

What New Attorneys Need to Know About Their MCLE Requirements

McLean County Bar Association – Young Lawyers Division

What New Lawyers Should Know about Illinois MCLE

May 17, 2017

Karen Litscher Johnson, Director



Minimum Continuing Legal Education Board
of the Supreme Court of Illinois

Requirements for Newly-Admitted Attorneys (“NAA”)

1. Earn MCLE credits *or* be entitled to an exemption by your completion deadline
 - a. Earn 15 total credits
 - Complete Basic Skills Course (you are here today!) *and/or* enroll in a mentoring program approved by the Court’s Commission on Professionalism *and*
 - Earn additional Illinois-approved MCLE hours to reach 15 hours
 - b. Entitled to an exemption? Check Rule 791(a)(1) - (7)
2. To avoid a late fee, report compliance or exemption by your reporting deadline at www.mcleboard.org

Already Licensed in Another State?

NAA Prior Practice Compliance Option

- If an attorney practiced and was licensed in another state
- And the attorney practiced in that other state for at least one year in the three years immediately preceding Illinois admission
- The attorney needs to complete 15 hours of MCLE credit, including at least four hours approved for professional responsibility credit, by the attorney's completion deadline

NAA Deadlines

Completion Deadline

1. Start with month and year of your Illinois bar admission date
2. Using that admission date, your completion deadline is the same month, one year later. Examples:
 - November, 2016 admission...November 30, 2017 completion deadline
 - May, 2016 admission...May 31, 2017 completion deadline

Reporting Deadline--31 days after your completion deadline

Report your completion or exemption at www.mcleboard.org.

Reporting after this deadline results in a late fee



Initial Two-Year Reporting Period: Start and End Dates

Based on the attorney's last name on Illinois admission date, assigned to a group:

-- Last name starts A-M: reporting periods begin and end in even-numbered years

-- Last name starts N-Z: reporting periods begin and end in odd-numbered years

Your reporting group does not change, even if you change your last name after admission

After your NAA completion deadline, your initial two-year reporting period is the **next full** two-year reporting period for your reporting group. Examples:

- November 30, 2017 completion date with A-M last name (even years)
Two-year reporting period starts July 1, 2018. Ends June 30, 2020
- November 30, 2017 completion date with N-Z last name (odd years)
Two-year reporting period starts July 1, 2019. Ends June 30, 2021
- May 31, 2017 completion date with N-Z last name (odd years)
Two-year reporting period starts July 1, 2017. Ends June 30, 2019
- May 31, 2017 completion date with A-M last name (even years)
Two-year reporting period starts July 1, 2018. Ends June 30, 2020

You do *not* join a two-year reporting period that already started



Initial Two-Year Reporting Period: Details

- Credits required: 30 hours of Illinois-approved MCLE credit, including at least six hours approved for professional responsibility credit
- Completion deadline: June 30
 - Even-numbered years for A-M attorneys
 - Odd-numbered years for N-Z attorneys
- Reporting deadline: July 31 of your completion year
- Report online at www.mcleboard.org



When Can a Newly-Admitted Attorney Begin Earning Credits for Initial Two-Year Reporting Period?

- You can earn hours to apply to your initial two-year requirement:
 - Beginning on your Illinois bar admission date and
 - Ending June 30 before the July 1 start of your initial two-year reporting period.
- Hours earned for your newly-admitted attorney requirement do not count toward your initial two-year requirement
- Cap: maximum of 15 hours may be carried over to your initial two-year reporting period



Exemptions: Rule 791(a)

- Inactive or retired status with ARDC
- Licensed in another MCLE state, complied with that state's requirements, primary office in that state
- Employed in certain jobs in IL state or federal judiciary and prohibited from practicing law
- Active duty Armed Forces
- Federal and state court judges
- Certain long-term discipline statuses
- Good cause – temporary extension or temporary exemption under Rule 791(a)(7). Rare case with attorney establishing:
 - Illness
 - Financial hardship
 - Other extraordinary or extenuating circumstances that prevented attorney from completing credits

Notable “Not Exemptions”

- Not employed as an attorney
- Not practicing law
- Not registered with the ARDC
- Work or live in another state but not earning MCLE credits to comply with that state’s MCLE requirements
- Work or live outside Illinois in a U.S. jurisdiction that has no MCLE requirements
- Working or living abroad
- Military reserves
- In-house attorney
- Clerking for a judge but not prohibited from practice by terms of employment
- Administrative law judge
- Hearing officer
- Serving in non-judicial elected office
- Illness without medical support
- Financial hardship without tax returns

Option to Earn Credit:

Participate in Traditional CLE Courses

- Traditional CLE courses are those submitted by the course provider for accreditation and then approved by the Illinois MCLE Board
- Thousands of courses are offered annually in a range of formats (live in person, live technology, various recorded options), as well as a broad range of topics
- Search for courses at www.mcleboard.org
 - Use provider name, course title, date(s), topics, cost
 - Short tutorial video on how to find a free course
- Course provider issues an attendance certificate to you after course ends



Option to Earn Credit: What if the Provider Doesn't Apply?

An attorney may apply online to claim Illinois CLE credit for participating in a *live in person* course or a course offered via *live technology* in certain circumstances

- Live in person course: held in the U.S. but outside Illinois; **and**
 - In a state with a comparable MCLE accreditation process, and the course was accredited for CLE credit in that state
 - In a state, or the District of Columbia, without a comparable MCLE accreditation process, and the course was accredited for CLE credit in any other state with a comparable MCLE accreditation process
- Live audio or video course and was accredited for CLE by any state



Option to Earn Credit:

What if the Provider Doesn't Apply (cont.)?

- Comparable MCLE accreditation processes exist in all 50 U.S. states **except:** Arizona, Connecticut, Maryland, Massachusetts, Michigan, New Hampshire and South Dakota. District of Columbia also lacks a comparable accreditation process
- The fee to claim CLE credit for an out-of-state course is \$1.00 per hour or fraction: minimum \$15.00 per course
- Each attorney submits online application and fee for each qualifying course
- Courses held outside the 50 U.S. states are not eligible as out-of-state courses
- Recorded courses are not eligible as out-of-state courses



Option to Earn Credit: Bar Association Meetings

- Bar association meetings
 - Must be one hour or less
 - Bar association needs to keep attendance records and issue attendance certificates
- Bar association also has the opportunity to apply to accredit longer courses



Option to Earn Credit:

Teaching or Writing Materials for CLE Course

- Teaching MCLE courses
 - Must be Illinois-accredited MCLE course *or* approved through out-of-state course approval process
 - Actual presentation time plus six times for preparation
 - Second time: half credit
 - Third time and more: no credit
 - New course? If substantially and substantively changed
- Writing CLE materials for an Illinois-accredited course
 - 10 credit hours max per reporting period
 - Instructors do not earn both teaching and writing credit for the same course



Option to Earn Credit: Law Courses

- Attending J.D. or graduate level law course at an ABA-accredited law school
 - Course must be taken after admission to Illinois bar
 - Law school must issue attendance certificate
- Part-time teaching of a law course
 - ABA-accredited law school, college, university or community college
 - Not eligible if full-time employee at the law school
 - Law school teaching: presentation time plus preparation time of three times presentation time
 - No preparation time for college, university or community college teaching



Option to Earn Credit: Law School Moot Court

- Law school moot court judging
 - Included in law school teaching which is listed as nontraditional credit
 - Confirm with sponsor: issuing Illinois MCLE credit?
 - All or almost all students from ABA-accredited schools
 - No moot court credit for coaching, writing bench brief, grading briefs
 - Limit on credit: second panel is half credit; no credit thereafter



Option to Earn Credit: *Pro Bono* Training

- Course designed to train attorneys who have agreed to provide *pro bono* services
- Confirm with the course provider that it has applied for and obtained Illinois MCLE accreditation



How the MCLE Requirements Can Fit into an Attorney's Professional Development Goals

- Idea: write a short professional development plan to span the next two years
- Set goals then develop concrete tasks to reach each goal
- Examples:
 - Goal: build reputation in the area of complex estate planning
 - Tasks: speak at no less than two bar association meetings in the next two years



MCLE Requirements and Professional Development Goals (cont.)

