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April 24, 2008

Mr. Ronald Carpenter
Clerk of the Supreme Court
Supreme Court of the State of Washington
P.O. Box 40929
Olympia, WA 98504

FILED
SUPREME COURT
STATE OF WASHINGTON
2008 APR 28 A 10330
BY RONALD R. CARPENTER
CLERK

**Re: Comment on Proposed Changes to APR 11 Regulation 104(e) – Private Law Firm,
Legal Department, and Government Agency Education**

Dear Mr. Carpenter:

This comment supports the proposed changes to APR 11 Regulation 104(e) and is submitted on behalf of the undersigned coalition of law firms and corporate legal departments (the "Coalition"). In particular, we wish to reiterate our support for the removal of the 15 credit hour limitation ("Limitation") on CLEs sponsored by private law firms and corporate law departments (collectively "Law Firms & Departments"), which was inserted into Regulation 104(e) with amendments effective November 2005.

Since becoming aware of the Limitation in May 2006, the Coalition has been in regular contact with the MCLE Board and WSBA Board of Governors. Consequently, we have observed first-hand some of the effort, deliberation, and careful consideration that went into creating the amendments that are currently under consideration. In general, we believe, the proposed amendments are a significant improvement over the current regulations and will serve to increase the availability and convenience of high quality continuing legal education for members of the Washington Bar. For the reasons stated in the Coalition's original petition, which we submitted to this Court on October 13, 2006, and which we incorporate by reference in this comment, as well as the additional comments contained in this letter, we urge the Court to approve the proposed amendments as applied to Law Firms & Department sponsors (Reg. 104(e)) without change.

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Perkins Coie LLP and Affiliates

A. Background.

The current version of APR 11 Regulation 104(e) was amended effective November 2005. Among other changes, the November 2005 amendment replaced the provision that credit was available for private law firm courses so long as they were "open to non-members of the sponsoring firm provided that there is space available" with a 15 credit hour limitation on credit obtained from CLE programs sponsored by Law Firms & Departments in any three-year reporting period. The November 2005 amendments came as a surprise to the Law Firms & Departments, even though several law firm representatives had sought guidance from the MCLE Board in 2003 as to how it intended to interpret the then existing guideline that allowed unlimited CLE credit for private law firm-sponsored CLEs that were open to the public on a space available basis.

Upon learning of the adoption of the Limitation, members of Law Firms & Departments contacted the MCLE Board to understand the reasons behind the Limitation and explain the potential detrimental effect that this change would have on many members of the Bar. In addition to working with the MCLE Board and WSBA, the Coalition submitted a petition for rule change to the Court on October 13, 2006. The petition was solely focused on removing the Limitation and addressing the issues that existed with the pre-November 2005 amendments. The MCLE Board indicated that it wished to take a fresh look at all provisions of APR 11 and the Court deferred action on the Coalition's petition to permit the MCLE Board and WSBA additional time to complete this review. In the ensuing 16 months, the Coalition has participated in multiple MCLE Board meetings and a WSBA Board of Governors meeting in order to answer questions and further explain its position.

B. Eliminating the 15 Credit Hour Limitation is Consistent With the Purposes of Continuing Legal Education.

The proposed amendment, which eliminates the Limitation removes an unnecessary and complicated restriction, promotes fairness and better supports the goal expressed in APR 11.1 of assisting members of the Washington Bar to continue their legal education throughout their career.

1. Permitting Members of the Bar to receive credit for Law Firm & Department sponsored CLE's without limitation returns the rule to pre-November 2005 practice.

Prior to the Limitation, members of the Bar received credit for all qualified Law Firm & Department sponsored CLEs they attended. Law Firm & Department CLEs were approved for credit as long as the sponsoring firm agreed to allow members of the public to attend if space was available. Reg 104(e)(4) (effective 2000). Thus, with respect to removal of the Limitation, the proposed amendment is neither radical nor new. Rather, it essentially returns the rule to the status quo prior to the 2005 amendment and recognizes that the addition of the Limitation in November 2005 was unnecessary.

2. Elimination of the Limitation will likely expand the availability of high quality CLEs and ensure that members of the Bar receive credit for all qualified CLEs they attend.

