

While there is a cost to attending CLE, it is simply part of the ongoing cost of doing business as an attorney, similar to the cost of bar membership. There is also a benefit in that some malpractice insurance companies offer reduced rates for attorneys in MCLE states.⁵² Requiring continuing legal education merely formalizes what attorneys have been or should have been doing all along.⁵³ Proponents of CLE requirements in Florida and New York have argued that the requirement would assist in ensuring lawyer competence and knowledge, and seems the most feasible way to promote competency.⁵⁴ Live CLE prevents professional isolation by creating opportunities to interact and network with faculty and other participants, contributing to professional contacts and business development.⁵⁵ One commentator noted that “[c]ontinuing [legal] education compensates for the fact that attorneys cannot learn everything they need to know in three years of law school or perhaps even in thirty years of practice.”⁵⁶ MCLE creates an “educational habit” for attorneys, which seems fitting for members of a “learned profession.”⁵⁷

⁵⁰ Stuart M. Israel, *On Mandatory CLE, Tongue Piercing and Other Related Subjects*, LABOR AND EMPLOYMENT LAWNOTES, Spring 1999, available at <http://www.academyanalyticarts.org/israel.htm>.

⁵¹ *Id.*

⁵² Ogden, *supra* note 12, at 1790.

⁵³ See Pedone, *supra* note 46.

⁵⁴ See Florida Background Paper, *supra* note 48; Pedone, *supra* note 46.

⁵⁵ Tamayo-Calabrese, *supra* note 38, at 3.

⁵⁶ Grigg, *supra* note 6, at 434.

⁵⁷ The concept of an “educational habit” was cited in Alan W. Ogden’s article, *Mandatory Continuing Legal Education: A Study of Its Effects*. See Ogden, *supra* note 12, at 1795 (quoting a response to a questionnaire sent by Wisconsin’s MCLE program director, Erica Moeser, in July 1983). The MacCrate Report describes lawyers as “members of a learned profession.” MACCRATE REPORT, *supra* note 1 (Value 4).

B. *The Effect on the Profession*

1. Opposed

Implementation of the requirement is merely a response to outside pressure.⁵⁸ Despite twenty years of MCLE in forty states, the public is still appalled by lawyer behavior.⁵⁹

2. In Favor

Public pressure is a force that has contributed to the adoption of MCLE requirements, but it is not the only force, or even a primary force.⁶⁰ Florida supporters noted that MCLE would upgrade the profession, placing their jurisdiction among the growing number of states recognizing the need for MCLE.⁶¹ Of the alternatives for promoting competency, MCLE is the most feasible.⁶² The MacCrate Report identifies two fundamental values of the legal profession that require continuing education: the value of competent representation and the value of professional self-development.⁶³ Both “call for a commitment to continuing study, although the former section conceives of such study as a means of maintaining competence while the latter treats it as a means of attaining excellence.”⁶⁴

C. *The Effect on CLE Courses*

1. Opposed

Colorado attorneys worried there would not be enough courses available to meet the increased demand created by the requirement and that course quality would diminish as the number of courses increased.⁶⁵

⁵⁸ Ogden, *supra* note 12, at 1789.

⁵⁹ Israel, *supra* note 50, at 2.

⁶⁰ Ogden, *supra* note 12, at 1790. More significant forces include the improving of lawyer competence, the significance of continued learning to an attorney’s continued development, and the constant changes in the law, which require frequent revisiting of subject matter in any area. *Id.*

⁶¹ Florida Background Paper, *supra* note 48.

⁶² *Id.*

⁶³ MACCRATE REPORT, *supra* note 1.

⁶⁴ *Id.* at 136–37.

⁶⁵ Ogden, *supra* note 12, at 1789.

2. In Favor

MCLE has stimulated the growth of CLE programs nationally, resulting in increased opportunities for education. Courses have become more accessible, even in rural areas, especially with the advent of programs presented via new technology.⁶⁶ Some states have reported an increase in out-of-state providers after they adopted MCLE regulations.⁶⁷ In many cases, course quality has increased because of the accreditation process. Most states have a requirement for “high-quality written materials” to be available to participants. This requirement prompts presenters to devote time and effort to planning a presentation, reducing the number of off-the-cuff programs.⁶⁸ Providers have found some creative ways to compete in a more crowded marketplace and address attorneys’ concerns about taking time away from work to complete CLE requirements. For example, Albany School of Law offered CLE courses on Amtrak commuter trains in New York.⁶⁹ By sitting in a special car, where the instructor uses the public address system to teach class, lawyers can make the most of time spent shuttling from the city to the state capital.⁷⁰

D. Opinions on Mandates in General

1. Opposed

Even if continuing education is “good” for a lawyer, that doesn’t mean it should be mandatory. Many Florida attorneys did not object to the goals or design proposed in that state, but they did object to the “mandatory” nature of the program.⁷¹ One Michigan author strenuously objected to the suggestion that attorneys should have required education because other licensed professions do. The mere fact that “everybody else does it” does not mean that it is worth doing.⁷² Colorado opponents

⁶⁶ *Id.*

⁶⁷ *Id.* at 1790.

⁶⁸ *Id.* at 1789, 1791.

⁶⁹ Charles Keenan, *Continuing Education Sets Lawyers on Course*, CRAIN’S NEW YORK BUSINESS, Oct. 9, 2000, at 20.

⁷⁰ *Id.*

⁷¹ Florida Background Paper, *supra* note 48.

⁷² Israel, *supra* note 50. Israel equates this argument to the teenage “tongue piercing” argument, hence the title of his article, *On Mandatory CLE, Tongue Piercing and Other Related Subjects*. *Id.* Israel also claims that the public image of lawyers would be better served by disseminating a client Bill of Rights in lieu of MCLE. *Id.* However, New York has adopted a client Bill of Rights in conjunction with MCLE, not instead of MCLE. See Pedone, *supra* note 46.

370 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 40

expressed the view that voluntary CLE might be as effective as a mandatory CLE.⁷³

2. In Favor

Many other licensed professions require ongoing training or education in order for a person to maintain a license. One reason mandatory education is effective is because it reaches the significant number of people who do not take courses unless required. Statistics in Ohio and Colorado showed less than half of the attorneys in those states were attending CLE regularly before MCLE was implemented.⁷⁴ Subsequent evaluations in Colorado indicated that attorneys who would not attend courses absent a CLE requirement have found programs to be beneficial.⁷⁵ In the context of professional responsibility, Professor Ewald argues that because the rules of professional conduct have been revised, the use of new technology in the practice of law raises new questions, and too many attorneys do not know the rules, “few would question the value” of requiring lawyers to attend CLE programs on the rules of professional conduct.⁷⁶ Parallel arguments could be made for nearly every area of law.

F. *The Importance of Statistical Data*

1. Opposed

Opponents of MCLE in Florida argued that there was no evidence that mandatory CLE had accomplished its purposes where adopted, or that it would accomplish its stated purposes in Florida.⁷⁷

2. In Favor

Currently there is no way to test whether CLE results in improved competency. Some commentators have taken the position that even if they cannot prove that CLE improves competency, there is no evidence that it hurts competency either.⁷⁸ Favorable malpractice rates indicate that insurance companies find improved competency to be a reasonable assumption. Even without statistical proof that MCLE is effective, many

⁷³ Ogden, *supra* note 12, at 1789.

⁷⁴ *Id.* at 1793.

⁷⁵ *Id.*

⁷⁶ Ewald, *supra* note 7, at 9.

⁷⁷ Florida Background Paper, *supra* note 48.

⁷⁸ *See, e.g.,* Grigg, *supra* note 6, at 427.

in the profession seem to take for granted that MCLE is key to maintaining attorney competence.⁷⁹

H. Opinions About the Entity Regulating Compliance

1. Opposed

One aspect of the debate is the question of whether supreme courts or bar associations should oversee MCLE.⁸⁰ Some are concerned that a powerful and expensive bureaucracy will develop, and rigid requirements will not account for lawyers' varied learning styles, needs, and resources.⁸¹ Some attorneys fear that the rules will become complicated and difficult to follow. Others suggest regulation of the requirement will be unduly difficult.⁸²

2. In Favor

Some states have made an effort to minimize the burden.⁸³ Almost every state has an exception or will grant an extension for undue hardship, military service overseas, physical disability, and other situations that might temporarily keep an attorney from complying.⁸⁴ This provides some flexibility in how the rules are administered. Many states have adapted rules to reflect new formats and new technology, with the majority of states permitting credit for audio, video, or digital

⁷⁹ *Id.* Although the title, *The MCLE Debate: Is it Improving Lawyer Competence of Just Busy Work?*, suggests the author is unconvinced, her support of MCLE seems clear from her discussion of why MCLE rules or statutes should not exempt groups. She writes:

All attorneys who want to practice law can benefit from the MCLE programs. The legal profession is a challenging and dynamic world where new statutes and interpretations continually arise. Thus, to be competent, an attorney must continue to adapt and learn. Many in the profession argue that continuing education is crucial to the adaptation and learning process.

Id. at 423.

⁸⁰ In 1986, while Florida's MCLE rule was under consideration, the Florida Conference of District Court Appeal Judges filed a brief arguing that they should be exempt from the rule. Florida Background Paper, *supra* note 48. Furthermore, they reasoned, if judges were required to comply, compliance ought to be monitored by the Florida Supreme Court rather than the bar. *Id.* This dispute resulted in a separate requirement for judges, administered by the Supreme Court of Florida. *Id.*

⁸¹ Israel, *supra* note 50.

⁸² Ogden, *supra* note 12.

⁸³ See Florida Background Paper, *supra* note 48 (noting that the requirement was designed not to be burdensome); see also Shepard, *supra* note 26, at 454 (noting that the rule is a light form of regulation).

⁸⁴ BROOKS, *supra* note 17, at 11-20.

media, and computer-based education or web casts.⁸⁵ While regulation does entail some cost, most agencies are self-funding. Furthermore, of all of the states that have adopted MCLE rules, only one state, Michigan, has rescinded its rule.⁸⁶

IV. VARIATIONS IN REGULATORY SCHEMES

Periodically, ABA committees and CLE providers call for increased uniformity.⁸⁷ However, the very nature of our union of states calls into question whether or not uniformity is a valid, reasonable, or achievable goal.

A look at who decides the rules and how they vary indicates that licensing standards for attorneys are unique to each state. This does not mean that each state should devise distinctive regulations just for the sake of exercising regulatory power. A reasonable goal for regulating authorities is to seek the most common denominators and to regulate in a meaningful way.

It may help to look at two different, but common, regulatory schemes that result in dual systems. In many states, affiliation with the bar association is voluntary, and the state supreme court determines matters related to attorney licensing, discipline, and CLE requirements. However, a majority of states have an integrated or unified bar, meaning that an attorney must join the bar association in order to maintain an active license.⁸⁸ In several of those states, the bar association is given the task of admitting and regulating attorneys, including administering MCLE. Some regulatory differences may be inevitable given these distinctions. Additionally, while most states have adopted MCLE by a court rule, occasionally a state has formed MCLE requirements under the authority of bar regulation or state statute.

Regulatory differences among the states include: the number of hours required in a reporting period, ranging from twelve to fifteen credits per year; the length of the reporting period, ranging from one to three years; the start of the reporting period, some states follow a

⁸⁵ *Id.* at 44–53. Many states limit the number of hours an attorney may accumulate using nontraditional methods. Other states only permit credit under certain circumstances, such as if a live instructor is present or a participant can ask questions. *Id.*

⁸⁶ *Id.* at II n.1. Michigan's MCLE rule was rescinded as of April 1, 1994. *Id.*

⁸⁷ See, e.g., Pedone, *supra* note 46 (stating ACLEA is "attempting to make the rules more uniform"); see also MODEL RULE FOR CONTINUING LEGAL EDUCATION (2004), available at <http://www.abanet.org/cle/ammodel.html>.

⁸⁸ See BROOKS, *supra* note 17, at III-V.

calendar year, others correlate to the attorney's birthday; and the period of instruction required for one unit of credit, some states use sixty minutes, others use fifty. Other distinctions between states include whether they allow self-study; require separate ethics, professional responsibility, or substance abuse courses; or require new attorneys to take a skills course, sometimes known as "Bridge the Gap" courses.⁸⁹ A few states now allow attorneys to count quality-of-life programs, such as stress reduction and time management, towards their requirements.⁹⁰ States have also reached differing results on the question of whether to allow credit for law office management courses.

Why do different jurisdictions adopt substantive course requirements over time? Ten years after the Indiana Supreme Court adopted its MCLE rule, Indiana's Chief Justice Shepard observed that, although one premise of the rule was that it would entail "a relatively light form of regulation," this is not easy to maintain.⁹¹ He explained why, noting that "people are always at your door saying, 'Well, why don't you make everybody take at least two hours of this or at least one hour of that' Those we mostly resist, although not always."⁹²

Similarly, interest groups with power may lobby to be exempted from the requirement altogether. In California, where MCLE requirements were originally adopted by state statute rather than court rule, the legislative history suggests legislators added exemptions that did not appear in the introduced bill, one at a time as requested by groups with political power.⁹³

Are varying requirements a problem?⁹⁴ On one hand, they permit local policy to reflect local values and to address issues that cause problems within that state's bar. On the other hand, varied requirements from area to area have the effect of segmenting the market, making it less likely that complicated issues will be addressed comprehensively by

⁸⁹ See, e.g., *id.*; Tamayo-Calabrese, *supra* note 38.

⁹⁰ See Steven Keeva, *CLE for the Whole Person*, A.B.A. J., Feb. 2004, at 76 (discussing an appeal of a Minnesota ruling regarding "soft" CLE courses).

⁹¹ Shepard, *supra* note 26, at 454.

⁹² *Id.* at 454 n.28.