- Examples:
 - Goal: reconnect with alma mater and establish relationships with other alumni
 - Tasks: volunteer to judge the law school's moot court competition and write a substantive article published in a law school journal
 - Goal: in the next year, meet at least 20 new people in the community who may need my (or my firm's) legal services
 - Task: teach a law course at a community college



24/7 Resource: The Board's Website

www.mcleboard.org

- Online compliance reporting
- Follow us on Twitter, Facebook and Instagram
- Search for Illinois-approved MCLE courses
- Search FAQs highlights topics or questions most often raised: report compliance online; basics of MCLE requirements; options to earn credit
- Ask a question using “Send Us a Message”



Final Questions

Thank you for attending!



Karen Litscher Johnson

As the first Director of the MCLE Board of the Supreme Court of Illinois, Karen Litscher Johnson works under the direction of the Court and the MCLE Board to conduct the Board's operations. Her experience includes six years as National Director of Professional Development for DLA Piper where she planned and managed the firm's attorney education programs, including MCLE accreditation, for all of its U.S. offices. Before joining DLA Piper, Ms. Johnson was a Litigation Partner with a mid-sized Chicago law firm, Much Shelist, P.C.

Ms. Johnson received her Juris Doctor degree from Cornell Law School and graduated from the University of Wisconsin-Madison. She served as Chair of the Chicago Bar Association Young Lawyers Section ("YLS"). During eight years in bar leadership, she planned dozens of CLE courses and organized many public and bar service projects. Before becoming a lawyer, Ms. Johnson was a radio reporter and anchor in Madison, Wisconsin.

Young Lawyers Presentation

“How to survive the early years”

(May 17, 2017)

General thoughts

- **Be Prepared!!!**
- **Always maintain your ethics**
 - Advise and advocate for your client to the best of your ability, but never surrender your ethics with a “win by deception” or “win at all cost” state of mind
 - If you make a mistake, own it
- **Maintain your reputation**
 - You develop a positive reputation over a long period of time
 - You can destroy it overnight with one bad decision
- **You are always on stage and being observed**
 - Dress and act appropriately at all times
 - Joking around with opposing counsel in view of your client or potential jurors is not the message you want to send
 - Do not meet with a client in less than courtroom attire
 - If you expect to demand top dollar, then look the part
- **As a young lawyer, litigate as many cases as you can, especially jury trials**
 - If lead chair is not an option, ask to second or third chair
 - Watch and learn from more experienced attorneys
 - Learn from your mistakes

Preparing for Court

- **Take off your coat and hat and put down your coffee before you enter the courtroom**
 - Tell your clients to do the same
- **Always be prepared**
 - Know the evidence and the issues

- File pretrial motions and support with a memorandum of authority (Have copies of cases for Judge and counsel)
 - Set them for hearing before trial whenever possible
- Act like you know what you're doing even if you don't
- Be confident
- No one can know all of the statutory and case law on every issue. The key is to know where to go and find it quickly
- **Know the Judge**
 - Judges are all different, if you don't know the Judge, ask around
 - Be respectful
 - Have a thick skin, do not take anything personally
 - Do not show your glee or frustration with a Judge's ruling
 - Advise the Judge of any unique issues that may come up in your case
 - Never engage in ex parte discussions with a judge
 - Always laugh at the Judges jokes
- **Opposing counsel**
 - If you don't know them, ask around
 - Be professional and cordial

