Executive Summary

In September 2010, SBA President Alan Bayham appointed Board of Governor Tom Crowe to chair the MCLE Task Force. The task force was charged with conducting a review of MCLE which they limited to reviewing the requirements under Rule 45 Ariz. R. Sup. Ct. This charge comports with the State Bar of Arizona Five-Year Vision, Goal 1, Competency and the plan to, “conduct a comprehensive review of Mandatory Continuing Legal Education (MCLE) to determine its effects on the legal profession, and provide its findings and recommendations to the Supreme Court of Arizona.”

In November 2010, the MCLE task force members were appointed. The task force developed and administered a survey to the State Bar membership regarding MCLE. Survey results, including the findings and recommendations are provided below.

History

The initial discussions regarding MCLE date back to 1976. Periodically during the following 13 years the concept of MCLE was discussed and proposals presented to the Board of Governors, but no recommendations were adopted. In 1989, the State Bar Board of Governors unanimously supported a proposal for MCLE and forwarded it to the Supreme Court of Arizona with a recommendation that it be adopted. The Court adopted the proposal and in October of 1989 MCLE Rule 45 Ariz. R. Sup. Ct. went into effect.

The next review of MCLE did not occur until the spring of 2000. A special review committee was appointed. The committee evaluated MCLE and made a number of recommendations a few of which were adopted. (Attachment A)

While there was no particular impetus for another review of MCLE, between 2000 and 2010, bar staff and members of the Board of Governors during those years received feedback from bar members questioning the efficacy of MCLE. The Bar’s Strategic Planning Committee proposed to the Board that a review of MCLE be conducted as part of the Strategic Plan. This recommendation was then included in the goals of the Plan. Through discussions with Chief Justice Berch, Alan
Bayham determined that the Court, while open to entertaining suggestions for changes to the MCLE rule, did not see elimination of MCLE as a viable recommendation. In September 2010, Alan Bayham appointed board member, Tom Crowe to chair the task force. In the subsequent two months the remainder of the task force members were appointed.

The task force was composed of lawyers from varied geographical areas of Arizona, representing both the defense and prosecutor’s bar, varied ages, areas of practice, firm size, and experiences with serving the bar association. (Attachment B)

The first order of business for the task force was to survey the State Bar membership regarding their opinions and suggestions about MCLE.

**The Survey**

A draft of prospective survey questions was developed from informal member feedback to staff, the State Bar 2011 Member survey results, suggestions from the Board of Governors, the MCLE and CLE Committees as well as suggestions from organizations with representatives on the task force, including Arizona Prosecuting Attorneys’ Advisory Council and the Federal Public Defender program.

The survey was sent electronically to all bar members via e-mail. The total number of complete responses received was 1458. A copy of the survey is attached (Attachment C).

**The Results**

After a review and discussion regarding the results of all survey questions, the task force focused on those questions for which the responses suggested a change to the current MCLE rule or regulations.

The survey results actually provided very few suggestions for change and only one substantive change to the MCLE rule. In fact, the only significant change suggested was to allow certified legal specialists to carry-forward CLE credits, beyond the required 15 advanced credits they earned, to the following reporting year. Currently, the option to carry-forward hours only applies to non-specialists. While the number of carry-forward hours recommended through the survey varied, the most common number of hours recommended is five (5).

The only other question which suggested a charge is regarding the due date by which the Affidavit of Compliance should be filed. A close majority of the respondents (51%) recommended the Affidavit of Compliance date coincide with the annual membership fee due date.

The question regarding the implementation of a process for approving CLE programs and providers was included in the survey as it is the subject of frequent inquiries from members. In particular,
members ask about solicitations they receive to purchase very low cost CLE offered by companies whose names they don’t recognize. The question they raise is whether the companies or programs are screened by anyone at the Bar for quality or to insure they comply with the MCLE regulations for what may qualify for CLE. Despite the frequent inquiries to bar staff the concept received no support from respondents. The task force’s interest in the concept varied from no support for any approval process to a great interest in the bar’s exploring this option. It was noted that Arizona is the only state which requires MCLE but does not have any process by which either providers of CLE or CLE programs offered are approved for quality and MCLE rule and regulation compliance.

A condensed version of the survey results is attached (Attachment D). A copy of the complete survey results is attached (Attachment E).

**Recommendations**

Based on the survey results the MCLE Task Force recommends the following:

1. The regulations for certified legal specialists be changed to allow specialists to carry-forward CLE hours. Further, the task force recommends that specialists be permitted to carry forward 5 hours of CLE in the member’s area of specialty. Of those 5 hours, a maximum of three hours may be in the area of professional responsibility.

2. The State Bar Board of Governors considers the administrative implications of changing the annual membership fee deadline or the MCLE Affidavit of Compliance deadline to coincide. Once this information is compiled the Board of Governors may wish to entertain the option of petitioning the Supreme Court for the appropriate rule change.

While it is expected that all recommendations from the Board of Governors go to the Supreme Court of Arizona it should be noted that the regulations regarding certified legal specialists are created by the State Bar of Arizona’s Board of Legal Specialization.

The Board of Legal Specialization (BLS) does not object to carry forward hours for specialists, having affirmatively reviewed the issue last year, albeit the above recommendation should be presented to them. The BLS has substantial revisions of other aspects of the regulations for review and approval by the Board of Governors in the fall of 2011. Those revisions can be readily amended by BLS staff to include the carry forward allowance.

An additional recommendation by some MCLE Task Force members was for the MCLE reporting to occur on a two-year reporting cycle instead of the current annual reporting. States that have a two-year reporting cycle indicate that, just as with annual reporting, there is a population of attorneys who wait until the end of the two-year cycle to complete the MCLE requirements. State Bar of Arizona staff suggests that the administration of MCLE on a two-year reporting cycle may help ease the workload associated with processing affidavits and conducting audits but would require extensive marketing of members to make the switch.