

STATE OF VERMONT

SUPREME COURT

RULES FOR MANDATORY CONTINUING LEGAL EDUCATION

1. Purpose

It is of primary importance to members of the Bar of the Supreme Court of Vermont and to the public that attorneys continue their legal education throughout the period of their active practice of law. These rules establish minimum requirements for continuing legal education.

2. Board of Continuing Legal Education

(a) The Court shall appoint a Board to be known as the Board of Continuing Legal Education, consisting of seven members as follows:

(1) One shall be a judge, active or retired, or a retired justice of the Supreme Court;

(2) Four shall be attorneys admitted to the Bar of the Supreme Court; and

(3) Two shall be laypersons, not admitted to the practice of law in this state.

For purposes of these rules, a quorum shall consist of four members, or all members not disqualified, whichever is the lesser.

(b) Each term of office shall be four years and until a successor is appointed. Whenever a member resigns, or the office is otherwise vacant, the Court shall appoint a successor to fill the unexpired term. Appointments shall be made annually on June first.

(c) The chairperson and vice-chairperson shall be members designated by the Court annually on June first and shall so serve until their successors are designated.

(d) In the performance of their duties, the members of the Board shall be reimbursed for reasonable and necessary expenses and shall receive per diem compensation equivalent to that provided by law for comparable boards and commissions. The commissioner of finance and information support shall issue his warrant for the compensation and expenses of each member of the Board when submitted on vouchers approved by the court administrator.

(e) The Court shall initially appoint members to the Board for terms as follows:

(1) Two members, but no more than one of whom shall be a layperson, for terms of two years;

(2) Two members for terms of three years; and

(3) Three members for terms of four years.

(f) The Board shall have general supervisory authority over the administration of these rules. The Board shall accredit activity, within and without the state, which will satisfy the educational requirements of

these rules; shall encourage the offering of such activity; shall determine and keep records of attorney compliance with these rules; shall report in writing to the Court the names of those who fail to meet the requirements of these rules; shall evaluate the effectiveness of mandatory continuing legal education in maintaining and improving the competence of members of the Bar; and shall monitor the continuing legal competence of members of the Bar and policies and procedures to maintain and improve that competency. The Board shall annually report in writing to the Court on December first its activities during the prior year and its recommendations, if any, relating to these rules and the maintenance of professional competence of attorneys admitted to the Bar of the Supreme Court.

3. Minimum Educational Requirements

(a) Every licensed attorney admitted to the Bar of the Supreme Court shall complete twenty hours of accredited continuing legal education during each two-year compliance period established by these rules.

(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.

(l) 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 and may not be fulfilled by self-study.

(c) The provisions of paragraph (a) and (b), above, notwithstanding, no attorney who was admitted by examination before September 1, 1990 shall be required to earn hours of accredited continuing legal education for a period commencing on the date of the attorney's admission and ending on June first of the third full year following. For all attorneys admitted by examination on or after September 1, 1990, the provisions of paragraph (a) and (b) apply.

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 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.

(b) In the event that unusual circumstances render it a hardship for an attorney to engage in a

sufficient quantity of continuing legal education activity creditable pursuant to subdivisions (1) or (2) of paragraph (a) above, the Board, in its discretion, may approve any alternate plan for continuing legal education which it finds satisfies the objectives of these rules.

(c) Activity may be accredited upon an application made to the Board, containing such information as the Board in its discretion requires. Applications may be filed by a sponsoring agency or group, or by any participant. Applications for the accreditation of activity described in paragraph (a) above must be filed no later than 30 days after the course has ended. Applications for the accreditation of activity described in paragraph (b) above must be filed and approved before the educational activity has occurred.

(d) The Board shall assign a maximum number of credit hours to each accredited activity.

(e) The Board may refuse to accredit any activity which it finds is not eligible for accreditation pursuant to paragraphs (a) or (b) of this section or which it finds is sponsored by a group or individual lacking the ability or intention to produce continuing legal educational activity of the kind proposed of sufficiently high quality to improve or maintain an attorney's professional competence, or which it finds is not offered in a sufficiently organized fashion or under otherwise adequate circumstances to fulfill the objectives of these rules.

(f) In the event that an activity has been approved by the Board, the sponsor shall be entitled to so state and to state the maximum number of credit hours for which the activity has been approved.

(g) The Board may delegate the authority to determine applications for accreditation. In the event said authority is delegated, a denial of accreditation by the Board's delegate shall be subject, upon request of the grievant, to de novo review by the Board.

' 5. Accumulation and Computation of Credit

(a) Credit will be given only for participation in accredited activities, up to the maximum number of hours assigned by the Board to each activity.

(b) Credit will be given for any course attended in preparation for admission to the practice of law in any jurisdiction.

(c) Credit may be earned by teaching in accredited activities; however, no credit will be given for teaching which is part of an attorney's regular occupational activity, such as full-time instruction at a law school or college.

