

**STATE OF VERMONT
SUPREME COURT
FEBRUARY TERM, 2020**

Order Abrogating and Replacing the Vermont Rules for Mandatory Continuing Legal Education

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

1. That the Vermont Rules for Mandatory Continuing Legal Education be abrogated and replaced to read as set forth in the attached appendix.
2. That these rules, as amended, are prescribed and promulgated to become effective July 1, 2020. The Board's Notes are advisory.
3. 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 10th day of February, 2020.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice

RULES FOR MANDATORY CONTINUING LEGAL EDUCATION

Introductory Board's Note

The 2020 amendments to the Rules for Mandatory Continuing Legal Education are comprehensive. Much of the ABA's February 2017 Model Rule for Minimum Continuing Legal Education (Model Rule) has been adopted in whole or in part. Many provisions of the prior rules remain in the current rules but have been incorporated into the framework of the Model Rule. Because of the comprehensive nature of the revision, it is not possible to present the amendments in a redlined version that highlights changes to the prior rules. The Board's Notes attempt to identify the relevant prior rules and to point out where the new rules reflect a significant substantive change from the prior rules.

PURPOSE

To maintain public confidence in the legal profession and the rule of law, and to promote the fair administration of justice, it is essential that attorneys be competent regarding the law, legal and practice-oriented skills, the standards and ethical obligations of the legal profession, and the management of their practices. In furtherance of this purpose, these rules establish minimum requirements for continuing legal education in the state of Vermont.

Board's Notes

The purpose language is drawn from the Model Rule and replaces prior rule § 1.

RULE 1. DEFINITIONS

- (A) "Attorney Wellness Programming" means CLE programming designed to help lawyers detect, prevent, or respond to substance use, mental health, and/or stress-related issues that can affect professional competence and the ability to fulfill a lawyer's ethical and professional duties. Such programming must focus on these issues in the context of the practice of law and the impact these issues can have on the quality of legal services provided to the public.
- (B) "Bar" means the Bar of the Vermont Supreme Court.
- (C) "Board" means the Vermont Board of Mandatory Continuing Legal Education.
- (D) "Continuing Legal Education Program" or "CLE Program" or "CLE Programming" means a legal education program taught by one or more faculty members that has significant intellectual or practical content designed to increase or maintain the attorney's professional competence and skills as an attorney.
- (E) "Court" means the Vermont Supreme Court.
- (F) "Credit" or "Credit Hour" means the unit of measurement used for meeting MCLE

requirements. For Credits earned through attendance at a CLE Program, a Credit Hour requires sixty minutes of programming. Credit Hours will be rounded to the nearest quarter hour.

(G) “Director” means Vermont’s Licensing Counsel.

(H) “Diversity and Inclusion Programming” means CLE Programming that addresses diversity and inclusion in the legal system of all persons regardless of race, ethnicity, religion, national origin, gender, sexual orientation, gender identity, or disabilities, and programs regarding the elimination of bias.

(I) “Ethics Programming” means CLE programming that addresses standards set by Vermont’s Rules of Professional Conduct with which an attorney must comply to remain authorized to practice law.

(J) “In-House CLE Programming” means programming provided to a select private audience by a private law firm, corporation, or financial institution, or by a federal, state, or local governmental agency, for attorneys who are members, clients, or employees of any of those organizations.

(K) “Interdisciplinary Programming” means programming that crosses academic lines that supports competence in the practice of law.

(L) “Law Practice Programming” means programming specifically designed for attorneys on topics that deal with means and methods for enhancing the quality and efficiency of an attorney’s service to the attorney’s clients.

(M) “MCLE” or “Minimum Continuing Legal Education” means the ongoing training and education that Vermont requires for attorneys to maintain their license to practice law.

(N) “Moderated Programming” means programming delivered via a format that provides attendees an opportunity to interact in real time with program faculty members or a qualified commentator who are available to offer comments and answer oral or written questions before, during, or after the program. Current delivery methods considered Moderated Programming include, but are not limited to:

(1) “In-Person” – a live CLE Program presented in a classroom setting devoted to the program, with attendees in the same room as the faculty members.