Limiting credit that can be earned from Law Firm & Department-sponsored CLEs creates a disincentive for Law Firms & Departments to offer CLEs, which are often provided at no or nominal cost to attendees. In addition to in-house training programs that are primarily geared for Law Firm & Department attorneys and which may hold little applicability or interest to the legal community as a whole, Law Firms & Departments also organize and sponsor programs that are intended for and open to the public. *See e.g.* October 13, 2006 Petition for Amendments to APR 11 Regulation 104(e), Exh. G ("Petition"). Such CLEs are a valuable service to the Bar as they serve as convenient, affordable, and relevant programs. However, it is foreseeable that the demand for these programs will decrease if the ability to receive CLE credit is restricted. A likely response to a decrease in demand will be a decrease in the availability of Law Firm & Department sponsored CLEs.

3. The current amendments remedy the arbitrary effect of the Limitation.

The Limitation is arbitrary as it applies to all programs sponsored by Law Firms & Departments regardless of whether a private legal sponsor contracts with a commercial sponsor to provide the training. For example, a Law Firm or Department may wish to contract with a provider such as NITA (National Institute of Trial Advocacy) to present an intensive multi-day training for its attorneys. While every aspect of the training may be identical to a NITA-sponsored program, the attorneys who attend the private sponsored training will be limited in the credit they receive, while those that attend the

exact same program sponsored by NITA will not. The current amendments remedy this by permitting Law Firm & Department sponsored CLEs to receive credit on an equal footing with CLEs sponsored by other entities.

The Limitation also could have been interpreted as applying to the credit available to presenters, who are permitted to earn up to 10 credit hours for preparation for each hour of training. Reg. 103(d). Limiting credit available to presenters based on the sponsor of the CLE regardless of the content or quality of the program is arbitrary and is remedied by the proposed amendments.

4. The current amendments remedy the unnecessary administrative burden created by the Limitation.

The Limitation created an unnecessary administrative burden and provided no benefit to Washington's legal community, citizens, or businesses. First, the Limitation created another subcategory of CLE credits that requires tracking in addition to the preexisting subcategories of recorded, live and ethics credits. Instead of focusing attention on attending the CLEs that are the most appropriate and beneficial to an attorney's practice, a large number of Washington attorneys will instead be forced to select CLEs based upon the identity of the sponsor. Second, the Limitation is unnecessary. There is no evidence that members of Law Firms & Departments will stop participating in bar-sponsored or commercial-sponsored CLEs. As set forth in greater detail in the Coalition's petition, attorneys from Law Firms & Departments actively participated in bar-sponsored and commercial-sponsored CLEs both as attendees and presenters before the regulations were amended in 2005 (during a time when unlimited credit could be obtained from private sponsored CLEs as long as they were open to the public). *See e.g.* Petition Exhs. H, I, J.

C. Removal of the Limitation will recognize the sometimes unique needs filled by certain Law Firm & Department trainings.

In addition to convenience and quality, Law Firm & Department sponsored CLEs allow in-house attorneys the ability to discuss the general but sensitive nature of their companies' businesses and clients in confidence through a closed CLE setting. In addition to increasing the effectiveness and relevancy of trainings by allowing the use of real life examples that would not be possible without disclosing client confidences in an open forum, these trainings are often tailored to specific needs of Law Firm & Department attorneys and would be of little practical interest to others. Law Firms & Departments are aware that credit will not be available for courses that focus directly on a

pending case, action or matter currently being handled by the sponsor and do not seek to change this condition. Proposed Reg. 102(i).

D. Conclusion.

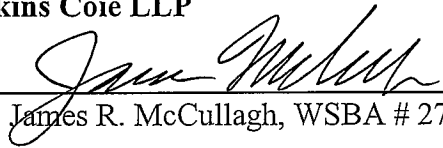
The ability to hold closed CLEs, with unlimited credit-hour reporting, supports the goal of providing lawyers with convenient, timely and quality continuing legal education that is relevant to their practice area. Limiting the credit for continuing legal education in areas that are likely to be directly applicable to an attorney's areas of practice creates a disincentive to provide such training and continuing education. In addition, eliminating the Limitation on Law Firm & Department sponsored CLEs will restore equality to the regulations by again allowing Washington bar members, regardless of their membership in Law Firms & Departments, to receive credit for all qualified CLE programs attended during a reporting period. For all the reasons stated above, we request that the Supreme Court adopt the proposed amendment to Regulation 104(e) that removes the 15 credit hour limitation on CLEs earned from Law Firm & Department sponsored CLEs.

Thank you for your consideration of this comment on the proposed amendment.

Very truly yours,

Coalition of Law Firms and Corporate Legal Departments

Perkins Coie LLP

By: 

James R. McCullagh, WSBA # 27744

With electronic or telephonic authority for signature by:

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David Zapolsky
WSBA #22451

Cozen O'Conner

By: /s/
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By: /s/
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By: /s/
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