

WASHINGTON STATE BAR ASSOCIATION

TO: WSBA Board of Governors

FROM: Todd Alberstone, MCLE Board Chair
Robert Malae, MCLE Board Vice Chair
Adelaine Shay, WSBA MCLE Manager

DATE: June 24, 2022

RE: Suggested Amendment to Admission and Practice Rule (APR) 11 – FOR REVIEW

Discussion: The MCLE Board requests the WSBA Board of Governors to review and comment on the preliminary suggested amendment to Admission and Practice Rule (APR) 11 regarding the establishment of MCLE credit for tutors in the APR 6 Law Clerk Program.

Pursuant to APR 11(d)(2)(i), “The MCLE Board shall review and suggest amendments or make regulations to APR 11 as necessary to fulfill the purpose of MCLE and for the timely and efficient administration of these rules and for clarification of education requirements, approved activities, and approved course subjects. Suggested amendments are subject to review by the Board of Governors and approval by the Supreme Court.”

Over the years, there have been several requests by tutors in the APR 6 Law Clerk Program to receive MCLE credit for giving their time as tutors to clerks enrolled in the Law Clerk Program. As part of the Law Clerk Program, tutors provide three hours of personal supervision each week to clerks, including substantive discussion of the law. Within each year of this four-year program, clerks are required to study six subjects and to pass monthly examinations. The exams are developed, administered, and graded by the tutors. Requests for MCLE credit for tutoring have sought credit under both “teaching” credit and “mentoring” credit provisions of APR 11. However, neither credit provision is designed to accommodate for law clerk tutoring. Tutors cannot claim teaching credit under APR 11(e)(6) as such credit is specifically limited to the teaching of law school courses. Likewise, requests for mentoring credit would also not be successful because students of the Law Clerk Program are not active members of the WSBA and therefore any supervision of them does not qualify for mentoring credit as it is defined in APR 11(e)(8).

In response to requests and the need to address this dilemma, the MCLE Board formed a workgroup—including two members of the Law Clerk Board—to explore a potential amendment to APR 11. On August 12, 2021, the workgroup met to discuss the need for an amendment and potential language. During this meeting, the workgroup members suggested that the “personal supervision” time as defined in APR 6(d)(2) should be eligible for MCLE teaching credit, and that APR 11(e)(6) should be amended accordingly. The workgroup suggested an amendment to APR 11(e)(6) (teaching credit) instead of APR 11(e)(8) (mentoring credit), as teaching law school was deemed to be the most analogous activity to Law Clerk Program tutoring.



Per APR 11(d)(2)(i), the following preliminary suggested amendment is brought before the WSBA Board of Governors for review:

APR 11(e)(6)

Teaching law school courses, when the instructor is not a full-time law school professor; or providing “personal supervision” as a tutor for the Law Clerk Program, as defined in APR 6(d)(2);

BACKGROUND

The purpose of MCLE is “to enhance lawyers’, LLLTs’, and LPOs’ legal services to their clients and protect the public by assisting lawyers, LLLTs, and LPOs in maintaining and developing their competence . . .” (APR 11(a)). Therefore, the MCLE Board is continuing in its work to respond to the needs of the legal community, by suggesting an amendment to APR 11 that would allow tutors in the APR 6 Law Clerk Program to claim MCLE credit for their personal supervision of APR 6 law clerks. The need for this amendment is evidenced by requests from tutors in the APR 6 Law Program to receive credit for the supervisory and teaching work they perform and a current absence of a credit provision that permits them to do so. The MCLE Board believes the work performed by law clerk tutors should be recognized as valuable continuing legal education and that APR 11(e)(6) should be amended to allow those engaged in this work to receive MCLE credit for their efforts.

On February 4, 2022, the Law Clerk Board reviewed the report and recommendation at its regularly scheduled meeting. No edits or suggestions were made by the Law Clerk Board. The Law Clerk Board supports the amendment to APR 11.

On April 10, 2022, a public comment survey requesting feedback regarding the preliminary suggested amendment was posted on the WSBA website. The MCLE Board webpage also informed WSBA licensed legal professionals (and the general public) of the opportunity to make a public comment regarding the preliminary suggested amendment at the May 13, 2022, MCLE Board Meeting. The online public comment survey closed on May 6, 2022. As of May 6, 2022, the MCLE Board had received 183 survey responses. Out of those responses, respondents were largely in favor of the preliminary suggested amendment with 136 in favor and 35 not in favor. The remaining 12 respondents were partially in favor.

At its May 13, 2022, meeting, the MCLE Board reviewed and considered all feedback produced from the survey. At the same meeting, the MCLE Board opened the proposed amendment for public comment; however, no licensed legal professional or interested member of the public appeared for such purpose. After having given due consideration to any public concerns identified in the survey, the MCLE Board voted unanimously to continue to move forward with the preliminary suggested amendment by sending it to the Board of Governors for review. After review by the Board of Governors the MCLE Board will discuss any feedback provided by the Board of Governors and decide at its August 5, 2022, meeting whether to suggest the rule amendment to the Washington Supreme Court. If the MCLE Board moves forward with suggesting the amendment to the Court, the MCLE Board will ask the Board of Governors to support the amendment at its September meeting.

FACTORS IN SUPPORT OF THE SUGGESTED AMENDMENT

The MCLE Board reviewed and discussed the public feedback received about the preliminary suggested amendment. In response to the opposition, the MCLE Board subcommittee now presents the following as important factors in support of the amendment:

Value of the Law Clerk Program

The four-year Law Clerk Program stands as a viable alternative to traditional law school that provides education through a combination of work and study under the supervision of a lawyer or judge. The lawyer or judge must have at least ten (10) years of experience to qualify as a tutor and be in good standing with the Washington State Bar Association. With these provisions for quality supervision, the Law Clerk Program increases opportunities of non-traditional law school students by offering an affordable alternative for those seeking to practice law in Washington state. Those who complete its education requirements qualify to apply for the Washington State bar exam. For this reason, the MCLE Board supports the entire preliminary suggested amendment.

Teaching Credit for “Personal Supervision”

Tutors in the law clerk program spend an average of three hours per week week—over the course of the four-year program—personally instructing and advising the law clerk. As the coursework for this program includes 6 courses every 12 months, as prescribed by the Law Clerk Program Rules and Regulations, the supervision time is functionally equivalent to the “teaching” that would be done in fulfillment of APR 11(e)(6). Personal supervision is defined in APR 6(d)(2):

Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor's personal supervision of the law clerk. “Personal supervision” is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments.

As the personal supervision time includes exposition and discussion of the law, case recitation, and analysis of assignments as part of coursework, this time should be eligible for “teaching” credit per APR 11(e)(6). The Law Clerk Program curriculum includes “using an apprenticeship model that includes, theoretical, scholastic, and clinical components.” These components are designed to parallel the extensive and comprehensive nature of law school curriculum and include in their coverage topics such as civil procedure, contracts, property, and torts.

Benefit of Offering MCLE Credit

Offering MCLE credit for supervision and instruction time may encourage lawyers to serve as tutors for the Law Clerk Program. Tutors must commit an extensive amount of time both to instruct and supervise the law clerk. The tutor is not only responsible for the personal supervision of the law clerk but also charged with the responsibilities of guiding the law clerk's study of all subjects, selecting all reading and instructional material to be used throughout the clerk's education, and assisting law clerks with the development of elective curriculum. This time is uncompensated volunteer time separate from the full-time job of the tutor. This status is analogous to that of a law school instructor claiming credit under APR 11(e)(6) who, according to the rule cannot be “a full-time law school professor.” As the tutor's full-time job is not tutoring, the MCLE credit eligibility will be consistent with this law school teaching requirement.

Recognizing law clerk program tutoring for MCLE credit, deservingly rewards the incredible time commitment and dedication to advancing the profession through this program as a law school alternative. Such a measure will hopefully increase the appeal of serving as a law clerk program tutor and ultimately affirm the WSBA’s commitment to increasing access to justice.

Timeline for Suggested Amendment		
January 2022		Workgroup drafts report and recommendation.
February 4, 2022	Law Clerk Board Meeting	Law Clerk Board reviews report and recommendation draft and provides feedback to workgroup. (COMPLETE)
April 8, 2022	MCLE Board Meeting	MCLE Board reviews report and recommendation and any feedback from Law Clerk Board. MCLE Board will vote whether to move forward with suggested amendment. Vote on opening for member and other stakeholder comment period. (COMPLETE)
May 6, 2022		Close written comment period. (COMPLETE)
May 13, 2022	MCLE Board Meeting	Hear member and other stakeholder comments and discuss feedback. MCLE Board to vote on whether to proceed with suggested amendment. If proceeding, MCLE Board to nominate Board members to present to Board of Governors and work on presentation materials. (COMPLETE)
June 27, 2022	Board of Governors Materials	Board of Governors materials due.
July 21-22, 2022	Board of Governors Meeting	Present to WSBA Board of Governors for review and comment.
August 5, 2022	MCLE Board Meeting	Discuss feedback from Board of Governors and vote on whether to move forward with suggested amendment. If proceeding, MCLE Board will nominate Board members to work on GR 9 coversheet.
August 22, 2022		First draft due of GR 9 coversheet.
September 12, 2022		Final draft due of GR 9 coversheet.

September 22 & 23, 2022	Board of Governors Meeting	Ask Board of Governors to support suggested amendment.
October 15, 2022	Suggested Amendment Deadline	Send recommendation to Court.

Enclosed Documents:

- APR 11 Preliminary Suggested Amendment—Redline
- Public Comments—Collected Feedback from Survey
- MCLE Board Report and Recommendation
 - APR 6 Rule and Regulations
 - APR 11
 - Primary Tutor Application
 - Resolution of the WSBA in Affirming the Law Clerk Program Value

WSBA RISK ANALYSIS: *This will be provided in the memo for the September meeting.*

WSBA FISCAL ANALYSIS: *This will be provided in the memo for the September meeting.*

SUGGESTED AMENDMENTS TO APR 11 (Redline)

1 **TITLE**

2 ADMISSION AND PRACTICE RULES (APR)

3 **RULE 11. MANDATORY CONTINUING LEGAL EDUCATION (MCLE)**

4 **Sections (a) – (e)(5) No Changes.**

5 **(e)(6)** Teaching law school courses, when the instructor is not a full-time law school professor, or
6 providing “personal supervision” as a tutor for the Law Clerk Program, as defined in APR 6 (d)(2);

7 **Sections (e)(7) – (k) No Changes.**

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Suggested Amendment – Collected Feedback

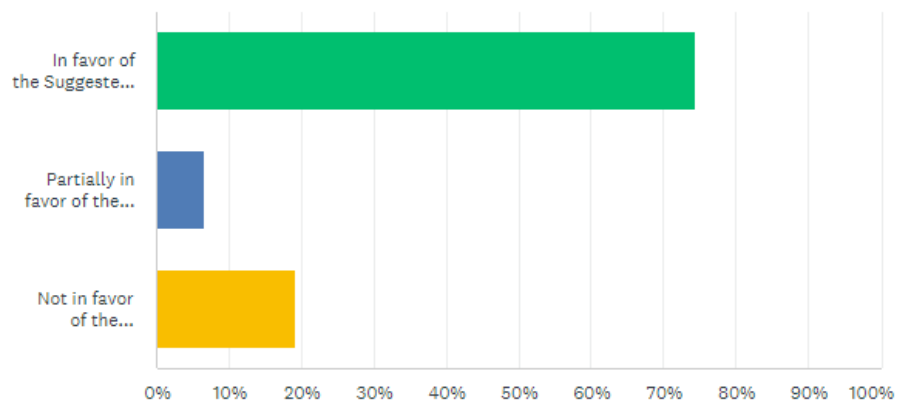
The below comments have not been edited in any way, including content, typographical errors, etc., and because the comments were submitted for consideration at a public meeting, we have included the commenters' names but not their email addresses or other identifying information.

Based on the survey questions, comments have been assigned to one of three categories: "In Favor of the Suggested Amendment", "Partially in Favor of the Suggested Amendment", and "Not in Favor of the Suggested Amendment". Within these three major groupings, comments are displayed in random order.

As of May 6, 2022:

Position on the MCLE Board's Suggested Amendment to APR 11(e)(6):

Answered: 183 Skipped: 0



ANSWER CHOICES	RESPONSES	
▼ In favor of the Suggested Amendment	74.32%	136
▼ Partially in favor of the Suggested Amendment, with some changes	6.56%	12
▼ Not in favor of the Suggested Amendment	19.13%	35
TOTAL		183

TOTAL IN FAVOR OF SUGGESTED AMENDMENT - 136

Name	Feedback/Comments
	<p>This expansion appears to be consistent with the existing 11(e)(6) and also with the rule allowing CLE credit for hours spent volunteering for a QLSP. The one caution I give relates to a possible dilution of the original purpose of MCLE, which is to be sure that practitioners stay current in the law through training courses. Does the time spent tutoring a law clerk or advising a low-income client provide that function of educating the practitioner? Sometimes, yes, but not as effectively as an educational hour devoted to developments in the law.</p>
Andrea O'Rourke	<p>Awarding MCLE credit to LLPs creates an incentive structure for the Law Clerk Program that is mutually beneficial to tutors, clerks, the general public, and the state of Washington as a whole while addressing several intersecting DEI issues that affect many current and prospective LLPs throughout the course of their career in the law.</p>
Barbara Backman	N/A
Lawrence A. Bennett	<p>The amendment should be subject to some sort of limitation for this type of credit.</p>
Kim Lancaster	<p>My tutor has spent well over 1000 hours during the last four years reading a textbook and supplemental materials for each course, creating a syllabus and exam for each course, grading exams, and meeting with me to discuss the assigned reading.</p>
Justin Mucklestone	<p>I am a APR 6 Law Clerk Student who has been in the program since September 2020. Throughout my time in the Rule 6 program, my tutor has spent many hours along side me on a weekly basis breaking down all the nuanced concepts and practices of both federal and Washington state law. Quite often the concepts we explore together using textbooks and syllabi from ABA accredited law schools not only give me the knowledge and recourses to learn the law and analyze legal issues through appropriate case law framework, but along the way they also give my tutor a reinforced ability to do so as well in all aspects of his own legal practice. I believe it would certainly be in the best interests of the WSBA and Supreme Court to move forward in approving this suggested amendment. Thank you.</p>
	N/A

Emanuel Jacobowitz	I have learned more from teaching most of the classes to my law clerk, than from any CLE I ever took.
	N/A
D'Adre Cunningham	N/A
Michael Savage	I think this is great idea. While it might be too late for my tutor I think this would be a nice benefit to confer under the circumstances and may encourage tutors who wouldn't otherwise. It seems only fair that they should be conferred some benefit other than good will especially considering the amount of hours they have to put into it.
	N/A
	N/A
	N/A
	N/A
David Carico	N/A
Mark J. Carroll	I think this is a good idea
Cindy Elsberry	Legal professionals who volunteer their time to teach, tutor and train other legal professionals deserve to receive MCLE credit for this work, it is similar to preparing a CLE or writing a legal article - all these endeavors equally enhance and improve the legal profession.
Elizabeth Kim	This is a really great idea that I hope will provide more access to legal education for nontraditional students. And also recognize in a tangible way these hard-working volunteer-tutors who are spending so much of their valuable time with students. The only change I would make is to find some way to provide some type of compensation for the tutors. Maybe we can't find a way to pay the tutors while still making the program affordable for low income students, but we should look at other options, such as waiving their annual WSBA dues.
	It needs to be strictly regulated with evidence of said tutoring so we know it's not all about drinking and socializing.
John Acheson	As a past chair of the tutorship program for the WSBA under 6(d){2}, I can attest to the fact that tutors spend an enormous amt of time in their responsibilities doing all that is necessary in qualifying their tutees to sit for the WSBA exam. Cheers John Acheson (6942)

Evelyn Cruz Sroufe	I served as a tutor in the WSBA Law Clerk Program in the 1980's. I also taught a quarter at the UW Law School during my first year of Law Practice. I have since presented at many CLE's--both WSBA and other forums. The preparation I did for both the tutoring and the Law School teaching were at least comparably rigorous. I believe credit for such tutoring and teaching is merited.
william gaar	This amendment would provide incentive to get volunteer teachers and it would reward those that give back to young lawyers needing mentoring and practical skill guidance. This is a no-brainer for me.
Craig Evezich	Having been a mentor, it is obvious to me that mentoring provides the best exposure to many areas of the law that I would never have exposure and makes me internalize the law through discussing it with my mentee. There is no CLE that I believe gives an attorney better exposure to knowledge, and practical use of the same, other than through the Clerkship Program.
	N/A
	N/A
	This is a wonderful idea to broaden the areas for people to help others.
Stella Edens Pederson	The work of being a tutor in the Rule 6 program far surpasses the information received in a more passive CLE environment. As a tutor and an assistant tutor, the education and review of subject matter and argument was intensely informative and useful in my practice as well. I would suggest that almost all CLE requirements be waived while one is acting as a Rule 6 tutor.
	I concur with the Benefit of Offering MCLE Credit to tutors described in the MCLE Board report. MCLE credit is an important incentive to motivate lawyers to donate time to a valuable program aimed at those who cannot afford traditional law school study. In this extremely difficult economic climate, the Bar should promote access to the legal profession through the Law Clerk Program; doing so requires the volunteer assistance of current Bar members. Incentivizing volunteer work in this case is a means toward an important end.
	I am a tutor and it is very obvious that CLE credit is merited in this situation. There is a significant amount of work involved that reinforces both basic legal principles that CLE's are intended to reinforce but also identifies where the law has changed and evolved since law school.

	To successfully tutor a Rule 6 law clerk, the tutor must essentially review all the materials and prepare discussions on all required topics. This is very similar to what a presenter would do for a CLE so it is fair that a tutor should receive similar CLE credits.
Roxanne Eberle	N/A
Kati Ortiz	I think allowing for CLE credit to APR 6 tutors is a great idea. As a tutor myself, I spend a lot of time creating lesson plans and providing direct instruction, similar to what I'd do if I were presenting a class where CLE credit was available. Thanks.
	N/A
Ann E Prezyna	N/A
Meredith Weaver	N/A
Claudia La Rose	N/A
Michael Vander Sys	Seems fair given the time, energy and preparation required to teach the course material. Must also understand and present it, very similar to teaching a CLE.
Scott Bergstedt	It is teaching credit to a limited number of individuals.
Brynjar Aaron Peterson	This is such a great program and the mentor's/tutor's spend an incredible amount of time teaching our future lawyers the law. If someone who teaches an MCLE receives credit, why would these very deserving people not receive MCLA credit. I am very much in favor of this change!!
Robert S. Apgood	I would also like to see the WSBA negotiate with the Oregon and Idaho Bar Associations to extend comity to members of the bar who completed the Rule 6 program and discontinue treating them like second class attorneys.
Greg Stadter	Great idea! Tutors perform a valuable service in sharing their expertise with future attorneys. An attorney's time is limited and valuable. MCLE credit will likely provide an opportunity and incentive for more attorneys to become tutors in the Law Clerk Program.
Donald Esau	N/A
Sarah Jones	It's a great idea!
Thomas Boeder	I believe that the proposed change is a good idea
Lynn Mounsey	N/A

	<p>Given the description in the MCLE Board report, the work done by tutors in the Law Clerk Program should be eligible for CLE credit. The work involved in preparing for a tutoring session and then performing the tutoring, appear at least analogous to preparing for and giving a presentation on a legal topic, for which a lawyer would get CLE credit. As noted in the report, another reason for providing CLE credit for the tutoring activity would be to encourage lawyers to volunteer for such tutoring activity.</p>
Andy Brassington	<p>I served on the Law Clerk Committee for 13 years, with several as Chair. I wholly endorse this Amendment. I have tutored several Law Clerks and know first hand the extra time required to perform the duties of a Tutor and the extra commitment to our Profession. This Amendment is a good idea. Andrew Brassington WSBA #18361</p>
Mark Jordan	<p>The tutors spend an enormous amount of time with the law clerks. It just makes sense giving them MCLE credits. Thank you.</p>
	N/A
Rob Tulloch, WSBA 9436	<p>I am a tutor for a law clerk who is finishing month 38 of 48. I happen to have sufficient CLEs that I do not need these, but given the massive time invested to be a tutor I am in support. The one change I would recommend (unless I am missing something) would be for Assistant Tutors to also receive credit. I have a vested interest because my law clerk works for me, but volunteers are fully just that and it would be a valuable "bonus" for them to receive CLE for the 2 month courses they teach when requested and are willing and able to volunteer.</p>
	<p>I tutored my wife, and it was a great experience for both of us. She completed the program, got the Board's approval to sit for the exam, and passed the bar exam on her first try. I spent an enormous amount of time preparing lessons and monthly exams, and grading them, and I think it makes a lot of sense to reward that time with CLE credits.</p>
	N/A
	N/A
Miriam Miller 14460	<p>Incentive to continue with WSBA in a responsible position.</p>

Barry M Meyers	I have served as a tutor in this very worthwhile and beneficial program. There is a substantial time commitment required to see a law clerk through this program from beginning to end. Offering some remuneration in the form of MCLE credits would seem reasonable and may encourage more tutor participation. The day my law clerk student was sworn in as a member of the WSBA was one of the most rewarding days of my law practice.
Asa LaMusga	Our firm has had one successful APR 6 graduate and two individuals currently in the program. Although I am not a tutor, watching others tutor demonstrates it is a ton of hard work for the tutor. MCLE credit is appropriate given the amount of time tutors must spend with the materials.
	N/A
Stephen John Henderson	We have a paralegal who is about half way through the rule 6 program. I have taught her the class in ethics and community property. The tutor winds reading more than the student as well as the one on one teaching the material. The testing, grading, and final review with the student is demanding, but quite rewarding. I would certainly welcome getting some CLE credit as a tutor. But I admit the real reward is seeing our student grow in their legal abilities. SJH
	I am surprised to learn that tutors don't get credit, especially when credit is available for prepping CLE presentations.
Thomas J. Van Norman	I have supervised law clerks before. Instructors can provide valuable training and if they do, this serves an important training and experience opportunity. Credit should be allowed in appropriate cases. Thank you.
	Makes sense and surprised this wasn't already in force.
Mel Simburg	Having served as a tutor for an aspiring lawyer, I realize that it is a lot of work and does refresh the tutor's knowledge at the same time. So, it makes sense to give CLE credit, but it should be limited to a reasonable amount.
Bob Baird-Levine	Providing incentives in the form of CLE credits for teaching future lawyers helps make clerking an easier path to becoming an attorney. Keep making becoming AND BEING an attorney less and not more costly. Way to go.

Klaus Snyder	<p>I have now been tutoring my son Brandon Snyder since September 2020 and I have to admit that the amount of time I have put in preparing for our classes and then conducting those classes which is part of the “personal supervision” of my law clerk student, it has certainly been quite a few more hours than I anticipated. However, I think it gives me A good perspective to evaluate this proposed new rule. I would say to all of you out there if you have the chance to be a tutor for a willing law clerk, expected to be a lot of hard work but expect it to be a great re-learning experience for you as a practicing lawyer. Just imagine going back and re-reading Pennoyer v. Neff and looking back at The Daubert case regarding scientific evidence and looking back again at property law. It has been a great ongoing CLE for me and certainly has helped me be better in my practice as I’ve refreshed my memory on many of these legal concepts. It is a requirement as a supervisor that we spend at least three hours per week of personal supervision with our law clerks and I find that my son and I spend that many hours and more each and every week, not only because I enjoy tutoring him, but I think we both are gaining a lot from the process. I would highly recommend and support the passage and inclusion of this provision in the CLE rules. I certainly would benefit from it, but I think it is reflective of a lot of good “education” for the lawyer/tutor as well.</p>
David B Trujillo	Those attorneys that provide that training should receive some credit. That’s a lot of work.
Jeanette Laffoon	<p>As a tutor myself, I am cognizant of the extensive time and energy committed to the program. I devote an average of 8 hours per week to mentoring my law clerk (meeting with her, reading, researching materials and drafting exams). It would be amazing to receive credit for 3 of those hours. It would also provide welcome incentive for other qualified attorneys to co-mentor in areas of their expertise, which would increase the quality of the experience for clerks.</p>
James Roy Wood	N/A
	N/A
Pamela Egan	I was a tutor in college. It improved my grades. One learns a lot tutoring.

D. James Tree	During the past decade I have acted as tutor for two different law clerks in the WSBA law clerk program. I found the program to be comprehensive and very time consuming. It was a rewarding experience mentoring these law clerks. I had to dive in-depth in many areas of the law. I believe the work and study necessary to be a tutor is at least equivalent to what an attorney learns through traditional CLE course, and I encourage the WSBA to allow tutors to earn credits for the hard work and service they are providing to our newest members of the bar.
Kristen Reid	As a former Law Clerk, and current Tutor, I am 100% for this. I know exactly how much work it is to be a Tutor, and it does require that I keep up on the law, and convey the concepts and rules effectively. Thanks!
	N/A
Scott F Lundberg	I was a former tutor under this program for Heather Webb - it takes a lot of time to create the syllabus and structure the outlines for each class, learn new and current law, spend and mentor with your time and then create meaningful exams. The goal is to be creative, have the mentee learn each subject, pass the bar and come out helping people solve problems. It takes a lot of time for the mentor and mentee to do it right and succeed. CLE credited for the mentor would be well earned and deserved. Scott WSBA 16178
Anthony F Menke	I believe this approach would encourage some attorneys to participate in this very worthy program. Being mentored by experienced and seasoned attorneys is a distinct advantage for law Clerks. I would respectfully recommend that there be a certain minimum number of years experience required before such attorneys may receive CLE credit.
Marya C. Noyes	This is a tremendous service to the profession. Frankly, I am surprised that it took so long to implement.
Eric Steven	The rule 6 program takes time and effort for both mentor and participant. The time spent seems like it furthers the mentors legal growth sufficient to warrant CLE credit.
Michael Graham	N/A
Adam Philipp	N/A
Doug Palmer	This is a lot of legal study/work that is verified with certification to the Bar. We're basically giving a personal, one-on-one CLE.

Gregory Hoover	I approve. The more CLE credits to members the better. It should be easier to give credits for CLEs to members. Always.
	<p>Being a tutor is a serious commitment of time and consistency; since the law clerk program is a four-year commitment, the tutor spends countless hours discussing each law subject under consideration, preparing appropriate exams for each subject, supervising the clerk's responses to the exam, reviewing/commenting on all written answers to each exam, and discussing each answer with the clerk. In addition, the tutor discusses each book which the clerk chooses for reading and written review; then the tutor reads and writes comments for discussion and analysis with the clerk. In addition, the tutor guides the clerk in all other aspects of professional rules of responsibility as the clerk learns how to serve clients responsibly and effectively. I believe this important time commitment by the tutor should be recognized for appropriate mcle consideration.</p>
Betsy Brinson	<p>I am currently supervising a Rule 6 intern. I graduated from law school 41 years ago this June and have been in a practice focused on single area of law for the last 30 years. Thus, it has been rude awakening as to how much I have forgotten and have had to relearn in order to be able to tutor my Rule 6. I've had other mentors tell me how much work tutoring a Rule 6 is, but until you do it yourself, you really don't appreciate what that means. I'm not in it for the credits, but it certainly is much more educational and intense than any CLE I've done in my 40 years of practice. It's also a much greater commitment of time than CLEs. For example, in the last 5 months I have spent between 8 and 16 hours every weekend boning up on the UCC and corporations because they are not areas that I practice in and have dealt with at most tangentially in the last 40 years. Given what the Bar has forecast about the declining numbers of attorneys in the future, offering credits for mentoring Rule 6's may be a way to counter the decline.</p>
Janet T. Kelly	<p>The proposed amendment is consistent with other teaching activities counting toward CLE requirements, and is in line with the spirit of the rule - to keep ourselves current and abreast with the law. I completed the law clerk program and have served as a tutor for about 6 months - it requires a lot of work, time and reading to serve as a tutor. My clerk successfully passed the bar.</p>
Robert C. Scanlon	

Robert Jones	I fully support this proposed change. It's a shame that this hasn't been done sooner. One of my partners has spend substantial amounts of time and effort to supervise the preparation of one of our paralegals to take the WA state bar exam this July (2022). It is a shame that my partner has not been able to claim CLE credits for the hours and hours of time he has spent in supervising this candidate.
	Supervising a Rule 6 student is a huge commitment of time and energy and requires significant knowledge and research on the part of the attorney. The 32 hours per month spent teaching and supervising dwarf the 15 hours per year required for CLEs, and if the WSBA can entice more attorneys to become Rule 6 supervisors it could help ease the financial burden of law school for many future lawyers.
Julie	This looks reasonable to me!
Timera Drake	I think this is a fantastic amendment and could boost participation in the Law Clerk program.
DEANE W MINOR, WSBA 12756	FROM MY 3+ YEARS AS A TUTOR, I CAN SAY WITH CONFIDENCE THAT I HAVE LEARNED AS MUCH FROM TUTORING AS I DO FROM THE BEST CLE'S I HAVE TAKEN -- AND MUCH MORE FROM TUTORING THAT FROM THE TYPICAL CLE. AFTER 40 YEARS, PALSGRAF MAKES SENSE!
William R. Kiendl	There should be no situation where a person devoting time to the training of aspiring professionals must do so using her / his own resources.
Alan Bornstein	The Apprenticeship program provides a path for those who wish to be lawyers, but lack the money or time to attend law school. Providing CLE credit to tutors rewards tutors for their efforts and, simultaneously, refreshes their legal knowledge.
Daniel J. Hess	I am currently tutoring a woman in the Law Clerk Program. This allows me to stay conversant with many areas of the law. I feel it should qualify for credit similar to that allowed for Law School Instructors. Dan Hess
	Teaching of law students and other legal professionals should also count for CLE credit as well so long as the teaching meet similar criteria with respect to content.
Cruz Turcott	N/A
Robert D. Gudmundson	Teaching is a great learning experience for the instructor. This amendment to allow tutors MCLE credit for time tutoring is a good idea. I support it.
Matthew McGowan	I think that's a great idea. Mentoring a Rule 6 can be hard work, and this is a reasonable and practical incentive.

	<p>Federal Administrative Judges should have the CLE requirement waived. Other judges and state administrative judges have this waived, it does not make sense that it is not waived for federal administrative judges.</p>
<p>Christopher Trent Kunz</p>	<p>I was a tutor in the law clerk program for Alexa Ritchie. I wholeheartedly endorse this amendment. I spent many, many hours providing "personal supervision" as to all tutors in the program. A major, sometimes insurmountable, hurdle for potential law clerks to enter the program is actually finding a qualified attorney who is willing to assist as a tutor. I believe, the amendment proposed, would allow potential tutors to free up some time, by not having to take CLE's. At the time I was participating in the program, many of the tutors were the parent of the law clerk participant. It is a HUGE ask to have a family member act as a tutor in this program, there is no incentive built into the program to do so – in fact, all of the duties of the tutor in the program become disincentives to participate as a tutor. Without incentives like this, and others not yet available, I would never participate as a tutor in the law clerk program again, unless it was a child or other close family member who was the participant. I hope this is helpful. Feel free to contact me if you would like further input, 360-576-5322.</p>
	<p>N/A</p>
<p>Sherri Marie Carr</p>	<p>I'd also provide for changes within the applicable rules and approve the mentoring aspect, per "Requests for MCLE credit for tutoring have sought credit under both "teaching" credit and "mentoring" credit provisions of APR 11. However, teaching credit is limited to law school courses and, therefore, is not applicable to the Law Clerk Program. Requests for mentoring credit are also not applicable, as the Law Clerk Program is not approved as a "Structured Mentoring Program" because the students are not active members of the WSBA as required per APR 11(e)(8). APR 11d (vii) Approve Mentoring Programs. The MCLE Board shall approve mentoring programs that meet requirements and standards established by the MCLE Board for the purposes of awarding MCLE credit under these rules." Being instructed and learning the applicable substance of the legal profession is just a portion of what is required. Folks also critically need mentors that guide them, that they feel comfortable asking questions of, and that teach them things that are not in the "textbooks" regarding how to progress ethically, professionally, and with the requisite well-being and skills necessary to succeed in this profession.</p>

Barry W. Brandenburg	Mentoring an APR 6 applicant is very time consuming. Time spent with the mentee takes away time from generating income for the firm as well as taking time away from the mentor to comply with the attorney's own MCLE obligations. By allowing MCLE credit for mentoring a potential new attorney, we encourage older, experienced attorneys to devote that time to the mentee.
Ada Danelo	N/A
	I am in favor of this amendment in the hope that more attorneys will be willing to supervise Rule 6 clerks. This is an extremely important alternative to law school and with the high cost of law school, this program is needed to diversify our profession.
Jennifer Jana	N/A
	As one who was a successful Rule 6 tutor, I totally support the proposal.
Dennis J. Beemer	As a current tutor, I am spending in excess of 8 hours per week reading law school textbooks and refreshing and updating my knowledge of the law. I am learning new material which significantly benefits me as a legal professional, and which I may then incorporate into my legal practice. Further, I spend approximately 12-15 hours each week in direct supervision of my student, reviewing case briefs, writing examinations, etc.. Essentially, I am assisting the next generation in their professional legal development. I believe both my knowledge and skill level has been substantially enhanced as a result of my participation in this program, which are the very essence of continuing legal education. Therefore, I believe it entirely appropriate to award CLE credits for tutors involved in this program.
KINNE HAWES	N/A
	Mentors provide many uncompensated hours and this change is a small way to support them and credit them for their work. This seems a small step, but better than not doing it.
Kate Gamble	Having studied under the APR 6 Law Clerk program, I can attest to the amount of time and attention required to be an effective tutor. Those willing to mentor not only impart the knowledge they have acquired through experience, but are actively learning themselves through the teaching process.

Jonathan Sprouffske	I've witnessed members of our firm serve as mentors to Rule 6 candidates. I think the time and attention they put into planning lessons and exams is commendable, it is likely they learn more undergoing that exercise than they would in an online CLE. I believe CLE credits would be appropriate.
	Tutors should absolutely receive MCLE teaching credit! This would provide incentives for attorneys to mentor Rule 6 clerks, thus providing more opportunities to the general public to have a shot as a lawyer without the additional financial strains of law school. It is a win-win for tutors and the public.
Matthew Campbell	This is an easy call in my opinion. Attorneys who take time from their regular practice to teach at our law schools or mentor law clerks provide a critical service to our legal community. They should receive CLE credit for that work. When I was in law school, most of my favorite professors were practicing attorneys. Their practical experience and focus on real application (vs. theoretical) was critical to my education. These attorneys made me the attorney I am today. I also came up through the law clerk program, and gained similar benefits from working with mentor attorneys. I know that these attorneys spend a significant amount of time keeping up to date to make sure they're passing on correct and accurate information. In my opinion, that work is at least as valuable, if not more, than anything we learn at a typical CLE. These attorneys add so much. They should received CLE credit for their efforts and time.
Kaustuv M. Das	Should there be some adjustment made in light of the fact that a typical law school class has more than one student? Also, would the tutor be entitled to claim another five hours of CLE credit under APR 11(e)(2) for every hour of "personal supervision?"
Brian L. Ernst	Tutors spend countless hours preparing their students by doing extensive legal research and preparation. This is akin to CLE presenters getting credit for their CLE preparations.
	N/A
	N/A
	I support this amendment. Although I went to traditional law school, I support the law clerk path to bar membership, and I believe this will encourage more lawyers to support law clerks.
Kristina Ralls	I think this amendment would encourage legal professionals to provide mentoring to rising APR 6 Law clerks

Lisa Brewer	Mentors and supervisors spend a huge amount of time overseeing Rule 11 etc students. It's like law school all over again. Plus, the WSBA would be wise to encourage volunteerism and mentoring as attorneys spend ever more time just making a living wage.
Kaylynn What	Yes! This is absolutely appropriate. Law school is great, but it's only when students get their feet wet in the field that they really understand what the practice is all about. This is so much work for the supervising attorney! They have to educate students about so many routine procedural issues, in addition to whatever area of law they are working within, and this process necessarily requires keeping up to speed with various aspects of the law, all the time, and understanding it all well enough to explain it to a person not well versed in it. This effort deserves the recognition that MCLE credit would provide.
	N/A
Salim Lewis	As a former law clerk and now lawyer, I saw the immense amount of work that goes into being a Rule 6 mentor firsthand. These lawyers are providing a service to the bar and the legal community at large and should be rewarded for that service with CLE credits.
	N/A
Erin Pierce	Teaching of any sort directed at other lawyers (through CLEs), or for students requires significant time and review of the relevant materials. It is appropriate for credit to be given for such efforts which enhance and update the teacher's knowledge in order to work with the student.
Carolyn Lake	Receiving credit is wildly appropriate recognition for the time and dedication these tutors devote to mentoring Law Clerks.
Aaron Ross	The law clerk program is a credit to the WSBA, and this change seems like it will increase interest in (and recognition for) tutoring -- it would be a welcome amendment.
Victoria Kesala	I was a tutor for two years. It is a huge time commitment and requires a lot of preparation. In my opinion, it is harder than teaching a CLE in your own subject matter area because you have to dig deep into other topics you may not have thought about much since the bar exam and make sure you understand them well enough to teach them properly to another person. It's a LOT. Offering credit is appropriate.

Malena Pinkham	I know the tutors do an enormous amount of work in their duties and learn a great deal from the material they are teaching.
	Participating in the time honored tradition of mentoring, even in this context, should be positively reinforced -- and it IS a lot of work!
Tiffany	N/A
	It completely makes sense! Particularly when the tutor is preparing the required monthly exams, they must review the law and be able to understand and apply it. That is just what the CLE is intended to do. This proposal should be approved without delay.
	N/A
Jason Pass	I think this is a great idea.
Jamie Olivares	I think this would be a wonderful amendment. I was lucky enough to have an attorney willing to clerk me. I would not have become an attorney otherwise, as the cost of law school was not an option. Giving the tutors CLE would encourage more attorneys do the law clerk program, which would result in a more diverse pool of attorneys in WA state that could not become an attorney via the traditional law school path.
	N/A
John Clynch	N/A

TOTAL PARTIALLY IN FAVOR OF SUGGESTED AMENDMENT - 12

Name	Feedback/Comments
Marjorie Simmons	As long as tutors are licensed attorneys
Lisa Johnson	<p>I have taught undergraduate students in law and legal studies for 18 years. No one has ever allowed me to earn MCLE credit for my teaching of substantive law to this constituency, and I have frankly felt quite disenfranchised from the WSBA because you do NOT address the important work of professors at the undergraduate level. To be absolutely honest, it is a major "hole" in the WSBA. I am a member, but I am often "left out." I am somewhat shocked at this suggestion "all of a sudden," give the - basically, what has at times seemed to be something of a dismissal of my work for the entirety of my career from this organization. I suppose the distinguishing factor is that the students considered here are law clerks, while my students are not. The objective teaching of law is the same, however. So, my suggestion is to yes, recognize it. But recognize ALL OF US who teach and allow ALL OF US to receive MCLE credit for our work.</p>
	<p>I guess I'm wondering what is different between any supervisor supervising any legal professional? Would you give a partner in a law firm CLE credit for supervising a subordinate that just joined the bar? If you're going to do one you might do the other. I don't think that I see anything special about law clerks that would set the supervisors apart and give them CLE credit and not give other supervisors silly credit. What about supervising paralegals? Should that count?</p>
Rhonna Kollenkark	<p>I think this is only fair. The amount of time devoted to properly mentor a law clerk is substantial. That said, lawyers that take time to teach a law school class have a lot more structure and objective requirements imposed on them by the institutions for whom they teach. I think the current amendment should offer either a credit limit or some firm guidelines for what will be considered acceptable to ensure a more evenly applied standard.</p>

Laird A. Pisto	The plan and changes make sense and will likely encourage attorney support for the underlying Law Clerk program. My recommendation is to place an annual "cap" on credits earned, perhaps around 8-10 CLE hours per year. The law firms supporting Law Clerk programs get a "lot" of benefit from the work performed by the clerks in their offices. Perhaps if there was more cross-training being done (teaching Law Clerks outside of the office they work in) which may be the case, where the teaching attorneys are subject-matter experts in the categories being taught, there would be less concern about a cap.
Eric Allen	Continuing legal education for presenters should be given based on the presenter having to do research or self education in order to teach others. It is not clear that personal supervision involves this. Giving credit under these circumstances does not show that the tutor is engaged in this self education.
	So many things qualify for CLE credits that it's become meaningless.
	Are there requirements for the number of hours that would qualify per credit? Please correct typo in proposed amendment.
Robert R. Fischer	I believe uncompensated tutors deserve credit for the services they are providing as "substitute" professors. However, adjunct professors who are receiving compensation should not receive credit unless being seriously underpaid, and then on a proportionate basis. For example, if an adjunct is receiving \$25 per hour then she should be some credits as determined by the board.
JIM ROHRBACK	IS THERE AN ANNUAL LIMIT ON HOW MUCH CLE CREDIT A "TUTOR" CAN GET BY SUPERVISING? I DO NOT BELIEVE THAT ALL 15 HOURS SHOULD BE ACCOMPLISHED BY THIS "TUTOR" DESIGNATION.
Neal Taylor	Any relief or benefit provided to Law Clerk Tutors will be greatly appreciated and MCLE credit is a good reward. How many MCLE credits would be granted and what will be the process for obtaining those MCLE credits? Depending on how many credits will be available, it might not be needed to ask you to find a way to provide MCLE credits for the lion's share of the time required to be a Tutor--studying the materials and creating, administering and grading the exams (one per month for 48 months)--especially those outside of the Tutor's active practice area. It has not been feasible to get Assistant Tutors for most of the classes.

TOTAL NOT IN FAVOR OF SUGGESTED AMENDMENT - 35

Name	Feedback/Comments
	N/A
	N/A
Stephen Faust	CLE requirements are justified for lawyers and others under your jurisdiction as a means to force professionals to maintain their professional competency. Mandatory CLE is not intended to create a form of currency the bar can spend to reward individuals for supporting programs the Bar finds interesting. If supervising clerks in the WSBA program is a practice that increases lawyer competency to the degree that it meets CLE requirements and justifies an award of credits, then so is the supervisory activity of any lawyer supervising any clerk or intern in their firm. You would never allow CLE for that, nor should you. Please confine the mandatory CLE concept within the bounds that give the bar any legitimate jurisdiction to require it of us in the first place!
Douglas Scott	Not in favor
	N/A
	N/A
	N/A
Britt L Ohlig	Tutoring is not the same as teaching.
	The Rule 6 sponsor could avoid any other CLEs simply by claiming they "personally supervised" the Rule 6 clerk...which is what they are supposed to do anyway when they agree to act as a sponsor. This would not give them any new or expanded legal knowledge, which is what CLEs are for.
	Providing oversight is not CLE, but more like being a managing partner, but much less on the education side.
	N/A
	We all applaud volunteer work, but MCLE is supposed to keep attorneys up to date in their legal education.

Vicki Beyer	I feel allowing CLE credit for personal tutoring is going too far. Every practicing lawyer "tutors" junior lawyers (and law clerks) in one way or another and allowing MCLE credit for tutoring in one context seems to be introducing a potentially very slippery slope. Personal tutoring, usually conducted one-on-one, does not usually involve preparation or reading of learning materials, which is usually a key component of any MCLE.
	Sounds like bullshit to me
	I'm opposed to this provision because licensed attorneys are not allowed to receive credit when they do their own "tutoring" to clients. The flexibility in crediting attorneys for their self-taught legal education is not available. That should happen first (before extending credits for "tutoring").
	Not learning any new law by teaching a clerk how you do law
	I've see a lot of attorneys with dysfunctional law practice getting free labor teaching someone to become another lawyer with a dysfunctional practice. Getting cle credit on top of the free labor is not helping that attorney become a better attorney or stay current with developments in the law.
	Not rationally related to lawyer's own continuing legal education. Ripe for abuse.
	I think it is important for people to obtain MCLE credits from a variety of sources, and I do not think that tutoring law clerks provides enough new and unique educational perspectives.
	This does little to further an attorney's skills or education. If this is okay why not also allow CLE credit for any pro bono work?
	Countless attorneys give of their time to mentor younger lawyers within their firms and communities without expectation of CLE credit. Although volunteering as a tutor is admirable, it is volunteering and should not be given CLE credit.

Steve Gordon	Tutoring others in areas the tutor already knows would seem to have little connection to the continuing the legal education of the tutor. It seems like a good idea to provide some benefit to the tutor but changing the purpose of continuing legal education to achieve social goals seems like a bad idea & a very slippery slope. The law is always changing and lawyers should be required to keep up with the changes through continuing legal education.
	This is bad precedent. What next? CLE credit for law school professors?
	Not needed.
	This starts a slippery slope: if such a tutor receives credit, then wouldn't an attorney supervising a Rule 9 also be eligible to receive such credit. How do you track that time on either such a tutor or a Rule 9-supervising attorney? It's how many years for such a tutor? How many hours is that? Is the tutor really doing all that work or is his/her paralegals actually doing the majority of the work?
	This is a horrible amendment and I am against it.
	N/A
	N/A
	make them go to law school
James Beard	Who should have CLE requirements more than law tutors.
	This dilutes the importance of the CLE's and appears to be a "favor" to a select few.
	N/A
	N/A
	🗨️

From: Mandatory Continuing Legal Education Board
Date: April 8, 2022
RE: REPORT AND RECOMMENDATION OF THE MCLE BOARD

Mandatory Continuing Legal Education Board

The Mandatory Continuing Legal Education Board (“MCLE Board”) consists of seven members: Todd Alberstone (Chair), Robert Malae (Vice-Chair), Asia Wright, Ayanna Eagan, Christopher Bueter, Efrem Krisher, and Merri Hartse.

Suggested Amendment

The MCLE Board workgroup recommends an amendment to Admission and Practice Rule (APR) 11 that would allow tutors in the APR 6 Law Clerk Program to claim MCLE credit for their personal supervision of APR 6 law clerks.

The MCLE Board recommends the following suggested amendment to APR 11:

APR 11(e)(6) Teaching law school courses, when the instructor is not a full-time law school professor; or providing “personal supervision” as a tutor for the Law Clerk Program, as defined in APR 6 (d)(2);

Background

Over the years, there have been several requests by tutors in the APR 6 Law Clerk Program to receive MCLE credit for giving their time as tutors to clerks enrolled in the Law Clerk Program. As part of the Law Clerk Program, tutors provide three hours of personal supervision each week to clerks, including substantive discussion of the law. Within each year of this four-year program, clerks are required to study six subjects and to pass monthly examinations. The exams are developed, administered, and graded by the tutors. Requests for MCLE credit for tutoring have sought credit under both “teaching” credit and “mentoring” credit provisions of APR 11. However, teaching credit is limited to law school courses and, therefore, is not applicable to the Law Clerk Program. Requests for mentoring credit are also not applicable, as the Law Clerk Program is not approved as a “Structured Mentoring Program” because the students are not active members of the WSBA as required per APR 11(e)(8).

In response to these requests, the MCLE Board formed a workgroup—including two members of the Law Clerk Board—to explore a potential amendment to APR 11. On August 12, 2021, the workgroup met to discuss the need for an amendment and potential language. During this meeting, the workgroup members decided that the “personal supervision” time as defined in APR 6(d)(2) should be eligible for MCLE teaching credit, and that APR 11(e)(6) should be amended accordingly. The workgroup suggested



an amendment to APR 11(e)(6) rather than to APR 11(e)(8), as the “teaching” requirement is more analogous to Law Clerk Program tutoring.

Factors & Information

Value of the Law Clerk Program

The four-year Law Clerk Program is an alternative to traditional law school that provides education through a combination of work and study, under the supervision of a lawyer or judge. The lawyer or judge must have at least ten (10) years of experience to qualify as a tutor, and be in good standing with the Washington State Bar Association.

The Law Clerk Program increases opportunities for non-traditional law school students, by offering an affordable alternative to those seeking to practice law in Washington State. Upon completion of the Program’s education requirements, students may sit for the Washington lawyer bar examination.

Teaching Credit for “Personal Supervision”

Tutors in the law clerk program spend an average of three hours per week—over the course of the four-year program—to personally instruct and advise the law clerk. As the coursework for this program includes 6 courses every 12 months, as prescribed by the Law Clerk Program Regulations, the supervision time can be considered “teaching” time. Personal supervision is defined in APR 6(d)(2):

“Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor’s personal supervision of the law clerk. “Personal supervision” is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk’s written assignments.”

As the personal supervision time includes exposition and discussion of the law, case recitation, and analysis of assignments as part of coursework, this time should be eligible for “teaching” credit per APR 11(e)(6). The Law Clerk Program curriculum includes “using an apprenticeship model that includes theoretical, scholastic and clinical components.” These components are designed to mirror the extensive and comprehensive nature of law school curriculum, and include law school course topics such as civil procedure, contracts, property, and torts.

Benefit of Offering MCLE Credit

Offering MCLE credit for this supervision and instruction time may encourage lawyers to serve as tutors for the Law Clerk Program.



Tutors must commit an extensive amount of time both to instruct and to supervise the law clerk. This time is considered volunteer time that is not the full-time job of the tutor, analogous to the current requirement for teaching credit per APR 11(e)(6): “Teaching law school courses, when the instructor is not a full-time law school professor;”. As the tutor’s full-time job is not tutoring, the MCLE credit eligibility will echo that of the law school course teaching requirement.

Offering this MCLE credit benefit rewards the incredible time commitment to advancing the profession through this program’s law school alternative and, by association, affirms the WSBA’s commitment to increasing access to justice.

Timeline

Possible Timeline for suggested amendment:		
January 2022		Workgroup drafts report and recommendation.
February 4, 2022	Law Clerk Board Meeting	Law Clerk Board reviews report and recommendation draft and provides feedback to workgroup.
April 8, 2022	MCLE Board Meeting	MCLE Board reviews report and recommendation and any feedback from Law Clerk Board. MCLE Board will vote whether to move forward with suggested amendment. Vote on opening for member and other stakeholder comment period.
May 6, 2022		Close written comment period.
May 13, 2022	MCLE Board Meeting	Hear member and other stakeholder comments and discuss feedback. MCLE Board to vote on whether to proceed with suggested amendment. If proceeding, MCLE Board to nominate Board members to present to BOG and work on presentation materials.
June 27, 2022	BOG Materials	BOG materials due.
July 21-22, 2022	BOG Meeting	Present to WSBA BOG and ask for support.
August 5, 2022	MCLE Board Meeting	Discuss feedback from BOG and vote on whether to move forward with suggested amendment. If proceeding, MCLE Board will nominate Board members to work on GR 9 coversheet.
August 22, 2022		First draft due of GR 9 coversheet.
September 12, 2022		Final draft due of GR 9 coversheet.
October 1, 2022	Suggested Amendment Deadline	Send recommendation to Court.



Attachments

1. APR 6 Rule and Regulations
2. APR 11
3. Primary Tutor Application
4. Resolution of the WSBA in Affirming the Law Clerk Program Value



WASHINGTON STATE
BAR ASSOCIATION

RULES AND REGULATIONS
GOVERNING THE WASHINGTON STATE
LAW CLERK PROGRAM

Effective Date: September 1, 2017

APR 6 Amended effective September 1, 1984; March 6, 1992; September 1, 1994; June 2, 1998; April 1, 2003; January 13, 2009; January 1, 2014; September 1, 2017.

Regulations approved by the Board of Governors September 26, 2013, effective January 1, 2014; amended effective May 19, 2017.



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ADMISSION AND PRACTICE RULES (APR)

RULE 6. LAW CLERK PROGRAM

(a) Purpose. The Law Clerk Program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, experiential, and clinical components. Successful completion of the Law Clerk Program provides a way to meet the education requirement to apply for the lawyer bar examination; it is not a special admission or limited license to practice law.

(b) Application. Every applicant for enrollment in the law clerk program shall:

- (1) Be of good moral character and fitness, as defined in APR 20;
- (2) Present satisfactory proof of having been granted a bachelor's degree by a college or university with approved accreditation; if the degree was earned in a non-US jurisdiction, the applicant shall provide supporting documentation as to its equivalency;
- (3) Be engaged in regular, full-time employment in Washington State for an average of 32 hours per week with the primary tutor or primary tutor's employer in a (i) law office, (ii) legal department or (iii) a court of general, limited, or appellate jurisdiction in Washington State. The employment must include tasks and duties which contribute to the practical aspects of engaging in the practice of law;
- (4) Submit in such form and manner as prescribed by the Bar (i) an application for enrollment in the program, (ii) the tutor's application, and, (iii) the application fee;
- (5) Appear for an interview, provide any additional information or proof, and cooperate in any investigation, as may be deemed relevant by the Bar; and
- (6) If applicable, present a petition for Advanced Standing based on law school courses completed or courses completed in this program during a previous enrollment. The Bar may grant Advanced Standing to an applicant approved for enrollment for courses deemed recently and successfully passed and equivalent to courses in the program.
- (7) Where the Bar is satisfied that a primary tutor has arranged a relationship with the applicant's full-time employer consistent with the purposes of the Program, the requirement that the primary tutor, or primary tutor's employer, be the law clerk's employer may be waived.

(c) Tutors. To be eligible to act as a tutor in the law clerk program, a lawyer or judge shall:

- (1) Act as a tutor for only one law clerk at a time;
- (2) Be an active member in good standing of the Bar, or be a judicial member who is currently elected or appointed to an elected position, who has not received a disciplinary sanction in the last 5 years, provided that if there is discipline pending or a disciplinary sanction has been imposed upon the member more than 5 years preceding the law clerk's application for enrollment, the Bar shall have the discretion to accept or reject the member as tutor;
- (3) Have active legal experience in the practice of law as defined by APR 1 or have held the required judicial position for at least 10 of the last 12 years immediately preceding the filing of the law clerk's application for enrollment. The 10 years of practice must include at least

2 years in Washington State and may be a combination of active practice and judicial experience but may not include periods of suspension for any reason;

- (4) Certify to the applicant's employment as required above and to the tutor's eligibility, and to agree to instruct and examine the applicant as prescribed under this rule; and
- (5) Act as a tutor only upon the approval of the Bar which may be withheld or withdrawn for any reason.

(d) Enrollment. When an application for enrollment has been approved by the Bar, an enrolled law clerk shall:

- (1) Pay an annual fee as set by the Board of Governors.
- (2) Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor's personal supervision of the law clerk. "Personal supervision" is defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments.
- (3) Complete the prescribed course of study which shall be the equivalent of four years of study. Each year of study shall consist of 6 courses completed in 12 months. Months of leave, failed courses, and months in which the enrollee does not meet the minimum number of hours of work and study may not be counted toward the completion of a course and may extend the length of a year of study. Advanced Standing granted may reduce the months of program study. The course of study must be completed within 6 years from the initial date of enrollment.
- (4) Abide by APR 6 and the Law Clerk Program Regulations approved by the Board of Governors which provide the course of study, program requirements and other guidelines to successfully complete the program.

(e) Course of Study. The subjects to be studied, the sequence in which they are to be studied, and any other requirement to successfully complete the program shall be prescribed in the Law Clerk Program Regulations. Progress toward completion of the program shall be evaluated by submission of examinations, certificates, reports and evaluations as follows:

- (1) **Examinations.** At the end of each month, the law clerk shall complete a written examination prepared, administered, and graded by the tutor. The examination shall be answered without research, assistance, or reference to source materials during the examination. The examination shall be graded pass/fail.
- (2) **Certificates.** The tutor shall submit the examination, including the grade given for the examination and comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study and the tutor's personal supervision within 10 business days following the month of study. If an examination is not given, the monthly certificate shall be submitted stating the reason.
- (3) **Book Reports.** The law clerk shall submit three book reports for the Jurisprudence course requirement corresponding to each year of study.
- (4) **Evaluations.** Annually, or at other intervals deemed necessary, the law clerk shall participate with the tutor in an evaluation of the law clerk's progress.

(f) Completion of the program. A law clerk shall be deemed to have successfully completed the program when:

- (1) All required courses have been completed and passed as certified each month by the tutor, and all book reports have been submitted,
- (2) The tutor has certified that the law clerk, in the tutor's opinion, is qualified to take the lawyer bar examination and is competent to practice law; and
- (3) The Bar has certified that all program requirements are completed.

(g) Termination. The Bar may direct a law clerk to change tutors if approval of a tutor is withdrawn. The Bar may terminate a law clerk's enrollment in the program for:

- (1) Failure to complete the prescribed course of study within 6 years from the date of enrollment;
- (2) Failure of the tutor to submit the monthly examinations and certificates at the end of each month in which they are due;
- (3) Failure to comply with any of the requirements of the law clerk program; and
- (4) Any other grounds deemed pertinent.

(h) Effective Date. Revision of this rule shall not apply retroactively. A law clerk may complete the program under the version of the rule in effect at the start of enrollment.

(i) Confidentiality. Unless expressly authorized by the supreme court, the program applicant's, or a current or former law clerk's enrollment and related records, documents, and proceedings are confidential and shall be privileged against disclosure, except that the fact of successful completion of the program shall be subject to disclosure.

APR 6 LAW CLERK BOARD REGULATIONS

1-1 Authority

Regulation 1. GENERAL

- A. The law clerk program established in APR 6 and implemented in these regulations is conducted by the Bar Association at the direction of the Supreme Court. It is administered by the Law Clerk Board under the direction of the Board of Governors.
- B. The good moral character and fitness of an applicant is determined by the Character and Fitness Board pursuant to Admission and Practice Rules 7 and 20 through 24.4(a).
- C. To facilitate prompt administration of APR 6 and these regulations, designated staff of the Washington State Bar Association may act on behalf of the Law Clerk Board under APR 6 and these regulations.
- D. The Law Clerk Board, with the approval of the Board of Governors, may amend these regulations as necessary. Revisions of these regulations shall not apply retroactively to an enrolled law clerk. These changes shall apply to applications, petitions and requests made after the effective date of the revisions.