(2) “Satellite/Groupcast” – a live CLE Program broadcast via technology to remote locations (i.e., a classroom setting or a central viewing or listening location). Attendees participate in the program in a group setting.

(3) “Teleseminar” – a live CLE Program broadcast via telephone to remote locations (i.e., a classroom setting or a central listening location) or to individual attendee telephone lines. Attendees may participate in the program in a group setting or individually.

(4) “Video Replay” – a recorded CLE Program presented in a classroom setting devoted to the program, with attendees in the same room as a qualified commentator. Attendees participate in the program in a group setting.

(5) “Webcast/Webinar” – a live CLE Program broadcast via the internet to remote locations (i.e., a classroom setting or a central viewing or listening location) or to individual attendees. Attendees may participate in the program in a group setting or individually.

(6) “Webcast/Webinar Replay” – a recorded CLE Program broadcast via the internet to remote locations (i.e., a classroom setting or a central viewing or listening location) or to individual attendees. A qualified commentator is available to offer comments or answer questions. Attendees may participate in the program in a group setting or individually.

(O) “New Attorney Programming” means programming designed for newly licensed attorneys that focuses on basic skills and substantive law that is particularly relevant to attorneys as they transition from law school to the practice of law.

(P) “Non-Moderated Programming with Interactivity as a Key Component” means programming delivered via a recorded format that provides attendees a significant level of interaction with the program, faculty, or other attendees. Types of qualifying interactivity for nonmoderated formats include, but are not limited to, the ability of participants to: submit questions to faculty members or a qualified commentator; participate in discussion groups or bulletin boards related to the program; or use quizzes, tests, or other learning assessment tools. Current delivery methods considered Non-Moderated Programming with Interactivity as Key Component include, but are not limited to:

(1) “Recorded On Demand Online” – a recorded CLE Program delivered through the internet to an individual attendee’s computer or other electronic device with interactivity built into the program recording or delivery method.

(2) “Video or Audio File” – a recorded CLE Program delivered through a downloaded electronic file in mp3, mp4, wav, avi, or other formats with interactivity built into the program recording or delivery method.

(3) “Video or Audio Tape” – a recorded CLE Program delivered via a hard copy on tape, DVD, DVR, or other formats with interactivity built into the program recording or delivery method.

(Q) “Rules” means the Rules for Mandatory Continuing Legal Education together with any subsequent amendments, as adopted by the Supreme Court of the State of Vermont.

(R) “Rules of Admission” means the Rules of Admission to the Bar of the Vermont Supreme Court.

(S) “Non-Moderated Programming Without Interactivity” means programming delivered via a recorded format that does not have interactivity built into the program recording or delivery method.

(T) “Sponsor” means the producer of the CLE Program responsible for adherence to the standards of program content determined by these Rules. A Sponsor may be an organization, bar association, CLE provider, law firm, corporate or government legal department, or presenter.

(U) “Technology Programming” means programming designed for attorneys that provides education on safe and effective ways to use technology in one’s law practice, such as to communicate, conduct research, ensure cybersecurity, and manage a law office and legal matters.

Board's Notes

The three definitions from the prior rule § 2 (“Board,” “Director,” and “Rules”) remain, with minor amendments. All other definitions are new. Most have been either adopted from the Model Rule or added for clarity and consistency. The definition of “Attorney Wellness Programming” was included to support the new wellness requirement of Rule 3(A)(4)(b).

RULE 2. BOARD OF MANDATORY CONTINUING LEGAL EDUCATION

(A) Appointment; Composition of Board; Terms; Vacancy; Officers; Quorum.

(1) *Appointment.* The Court appoints the Members of the Board.

