

**STATE OF VERMONT
VERMONT SUPREME COURT
MARCH TERM, 2010**

**Order Promulgating Amendments to §§ 3(b), 4(a), 6(b), (c) and (d), 7(b) and 8(b) of the
Rules for Mandatory Continuing Legal Education**

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That § 3(b) of the Rules for Mandatory Continuing Legal Education are amended to read as follows (new matter underlined, deleted matter overstruck):

§ 3. Minimum educational requirements

(b) At least two of the twenty hours required by paragraph (a), above, shall be devoted to continuing legal education specifically addressed to legal ethics and at least two hours shall be devoted to education specifically in the area of professionalism. The courses meeting the professionalism requirement shall be pre-approved by the Board of Continuing Legal Education.

While courses that qualify for ethics credits should focus specifically on the Rules of Professional Conduct and their applicability to specific problems and situations lawyers face in their practice, courses that qualify for professionalism credits address conduct consistent with the tenets of the legal profession as demonstrated by a lawyer's civility, honesty, integrity, character, fairness, competence, attention to mental and physical health, public service, and respect for the rule of law, the courts, clients, other lawyers and parties. While courses related to the subject of law office management may satisfy this requirement, the substance of these courses shall be directed to a discussion of the areas described above and not merely education related to management tools, technology and the like. Courses meeting the professionalism requirement must be live, face to face and participatory, but may be attended via teleconference, interactive television, or on-line. ~~and~~ The credits may not be fulfilled by self-study.

HISTORY

Amendments--2010. Subsection (b): deleted the words "face to face" from the phrase "live, face to face and participatory" in the last sentence and inserted "but may be attended via teleconference, interactive television, or on-line".

Board's Statement of Intent – 2010 Amendment

Rule 3(b) was amended in 2008 to require that at least two of the twenty hours of continuing legal education be devoted to education specifically in the area of professionalism. The rule adopted at that time stated that "courses meeting the

professionalism requirement must be live, face to face and participatory.” As explained in the Reporter’s Notes relating to the 2008 amendment:

The general goal of the Vermont professionalism CLE requirement is, therefore, to create a forum in which lawyers, judges and legal educators can explore and reflect upon the meaning and goals of professionalism in contemporary legal practice. Building a community among the lawyers of this state is a specific goal of this requirement.

Board’s Statement of Intent – 2010 Amendment

The professionalism requirement became effective in August 2008, and was first applied to attorneys whose two year cycle of continuing legal education ended June 30, 2009. It soon became apparent to the Mandatory Continuing Legal Education Board that the requirement—that all professionalism courses be “live, face to face and participatory”—was causing great hardship to Vermont licensed attorneys residing in other states. At this time the professionalism requirement is not universal, and professionalism courses are simply unavailable in many jurisdictions. As a result, Vermont licensed attorneys residing outside the state faced the prospect of traveling hundreds, even thousands of miles, to complete the professionalism requirement.

The amendments to Rules 3 and 4 are intended to address the issue of accessibility to quality professionalism courses while respecting the underlying intent and objective of the rule: to create a forum in which legal professionals explore and reflect on the meaning and goals of professionalism in contemporary legal practice. The requirement in Rule 3 that professionalism courses be “face to face” was eliminated, and replaced by the option of attending via “teleconference, interactive television or on-line.” Rule 4(a)(1) was further amended to make it clear that, in order to qualify as “live” credit, the instructor and attendees must be able to participate and interact simultaneously, in real time.

2. That § 4(a)(1) of the Rules for Mandatory Continuing Legal Education are amended to read as follows (new matter underlined):

§ 4. Accreditation

(a) Educational activity shall be eligible for accreditation to satisfy the requirements of these rules if it has significant intellectual and practical content directed at increasing the professional competence of attorneys and is of the nature listed below:

(1) Law school or other classroom instruction or educational seminars with substantial written material available, whether conducted by live speakers, lecturers, panel members, video or audio tape presentation, in a classroom setting with a group of not fewer than three

individuals. For the purposes of these rules, in order for a course to qualify as live credit, the instructor and attendee must participate simultaneously. For video replays or computer generated courses to count as live credit, an expert moderator needs to be monitoring to answer questions and/or lead discussion; or

(2) Self study meaning individually viewing prerecorded presentations and is limited to 10 hours per reporting period; or

(3) With prior approval, independent study in supervised and graded courses.