Trial

- Make sure you reviewed all the evidence and watched any videos prior to trial. Seek the redaction of any inadmissible portions if you cannot reach agreement with opposing counsel.
- File motions in limine and argue in advance of trial whenever possible
- Spend some time in jury selection, one bad juror can spoil your case
- Know the elements of your case and check them off as you cover them
- You know your case forward and backward, the jury is hearing it for the first time.
 - Do not overpromise in your opening statement
 - Take your time and paint a picture through the testimony and exhibits
 - Word choice matters
 - Frame your case and present evidence in preparation for your closing argument

- Do not throw your common sense and life experiences out the window, think like a juror
- Object and state the basis in one or two words
 - **Do not let your opponent**
 - Lead on direct (“objection, leading”)
 - Introduce inadmissible evidence or hearsay testimony (“objection, foundation/relevance/hearsay/etc.”)
 - Ask the same question multiple times (objection, asked and answered)
 - Go beyond the scope of your cross or redirect (“objection, beyond the scope”)
 - Bully witnesses (“objection, harassing the witness”)
 - Intimidate you
 - Be more prepared than you
 - Cross-examination is limited to topics covered on direct; do not allow opposing counsel to go beyond the scope of direct unless it is by agreement, usually for convenience of witness or trial efficiency. (“objection, beyond the scope”)
 - Redirect is not an opportunity to repeat the questions and answers given on direct. (“objection, asked and answered”)
 - Do not object just for the sake of objecting
 - Do not allow opposing counsel to personally vouch for a witness or defendant
 - Do not allow opposing counsel to personally attack you or insinuate you are attempting to confuse jurors through “smokescreens” or “red herrings”
- **When defending a criminal case, the State has the burden. Never say, “the defendant will prove . . .”**
 - The job of the defense is **not** to prove the defendant innocent; it is to highlight reasonable doubt. “The state failed to prove this case beyond a reasonable doubt . . .”

Most importantly, as written by Shakespeare in the ‘Taming of the Shrew’,

“. . . and do as adversaries do in law, strive mightily, but eat and drink as friends.”

Voir Dire

1. Procedures and Mechanics

- You are always on stage in and around the courtroom. Act professional at all times, you never know who is watching.
- Every Judge is slightly different in how they conduct Voir Dire, ask your judge what the rules are before you begin. ie. How jurors will be seated and questioned. Whether back-striking is allowed.
- Help the judge out with the law if necessary (subtly) most judges will appreciate it. They do not want to be reversed either.
- Every attorney is different as is every juror you will question, use the procedure that fits your personality.

- a. SCR 431(a) (Voir Dire Examination)
 - i. 431(a) – Voir Dire conducted in the sound discretion of Judge
 - ii. Attorneys should be allowed to question jurors but length may be limited based on complexity and seriousness of the case
- b. SCR 431(b) – Zehr principles
 - i. Presumed innocent
 - ii. Must be proven guilty beyond reasonable doubt
 - iii. Defendant not required to present any evidence
 - iv. Failure to testify can not be held against defendant*
*unless objected to be defendant
- c. SCR 434 – (Jury Selection)
 - i. Juries should be selected in panels of four unless Judge directs otherwise
 - ii. Challenges for cause
 - iii. Peremptory challenges
 - iv. Alternates and additional peremptory challenges

2. Questioning by Judge or by Counsel

- a. Attorneys should be allowed to question jurors but length may be limited based on complexity and seriousness of the case
- b. Find out who your juror is:
 - i. What they do

- ii. Who they live with
 - iii. What their family history is
 - iv. Who they hang out with
 - v. What their associations are?
 - vi. How long in the community?
 - vii. Ever victimized before?
 - viii. Bias for or against against Law Enforcement? Etc.
- c. CSI effect
- i. Do jurors expect/demand forensics?
 - ii. Will they convict without it?
 - iii. Understand the shows on television are fiction?
 - iv. Do not need forensics to convict?