(2) *Composition of the Board.* The Board consists of seven Members, as follows:

(a) Either one retired Supreme Court justice or an active or retired superior court judge;

(b) Four attorneys admitted to the Bar; and

(c) Two laypersons not admitted to the Bar.

(3) *Terms.* Each term of office is for four years, plus any additional time necessary for the appointment of a successor. Appointments will be made annually, for terms commencing on June 1. No Member may serve for more than two consecutive terms or parts of a term.

(4) *Vacancy.* If a Member resigns or the office is otherwise vacant, the Court will appoint a successor to complete the unexpired term.

(5) *Officers.* Annually, for terms commencing on June 1, the Court will designate two Members to serve respectively as the Chairperson and Vice-Chairperson. The Chairperson and Vice-Chairperson will serve in those capacities until their successors are designated.

(6) *Quorum.* A quorum consists of four Members, or all Members not disqualified, whichever is less.

(B) **Authority.** The Board has the authority to administer the mandatory continuing legal education program in Vermont in accordance with these Rules. This includes the authority to: supervise staff regarding the administration of the Rules; develop policies to provide guidance and further the intent of the Rules; interpret the Rules and consider and rule on any matter that a member of the bar may bring to the Board’s attention regarding application of the Rules; and recommend rule changes to the Court.

(C) **Annual Report.** Annually on December 1, the Board must report in writing to the Court its activities during the prior year and any recommendations relating to these Rules and the maintenance of professional competence of attorneys admitted to the Bar.

(D) **Expenses.** In the performance of their Committee duties, each Member is eligible to be reimbursed for reasonable and necessary expenses equivalent to that provided by law for comparable boards and commissions. A request for reimbursement of expenses must be made on a Court-approved voucher and be submitted to the Court Administrator.

Board's Notes

This rule replicates the prior rule § 3, with some reorganization and minor changes.

RULE 3. MCLE REQUIREMENTS AND EXCEPTIONS

(A) Requirements.

(1) All attorneys who are licensed to practice law in Vermont and on active status must earn at least twenty-four MCLE Credit Hours per two-year reporting period established by these Rules.

(2) At least twelve of the twenty-four Credit Hours required by Rule 3(A)(1) must be programs delivered either as Moderated Programming or Non-Moderated Programming with Interactivity as a Key Component.

(3) No more than six of the twenty-four Credit Hours required by Rule 3(A)(1) can be programs delivered as Non-Moderated Programming Without Interactivity.

(4) As part of the required Credit Hours referenced in Rule 3(A)(1), attorneys must earn Credit Hours in each of the following areas:

- (a) Ethics Programming (at least two Credit Hours per reporting period);
- (b) Attorney Wellness Programming (at least one Credit Hour per reporting period); and
- (c) Diversity and Inclusion Programming (at least one Credit Hour per reporting period).

(B) Additional Provisions.

(1) *Approval of Alternate Plans.* If unusual circumstances render it a hardship for an attorney to fulfill the requirements of Rule 3(A), the attorney may submit an alternate plan for continuing legal education to the Board in writing. The Board, in its discretion, may approve such a plan if the Board finds that the plan satisfies the purpose of these Rules.

(2) *Carry Over of Excess Credit Hours.* If an attorney has completed more than twenty-four MCLE Credit Hours in a reporting period ending after the effective date of these rules, any excess Credit Hours earned during the second year of the reporting period may be used to fulfill the requirements of Rule 3(A) for the reporting period immediately following. Ethics, Attorney Wellness, and Diversity and Inclusion Programming Credit Hours may be brought forward to meet the corresponding requirement only when not utilized to meet any minimum requirement in the reporting period earned.

(3) *First-Year CLE Requirement.* Any CLE Credit Hours earned to satisfy the first-year CLE requirements for newly admitted attorneys, including those earned prior to admission to the Vermont bar, may be used to fulfill the requirements of Rule 3(A) for the attorney's first reporting period.