⁹³ Grigg, *supra* note 6, at 422-24, (citing *Warden v. Cal. Bar Ass'n*, 62 Cal. Rptr. 2d 32, 42 (Cal. Ct. App. 1997)). The statute exempted state officers, elected state officials, retired judges, and full-time law professors. *Id.* at 423. The California Supreme Court upheld these exemptions in *Warden v. State Bar of Cal.*, 982 P.2d 154 (Cal. 1999).

⁹⁴ See Ewald, *supra* note 7, at 8 (answering this question "both yes and no," she suggests what is problematic about the varying requirements and urges the use of common terminology, particularly regarding professional responsibility and ethics).

larger providers. Perhaps even more significantly, they confuse the practitioner, particularly in the case of the attorney licensed in more than one jurisdiction. That attorney may wonder why the states in which she is licensed do not always treat her CLE credits the same. However, this situation is not so different from the numerous individual state requirements she had to meet in order to become licensed in multiple states. The MacCrate Report itself acknowledges that it is not intended to set a standard:

The Statement of Skills and Values is concerned with the limited goal of ensuring practice at a minimum level of competency. All law schools and the legal profession rightly aspire to assist lawyers to practice not merely capably but excellently. *Excellence cannot be promoted by the kind of standardization involved in formulating any particular list of prescriptions and prerequisites. It is best supported by encouraging pluralism and innovativeness in legal education and practice.* This Statement should therefore not be viewed as denigrating the development of skills and values not included in it. Such skills and values will frequently mark the difference between an able lawyer and an outstanding one.⁹⁵

This excerpt suggests embracing a framework that preserves regional variations, rather than striving for uniformity for the sake of simplicity. Robert MacCrate reiterated this point in *Preparing Lawyers to Participate Effectively in the Legal Profession*, stating that the task force was “mindful of the risks inherent in externally imposed requirements that can stifle experimentation and innovation.”⁹⁶ His article emphasizes that the task force urged no “unitary answer” but rather “challenged the law schools, the organized bar, and the judiciary *in each state* to develop an educational continuum, based on a continuing dialogue, *appropriate to that state’s legal community.*”⁹⁷

The idea of a national standard for MCLE would not make sense unless states were willing to nationalize all aspects of attorney licensing. This idea is unlikely to garner support. Individual jurisdictions can serve as laboratories where new ideas and pilot projects can be launched, whereas a national regulatory body would likely be more cumbersome and less adaptable to the unique demands of a local bar.

⁹⁵ MACCRATE REPORT, *supra* note 1, at 132 (emphasis added).

⁹⁶ MacCrate, *supra* note 25, at 94.

⁹⁷ *Id.* at 91 (emphasis added).

Because of the varied sources of authority for MCLE, a future made simple by complete uniformity of requirements seems exceptionally unlikely. Perhaps a more achievable goal is more widespread reciprocity or comity. There is precedent in the realm of bar admission and it has even been tried in a limited way by MCLE regulators.⁹⁸

The differences between jurisdictions would cause less distress if more jurisdictions provided comity to attorneys.⁹⁹ In an excellent example of regional cooperation, Idaho, Oregon, Washington, and Utah have worked out a compliance agreement that simplifies the process for any attorney that is licensed in more than one of the four states.¹⁰⁰ Attorneys comply with the rules of the state where they primarily practice. Comity seems to be working well in the states that have it, and the newest MCLE jurisdiction, Illinois, has adopted this approach from the start.¹⁰¹

V. RECOMMENDATIONS

A. *Continue to Stay Responsive to an Ever-Changing Legal Environment*

Changing court rules to keep pace with new technology takes time, but many jurisdictions have managed to address the most current methods of CLE delivery. Fortunately for new jurisdictions, other

⁹⁸ According to ORACLE's website, the following states have some form of reciprocity or comity: Colorado; Georgia (with South Carolina); Maine; New York; North Carolina (with South Carolina); Oregon (with Washington, Idaho, and Utah); South Carolina (with Georgia and North Carolina); and Utah. ORACLE MEMBERSHIP BOOKLET FREQUENTLY ASKED QUESTIONS AND NOT SO EASY TO FIND FACTS, available at <http://www.cleusa.com/questionsandanswers.pdf>.

⁹⁹ Some jurisdictions refer to this arrangement as comity, while others call it reciprocity. Because reciprocity is also used to refer to reciprocal course accreditation (State A will accept the accreditation of a course that has already been approved by State B), this Article will use the word comity to refer to attorney compliance agreements. Such agreements generally apply to an attorney who is licensed in the jurisdiction but lives and practices law primarily outside of the jurisdiction. Some states exempt from compliance any attorney who is subject to MCLE compliance in another state.

¹⁰⁰ Grigg, *supra* note 6, at 428.