3. Questionnaires

- a. Every county is different, find out what information you will get in advance by way of a jury questionnaire

4. Approach to Jurors – Developing rapport

- a. Break the ice
- b. Talk with them, not at them
- c. Want fair and impartial jurors without any bias or prejudice either way
- d. Stay with what works for you, what fits your personality

5. Techniques – Open ended vs. Restrictive questions

- a. Some of both, but mostly open ended
- b. Let them respond to you
- c. Listen to what they say

6. Developing a Jury Profile – Favorable and Unfavorable

- a. Do not want all chiefs and no followers
- b. Know your case and the types of jurors that may have hidden bias's (guns, drugs, gangs, DV, sexual assault, child sex, etc.) each has different issues that need to be addressed with potential jurors
- c. Make-up of jury depends on:

- i. Type of case
- ii. Facts of case
- iii. Who the witnesses will be
- iv. Evidence that will be presented

7. Exercising Challenges – Cause – Peremptory

- a. Batson – Always have a race neutral reason for a challenge. Never excuse based solely on race or gender.
- b. Three step process (Do not bypass steps 1 and 2)
 - i. Defense must establish a Prima Facie case of a discriminatory purpose
 - ii. If the court finds the defense has established a PF case, then and only then does the process move to step 2 where the ASA articulates neutral reasons for peremptory challenge
 - iii. Then step 3 – the court must determine whether the defendant established purposeful discrimination. (Never put yourself in this position. Always have legitimate neutral reasons for your challenges)

8. Identifying Leaders and Followers

- a. What does the juror do? Management? Hire and fire? Direct others?
- b. How does the juror act in the jury box? Assertive with answers? Talkative?
- c. Just sit there? Avoid controversy?
- d. Pay attention to facial expressions or subtle nods or shakes of the head.

9. Educating Jurors vs. Indoctrination

- a. Form of the question (depending on nature of the case)
 - i. OK – Have you, any member of your family, or close friend ever....”:
 1. been involved with gangs
 2. been the victim of gang crime
 3. had any experiences with alcoholism
 4. had any experiences with domestic violence

- 5. owned firearms
- 6. etc.
- ii. Improper – Most questions that begin, “Do you understand that....” or, “Can we all agree that....” and are then followed up by a hypothetical statement of facts and a conclusion of law, such as:
 - 1. “....if a woman invites a man up to her room, that she is not by that invitation alone consenting to any sexual act the man wishes to engage in thereafter.”
 - 2. “....when a person points a gun at someone, that he is not by that act alone intending to kill them but may only be trying to scare them.”
- b. P. v. Boston, 383 Ill. App. 3d352, 893 NE2d 677, 323 Ill. Dec. 405,
 - i. Indoctrination in DV case
 - ii. Error can be raised for first time on appeal. No objection by defense attorney at trial or in post trial motion.

Do not blindly trust what you learn at trainings. Do your own additional research to verify.

Bill Yoder Bio

Judge Yoder obtained his BS Degree from Purdue University in 1982 and his JD from The John Marshall Law School in 1985.

Bill spent three years in private practice during which time he served as a part time public defender. He became an Assistant State's Attorney in 1988, where he rose to the position of Chief Felony Prosecutor in McLean County. After leaving the State's Attorney's Office, Bill spent eleven years in private practice as a partner at the John W. Yoder Law Firm where he concentrated in criminal law.

He was appointed McLean County State's Attorney in December of 2002 and was elected to additional four year terms in 2004 and 2008.

During his tenure as State's Attorney, he was involved in the successful development and implementation of the McLean County Drug Court and the McLean County Mental Health Court. He was also involved in the development of the McLean County Criminal Justice Coordinating Council, a council charged with evaluating the efficiencies of, and recommending positive changes within, the criminal justice system.

In December of 2011, he was appointed Associate Judge and has served in both Logan County and McLean County.

Judge Yoder has previously presided over the Logan County Drug Court. In his current assignment, he hears DUI cases, pretrial bond court, and presides over the McLean County Recovery (mental health) Court.