(4) *Pro Bono Emeritus Attorneys.* A licensed attorney on pro bono emeritus status is subject to the requirements of Rule 3(A) except that the attorney must only complete at least eight MCLE Credit Hours per two-year reporting period established by these Rules, including at least one Credit Hour of Ethics Programming. At least four of the eight Credit Hours must be programs delivered either as Moderated Programming or Non-Moderated Programming with Interactivity as a Key Component, and no more than two of the eight Credit Hours can be programs delivered as Non-Moderated Programming Without Interactivity.

Board's Notes

This rule is drawn from the prior rules §§ 4(a), 4(b), 5(c), and 6(b), with the following significant changes.

The total number of credit hours required per reporting period has been increased from twenty to twenty-four. Rule 3(A)(1).

The prior distinction between live and self-study programming has been replaced with a distinction between three types of programming: Moderated Programming, Non-Moderated Programming with Interactivity as a Key Component, and Non-Moderated Programming Without Interactivity. Of the twenty-four required credit hours, twelve must be programs delivered either as Moderated Programming or Non-Moderated Programming with Interactivity as a Key Component (Rule 3(A)(2)), with the number of credit hours for programs delivered as Non-Moderated Programming Without Interactivity (previously, self-study) now capped at six (Rule 3(A)(3)).

In addition to the prior ethics requirement, attorneys must now complete at least one credit hour of both attorney wellness programming (Rule 3(A)(4)(b)) and diversity and inclusion programming (Rule 3(A)(4)(c)) per reporting period.

A carryover provision has been added (Rule 3(B)(2)) to allow excess credit earned in the second year of the reporting period to be carried over to the next reporting period.

A specific provision laying out the details of the MCLE requirements for attorneys on pro bono emeritus status (Rule 3(B)(4)) has been added.

RULE 4. MCLE-QUALIFYING PROGRAM STANDARDS

To be approved for credit, Continuing Legal Education Programs must meet the following standards:

(A) The program must have significant intellectual or practical content and be designed for an attorney audience. Its primary objective must be to increase the attendee's professional competence and skills as an attorney and to improve the quality of legal services rendered to the public.

(B) The program must pertain to a recognized legal subject or other subject matter which integrally relates to the practice of law, diversity and inclusion issues, attorney wellness, or the ethical obligations of attorneys. Provided the program satisfies the other accreditation requirements, CLE Programs that address any of the following will qualify for MCLE credit:

- (1) Substantive Law Programming
- (2) Legal and Practice-Oriented Skills Programming
- (3) Specialty Programming (see Rule 3(A)(4))
- (4) New Attorney Programming (see Rule 1(O))
- (5) Law Practice Programming (see Rule 1(L))
- (6) Technology Programming (see Rule 1(U))
- (7) Interdisciplinary Programming (see Rule 1(K))
- (8) Attorney Wellness Programming (see Rule 1(A))

(C) The program must be delivered as Moderated Programming, Non-Moderated Programming with Interactivity as a Key Component, or Non-Moderated Programming Without Interactivity. The Sponsor must have a system which allows certification of attendance to be controlled by the Sponsor and which permits the Sponsor to verify the date and time of attendance.

(D) Thorough, high-quality instructional written materials which appropriately cover the subject matter must be distributed to all attendees in paper or electronic format during or prior to the program.

(E) Each program must be presented by a faculty member or members qualified by academic or practical experience to teach the topics covered, whether they are attorneys or have other subject matter expertise.

(F) Credit will not be given for coffee breaks, keynote speeches, business meetings, and speeches presented at and attendance at luncheons and banquets.

Board's Notes

This rule, adopted in full from the Model Rule, replaces the prior rules § 5(a), (b)(1)-(6), although the new MCLE-qualifying program standards are generally consistent with those from the prior rules. The new rule makes explicit that certain types of programming, such as Law Practice Programming, Technology Programming, Interdisciplinary Programming, and Attorney Wellness Programming, are accreditable.

RULE 5. ACCREDITATION

(A) Accreditation of Programs.

(1) *Requirement of Accreditation.* Except as provided in Rule 5(B), all programs must be accredited to satisfy the requirements of these Rules.

(2) *Application.* To request accreditation for a program not previously accredited, the Sponsor or an attorney participating in the program must file a written application with the Board on a form approved by the Board.

(a) *Timing.* The application must be filed no later than 30 days after the program has ended, except that an application for the accreditation of an activity described in Rule 3(B)(1) must be filed and approved before the activity commences. A Sponsor or attorney who files a request for credit more than 30 days after the date of attendance must pay a late fee pending approval of the out-of-time request.

(b) *Contents.* The application must contain the following information:

- (i) The name and address of the Sponsor;
- (ii) The title, date, location, and fee for the program;
- (iii) The name of the presenter(s) and their qualifications;
- (iv) A description of program content and length of presentation;
- (v) An indication of any part pertaining to Ethics, Attorney Wellness, and Diversity and Inclusion Programming; and
- (vi) A description of the materials.

(c) *Program Brochure.* The Sponsor or attorney requesting accreditation may supply the required program information by attaching a copy of the program brochure.

(3) *Approval.*

(a) *Denial.* The Board must grant the request for accreditation unless it finds that the program:

(i) is not eligible for accreditation under Rule 4;

(ii) is sponsored by a Sponsor lacking the ability or intention to produce CLE Programming of the kind proposed of sufficiently high quality to improve or maintain an attorney's professional competence; or

(iii) is not offered in a sufficiently organized fashion or under otherwise adequate circumstances to fulfill the objectives of these Rules.

(b) *Scope of Approval.* The Board may grant approval for either a specific program or a series of programs.

(c) *Ongoing Approval.* The Board may approve on an ongoing basis programs given annually, subject to revocation after notice by the Board.

(d) *Number Credit Hours.* The Board must assign a maximum number of Credit Hours to each accredited program.

(e) *In-House CLE Programming.* In-House Sponsors are treated the same as other Sponsors and In-House CLE Programming is allowed full accreditation if the program satisfies the other accreditation requirements outlined herein.

(3) *Representations by Sponsor.* If the Board approves a program, the Sponsor is entitled to so state and to state the maximum number of Credit Hours for which the program has been approved.

(4) *List of Approved Programs.* The Director will maintain a list of approved programs.

(B) Accreditation of Sponsors.

(1) *General.* On its own or upon application from a Sponsor, the Board may designate a Sponsor as an "Accredited Sponsor" if the Board determines that the Sponsor regularly provides a significant volume of CLE programs that meet the standards of approval and that the Sponsor will maintain and submit the required records. A program produced by an Accredited Sponsor is approved for MCLE credit without the need of the Sponsor to seek prior approval under Rule 5(A), so long as the program complies with the other accreditation requirements outlined herein.

(2) *Application and Board Approval.* An application to become an Accredited Sponsor must be made in writing and state the Sponsor's legal education history for the preceding two calendar years, including dates, subjects offered, total Credit Hours of instruction presented, and the names and qualifications of presenters. In evaluating the application, the Board will primarily consider the Sponsor's previous experience in sponsoring and presenting continuing legal education activities.

(3) *Advisory Opinions.* An Accredited Sponsor may seek an advisory opinion from the Director about a program's compliance with the standards under these Rules and the proper amount of Credit Hours to be given for the program.

(4) *Reevaluation and Revocation.* The Board may at any time reevaluate an Accredited Sponsor and revoke approval if a Sponsor fails to comply with the program standards and requirements of these Rules. If the Board finds a basis to revoke the approval, the Board will notify the Accredited Sponsor and provide the Accredited Sponsor the opportunity to have a hearing on possible revocation prior to making a decision on revocation. The Board's decision is final.

(5) *List of Accredited Sponsors.* The Director will maintain a list of Accredited Sponsors.

(C) Director's Determinations and Review.

(1) *Delegation of Authority.* Except as provided in 4(C)(2), the Board may delegate to the Director the authority to determine, under guidelines established by the Board, written requests and applications for: accreditation of programs; accreditation of Sponsors; awarding of credit for attending, teaching, or participating in approved programs; waivers; extensions of time deadlines; and interpretations of these Regulations. The Director will issue a written decision in response to any such request or application. The Director may consult with the Board before rendering a decision.

(2) *Limit on Delegation.* The Board may not delegate to the Director the authority to determine written requests and applications for the accreditation of Attorney Wellness and Diversity and Inclusion programs. Such requests and applications must be reviewed by the Board to ensure that the curriculum fulfills the purposes of the Rule 3 and the presenters are authoritative on the subject matter.

(3) *Board Review.* The Sponsor or attorney making the request or application may appeal an adverse determination by the Director to the Board, which will review the request de novo. The Sponsor or attorney affected may present information to the Board in writing. If the Board concludes that the Director incorrectly interpreted the facts or the provisions of the Rules, it may take appropriate action. The Board must advise the Sponsor or attorney affected of its decision and any action taken. The Board's decision is final.

Board's Notes

This rule is drawn from the prior rules §§ 5(d)-(h), 7, 8.

The accreditation process for both individual programs and sponsors remains essentially unchanged from the prior rules. The new rules, however, explicitly state that in-house CLE programming is subject to the same accreditation standards as other programming (Rule 5(A)(3)(e)). Also, the new rules remove the requirement that the Director report and the Board review all adverse determinations by the Director, in favor of giving the affected sponsor/attorney the right to appeal any adverse determination by the Director to Board for de novo review (Rule 5(C)).

RULE 6. OTHER MCLE-QUALIFYING ACTIVITIES

MCLE credit may be earned through participation in the following activities (unless the attorney receives for that activity financial remuneration exceeding out-of-pocket expenses):

(A) **Teaching Accredited CLE Programs and at a Law School.** An attorney may earn MCLE credit for being a speaker at an accredited CLE program. In addition, attorneys who are not employed full-time by a law school may earn MCLE credit for teaching a course at an ABA-accredited law school or teaching a law course at a university, college, or community college. One Credit Hour of actual preparation time will be allowed for each actual Credit Hour of approved teaching, up to a maximum of five Credit Hours of preparation time;

(B) **Teaching Legal Programs to Nonattorneys.** An attorney may earn MCLE credit for presenting formal education and/or informational programs to nonattorneys (including but not limited to student groups) that are designed to broaden public knowledge and understanding of the law and/or increase public support and respect for the legal system. Credit under this paragraph is not allowed for instruction primarily aimed at the marketing of the presenter and is limited to two Credit Hours per reporting period;

(C) **Writing.** An attorney may earn MCLE credit for legal writing.

(1) The legal writing must:

(a) be published or accepted for publication, in print or electronically, in the form of an article, chapter, book, revision or update;

(b) be written in whole or in substantial part by the applicant; and

(c) contribute substantially to the continuing legal education of the applicant and other attorneys.

(2) Credit Hours for writing is earned as follows: two and a half Credit Hours for 1000 published words and five Credit Hours for 3000 published words. Earned Credit Hours may be prorated among multiple authors;

(D) **Mentoring.** An attorney may earn up to five Credit Hours per reporting period (no credit for preparation) for service as a mentor in the mentorship program for newly admitted attorneys described in Rule 12(a)(2) of the Rules of Admission;

(E) **Acting Judicial Appointments.** An attorney may earn up to three Credit Hours per reporting period (no credit for preparation) for service as an acting judge, including acting judicial appointments reviewing small claims cases in Superior Court;

(F) **Moot Court.** An attorney may earn up to two Credit Hours per reporting period (no credit for preparation) for service as a moot court judge;

(G) **Volunteer Committee Work.** An attorney may earn up to two Credit Hours per reporting period for service on approved committees (no credit for preparation); but Examiners and

Associate Examiners of the Board of Bar Examiners may receive up to ten Credit Hours for work on behalf of that Board.