1-2 Purpose and Expectations.

- A. The law clerk program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, scholastic and clinical components. Successful completion of the law clerk program qualifies a person to apply for the Washington State bar exam. Participation in the law clerk program is not a special admission or limited license to practice law.
- B. The program relies on the good faith and integrity of the participants. The Board cannot administer and supervise the clerkship on a daily basis. The Board assumes the tutor and the law clerk will adhere to the letter and spirit of the program.
- C. The law clerk program is an alternative legal education. The program issues a certificate of completion; it is not approved by the American Bar Association and it does not confer a Juris Doctor degree or other degree.
- D. The Board will not assist an applicant for the law clerk program to find employment or to evaluate in advance the qualifications of a potential tutor.

1-3 Definitions.

For the purpose of these regulations, the following terms are defined:

- A. "Approved accreditation" means accredited by an accrediting agency recognized by the US Department of Education.
- B. "Assistant Tutor" means a qualifying lawyer or judge who has been approved to teach specific courses.
- C. "Bar Association" means the Washington State Bar Association.
- D. "Board of Governors" means the Board of Governors of the Washington State Bar Association.
- E. "Board" means the Law Clerk Board.

- F. "Board Liaison" means an individual member of the Law Clerk Board in his or her role as liaison between the law clerk and the Board.
- G. "Employment waiver" means a relationship in which the primary tutor is not the law clerk's direct employer but has received Board approval of an alternative relationship under APR 6(b)(7).
- H. "Law clerk" means a person whose application for enrollment in the law clerk program has been accepted by the Board. It refers to applicants to the program in that applicants must have employment as a law clerk, legal assistant, or equivalent to qualify for enrollment. Law clerks are not authorized or licensed to engage in the practice of law by virtue of APR 6.
- I. "Program" means the law clerk program established by APR 6 and implemented in these regulations.
- J. "Regular, full-time employment" means that the law clerk is hired by the tutor or the tutor's employer in a (i) law office, (ii) legal department, or (iii) a court of general, limited, or appellate jurisdiction located in Washington State, for an average of 32 hours per week for at least 48 weeks each calendar year.
- K. "Tutor" means a qualifying lawyer or judge who has agreed to teach the law clerk and be responsible for all aspects of compliance with the program.

Regulation 2. LAW CLERK BOARD

2-1 Responsibilities.

The Board will make decisions regarding:

- A. Approval or rejection of an application for enrollment in the program.
- B. Approval or rejection of a lawyer or a judge to act as a tutor.
- C. A petition for advanced standing.
- D. A direction to the law clerk to change tutors.
- E. A recommendation to the Board of Governors for the termination of a law clerk's enrollment in the program.
- F. A petition for readmission.
- G. Changes in course contents, course descriptions, or program completion requirements.
- H. Applicability of the effect of prior decisions regarding other law clerks and tutors.
- I. Recommendations to the Board of Governors regarding amendments to these regulations.
- J. Any other matter related to the program or referred to the Board by the Board of Governors.

2-2 Board Liaisons.

- A. A law clerk will be assigned to a Board member who shall act as a liaison between the law clerk and the Board.
- B. A Board liaison will make decisions regarding:
 - (1) Recommendations to the Board regarding the acceptance or rejection of an applicant.
 - (2) An annual evaluation of the law clerk's second and third years.
 - (3) Recommendations regarding any other matter related to the program or referred to the Board.

2-3 Staff Administration.

- A. The Board may delegate duties to staff to facilitate prompt administration of the program.
- B. The duties may regularly include but are not limited to:
 - (1) Review of applications to the program, recommendation regarding their qualifications for the program, and assignment of a Board Liaison;
 - (2) Approval of assistant tutors to teach specific courses;
 - (3) Approval of leaves of absence of less than 12 months;
 - (4) Approval of petitions by law clerks to take courses or electives out of order;
 - (5) Approval of the 4th year courses; and
 - (6) Notices of involuntary withdrawal.

2-4 Filing, general.

All applications, petitions or requests shall be in writing and shall be directed to the Board at the Bar Association office.

2-5 Review Procedure.

A. Review of Right. An applicant, law clerk or tutor, has a right to have the Board of Governors review the following decisions of the Board:

- (1) Rejection of an application for enrollment in the program;
- (2) Termination of a law clerk's enrollment in the program; or
- (3) Requiring a law clerk to change tutors.

B. Discretionary. An applicant, law clerk or tutor may ask the Board of Governors to review any decision made by the Board.

C. Filing. A petition requesting either review of right or discretionary review shall be:

- (1) in writing,
- (2) directed to the Board of Governors;
- (3) filed at the Bar Association office; and
- (4) filed within 30 days of the date the law clerk or applicant received notice of the decision.

Regulation 3. APPLICATION PROCEDURE

3-1 Applicants. Every applicant for enrollment in the program shall:

A. Be engaged in regular, full-time employment as defined in Regulation 1-3 unless requesting an employment waiver as defined in Reg. 1-3.

- (1) Under no circumstances may the tutor assess a fee or require any other form of compensation in return for instructing or employing the law clerk. The law clerk shall receive monetary compensation in compliance with federal and state law governing employment. The Board may require proof of employment as deemed necessary.
- (2) Approval of any relationship requiring an employment waiver is within the discretion of the Board. The applicant and proposed tutor must explicitly describe the alternative relationship, show how the purpose of the program will be maintained, and describe how client confidentiality and conflicts of interest will be resolved.

B. Submit the following with the application fee by the deadlines established by the Board:

- (1) A completed program application and all required supplemental information;
 - (2) Official transcripts from all undergraduate and graduate institutions attended, which show the grades received, the date a bachelor's degree was awarded by a school with approved accreditation, and the subject in which it was granted;
 - (3) Two letters attesting to the applicant's good moral character and appraising the applicant's ability to undertake and successfully complete the program; and
 - (4) The tutor's application establishing the applicant's and the tutor's eligibility and certifying to compliance with APR 6 and these regulations.
- C. Appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board, the Character & Fitness Board, or the Board of Governors.

3-2 Advanced Standing. A petition to request consideration for advanced standing for law school courses completed or previous enrollment in the law clerk program must be submitted with an application for enrollment.

A. Petition for Advanced Standing. All law clerks must pass the prescribed courses established in these regulations. No courses may be waived. Applicants seeking advanced standing must establish, to the satisfaction of the Board, that the courses for which they seek credit are equivalent to specified prescribed courses in these regulations. The petition shall include:

- (1) A list of courses in the law clerk program for which advanced standing is sought. No advanced standing may be sought for Basic Legal Skills;
- (2) A list of the law school courses and course descriptions from the law school course catalogue with an explanation of how each course is equivalent to the law clerk program courses;
- (3) Official transcripts for the law school courses. Courses in which the applicant earned a grade less than a B- or 2.7 and/or completed more than five years prior to the Law Clerk Program application date will not be considered. For applicants admitted to the practice of law in a foreign jurisdiction, grades older than five years may be considered in combination with proof of current good standing and active practice of law for three out of the last five years; and
- (4) Any additional information the applicant believes will be helpful or which the Board has requested.

B. Determination. In granting advanced standing, the Board will specify:

- (1) Any prescribed courses or portions thereof that the law clerk applicant has been deemed to have completed;
- (2) Any prescribed courses or portions thereof that the law clerk applicant will be required to pass; and
- (3) Any law school courses that the law clerk applicant will be allowed to use to satisfy the fourth-year curriculum.

3-3 Additional and Remedial Courses. In its discretion, the Board may also require the law clerk applicant to take and pass certain subjects which appear necessary to prepare the applicant to practice law in this state, regardless of whether or not those courses are prescribed courses or approved elective courses. The Board may require the law clerk applicant to take remedial or other legal or nonlegal instruction.

3-4 Notification. The Board will notify an applicant of acceptance or rejection of the application for enrollment. If accepted, the notification will specify the month the law clerk is authorized to begin the program. All programs shall begin the first day of the month specified in the notice. If rejected, the notification will provide the basis for the rejection.

3-5 Acknowledgement of Enrollment. Before beginning the program the law clerk must acknowledge enrollment, pay the annual fee, and agree to inform the Bar Association in writing of any incident that occurs while the law clerk is enrolled that might call the law clerk's moral character or fitness into question.

Regulation 4. TUTORS

4-1 Tutor's Responsibilities.

- A. The tutor is responsible for supervising and guiding the law clerk's education, and for setting an example of the highest ethical and professional conduct. The tutor has an obligation not only to instruct the law clerk, but to ensure only fully competent law clerks are deemed to be qualified to sit for the bar examination.
- B. In addition to any other requirements, a potential tutor shall appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board.
- C. The tutor is required to continue to meet the qualifications for a tutor established in APR 6 and remain in good standing throughout the period of the clerkship.
- D. In addition to the "personal supervision" required by APR 6, defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments, the tutor's responsibilities include:
 - (1) Guiding and assisting the law clerk's study of each subject, using the course descriptions as a basic outline of course content and emphasizing pertinent state law;
 - (2) Choosing textbooks, casebooks, and other written, legal materials, selected from those in use at any of the law schools in the state, to guide the law clerk through the subject matter of each course;
 - (3) Assisting the law clerk in planning the sequence and timing of each prescribed course and of the fourth-year curriculum;
 - (4) Evaluating the law clerk's progress;
 - (5) Developing, administering, and grading the monthly examinations;
 - (6) Submitting the graded monthly examination with written comments and the required certificate to the Board within 10 working days of the end of the month in which it was administered;
 - (7) Assigning the law clerk tasks and duties which are intended to contribute to the law clerk's understanding of the practical aspects of engaging in the practice of law; and
 - (8) Providing the law clerk with an adequate work station and with reasonable access to an adequate law library.

4-2 Assistant Tutors. When an assistant tutor is proposed to teach a course instead of the primary tutor, the Board may approve the application(s) of one or more assistant tutors for up to 6 months of each year of study. The assistant tutor may teach only the course(s) for which he/she was approved by the Board. Informal assistance to a lesser degree, by other lawyers, judges or staff

is generally acceptable without specific approval.

A. Qualification. The assistant tutor shall meet all the qualifications and continuing qualifications established for the tutor in APR 6 and these regulations, except the assistant tutor shall have been actively and continuously engaged in the practice of law or have held the required judicial position for at least five years immediately preceding the commencement of the assistant tutorship.

B. Scope of Delegation.

(1) The assistant tutor may undertake the following duties for the course(s) for which he/she is approved:

- i. Choosing textbooks, casebooks, and resource materials for the course.
- ii. Guiding and assisting the law clerk's study of the subject, using the course description as a basic outline of course content and emphasizing pertinent state law.
- iii. Developing, administering, and grading the monthly examination.

(2) The primary tutor shall:

- i. In consultation with the assistant tutor, determine if the law clerk passed or failed the course;
- ii. Remain ultimately responsible for the conduct of the clerkship;
- iii. Complete all monthly and other certificates; and
- iv. Appear with the law clerk at all oral evaluations with the Board, although the assistant tutor may also be in attendance where appropriate.

Regulation 5. COURSE OF STUDY

5-1 Structure.

- A. The program is designed to be a four year course of study in combination with employment. Each year consists of 12 months during which the law clerk is required to study 6 subjects, pass 12 exams and submit 3 book reports.
- B. The program is structured so the law clerk studies only one subject at a time and passes it before beginning the next subject. All courses in a given year must be completed before the law clerk may study courses in a subsequent year. A law clerk may not take more course work in any calendar year than is prescribed by these regulations without prior Board approval. The length of time to be devoted to each subject is prescribed by regulation.
- C. A law clerk may take leave or vacation in increments of one month upon written notice to the Board. A law clerk may take leave of longer than one month only upon advance written request and approval by the Board. Exceptions for emergency medical situations may be considered. A law clerk may not request leave of more than 12 consecutive months.

5-2 Subjects.

- A. Jurisprudence Reading. Every law clerk is required to take the Jurisprudence course, which is a four year reading program, intended to familiarize the law clerk with legal history, philosophy, theory and biography.
- B. First Year. To complete the first year of the program, the law clerk shall pass the following prescribed courses. The course entitled "Basic Legal Skills" shall be studied and passed first. Thereafter, the courses may be studied in any order.

Course	Months
Basic Legal Skills	2
Civil Procedure	2
Torts	2
Contracts	2
Agency & Partnerships	2
Property	2

C. Second Year. To complete the second year of the program, the law clerk shall pass the following prescribed courses, in any order:

Course	Months
Community Property	1
Criminal Law	2
Constitutional Law I	2
Corporations	2
Evidence	2
Uniform Commercial Code	3

D. Third Year. To complete the third year of the program, the law clerk shall pass the following prescribed courses, in any order:

Course	Months
Constitutional Law II	2
Professional Responsibility	1
Domestic Relations	2
Wills, Estates, Trusts, Probate	3
Conflict of Laws	2
Criminal Procedure	2

E. Fourth Year. The fourth year of the program is devoted to elective subjects. The law clerk, in consultation with the tutor, shall develop a fourth year curriculum of six electives. The law clerk shall then make a written petition to the Board, at least six months prior to the commencement of the fourth year, for approval of the proposed fourth year course of study.

(1) Under no circumstances will approval or recognition be given to courses directed to fulfillment of a continuing legal or other professional education requirement, or intended to provide a preparation for a bar examination, or taught through correspondence or any equivalent.

(2) Recommended Electives. The following electives are recommended because they will broaden the law clerk's legal background, perspective, and skills. A law clerk may petition the Board for approval

of alternative areas of study by including a detailed course description for each proposed course.

Course	Months
Administrative Law	2
Personal Federal Income Tax	2
Land Use	2
Labor Law	2
Remedies	2
Antitrust	2
Creditor-Debtor Relations	2
Securities Regulation	2
Legal Accounting	2
International Law	2
Insurance	2
Consumer Protection	2
Environmental Law	2
Real Property Security	2
American Indian Law	2
Trial Practicum	2
Elder and Disability Law	2

5-3 Monthly Examinations. The tutor is responsible for the content and administration of all monthly examinations.

- A. Content. Although no specific substantive content is prescribed by the Board, it is anticipated such an examination will test the law clerk's comprehension of the current subject matter, and the law clerk's understanding of the ethical, professional and practical aspects of practicing law.
 - B. Course Descriptions. The course descriptions in Regulation 7 state the minimum level of knowledge the Board expects a law clerk to obtain in each subject, and provide guidance to the tutor in formulating monthly examinations.
 - C. Timing. The tutor shall administer an examination covering that month's subjects to the law clerk on or before the last business day of each month.
 - D. Grading. All courses in the program are to be graded as pass/fail only. "Pass" means that the law clerk has exhibited reasonable comprehension of the theory and practice of any given subject to the satisfaction of the tutor and the Board. If a law clerk earns a "Fail" grade he or she shall continue to study the subject for an additional month.
 - E. Certificates. The tutor shall submit the exam, including the grade given for the examination and written comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study and the tutor's personal supervision, within 10 business days following the month of study.
- (1) If an exam is not given, the monthly certificate shall be submitted stating the reason.