HISTORY

Amendments--2010. Subsection 4(a) (1): inserted a new sentence “[f]or the purposes of these rules, in order for a course to qualify as live credit, the instructor and attendee must participate simultaneously” to clarify the meaning of the word “live” in Rule 3(b), and elsewhere in the rules.

Board’s Statement of Intent – 2010 Amendment

See the Board’s Statement of Intent to Rule 3(b).

3. That § 6(b), (c) and (d) of the Rules for Mandatory Continuing Legal Education are amended to read as follows (new matter underlined, deleted matter overstruck):

§ 6. Procedure

(b) Before June 1 of each subsequent year, the Board shall cause to be sent to each attorney subject to reporting for that period a compliance form ~~affidavit~~ for the recording and reporting of compliance with these rules.

(c) No later than July 1st following the end of each applicable reporting period, each licensed attorney shall submit ~~an affidavit~~ the compliance form attesting to the total hours of continuing legal education (a minimum of twenty hours) that the attorney has completed during such period.

(d) In the event a licensed attorney fails to file ~~an affidavit of~~ the compliance form, files an incomplete ~~affidavit of~~ compliance form, or files ~~an affidavit~~ form which does not demonstrate substantive compliance with the requirements of these rules, the Board shall promptly notify such attorney of the fact and nature of noncompliance, by certified or registered mail, return receipt requested. The statement of noncompliance shall advise the attorney that the attorney must respond within fifteen days by:

(1) filing ~~an affidavit~~ the form which reflects compliance;

(2) filing a makeup plan as described in § 7, below, along with the makeup plan filing fee; or

(3) filing with the Board a written answer to the Board's notice of noncompliance.

Board's Statement of Intent – 2010 Amendment

The changes to § 6(b), (c) and (d) and are intended to improve efficiencies during the relicensing period of attorneys by removing the requirement that the form which indicates compliance with the Continuing Legal Education Rules be in the form of an affidavit. This will allow for on-line continuing legal education reporting.

4. That § 7(b) and of the Rules for Mandatory Continuing Legal Education is amended to read as follows (new matter underlined, deleted matter overstruck):

§ 7. Makeup Plans

(b) The makeup plan must contain a specific plan for correcting the attorney's noncompliance within 120 days from the date of filing. The plan shall be accompanied by a makeup plan filing fee, the amount of which shall be determined by the Court annually on recommendation of the Board, and which shall be an amount estimated by the Board to cover the costs associated with a makeup plan. The plan shall be deemed accepted by the Board unless within 30 days after its receipt the Board notifies the attorney to the contrary. Full completion of the plan shall be reported by ~~affidavit~~ the compliance form filed with the Board not later than 15 days following the 120-day period. If the attorney shall fail to file an acceptable plan, or shall fail to complete and report completion of the plan within the aforementioned 135 days, the Board shall proceed as set forth in paragraphs (d) through (k) of § 6 of these rules.

Board's Statement of Intent – 2010 Amendment

The changes to § 7(b) are intended to improve efficiencies during the relicensing period of attorneys by removing the requirement that the form which indicates compliance with the Continuing Legal Education Rules be in the form of an affidavit. This will allow for on-line continuing legal education reporting.

5. That § 8(b) of the Rules for Mandatory Continuing Legal Education is amended to read as follows (new matter underlined, deleted matter overstruck):

§ 8. Inactive attorneys

(b) The provisions of paragraph (a) above notwithstanding, an attorney who has been in inactive status for a period of three years or more following June 1 of 1985 shall be required before reinstatement to file with the Board ~~an affidavit~~ the compliance form reflecting the completion of not less than twenty hours of accredited continuing legal education, including two

hours of legal ethics and two hours of approved professionalism courses and limited to ten hours of self-study courses within two years before the date upon which reinstatement is sought.

Board's Statement of Intent – 2010 Amendment

Section 8(b) is amended to clarify the intent that the twenty hours required for reinstatement to active status must include the categories and restrictions of the standard reporting requirements in §§ 3 and 4 of the Rules for Mandatory Continuing Legal Education.

6. That these rules as amended or added are prescribed and promulgated to become effective on May 31, 2010. The Board's Statements of Intent are advisory.

7. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 31st day of March, 2010.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice