

# Why Proposed MCLE Changes Will Support Lawyer Thriving

BY ROBIN OAKS

Lawyering well involves an interconnected web of behavioral and professional competencies that contribute positively to legal professionals' lives, their clients, and the legal profession as a whole. Recently, the State Bar of California's Board of Trustees approved numerous changes proposed by the Office of Professional Compliance to the MCLE (mandatory continuing legal education) requirements, signaling recognition that a wide range of legal proficiencies are vital for professional success and well-being.

As part of the new changes,<sup>1</sup> effective October 1, 2023, licensed attorneys must complete two hours for competence, one hour for technology, and one hour for civility. Rule 2.72 (C)(2). Another notable change is Rule 2.84 that allows attorneys to receive participatory MCLE credit for coaching or scoring mock trial and moot court activities. All licensees shall comply with these changes beginning with the compliance period ending January 31, 2025.

The proposed changes were all highly supported by legal practitioners and bar associations across the state, including the California Civility Task Force, a diverse group of more than forty lawyers and judges. See Civility Task Force Report.<sup>2</sup>

## *The MCLE Proposed Changes for Technology, Civility, and Competence*

The recent changes will *not* increase the total number of hours (25 credit hours of MCLE) required every three years, but will add to the other subcategories, which currently include "at least four hours on legal ethics," and at least two hours covering "the recognition and elimination of bias," one hour of which "must focus on implicit bias and the promotion of bias-reducing strategies..." The following outlines the State Bar standards for MCLE activities now required for technology, civility, and competence.

1. **Technology:** At least one hour of education addressing technology in the practice of law. This includes education on technology tools, programs, or ap-

plications to assist attorneys in their law practice. See Rule 3.601 G.

2. **Civility:** At least one hour of education addressing civility in the legal profession. This consists of education that discusses the link between civility and bias, incivility that is directed at opposing parties or counsel, and incivility aimed at the judiciary. See Rule 3.601 H.
3. **Competence:** At least two hours of education addressing competence, with one hour focusing on "prevention and detection," and another hour on broader "wellness" competence-related topics. The "prevention and detection competence" activity must consist of "education that relates to the prevention and detection of substances use disorders, mental illness, and other mental or physical issues that impair an attorney's ability to perform legal services with competence."

The other competence requirement, "wellness competence," includes "physical and mental wellness and wellbeing or stress management so long as the activity addresses these topics in the context of the practice of law and the impact these issues can have on an attorney's ability to perform legal services with competence." See Rules 3.601 E, F.



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## *Exploring What Lawyer Competence Really Means*

There is growing research in the legal field seeking to create an empirically-based framework to identify those foundational legal competencies important to lawyering and law school training, and for the fairness, efficacy, and validity of the bar exam. For instance, the Building a Better Bar Project has made evidence-based recommendations to improve the lawyer licensing process, referencing its comprehensive research about minimum competence concepts.<sup>3</sup> Yet, to date, the legal profession and legal associations or organizations that control lawyer licensing and professional standards generally have not sufficiently defined nor

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researched what legal competence really means.<sup>4</sup>

Extensive research in the fields of positive psychology, neuroscience, medicine, and business has contributed to understanding what key tenets, practices and capabilities support human flourishing and work performance. What are the essential abilities for developing professional identity—those skillsets for functioning and sustaining legal competence? Is there a difference between a competent lawyer and a thriving lawyer?

Drawing from multiple sources, I have created a framework that I call PROS to discuss vital legal skillsets. The PROS diamond (see diagram) helps conceptualize the interconnection of lawyering competencies and those professional and personal skills fostering well-being. The recent proposed changes for required MCLE activities, outlining a broad range of topics, reflect many of these competencies that contribute to lawyering well, successful legal practice, and thriving as legal professionals. PROS stands for four key categories of competencies: Professional Proficiencies, Relational Abilities, Organizational Context, and SELF Skills.

### ***The PROS of Lawyering Well***

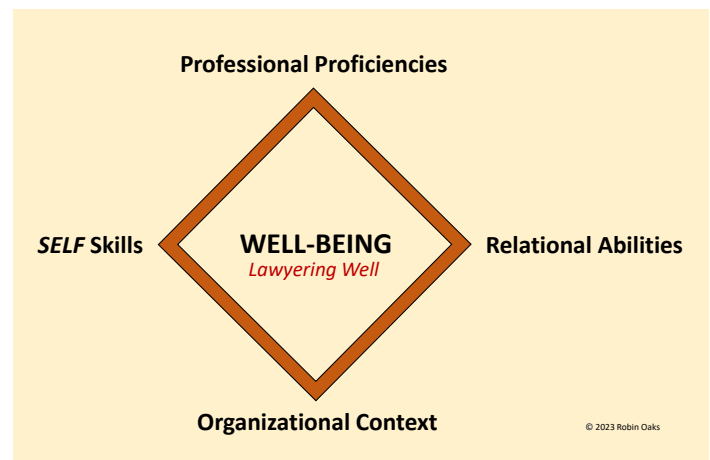
Professional proficiencies include the technical thinking skills and substantive knowledge that are generally covered during the bar examination process, included in traditional legal studies, and considered essential for practicing law, especially litigation. This category also includes skillsets, many of which develop over time and experience, such as document drafting, persuasive writing, advocacy, identifying issues, analytical thinking, fact gathering, researching, knowledge of court processes, and, particularly in today’s modern world, understanding of technology.

**Relational abilities** involve one’s relationship capabilities, including interactions not only with others, but also relatedness to “time” (i.e., time management, and goal setting, combating procrastination) and finances (financial management). Relational competencies include behaviors such as civility, collegiality, integrity, leadership, emotional intelligence, empathy, and work-life balance. Trauma-informed lawyering, effective communication, mentoring, “supportive autonomy,” negotiation and conflict resolution skills, mindful listening, giving and receiving feedback, and client-centered problem-solving are all competencies in this category.

**Organizational context** involves the structure, societal influences, supervisory networks, culture, and climate affecting the practice of law. This category includes practices

and procedures, values, rules of professional conduct, and healthy (vs. toxic) environments - both structurally, such as air quality and physical working conditions, and institutional norms supporting “psychological safety” and work “engagement.” Organizational resources, DEI programs addressing the importance of fairness, equity, inclusion, and belonging, business goals, policies, vision, finances, fair pay, workload, and strategic work practices supporting performance (or not, i.e., “burnout,” morale issues, “hostile environment”) all impact people working in legal environments.

### **PROS = Thriving as a Lawyer**



“**SELF**” skills include all the intra-personal competencies affecting legal practice, professional identity, and professionalism, such as authenticity and value alignment, self-efficacy, self-discipline, self-awareness, self-regulation, self-confidence, self-compassion, self-reflection, and self-care. Stress management, wellness, nutrition, sleep, mental health, mindset, grit, cognitive and physical fitness, and mind-body practices (mindfulness, breathwork, yoga) are vital for sustainability and fostering well-being for self and others.

### ***Setting the Bar High to Thrive***

I am heartened by the recent MCLE amendments, which emphasize a broad range of competencies important for successful legal practice. To manage the stressors of our work and provide competent professional services, it’s important to remember that pressure can make diamonds—under the right conditions. Also, pressure makes oil, and our bodies, minds, and livelihoods need to develop in ways that fuel our mental, intellectual, and physical potential. The California Civility Task Force’s report states:

“Civil behavior is a core element of attorney profession-

alism... We are professionals... We are not just vendors or suppliers who come into the court to do business; we are justice's lifeblood. The judicial system is not a collection of buildings, it's a collection of people and principles. And we have been entrusted with its safekeeping... We also owe it to ourselves as human beings. Ours is an exceptionally stressful profession. At its best, it can take a toll on the individuals who practice it, and what we're seeing today is not the profession at its best... We deserve better for ourselves and our loved ones..."

As chair of the newly formed section on lawyer wellness and well-being, I ask for your input to create inspiring continuing education opportunities so we all may practice law well. Reach out to me and share ideas for speakers, topics, research possibilities, and activities that will help make practicing law healthy, satisfying, and rewarding. ■

*Robin Oaks has been an attorney for nearly forty years, and for twenty-five years has provided legal services focused on independent workplace investigations and mediation. She is certified in and has studied a wide range of healing, emotional intelligence, cognitive fitness, and mind-body practices. She is a well-being consultant and offers confidential professional life coaching sessions for legal professionals seeking to optimize potential, restore balance, and thrive during stressful life changes and challenges. Contact: Robin@RobinOaks.com or 805-685-6773.*

### ENDNOTES

- 1 For a copy of the Board item that was approved, contact me at Robin@RobinOaks.com or search here: <https://board.calbar.ca.gov/Agenda.aspx?id=16986&tid=0&show=100035863&s=true#10044320>
- 2 See California Civility Task Force Report at <https://caljudges.org/docs/PDF/California%20Civility%20Task%20Force%20Report%209.10.21.pdf>
- 3 See Building a Better Bar, IAALS, report "Building a Better Bar: Twelve Building Blocks of Minimum Competence" and research at <https://iaals.du.edu/publications/building-better-bar>
- 4 ABA Rules of Professional Conduct 1.1: "Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Under California **Rules of Professional Conduct, Rule 1.1, Competence: The term "competence" in legal service "shall mean to apply to the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably necessary for the performance of such service [emphasis added]."**

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in place, which ensure that all employees are treated fairly, and decisions are not hindered by biases.<sup>7</sup> Once you have an inclusive environment supported by equitable practices and policies, recruiting and retaining historically excluded talent (and attracting large institutional clients) will become easier because everyone feels like they belong and can succeed.<sup>8</sup>

If you'd like to learn more about the Santa Barbara Bar Associations DEI Taskforce, or would like resources to help your workplace implement a DEI program, you can contact Claire Mitchell at [claire.mitchell@rimonlaw.com](mailto:claire.mitchell@rimonlaw.com). ■

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### ENDNOTES

- 1 *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141 (2023), available at [https://www.supremecourt.gov/opinions/22pdf/20-1199\\_hgdj.pdf](https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf).
- 2 MATT HAMILTON and HARRIET RYAN, *Los Angeles Times*, "Revenge served ice cold? Top L.A. law firm outs former partners' racist, sexist emails," June 7, 2023, available at <https://www.latimes.com/california/story/2023-06-07/revenge-delivered-ice-cold-top-l-a-law-firm-outs-former-partners-racist-sexist-emails>.
- 3 CHETTY, DEMING, FRIEDMAN, "Diversifying Society's Leaders? The Determinants and Causal Effects of Admission to Highly Selective Private Colleges," July 2023, available at [https://opportunityinsights.org/wp-content/uploads/2023/07/CollegeAdmissions\\_Paper.pdf](https://opportunityinsights.org/wp-content/uploads/2023/07/CollegeAdmissions_Paper.pdf).
- 4 *Id.*
- 5 *Id.*
- 6 ALEX-MARIE BAEZ, JD, "Law Firm DEI Programs," Brownstein Hyatt Farber Schreck, LLP, June 2023.
- 7 *Id.*
- 8 *Id.*