(2) The date of receipt will be recorded. A pattern of late certificates may be cause for remedial action or termination from the program.

5-4 Board Evaluations. Annually, or at such other intervals as may be established by the Board, the Board shall conduct an evaluation at which the law clerk and the tutor shall be personally present. The Board may at any other time, in its discretion, conduct an evaluation at which the law clerk and the tutor shall be personally present if required to do so.

A. The Board will not normally test the law clerk's substantive knowledge, but may do so to evaluate whether or not the law clerk is progressing satisfactorily in the program.

B. Materials. In making its evaluation, the Board may consider:

(1) The substantive contents of all monthly examinations;

(2) The tutor's monthly certificates and timeliness of receipt;

(3) Any written course work; and

(4) Any other written or oral materials deemed to be pertinent by the Board.

C. Decision. At the conclusion of the evaluation, the Board may:

(1) Determine the law clerk has successfully mastered the preceding year's course work and is eligible and authorized to begin the next year of the program;

(2) Determine the law clerk has satisfactorily completed the program and is qualified to sit for the bar examination, subject to any other requirements for sitting for the bar examination as set forth in the Admission and Practice Rules;

(3) Advise the tutor regarding the quality, timeliness, or appropriateness of coursework, exams, and certificates;

(4) Direct the law clerk to repeat designated prescribed or elective courses, devote more time to each course, take remedial legal or nonlegal instruction, appear before the Board at more frequent intervals for an examination which may be written or oral;

(5) Require the law clerk to change tutors;

(6) Advise the law clerk that the law clerk's enrollment in the program is terminated.

D. At the conclusion of any evaluation, the Board will provide a brief written summary of its decision to the law clerk and to the tutor.

Regulation 6. WITHDRAWAL AND TERMINATION OF ENROLLMENT

6-1 Withdrawal by Law Clerk.

A. Voluntary. A law clerk who wishes to withdraw from the program shall notify the Board in writing, filed as required by Regulation 2-4.

B. Involuntary. A law clerk will be deemed to have withdrawn from the program if:

(1) The law clerk is absent from the program for more than one month in any calendar year without the Board's prior approval of a petition for a leave of absence. Failure to submit exams and tutor's certificates shall be interpreted as absence from the program;

(2) The law clerk takes a leave of absence from the program for more than 12 consecutive months; or

(3) The annual fee is not paid by the established deadline.

6-2 Withdrawal by Tutor.

- A. Voluntary. A tutor who wishes to withdraw from that position shall notify the Board and the law clerk in writing, filed as required by Regulation 2- 4.
- B. Involuntary. If a disciplinary sanction is imposed upon a tutor, the tutor will be deemed to have withdrawn from that position. The Board may determine that the imposition of a sanction does not necessitate automatic withdrawal.
- C. The Board may direct a law clerk to change tutors if approval of a tutor is withdrawn.

6-3 Termination of Enrollment by the Board. The Board may terminate a law clerk's participation in the program for:

- A. Failure to complete the prescribed course of study within 6 years from the date of enrollment;
- B. The law clerk's failure to comply with the requirements of the program or a decision or order of the Board; or
- C. A determination by the Character and Fitness Board that the applicant does not meet the character or fitness requirement for enrollment in the program.

Regulation 7. COURSE DESCRIPTIONS

7-1 Jurisprudence Reading. A four-year course of reading consisting of three (3) books each year, to be selected from a list approved by the Board. The Board has discretion to select and require specific books which must be read to meet this requirement.

- A. Upon completion of each book, the law clerk shall prepare and submit to the Board a short book report. Reports shall be submitted every 4 months.
- B. A year's coursework shall not be deemed completed unless the book reports are submitted. A law clerk may not begin the next year's course work until the current year's book reports are completed and submitted to the Board.

7-2 First Year Clerkship.

- A. Basic Legal Skills. Introduction to basic legal reference materials (including judicial, legislative and administrative primary and secondary sources) and their use; techniques of legal reasoning, analysis and synthesis; legal writing styles. Familiarization with the structure of the federal and state court systems; the concept of case law in a common law jurisdiction; fundamental principles of stare decisis and precedent; the legislative process; principles of statutory construction and interpretation. Law Clerk should be assigned projects of increasing difficulty such as: case abstracts; analysis of a trial record to identify issues; short quizzes to demonstrate ability to locate primary and secondary sources; office memoranda or a trial oriented memorandum of authorities to demonstrate ability to find the law applicable to a factual situation and to differentiate unfavorable authority; an appellate level brief.
- B. Civil Procedure. Fundamentals of pleading and procedure in civil litigation, as structured by the Federal Rules of Civil Procedure and the Washington Superior Court Civil Rules. Study shall include: jurisdiction over the person and subject matter; venue; time limits; commencement of actions; pleadings; parties; impleader; interpleader; motions; class actions and intervention; res judicata and collateral estoppel; discovery and other pretrial devices; joinder; summary judgment;

judgments; post-trial motions. Law Clerk should be required to draft summons; pleadings; motions; findings of fact and conclusions of law; judgment; interrogatories; requests for admission.

- C. Contracts. Study of legal principles related to the formation, operation and termination of the legal relation called contract. General topics include: offer and acceptance; consideration; issues of interpretation; conditions; performance; breach; damages or other remedies; discharge; the parol-evidence rule; the statute of frauds; illegality; assignments; beneficiaries.
- D. Property. Study of the ownership, use, and transfer of real property in both historical and modern times. Topics include: estates and interests in land; concurrent ownership; easements; equitable servitudes; conveyances; real estate contracts; nuisance; adverse possession; land use controls; landlord-tenant; the recording system; title insurance.
- E. Torts. Study of the historical development, principles, concepts and purposes of the law relating to redress of private injuries. Topics include: conversion; trespass; nuisance; intentional tort; negligence; strict liability; products liability; concepts of duty, causation, and damage; limitations on liability such as proximate cause, contributory negligence, assumption of the risk, immunity; comparative negligence.
- F. Agency and Partnership. Legal principles of agency law including definition of the agency relationship, authority and power of agents, notice and knowledge, rights and duties between participants in the relationship, termination of agency relationship, master-servant relationship. Partnership law using the Revised Uniform Partnership Act as a model code. Topics include: formation, partners' rights and duties between themselves, powers, unauthorized acts, notice and knowledge, incoming partner liability, indemnification, contribution, partner's two-fold ownership interest, co-ownership interests and liabilities, creditor's claims and remedies, dissolution events, winding up, distribution of asset rules. Study of the Uniform Limited Partnership Act and joint venture law.

7-3 Second Year Clerkship.

- A. Community Property. Relationship necessary for creation of community property, classification of property as community or separate, management and control of community assets, rights of creditors, disposition of community property upon dissolution of the community, problems of conflict of laws encountered in transactions with common-law jurisdictions.
- B. Criminal Law. Study of substantive criminal law including concepts such as elements of criminal responsibility; principles of justification and excuse; parties; attempts, conspiracy; specific crimes; statutory interpretation; some introduction to sentencing philosophies and to juvenile offender law.
- C. Constitutional Law I. Course covers basic constitutional document, excluding the Bill of Rights. Topics include: taxing clause, commerce clause, contract clause, war power and treaty power. Allocation and distribution of power within the federal system, and between federal and state systems, including economic regulatory power and police power; limitations on powers of state and national governments; constitutional role of the courts.
- D. Corporations. Business corporations for profit using the Model Business Corporations Act and state law provisions. Topics include: promotion, formation and organization; theories of

corporations; corporate purposes and powers; disregard of corporateness; common law and statutory duties and liabilities of shareholders, directors, and officers; allocation of control, profit and risk; rights of shareholders; derivative suits and class action suits by shareholders; mergers and consolidations, sale of assets, and other fundamental changes in corporate structure; corporate dissolution; SEC proxy rules and Rule 10(b)(5).

- E. Evidence. Rules of proof applicable to judicial trials. Topics include: admission and exclusion of evidence, relevancy, hearsay rule and its exceptions, authentication of writings, the best evidence rule, examination and competency of witnesses, privileges, opinion and expert testimony, demonstrative evidence, presumptions, burden of proof, judicial notice.
- F. Uniform Commercial Code. Course covers Articles I, II, III, IV, VI, VII, and X of the Uniform Commercial Code. Course first examines problems in the sale of goods as governed by Article II (with a brief survey of its antecedents) including: warranty, risk of loss, acceptance and rejection, tender of delivery, revocation, remedies for breach of contract. Some discussion of other laws relating to warranties, Article VI on Bulk Sales, and Article VII on documents of title and bills of lading. Course next examines commercial paper, bank deposits and collections under UCC Articles III and IV, including: formation and use of negotiable instruments with an emphasis on checks, rights and liability of parties to negotiable instruments, defenses to liability, study of bank collection process and bank's relationship with its customers. Course finally examines secured transactions under UCC Article IX, including: types of security interests, perfection of such interests, priority of claims, rights to proceeds of collateral, multi-state transactions, rights of parties after debtor's default.

7-4 Third Year Clerkship.

- A. Constitutional Law II. Course examines the Bill of Rights. Topics include: free speech, prior restraint, obscenity, libel, fair trial and free press, loyalty oaths, compulsory disclosure laws, sedition and national security, picketing, symbolic conduct, protest, subversive advocacy; due process; equal protection development and analysis; fundamental rights and entitlements; religious clause; jury trial right in civil actions; constitutional protection and interpretation under state as contrasted to federal constitutional documents.
- B. Professional Responsibility. Study of legal ethics and a lawyer's roles in society, including lawyer-client relations, lawyer-public relations, and a lawyer's responsibility to the courts and the profession. Topics also include: organization of an integrated bar, Supreme Court's supervisory powers, professional service corporations, pre-paid legal services arrangements, malpractice, the Admission to Practice Rules, the Rules for the Enforcement of Lawyer Conduct, the Rules of Professional Conduct and the ABA Model Rules of Professional Conduct.
- C. Domestic Relations. Study of the substantive and procedural law affecting the formation, disintegration and dissolution of family relations, including those of husband and wife, parent and child, and non-marital. Topics include: jurisdiction, procedure, costs, maintenance, child support, property division, custody, modification and enforcement of orders, some discussion of conflict of laws, taxation, URESA and UPA.
- D. Wills, Estates, Trusts, Probate. Study of the voluntary transmission of assets in contemplation of and at death. Topics include: disposition by will, creation of and disposition by a trust, effectiveness of the disposition in the creation of present and future interests in property,

intestate succession, construction problems, powers of appointment, restrictions on perpetuities and accumulations, alternative methods of wealth transmission, some introduction to the basic tax framework important in formulating plans of disposition, and fiduciary administration and management of decedent's estates and trusts.

- E. Conflict of Laws. Study of that part of the law that determines by which state's law a legal problem will be solved. Topics include: choice-of-law problems in torts, contracts, property, domestic relations, administration of estates, and business associations.
- F. Criminal Procedure. Constitutional doctrines governing criminal procedure. Topics include: Fourth, Fifth, Sixth and Eighth Amendments, pertinent due process provisions of Fourteenth Amendment; search and seizure, confessions, identification procedures, right to counsel, arrest, jury trial, double jeopardy, and pertinent provisions of the state constitution. The Superior Court Criminal Rules are examined as they relate to the procedural aspects of raising the constitutional issues.

7-5 Fourth Year Clerkship; Electives.

- A. Administrative Law. Study of the administrative process and its role in the legal system. Subjects include: powers and procedures of administrative agencies, relationship of administrative agencies to executive, judicial and legislative departments of government.
- B. Personal Federal Income Tax. Examination of federal income tax law as it applies to individuals, but not in their role as partners, shareholders, or beneficiaries of trusts or estates. Topics include: concepts of income, gross income, net income, when income should be taxed, to whom it should be taxed and its character as unearned, earned or capital gain income. Deductions are also examined in detail.
- C. Land Use. Study of legal principles and constitutional limitations affecting systems for public regulation of the use of private land. Topics include: planning, zoning, variances, special use permits, subdivision controls, environmental legislation, nuisance, eminent domain, powers of public agencies, "taking" without just compensation, due process, administrative procedures and judicial review, exclusionary zoning and growth control.
- D. Labor Law. Study of the organizational rights of employees and unions and the governance of the use of economic force by employers and unions. Other topics include the duty to bargain collectively, the manner in which collective bargaining is conducted, subjects to which it extends, administration and enforcement of collective bargaining agreements, and relations between a union and its members.
- E. Remedies. Historical development and use of judicial remedies that provide relief for past or potential injuries to interests in real or personal property. Topics include: history of equity, power of equity courts, restitution, specific performance, injunctions, equitable defenses, compensatory and punitive damages, unjust enrichment, constructive trusts, equitable liens, tracing and subrogation.
- F. Antitrust. An examination of the antitrust laws including the Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act; and topics such as monopolies, restraint of trade, mergers, price fixing, boycotts, market allocation, tying arrangements, exclusive dealing and state antitrust law.
- G. Creditor-Debtor Relations. Rights and remedies of creditors and debtors under the Federal

Bankruptcy Code, particularly in straight bankruptcy cases and under state laws relating to judgments, judgment liens, executions, attachments, garnishments, fraudulent conveyances, compositions, assignments for the benefit of creditors, and debtor's exemptions.

- H. Securities Regulation. Study of legal control over the issuance and distribution of corporate securities. Topics include: registration and distribution of securities under the Federal Securities Act of 1933, including the definition of a security; basic structure, applicability, and prohibitions of the Act; underwriting; preparation, processing and use of registration statement and prospectuses; exemptions from registration under the Act, including Regulation A, private offerings, and business reorganizations and recapitalizations; secondary distributions; brokers transactions; and civil liability for violation of the Act. Registration, distribution and regulation of securities under state "blue sky" laws, including the State of Washington Securities Act. Regulation of franchise arrangements under the Federal Securities Act of 1933 and the State of Washington Franchise Investment Protection Act. Regulation of national securities exchanges and broker-dealers; registration and listing of securities on national securities exchanges; periodic reporting and public disclosure of information requirements for companies whose securities are traded on national securities exchanges; and civil liability for violation of the Act. Regulation of mutual funds and other types of investment companies under the Federal Investment Company Act of 1940.
- I. Legal Accounting. Bookkeeping, use of journals and ledgers, analysis of financial statements, professional responsibility of a lawyer to a corporate client and relationship to accountants involved in a client's financial affairs. Course also addresses lawyer's accounting and recordkeeping obligations to his or her client under the Rules of Professional Conduct or its successor.
- J. International Law. Legal process by which interests are adjusted and authoritative decisions made on the international level. Topics include: nature and source of international law, law of treaties, jurisdiction, some discussion of international legal organizations, state responsibility and international claims for wrongs to citizens abroad, and application of international law in United States courts.
- K. Insurance. Legal principles governing formal mechanisms for the distribution of risk of loss. Emphasis is on property, casualty, life insurance. Topics include: marketing of insurance, indemnity principle, insurable interest, amount of recovery and subrogation, persons and interests protected, brokers, and identification of risks transferred by insurance.
- L. Consumer Protection. Selected laws for protection of consumers, including federal, state and local laws that prohibit deceptive advertising, mandate disclosure of information, regulate credit practices, license occupations, establish quality standards for products and services, and condemn "unfair" practices. Emphasis on the theoretical justifications for governmental intervention in the marketplace. Attention to problems of consumer justice administration, including informal dispute resolution procedures and representation of consumer interests in administrative and legislative proceedings.
- M. Environmental Law. Survey of citizen, legislative, administrative and judicial action in response to the reality and the threat of man-induced alteration to the natural environment; focuses on National Environmental Policy Act, federal air and water pollution control legislation, state air and water pollution control statutes and shoreline management.

- N. Real Property Security. Methods by which an obligation may be secured by real property of the obligor or of a third person. Covers the common-law principles and statutes that regulate the creation, operation, and extinguishment of the legal relations known as the real property mortgage and deed of trust, considered in the context of financing the purchase or development of land. Some attention must be given to principles governing operation of the lending industry.
- O. American Indian Law. Tribal/state/federal judicial and legislative jurisdiction in Indian country. Criminal and civil jurisdiction. Indian religious freedom. Indian water rights. Special hunting and fishing rights. History of federal laws and policies towards Indians. Current federal law and policy. Judicial trends in Indian cases. The federal trust responsibility toward Indian tribes; tribal powers of self government. Tribal courts. Federal supremacy (preemption) over state law in Indian country.
- P. Trial Practicum. Advanced course in preparing for trial. Resources should include sample cases and text books as well as evidence and civil rules. The clerk will write a fully researched brief, motions in limine, prepare ER 904; prepare objections to opposition motions in limine and ER 904; argue pretrial motions; research and perform voir dire; prepare and give an opening statement; prepare and give a direct exam with introduction of multiple exhibits; prepare and give a cross exam with introduction of exhibits; draft and argue jury instructions; prepare and give a closing statement.
- Then to be assigned an actual case in litigation and add to the above, a mock trial which includes: prepared statement of the “story” of the case; illustrate how each witness fits into the story and what evidence is to be used with each witness; develop direct examination of one witness, cross examination of one witness and at least one exhibit for each witness; prepare and give an opening; conduct voir dire of volunteers; examine a witness; handle objections; and argue sample motions in limine. The clerk is expected to attend court proceedings regularly, and participate to the extent permitted by APR 9, if licensed.
- Q. Elder and Disability Law. An examination and study of the complex legal needs of people who are elderly and people who have a disability. This course examines major issues and substantive laws affecting people who are elderly or who have a disability including income protection, asset preservation and protection, options for financing long-term care and healthcare, planning for incapacity and the use of traditional and nontraditional estate and life care planning devices such as wills, trusts, special needs trusts, powers of attorney, guardianships, adult protection actions and other devices but in the context of the needs of people who are elderly or who have a disability. This course will also address the special ethical challenges and concerns of lawyers who are practicing elder and disability law.

MANDATORY CONTINUING LEGAL EDUCATION (MCLE)

(a) Purpose. Mandatory continuing legal education (MCLE) is intended to enhance lawyers', LLLTs', and LPOs' legal services to their clients and protect the public by assisting lawyers, LLLTs, and LPOs in maintaining and developing their competence as defined in RPC 1.1 or equivalent rule for LLLTs and LPOs, fitness to practice as defined in APR 20, and character as defined in APR 20. These rules set forth the minimum continuing legal education requirements for lawyers, LLLTs, and LPOs to accomplish this purpose.

(b) Definitions. For the purposes of this rule, the following definitions shall apply:

(1) "Activity" means any method by which a lawyer, LLLT, or LPO may earn MCLE credits.

(2) "Attending" means participating in an approved activity or course.

(3) "Calendar year" means a time period beginning January 1 and ending December 31.

(4) "Identical activity" means any prior course or other activity that has not undergone any substantial or substantive changes since last offered, provided, or undertaken.

(5) "Lawyer, LLLT, or LPO" means an active lawyer, LLLT, or LPO of the Bar, a judicial member of the Bar classified as an administrative law judge, and any other lawyer licensed or authorized to practice law in Washington who is required by the Admission and Practice Rules (APR) to comply with this rule.

(6) "Reporting period" means a three-year time period as assigned by the Bar in which a lawyer, LLLT, or LPO must meet the education requirements of this rule.

(7) "Sponsor" means a provider of continuing legal education activities.

(c) Education Requirements.

(1) *Minimum Requirement.* Each lawyer must complete 45 credits and each LLLT and LPO must complete 30 credits of approved continuing legal education by December 31 of the last year of the reporting period with the following requirements:

(i) at least 15 credits must be from attending approved courses in the subject of law and legal procedure, as defined in subsection (f)(1); and

(ii) at least six credits must be in ethics and professional responsibility, as defined in subsection (f)(2).

(2) *Earning Credits.* A lawyer, LLLT, or LPO earns one credit for each 60 minutes of attending an approved activity. Credits are rounded to the nearest quarter hour. A lawyer, LLLT, or LPO may earn no more than eight credits per calendar day. A lawyer, LLLT, or LPO cannot receive credit more than once for an identical activity within the same reporting period.

(3) *New Lawyers, LLLTs, and LPOs.* Newly admitted lawyers, LLLTs, and LPOs are exempt for the calendar year of admission.

(4) *Military Personnel.* Military personnel in the United States Armed Forces may be granted an exemption, waiver, or modification upon proof of undue hardship, which includes deployment outside the United States. A petition shall be filed in accordance with subsection (i)(5) of these rules.

(5) *Exemptions.* The following are exempt from the requirements of this rule for the reporting period(s) during which the exemption applies:

(i) *Judicial Exemption.* Judicial members of the Bar, except for administrative law judges;

(ii) *Supreme Court Clerks.* The Supreme Court clerk and assistant clerk(s) who are prohibited by court rule from practicing law;

(iii) *Legislative Exemption.* Members of the Washington State Congressional Delegation or the Washington State Legislature; and

(iv) *Gubernatorial Exemption.* The Governor of Washington State.

(6) *Comity.* The education requirements in Oregon, Idaho, and Utah substantially meet Washington's education requirements for lawyers. These states are designated as comity states. A lawyer may certify compliance with these rules in lieu of meeting the education requirement by paying a comity fee and filing a Comity Certificate of MCLE Compliance from a comity state certifying to the lawyer's subjection to and compliance with that state's MCLE requirements during the lawyer's most recent reporting period.

(7) *Carryover Credits.* If a lawyer, LLLT, or LPO completes more than the required number of credits for any one reporting period, up to 15 of the excess credits, 2 of which may be ethics and professional responsibility credits, may be carried forward to the next reporting period.

(d) MCLE Board.

(1) *Establishment.* There is hereby established an MCLE Board consisting of seven members, six of whom must be active lawyers, LLLTs, or LPOs of the Bar and one who is not licensed to practice law. The Supreme Court shall designate one board member to serve as chair of the MCLE Board. The members of the MCLE Board shall be appointed by the Supreme Court. Appointments shall be staggered for a three-year term. No member may serve more than two consecutive terms. Terms shall end on September 30 of the applicable year.

(2) *Powers and Duties.*

(i) *Rules and Regulations.* The MCLE Board shall review and suggest amendments or make regulations to APR 11 as necessary to fulfill the purpose of MCLE and for the timely and efficient administration of these rules and for clarification of education requirements, approved activities, and approved course subjects. Suggested amendments are subject to review by the Board of Governors and approval by the Supreme Court.

(ii) *Policies.* The MCLE Board may adopt policies to provide guidance in the administration of APR 11 and the associated regulations. The MCLE Board will notify the Board of Governors and the Supreme Court of any policies that it adopts. Such policies will become effective 60 days after promulgation by the MCLE Board.

(iii) *Approve Activities.* The MCLE Board shall approve and determine the number of credits earned for all courses and activities satisfying the requirements of these rules. The MCLE Board shall delegate this power to the Bar subject to MCLE Board review and approval.

(iv) *Review.* The MCLE Board shall review any determinations or decisions regarding approval of activities made by the Bar under these rules that adversely affect any lawyer, LLLT, or LPO or sponsor upon request of the lawyer, LLLT, or LPO, sponsor, or Bar. The MCLE Board may take appropriate action consistent with these rules after any such review and shall notify the lawyer, LLLT, or LPO or sponsor in writing of the action taken. The MCLE Board's decision shall be final.

(v) Fees. The MCLE Board shall determine and adjust fees for the failure to comply with these rules and to defray the reasonably necessary costs of administering these rules. Fees shall be approved by the Board of Governors.

(vi) Waive and Modify Compliance. The MCLE Board shall waive or modify a lawyer's, LLLT's, or LPO's compliance with the education or reporting requirements of these rules upon a showing of undue hardship filed in accordance with these rules. The MCLE Board may delegate this power to the Bar subject to (1) parameters and standards established by the MCLE Board and (2) review by the MCLE Board.

(vii) Approve Mentoring Programs. The MCLE Board shall approve mentoring programs that meet requirements and standards established by the MCLE Board for the purposes of awarding MCLE credit under these rules.

(viii) Audits for Standards Verification. The MCLE Board may audit approved courses to ensure compliance with the standards set forth in these rules.

(3) *Expenses and Administration.* Members of the MCLE Board shall not be compensated for their services but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties according to the Bar's expense policies. The Bar shall provide administrative support to the MCLE Board.

(e) Approved Activities. A lawyer, LLLT, or LPO may earn MCLE credit by attending, teaching, presenting, or participating in activities approved by the Bar. Only the following types of activities may be approved:

(1) Attending, teaching, presenting, or participating in or at a course, provided that any prerecorded audio/visual course is less than five years old;

(2) Preparation time for a teacher, presenter, or panelist of an approved activity at the rate of up to five credits per hour of presentation time, provided that the presentation time is at least 30 minutes in duration;

(3) Attending law school courses with proof of registration or attendance;

(4) Attending bar review courses for jurisdictions other than Washington with proof of registration or attendance;

(5) Writing for the purpose of lawyer, LLLT, or LPO education, when the writing has been published by a recognized publisher of legal works as a book, law review, or scholarly journal article of at least 10 pages, will earn one credit for every 60 minutes devoted to legal research and writing;

(6) Teaching law school courses, when the instructor is not a full-time law school professor;

(7) Providing pro bono legal services provided the legal services are rendered through a qualified legal services provider as defined in APR 1;

(8) Participating in a structured mentoring program approved by the MCLE Board, provided the mentoring is free to the mentee and the mentor is an active member of the Bar in good standing and has been admitted to the practice of law in Washington for at least five years. The MCLE Board shall develop standards for approving mentoring programs; and

(9) Judging or preparing law school students for law school recognized competitions, mock trials, or moot court. The sponsoring law school must comply with all sponsor requirements under this rule.

(f) Approved Course Subjects. Only the following subjects for courses will be approved:

(1) *Law and legal procedure*, defined as legal education relating to substantive law, legal procedure, process, research, writing, analysis, or related skills and technology;

(2) *Ethics and professional responsibility*, defined as topics relating to the general subject of professional responsibility and conduct standards for lawyers, LLLTs, LPOs, and judges, including diversity and antibias with respect to the practice of law or the legal system, and the risks to ethical practice associated with diagnosable mental health conditions, addictive behavior, and stress;

(3) *Professional development*, defined as subjects that enhance or develop a lawyer's, LLLT's, or LPO's professional skills including effective lawyering, leadership, career development, communication, and presentation skills;

(4) *Personal development and mental health*, defined as subjects that enhance a lawyer's, LLLT's, or LPO's personal skills, well-being, and awareness of mental health issues. This includes, stress management, and courses about, but not treatment for, anxiety, depression, substance abuse, suicide, and addictive behaviors;

(5) *Office management*, defined as subjects that enhance the quality of service to clients and efficiency of operating an office, including case management, time management, business planning, financial management, office technology, practice development and marketing, client relations, employee relations, and responsibilities when opening or closing an office;

(6) *Improving the legal system*, defined as subjects that educate and inform lawyers, LLLTs, or LPOs about current developments and changes in the practice of law and legal profession in general, including legal education, global perspectives of the law, courts and other dispute resolution systems, regulation of the practice of law, access to justice, and pro bono and low cost service planning; and

(7) *Nexus subject*, defined as a subject matter that does not deal directly with the practice of law but that is demonstrated by the lawyer, LLLT, or LPO, or sponsor to be related to a lawyer's, LLLT's, or LPO's professional role as a lawyer, LLLT, or LPO.

(g) Applying for Approval of an Activity. In order for an activity to be approved for MCLE credit, the sponsor or lawyer, LLLT, or LPO must apply for approval as follows.

(1) *Sponsor.* A sponsor must apply for approval of an activity by submitting to the Bar an application fee and an application in a form and manner as prescribed by the Bar by no later than 15 days prior to the start or availability of the activity.

(i) *Late fee.* A late fee will be assessed for failure to apply by the deadline. The Bar may waive the late fee for good cause shown.

(ii) *Repeating Identical Course.* A sponsor is not required to pay an application fee for offering an identical course if the original course was approved and the identical course is offered less than 12 months after the original course.

(iii) *Waiver of Application Fee.* The Bar shall waive the application fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.

(2) *Lawyer, LLLT, or LPO.* A lawyer, LLLT, or LPO may apply for approval of an activity not already approved or submitted for approval by a sponsor by submitting to the Bar an application in a form and manner as prescribed by the Bar. No application fee is required.