¹⁰¹ ILL. SUP. CT. R. 791(a)(5) (effective Sept. 25, 2005), available at <http://www.state.il.us/court/SupremeCourt/Rules/Amend/2005/MRAMend092905.htm>. The new Illinois rule exempts:

An attorney otherwise subject to this rule who is also a member of the bar of another state which has a minimum continuing education requirement, who is regularly engaged in the practice of law in that state, and who has appropriate proof that he or she is in full compliance with the continuing legal education requirements established by court rule or legislation in that state.

Id.

jurisdictions with experience resolving issues and integrating new approaches are willing to share lessons they have learned and recommend policies to smooth the implementation process. CLE providers and regulators will be well served by preparing for the next wave of changes to CLE. Regulators can track the direction of those changes, provided they know about changes to teaching approaches proposed by law schools and among judicial educators.

B. Consider a Comprehensive Assessment of the Effect of MCLE Regulations

MCLE regulators, CLE providers, and CLE consumers share some characteristics. To some extent, all have limited resources and face growing demands and competition for those resources. Knowing which regulations or programs are working and which are not helps each member of the community make better decisions about how to distribute scarce resources.¹⁰² Regulators need to review regulatory goals to ensure that they are clear, coherent, and up-to-date, and they must determine whether the goals are being accomplished. Process, outcome, and cost-benefit analysis of MCLE programs could go a long way in helping regulators determine how best to direct limited resources.¹⁰³

C. Work Towards Regional Cooperation and Expansion of Reciprocity and Comity

Attorneys and providers experience less confusion when regulators agree to use the same terminology and definitions. Regulators can look for issues on which to agree by focusing on areas that are more procedural than substantive. CLE providers seeking changes to regulations will find regulators more receptive to arguments based on logic than convenience. It is time for regulators to foster conversations about comity so that jurisdictions without comity provisions can learn of the advantages and get helpful guidance from jurisdictions with experience.

¹⁰² Cf. Martin Burke, *Promoting the Art and Science of Teaching*, LAW TEACHER, Spring 2000 (reviewing GREGORY MONROE, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* (2000)), available at <http://www.law.gonzaga.edu/Programs/Institute+for+Law+School+Teaching/The+Law+Teacher+-+Newsletter/Past+Issues+of+The+Law+Teacher/Spring+2000/default.htm>. Describing these characteristics as they apply to law schools, Burke stated that “[f]aced with limited resources, growing competition for students, and a changing legal environment, law schools must consider more carefully their specific niche in legal education. Most schools can ill afford to attempt to be all things to all students.” *Id.*

¹⁰³ Burke also noted that “[an] assessment program . . . provides a mechanism for the effective marshaling of limited education resources while at the same time revitalizing the academic enterprise.” *Id.*

D. Revisit the Conclave Model

Conclave activities of the late 1990s provide a great model for gathering, sharing, and generating consensus about the need for change and developing a mechanism for follow-through. Within the CLE community, these should be conducted regularly and on a local and a national level. These conclave activities should involve consumers as well as providers and regulators. Forging a cooperative model of interaction between regulators and providers requires building relationships and lowering walls. These conclave activities should occur often enough so that people who are new to this work experience are invited and given a seat at the table.

Each of these recommendations requires improved communication and shared information. Implementing these recommendations will provide MCLE leaders an opportunity to model the very communication and problem-solving skills and values generations of legal scholars deem essential to being a good lawyer.

APPENDIX: TIMELINE OF EVENTS RELATED TO CONTINUING LEGAL
EDUCATION

While by no means exhaustive, the following timeline provides a framework for understanding the historical context in which CLE began and was developed.

- **1878:** The American Bar Association (“ABA”) was formed with the aim of imposing new educational and exam requirements to raise standards for admission to the legal profession. This was accompanied by the development of a disciplinary system and a move to require a college degree for law school admission.¹⁰⁴
- **1870–1900:** Harvard Law School created the model case method, which consisted of more dialog than lecture. This private law approach taught the general skill of “thinking like a lawyer,” but provided little in the way of practical or relevant skills such as drafting, interpreting statutes, or developing expertise in specific subjects.¹⁰⁵
- **1920s:** Legal realists attacked the Harvard model, arguing that law should be taught as a social product arising from social conflict, interests, and policies. Students should learn by arguing for results based on social policy. This began a movement away from private law towards public law.¹⁰⁶
- **1923:** The American Law Institute (“ALI”) was founded “to promote the clarification and simplification of the law.”¹⁰⁷ They draft codes, model laws, and restatements of law.¹⁰⁸

¹⁰⁴ At least one commentator has observed that this move coincided with a wave of immigration from Europe to the United States and had the effect of shutting that group of immigrants out of the profession.

¹⁰⁵ See, e.g., Robert W. Gordon, *Legal Education in the United States: Origins and Development*, ISSUES IN DEMOCRACY, Aug. 2002, at 2, <http://usinfo.state.gov/journals/itdhr/0802/ijde/gordon.htm>.

¹⁰⁶ *Id.*

¹⁰⁷ This is ALI-ABA, <https://www.ali-aba.org/aliaba/thisis.asp> (last visited Nov. 10, 2005).

¹⁰⁸ *Id.*

2006] *Perils, Pitfalls, and Promise* 379

- **1932–1940:** New Deal programs generated a flood of federal regulations, new legislation, and new federal agencies that created new jobs for attorneys and law professors. New law school courses included tax, labor, and antitrust. The teaching focus shifted from case law to cases and materials that included statutes and administrative agency rules.¹⁰⁹
- **1933:** The Practicing Law Institute (“PLI”) was founded as a non-profit CLE organization chartered by the Regents of the University of the State of New York.¹¹⁰
- **1937:** ABA passed a resolution (initially at the request of Harold Seligson, a founder of PLI) supporting a nationwide program of CLE.¹¹¹
- **1947:** ABA joined with American Law Institute to form ALI-ABA, creating the structure to offer national programs and support state and local sponsoring organizations.¹¹²
- **1958:** ABA and American Law Institute held the first National Conference on the Continuing Education of the Bar at Arden House in Harriman, New York (referred to as Arden I). One hundred judges, bar professionals, and law school faculty attended.¹¹³ Noting the lawyer’s need for “lifelong learning,” the conference’s final report recognized CLE’s dual role of increasing professional competence and making an attorney better qualified to meet professional responsibilities to clients and the public.¹¹⁴
- **1963:** (1) The National Judicial College was formed in response to the recommendations of the ABA Joint

¹⁰⁹ See Gordon, *supra* note 2.

¹¹⁰ About PLI, <http://www.pli.edu/public/about/default.asp> (last visited Nov. 10, 2005).

¹¹¹ Linda Sorenson Ewald, Professional Responsibility, Ethics and Professionalism: What do they Mean in the Context of Mandatory Continuing Legal Education? 2 (2005) (unpublished manuscript), available at <http://cleusa.com/jointsession2005.pdf>.

¹¹² *Id.* at 2; see also This is ALI-ABA, *supra* note 4.

¹¹³ Ewald, *supra* note 8, at 2.

¹¹⁴ *Id.*

Commission for Effective Administration of Justice, which included continuing judicial education.¹¹⁵

(2) The Second National Conference of Continuing Education of the Bar (Arden II) occurred, five years after the first conference in 1958.¹¹⁶

- **1964:** The Association for Continuing Legal Education (“ACLEA”) was established.¹¹⁷
- **1965:** Creation of Legal Services Organization (“LSO”) generated a new subject, poverty law, and introduced law school legal clinics, which provide hands on experience.¹¹⁸
- **1967:** The Federal Judicial Center was established as the research and education agency of the United States Federal Judicial System.¹¹⁹ The center was established to provide orientation for new judges as well as continuing education.¹²⁰
- **1960s–1970s:** Social upheavals resulted in new courses in civil rights law, employment discrimination, and environmental law.¹²¹ During the 1970s and 1980s, law schools doubled in size to accommodate the increase in the admissions of African Americans, Hispanics, and women.¹²²
- **1970s:** Growth of the law and economics movement resulted in a number of legal economics professors becoming federal judges.¹²³

¹¹⁵ Stuart Gorin & David Pitts, *Continuing Legal Education: Three Organizations that Fulfill the Need*, ISSUES OF DEMOCRACY, Aug. 2002, at 2, at <http://usinfo.state.gov/journals/itdhr/0802/ijde/gorinpitts.htm>.

¹¹⁶ Ewald, *supra* note 8, at 3.

¹¹⁷ About ACLEA, <http://www.aclea.org/about.html> (last visited Nov. 11, 2005). ACLEA’s website states that the organization is “devoted to improving the performance of CLE professionals.” *Id.*

¹¹⁸ See Gordon, *supra* note 2.

¹¹⁹ See Gorin & Pitts, *supra* note 12.

¹²⁰ *Id.*

¹²¹ See Gordon, *supra* note 2.

¹²² *Id.*

¹²³ *Id.*

- 2006] *Perils, Pitfalls, and Promise* 381
- **1971:** Chief Justice Warren Burger founded the National Center for State Courts (“NCSC”).¹²⁴
 - **1973:** (1) Chief Justice Warren Burger delivered a lecture, subsequently published in *Fordham Law Review*, which indicated that the poor quality of legal advocacy was a “problem of large scope and profound importance.”¹²⁵
(2) Six state judicial educators attended the first meeting of the National Association of State Judicial Educators (“NASJE”).¹²⁶
 - **1975:** Minnesota became the first state to mandate CLE.¹²⁷
 - **1976:** MCLE rule took effect in Iowa.¹²⁸
 - **1977:** MCLE rules took effect in North Dakota, Washington, Wisconsin, and Wyoming.¹²⁹
 - **1979:** MCLE rules took effect in Colorado, Idaho, and South Carolina.¹³⁰
 - **1981:** MCLE rule took effect in Alabama.¹³¹
 - **1982:** MCLE rules took effect in Montana and Nevada.¹³²
 - **1983:** The United States Court of Appeals for the Tenth Circuit confirmed the constitutionality of state supreme court MCLE requirements, provided that

¹²⁴ See Gorin & Pitts, *supra* note 12. The goal of NCSC is to improve the administration of justice in the United States and abroad through research, education, consulting, and information services. *Id.*

¹²⁵ Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 227 (1973).

¹²⁶ NAT’L ASS’N OF STATE JUDICIAL EDUCATORS, PRINCIPLES AND STANDARDS OF JUDICIAL EDUCATION 1 (1991) [hereinafter STANDARDS OF JUDICIAL EDUCATION].

¹²⁷ TERRY J. BROOKS, COMPARISON OF THE FEATURES OF MANDATORY CONTINUING LEGAL EDUCATION RULES IN EFFECT AS OF JULY 2005 II (N.Y. St. B. Ass’n 2006).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

the requirements had a “rational connection” with the attorney’s fitness or capability to practice law.¹³³

- **1984:** (1) MCLE rules took effect in Georgia and Kentucky.¹³⁴
(2) Colorado Board of Continuing Legal and Judicial Education undertook a study to determine the effectiveness of MCLE.¹³⁵
- **1985:** MCLE rules took effect in Kansas, Mississippi, and Vermont.¹³⁶
- **1986:** (1) MCLE rules took effect in Delaware, Indiana, New Mexico, Oklahoma, Texas, Virginia, and West Virginia.¹³⁷
(2) The Association of Mandatory CLE Administrators (“AMCLEA”) began meeting.¹³⁸
(3) ABA passed a Model Rule for MCLE and adopted resolutions supporting the concept of MCLE for all active lawyers, urging states that had not adopted MCLE to seriously consider its adoption.¹³⁹ The ABA also authorized the Standing Committee on the Continuing Education of the Bar to develop materials and guidelines as well as to otherwise assist the states in developing MCLE programs.¹⁴⁰

¹³³ Verner v. Colorado, 716 F.2d 1352, 1353 (10th Cir. 1983).

¹³⁴ BROOKS, *supra* note 24, at II.

¹³⁵ Alan W. Ogden, *Mandatory Continuing Legal Education: A Study of Its Effects*, COLO. LAW., Oct. 1984, at 1789.

¹³⁶ BROOKS, *supra* note 24, at II.

¹³⁷ *Id.*

¹³⁸ The organization first met on February 2, 1986, but it did not choose a name until a year later. Minutes, Association of Mandatory Continuing Legal Education Administrators (February 10, 1987) (on file with the author); Minutes of the February 2 and 3, 1986 MCLE Meeting (Feb. 2–3, 1986) (on file with author). In 1992, the organization changed its name to the Organization of Regulatory Administrators for CLE (“ORACLE”). ORACLE Minutes, 1992 Annual Meeting (Aug. 5, 1992) (on file with the author).

¹³⁹ MODEL RULE FOR MINIMUM CONTINUING LEGAL EDUC. (2004), available at <http://www.abanet.org/cle/ammodel.html>. Note that the Model Rule uses the term “minimum” rather than “mandatory.” Some states have adopted that term as well.

¹⁴⁰ *Id.*

(4) ABA Commission on Professionalism released *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*.¹⁴¹ Known as the Stanley Report, its recommendations included mandatory CLE.¹⁴²

- **1987:** (1) MCLE rules took effect in Missouri and Tennessee.¹⁴³

(2) The National Conference on Continuing Education and the Bar (“Arden III”) urged MCLE states to adopt uniform standards and means of accreditation for CLE programs and providers.¹⁴⁴
- **1988:** MCLE rules took effect in Arkansas, Florida, Louisiana, North Carolina, and Oregon.¹⁴⁵
- **1989:** MCLE rules took effect in Arizona and Ohio.¹⁴⁶
- **1990s–present:** Globalization of our society is reflected in the increasing presence of law school courses in international law, global legal studies, commercial law, and human rights.¹⁴⁷
- **1990:** MCLE rules took effect in Michigan, New Mexico, and Utah.¹⁴⁸
- **1991:** The National Association of State Judicial Educators issued *Principles and Standards of Continuing Judicial Education*, the result of a two-year project involving the study of national standards for education of over twenty professions.¹⁴⁹

¹⁴¹ Ewald, *supra* note 8, at 4.

¹⁴² *Id.*

¹⁴³ BROOKS, *supra* note 24, at II.

¹⁴⁴ MODEL RULE FOR MINIMUM CONTINUING LEGAL EDUC. (2004). MCLE jurisdictions are encouraged to use the model rule to help achieve that end.

¹⁴⁵ BROOKS, *supra* note 24, at II.

¹⁴⁶ *Id.*

¹⁴⁷ Gordon, *supra* note 2.

¹⁴⁸ BROOKS, *supra* note 24, at II. Michigan’s MCLE rule was rescinded as of April 1, 1994. *Id.* at II n.1.

¹⁴⁹ STANDARDS OF JUDICIAL EDUCATION, *supra* note 23, at 2.

384 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 40

- **1992:**
 - (1) MCLE rules took effect in California, New Hampshire, and Pennsylvania.¹⁵⁰
 - (2) AMCLEA changed its name to Organization of Regulatory Administrators for CLE (“ORACLE”).¹⁵¹
 - (3) The Virginia State Bar held a legal education conclave that became a model for dozens of other states.¹⁵²
 - (4) The ABA issued the MacCrate Report, an inventory of the skills and values needed for competent practice and a blueprint for how to acquire these skills and values.¹⁵³ The report suggested that while law school lays a foundation, CLE plays a critical role in teaching the necessary skills and values.¹⁵⁴
 - (5) NCSC creates an International Program Division to improve administration of justice and rule of law worldwide.¹⁵⁵
- **1993:** MCLE rule took effect in Rhode Island.¹⁵⁶
- **1994:** The ABA Coordinating Committee on Legal Education published a how-to manual intended to encourage the conclave movement.¹⁵⁷
- **1996:** Professionalism Committee of the ABA Section of Legal Education and Admissions to the Bar report titled *Teaching and Learning Professionalism*

¹⁵⁰ BROOKS, *supra* note 24, at II.

¹⁵¹ ORACLE Minutes, *supra* note 35. ORACLE’s primary purposes are to provide an opportunity for the discussion and exchange of information among administrators of MCLE programs and promote and encourage cooperation between MCLE organizations and CLE sponsors. See Draft of ORACLE Bylaws (Aug. 1999) (on file with the author).

¹⁵² William R. Rakes, *Conclaves on Legal Education: Catalyst of the Profession*, 72 NOTRE DAME L. REV. 1119, 1125–30 (1997).

¹⁵³ LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>.

¹⁵⁴ *Id.*

¹⁵⁵ See Gorin & Pitts, *supra* note 12.

¹⁵⁶ BROOKS, *supra* note 24, at II.

¹⁵⁷ Rakes, *supra* note 49, at 1129.

2006] *Perils, Pitfalls, and Promise* 385

recommended mandatory CLE in ethics and professionalism.¹⁵⁸

- **1997:** ABA Model Rule was amended to permit MCLE credit for technology-based CLE.¹⁵⁹
- **1998:** MCLE rule took effect in New York.¹⁶⁰
- **1999:** Alaska adopted a voluntary CLE rule (“VCLE”).¹⁶¹
- **2001:** MCLE rules took effect in Hawaii and Maine.¹⁶²
- **2004:** ABA Model Rule was amended to recommend the addition of a requirement for programs related to racial and ethnic diversity and for the elimination of bias in the profession.¹⁶³
- **2005:** On September 29, Illinois became the most recent state to adopt MCLE requirements.¹⁶⁴

¹⁵⁸ Ewald, *supra* note 8, at 5 (citing *Teaching and Learning Professionalism*, 1996 A.B.A. SEC. LEGAL EDUC. AND ADMISSION TO THE B. REP. 29).

¹⁵⁹ MODEL RULE FOR MINIMUM CONTINUING LEGAL EDUC. (2004).

¹⁶⁰ BROOKS, *supra* note 24, at II; *see also* Rose-Robin Pedone, *Legal Ed. Rules Face Dec. Debut*, LONG ISLAND BUSINESS NEWS, Nov. 20, 1998, at 5A.

¹⁶¹ BROOKS, *supra* note 24, at II.

¹⁶² *Id.*

¹⁶³ MODEL RULE FOR MINIMUM CONTINUING LEGAL EDUC. (2004).

¹⁶⁴ ILL. SUP. CT. R. 790-97 (Minimum Continuing Legal Education Rules), *available at* <http://www.state.il.us/court/SupremeCourt/Rules/Amend/2005/MRAmend092905.htm>.