' 6. Procedure

(a) The continuing legal education requirement imposed by these rules shall be effective from and after June 1, 1999. All licensed attorneys are divided into two groups of approximately equal numbers. The first group shall be required to complete twenty hours of continuing legal education within two years after June 1, 1999, and thereafter all licensed attorneys in the first group shall complete twenty hours of continuing legal education during each subsequent two-year compliance period. The second group shall be required to complete twenty hours of continuing legal education within two years of June 1, 2000, and thereafter all licensed attorneys in the second group shall complete twenty hours of continuing legal education during each subsequent two-year compliance period. For licensed attorneys admitted to practice after July 1, 1999, the reporting period shall commence on the date of admission and end on June 30th of the second full year following the year of admission.

(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 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 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 compliance, files an incomplete affidavit of compliance, or files an affidavit 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 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.

(e) If an answer pursuant to subdivision (3) of paragraph (d) above is filed and the answer does not admit noncompliance, the Board shall schedule a hearing on the question of compliance within thirty days of the filing. Notice of the date, time and place of said hearing shall be given to the attorney at least ten days prior thereto. The attorney shall bear the burden of establishing compliance with the substance of these rules. The attorney may be represented by counsel. Witnesses shall be sworn; and if requested by the attorney a complete electronic recording shall be made of all proceedings and all testimony taken. The chairperson, or other presiding member of the Board, shall have the authority to determine all motions, objections and other matters presented in connection with the hearing. The hearing shall be conducted in conformity with the Vermont Rules of Civil Procedure. The presiding officer of the Board and the attorney shall have the right to subpoena witnesses for said hearing. Application for a subpoena, including a subpoena duces tecum, shall be made to the Clerk of the Supreme Court, who shall issue the same.

(f) Within thirty days of the conclusion of a hearing, the members of the Board who conducted the hearing shall make findings of fact determining whether the attorney has complied with the requirements of these rules. If the Board finds that compliance has occurred, the matter shall be dismissed, and the Board's records shall be amended to reflect such compliance. If it is determined that the attorney has not complied with these rules, the Board shall recommend suspension. The Board shall promptly forward said findings and recommendation to the Supreme Court.

(g) In the event that an attorney fails to answer the Board's statement of noncompliance pursuant to paragraph (d), or files an answer which admits noncompliance, the Board shall promptly file a determination of noncompliance and a recommendation of suspension with the Supreme Court.

(h) Upon the recommendation of the Board, the Court may enter an order suspending an attorney for noncompliance, or, if it determines that the Board's finding of noncompliance is not supported by the record, reverse the finding of noncompliance and remand the matter to the Board for further consideration, or, find compliance and order the Board's records amended to reflect compliance.

(i) An attorney who has been suspended pursuant to order of the Court for noncompliance shall be deemed to be without a license to practice law pursuant to Administrative Order No. 41, Licensing of Attorneys, ' 2 and, in the event the attorney should practice law during the period of suspension, the attorney may be punished for unauthorized practice of law.

(j) Any attorney who has been suspended for noncompliance may be reinstated by order of the Court upon a showing that the attorney's continuing legal education deficiency has been made up. The attorney shall file with the Board a petition seeking reinstatement. The petition shall state with particularity the accredited continuing legal education activity which the attorney has completed including the dates of completion. The petition shall be accompanied by a reinstatement filing fee, the amount of which shall be determined by the Court annually, based on a recommendation of the Board, and which shall be in an amount estimated by the Board to cover the costs associated with a reinstatement. The Board shall determine whether the petition shows that compliance has been made, in which event it shall, within 10 days, file the petition, together with its recommendation of reinstatement, with the Supreme Court. If the Court finds the attorney eligible for licensure, or exempt therefrom, and that the record supports the Board's recommendation of reinstatement, it shall order reinstatement; otherwise, it may deny reinstatement or remand the matter to the Board for further consideration.

(k) At any time when proceedings are pending, and before the Board makes a recommendation of suspension, the Board may, in its discretion, dismiss said proceedings upon the filing of a makeup plan by the attorney, if it finds that the makeup plan is in compliance with ' 7 of these rules and that dismissal will serve the policy of these rules.

' 7. Makeup Plans

(a) An attorney who has failed to comply with the substantive requirements of these rules within the applicable compliance period may file a makeup plan, on his or her own initiative, or in response to a statement of noncompliance.

(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 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.

' 8. Inactive Attorneys

(a) An attorney who is exempt from licensure shall be relieved thereby from the requirements of these rules during the period of exemption of said attorney. Upon application for reinstatement and issuance of a license to practice law pursuant to Administrative Order No. 41, Licensing of Attorneys, the compliance period of the attorney shall commence on the date of reinstatement and end on June 30th of the second full year following the year of reinstatement, provided the date of reinstatement is more than one year from the date of transfer to inactive status. Otherwise, the compliance period shall be the same as it would have been absent inactive status. No attorney shall be permitted to transfer from active status to inactive status and vice versa in order to circumvent the requirements of these rules.

(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 reflecting the completion of not less than twenty hours of accredited continuing legal education within two years before the date upon which reinstatement is sought.

' 9. Supplemental Regulations; Fees

The Board of Continuing Legal Education may make and adopt such regulations, not inconsistent with these rules, governing the conduct of its business and the performance of its duties, as it finds to be

appropriate to implement these rules. All fees received pursuant to these rules shall be deposited in the general fund.