(h) Standards for Approval. Application of the standards for approval, including determination of approved subject areas and approved activities in subsections (e) and (f) of this rule, shall be liberally construed to serve the purpose of these rules. To be approved for MCLE credit, all courses, and other activities to the extent the criteria apply, must meet all of the following criteria unless waived by the Bar for good cause shown:

(1) A course must have significant intellectual or practical content designed to maintain or improve a lawyer's, LLLT's, or LPO's professional knowledge or skills, competence, character, or fitness;

(2) Presenters must be qualified by practical or academic experience or expertise in the subjects presented and not disbarred from the practice of law in any jurisdiction;

(3) Written materials in either electronic or hardcopy format must be distributed to all lawyers, LLLTs, and LPOs before or at the time the course is presented. Written materials must be timely and must cover those matters that one would expect for a professional treatment of the subject. Any marketing materials must be separate from the written subject matter materials;

(4) The physical setting must be suitable to the course and free from unscheduled interruption;

(5) A course must be at least 30 minutes in duration;

(6) A course must be open to audit by the Bar or the MCLE Board at no charge except in cases of government-sponsored closed seminars where the reason is approved by the Bar;

(7) Presenters, teachers, panelists, etc. are prohibited from engaging in marketing during the presentation of the course;

(8) A course must not focus directly on a pending legal case, action, or matter currently being handled by the sponsor if the sponsor is a lawyer, LLLT, or LPO, private law firm, corporate legal department, legal services provider, or government agency; and

(9) A course cannot have attendance restrictions based on race, color, national origin, marital status, religion, creed, gender, age, disability, or sexual orientation.

(i) Lawyer, LLLT, or LPO Reporting Requirements.

(1) *Certify Compliance.* By February 1 of the year following the end of a lawyer's, LLLT's, or LPO's reporting period, a lawyer, LLLT, or LPO must certify compliance, including compliance by comity certification, with the education requirements for that reporting period in a manner prescribed by the Bar.

(2) *Notice.* Not later than July 1 every year, the Bar shall notify all lawyers, LLLTs, and LPOs who are in the reporting period ending December 31 of that year that they are due to certify compliance.

(3) *Delinquency.* A lawyer, LLLT, or LPO who does not certify compliance by the certification deadline or by the deadline set forth in any petition decision granting an extension may be ordered suspended from the practice of law as set forth in APR 17.

(4) *Lawyer, LLLT, or LPO Late Fee.* A lawyer, LLLT, or LPO will be assessed a late fee for either (i) or (ii) below but not both.

(i) **Education Requirements Late Fee.** A lawyer, LLLT, or LPO will be assessed a late fee for failure to meet the minimum education requirements of this rule by December 31. Payment of the late fee is due by February 1, or by the date set forth in any decision or order extending time for compliance, or by the deadline for compliance set forth in an APR 17 presuspension notice.

(ii) **Certification and Comity Late Fee.** A lawyer, LLLT, or LPO will be assessed a late fee for failure to meet the certification requirements or comity requirements by February 1. Payment of the late fee is due by the date set forth in any decision or order extending time for compliance or by the deadline for compliance set forth in an APR 17 presuspension notice.

(iii) **Failure to Pay Late Fee.** A lawyer, LLLT, or LPO who fails to pay the MCLE late fee by the deadline for compliance set forth in an APR 17 presuspension notice may be ordered suspended from the practice of law as set forth in APR 17.

(5) *Petition for Extension, Modification, or Waiver.* A lawyer, LLLT, or LPO may file with the MCLE Board an undue hardship petition for an extension, waiver, and/or modification of the MCLE requirements for that reporting period. In consideration of the petition, the MCLE Board shall consider factors of undue hardship, such as serious illness, extreme financial hardship, disability, or military service, that affect the lawyer's, LLLT's, or LPO's ability to meet the education or reporting requirements. The petition shall be filed at any time in a form and manner as prescribed by the Bar, but a petition filed later than 30 days after the date of the APR 17 presuspension notice will not stay suspension for the reasons in the APR 17 presuspension notice.

(6) *Decision on Petition.* The MCLE Board shall as soon as reasonably practical notify the lawyer, LLLT, or LPO of the decision on a petition. A lawyer, LLLT, or LPO may request review of the decision by filing, within 10 days of notice of the decision, a request for a hearing before the MCLE Board.

(7) *Hearing on Petition.* Upon the timely filing of a request for hearing, the MCLE Board shall hold a hearing on the petition.

(i) The MCLE Board shall give the lawyer, LLLT, or LPO at least 10 days' written notice of the time and place of the hearing.

(ii) Testimony taken at the hearing shall be under oath and recorded.

(iii) The MCLE Board shall issue written findings of fact and an order consistent with these rules as it deems appropriate. The MCLE Board shall provide the lawyer, LLLT, or LPO with a copy of the findings and order.

(iv) The MCLE Board's order is final unless within 10 days from the date thereof the lawyer, LLLT, or LPO files a written notice of appeal with the Supreme Court and serves a copy on the Bar. The lawyer, LLLT, or LPO shall pay to the Clerk of the Supreme Court any required filing fees.

(8) *Review by the Supreme Court.* Within 15 days of filing a notice with the Supreme Court for review of the MCLE Board's findings and order, after such a noncompliance petition hearing, the lawyer, LLLT, or LPO shall cause the record or a narrative report in compliance with RAP 9.3 to be transcribed and filed with the Bar.

(i) The MCLE Board chairperson shall certify that any such record or narrative report of proceedings contains a fair and accurate report of the occurrences in and evidence introduced in the cause.

(ii) The MCLE Board shall prepare a transcript of all orders, findings, and other documents pertinent to the proceeding before the MCLE Board, which must be certified by the MCLE Board chairperson.

(iii) The MCLE Board shall then file promptly with the Clerk of the Supreme Court the record or narrative report of proceedings and the transcripts pertinent to the proceedings before the MCLE Board.

(iv) The matter shall be considered by the Supreme Court pursuant to procedures established by order of the Court, which may in the Court's discretion consist of consideration solely on the basis of the record presented to the MCLE Board.

(v) The times set forth in this rule for filing notices of appeal are jurisdictional. The Supreme Court, as to appeals pending before it, may, for good cause shown, (1) extend the time for the filing or certification of said record or narrative report of proceedings and transcripts or (2) dismiss the appeal for failure to prosecute the same diligently.

(9) *Compliance Audits.* The Bar may audit an individual lawyer's, LLLT's, or LPO's compliance certification to substantiate participation in the activities listed in the certification. The Bar may request records from a lawyer, LLLT, or LPO, or sponsor for the purpose of conducting the audit and the lawyer, LLLT, or LPO must comply with all such requests. Where facts exist that indicate a lawyer, LLLT, or LPO may not have participated in the activities certified to, the lawyer, LLLT, or LPO may be referred to the Bar's Office of Disciplinary Counsel and/or credit for the activities may be rescinded.

(j) Sponsor Duties. All sponsors must comply with the following duties unless waived by the Bar for good cause shown:

(1) The sponsor must not advertise course credit until the course is approved by the Bar but may advertise that the course credits are pending approval by the Bar after an application has been submitted. The sponsor shall communicate to the lawyer the number of credits and denominate whether the credits are "law and legal procedure" as defined under subsection (f)(1), "ethics and professional responsibility" as defined under subsection (f)(2), or "other," meaning any of the other subjects identified in subsections (f)(3)-(7).

(2) The sponsor must provide each participant with an evaluation form to complete. The forms or the information from the forms must be retained for two years and provided to the Bar upon request.

(3) The sponsor must submit an attendance report in a form and manner as prescribed by the Bar and pay the required reporting fee no later than 30 days after the conclusion of the course. A late fee will be assessed for failure to report attendance by the deadline.

(i) *Waiver of Reporting Fee.* The Bar shall waive the reporting fee for a course if the course is offered for free by a government agency or nonprofit organization. This provision does not waive any late fee.

(4) The sponsor must retain course materials for four years from the date of the course. Upon request of the Bar, a sponsor must submit for review any written, electronic, or presentation materials, including copies of audio/visual courses.

(5) The sponsor must keep accurate attendance records and retain them for six years. The sponsor must provide copies to the Bar upon request.

(6) The sponsor shall not state or imply that the Bar or the MCLE Board approves or endorses any person, law firm, or company providing goods or services to lawyers, LLLTs, or LPOs, or law firms.

(7) *Accredited Sponsors.* The Bar may approve and accredit sponsoring organizations as “accredited sponsors” subject to procedures and fees established by the Bar. Accredited sponsors have the same duties as sponsors but have the additional responsibility of approving their own courses and determining appropriate MCLE credit in accordance with this rule. Accredited sponsors pay an annual flat fee for all course applications submitted in lieu of an application fee for each individual course.

(k) Confidentiality. Unless expressly authorized by the Supreme Court or by the lawyer, LLLT, or LPO, all files and records relating to a lawyer’s, LLLT’s, or LPO’s individual MCLE requirements are confidential and shall be privileged against disclosure except as necessary to conduct an investigation, hearing, and appeal or review pursuant to these rules. This provision does not apply to the Bar except that such records shall not be disclosed to Bar staff responsible for creating or marketing CLE products.

[Adopted effective February 12, 1965; Amended effective January 1, 2016; September 1, 2017.]

WASHINGTON STATE
BAR ASSOCIATION
PRIMARY TUTOR APPLICATION
APR 6 LAW CLERK PROGRAM

Re: _____
Name of Law Clerk Applicant

(Please print or type)

1. Full Name: _____
Last First Middle

2. WSBA Bar Number: _____

3. Business Address: _____
Name of Business, Firm or Court

Street or P.O. Box

City State Zip Code

Work Email Address

4. Work Telephone: () _____

5. Is the law clerk applicant employed by you or your employer? Yes No
If no, you must complete questions 13-16.

6. Are you eligible to apply as a Primary Tutor as defined in APR 6(c)? Yes No

7. Have you ever been disbarred, suspended, reprimanded, censured, or otherwise disciplined by any jurisdiction? *If yes, give full details on an attached sheet.* Yes No

8. Name all jurisdictions and courts in which you have been admitted to the practice of law, including any limited practice and *pro hac vice*. Give the date of admission and current standing:

9. Please describe your legal education. List when you completed the Law Clerk Program or law school, degrees and dates earned:

**WASHINGTON STATE
BAR ASSOCIATION**

- 10. Please attach a brief statement of your employment during the previous ten years, including the name of employer, inclusive dates, and primary area of law you practiced. You may provide a resume or CV if it covers the past ten years.
- 11. Please attach a brief statement explaining why you wish to act as a tutor and why you believe the applicant is suitable to enroll in the Law Clerk Program.
- 12. Have you read “Rules and Regulations Governing the Washington State Law Clerk Program” **Yes** **No**
and do you agree to abide by them?

**Questions 13-16 are to be completed only if the applicant is applying for an
employment waiver under APR 6(b)(7)**

13. Does the law clerk applicant have regular, full-time, paid employment working with a lawyer or a judge (“workplace lawyer”) that meets the requirements of APR 6, the law clerk program regulations and the employment waiver guidelines, except that the employer is not the tutor or the tutor’s employer? **Yes** **No**

14. Describe the alternative relationship between yourself, the workplace lawyer and the law clerk.
(Use a separate sheet if necessary)

15. Describe how client confidentiality and conflicts of interest will be resolved given the alternative relationship between yourself, the workplace lawyer and the law clerk. (Use a separate sheet if necessary)

16. How will the purpose of the program be maintained given the alternative relationship between yourself, the workplace lawyer and the law clerk? (Use a separate sheet if necessary)

WASHINGTON STATE BAR ASSOCIATION

Tutor's Certificate

I, _____, state under penalty of perjury under the laws of the State of Washington that I am an attorney at law duly admitted to practice law in the State of Washington; that I have read the foregoing application to act as a tutor and that the statements made therein are full, true and correct; and that I am eligible to act as a primary tutor.

I further certify that _____ (law clerk applicant) is employed on a regular, full-time basis: (*initial one below*)

_____ in my office in compliance with APR 6(3) and the Law Clerk Program Regulations.

_____ with the law clerk applicant's workplace lawyer in compliance with the employment waiver guidelines.

I further certify that I will instruct and examine the law clerk applicant faithfully in the branches of the law prescribed by the course of study approved by the Board of Governors, and that I will comply with the Rules and Regulations relating to the Law Clerk Program.

Signature

Print Name

Date and City/State where signed

WASHINGTON STATE BAR ASSOCIATION

Office of the President

TO: WSBA Membership, Washington Supreme Court, General Release
FROM: President Rajeev D. Majumdar
DATE: June 28, 2020
RE: Resolution of the WSBA in Affirming the Rule 6's Program Value and Role in Providing an Additional Path to Justice for Underrepresented Communities, and Support for Rule 6 Diploma Privilege

On June 26, 2020, the Washington State Bar Association adopted the following resolution:

WHEREAS, the Washington Supreme Court's Admission and Practice Rule (APR), 6 commonly known as the "Law Clerk" Program ("Program"), is an alternative to traditional law school education that might otherwise be unattainable due to economic and institutional barriers, and,

WHEREAS, the Program is a four-year course of study designed to provide educational and practical experience through a combination of work and study with an experienced lawyer or judge with at least ten (10) years of experience and in good standing with the Washington State Bar Association ("WSBA") during their Tutoring, and

WHEREAS, the Program is operated under court supervision by the Law Clerk Board which is comprised of volunteer WSBA members, and is comprised of WSBA volunteer Law Clerk Tutors who volunteer their time teaching the law to APR Rule 6 students for no financial compensation, and

WHEREAS, the Program offers an increased opportunity for non-traditional law school students, working parents, and other members of the public that are interested in becoming an attorney to serve the public, and

WHEREAS, without the Program, the WSBA and the members of the public would be deprived of many talented, hardworking attorneys that have provided valuable legal services to clients, and

WHEREAS, the Program has consistently provided a steady stream of competent, skilled, and proficient lawyers that have practical experience from having worked directly with a licensed attorney when they pass the Washington State Bar Exam, and,

WHEREAS, given the ever-increasing costs of traditional law school debt that face the overwhelming majority of most traditional law school graduates, the Program's graduates are frequently in an advantageous position to offer pro bono and/or moderate means legal services to their clients, and

WHEREAS, the Program offers increased access to justice, increasing the public good and benefiting the citizens of the State of Washington; Now therefore,

Be it resolved by the Board of Governors of the WSBA that we memorialize our full and continued support for the court approved and supervised Program and urge every qualified Member of the WSBA to consider serving as a Tutor for a prospective Law Clerk student.

Be it further resolved that the Board of Governors respectfully encourages the Washington Supreme Court to amend the Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules dated June 12, 2020 to include qualified graduates of the Program.

Be it further resolved that the Board of Governors hereby thanks all of the volunteers of the APR Rule 6 Law Clerk Board, and all of the APR Rule 6 Law Clerk Tutors who have spent countless hours to make this Program an ongoing success for the benefit of the citizens of the State of Washington.

Approved by the WSBA Board of Governors on June 26, 2020.



Rajeev D. Majumdar
WSBA President, 2019-2020