Board's Notes

This rule is drawn from the prior rules §§ 5(b)(9)-(10), 6(c), (d), (f), (g).

All the noncourse MCLE-qualifying activities from the prior rules remain, although the specific requirements for teaching and writing have been slightly changed to reflect the Model Rule provisions.

RULE 7. REPORTING AND COMPLIANCE

(A) **Reporting Period.** Each two-year reporting period begins on July 1 and ends on June 30 in the second successive year, except that an attorney's first reporting period begins on the date of admission to the Bar and ends on June 30 of the second full year after the year of admission. Each attorney is assigned to report in either even-numbered or odd-numbered years, based initially on the attorney's date of admission to the Bar.

(B) Reporting Process.

(1) *Notice.* Before June 1 of each year, the Board will notify each attorney subject to reporting for the current reporting period that the attorney must complete the Rule 3 MCLE requirements and certify such completion by the end (June 30) of the reporting period.

(2) *Reporting.* An attorney subject to reporting for the current reporting period must file either a certification of completion of the Rule 3 MCLE requirements or a makeup plan detailing how the attorney intends to complete those requirements by the end of the reporting period (June 30), unless the Board extends the time for good cause.

(3) Makeup Plans.

(a) *Contents.* The makeup plan must contain a specific plan for correcting the attorney's noncompliance by that October 31.

(b) *Fees.* The plan must be accompanied by a makeup plan filing fee.

(c) *Approval.* The plan will be deemed approved by the Board unless the Board notifies the attorney to the contrary by that July 31.

(d) *Certification of Compliance.* The attorney must file a certification of compliance with the makeup plan no later than that November 15, unless the Board extends the time for good cause.

(C) **Audits.** The Board, at its discretion, may perform an audit of an attorney's compliance with these Rules during the two most recently completed reporting periods, except that such an audit cannot include reporting periods that started prior to the effective date of this provision. The Board will notify the attorney of the audit and give the attorney 60 days from notification

to provide the Board with documentation establishing compliance. An attorney subject to an audit has the burden of establishing compliance to the Board's satisfaction. The Board will issue its findings and decision on the audit within 90 days of notification of the audit.

Board's Notes

This rule is drawn from the prior rules §§ 9(a)-(d), 10.

The reporting process has been changed to reflect the current practice in which attorneys certify that they have completed the MCLE requirement for the reporting period, rather than presenting a detailed list of the MCLE credits that they have earned. To ensure compliance, the new rules explicitly give the MCLE Board the authority and discretion to do audits and require attorneys to keep records for the past two reporting periods.

RULE 8. SUSPENSION AND HEARING PROCESS

(A) **Basis for Suspension.** An attorney's license is subject to nondisciplinary, administrative suspension if:

(1) the attorney was subject to reporting for the prior reporting period and submitted a relicensing statement but failed to timely file either a certification of completion of the Rule 3 MCLE requirements or an acceptable makeup plan with the makeup plan filing fee;

(2) the attorney timely filed an acceptable makeup plan but failed to timely file a certification of compliance with the makeup plan; or

(3) the Board determined, based on an audit, that the attorney failed to comply with the Rules for a prior reporting period.

(B) **Suspension Process.**

(1) *Notice.* If the Board determines that an attorney is subject to license suspension under (A), the Board will promptly notify the attorney of that fact, the basis for the suspension, and the attorney's obligations to respond to the notice per (B)(2). The notice will be given in writing and sent to the attorney by certified or registered mail, return receipt requested. The Board's failure to send timely notice does not relieve the attorney of the duty to comply with the Rules.

(2) *Response.* Within 14 days of when the notice of suspension is sent, or later if the Board extends the time for good cause, the attorney must respond by filing one of the following with the Board:

(a) if the basis for the suspension is (A)(1), a form reflecting compliance or an acceptable makeup plan and makeup plan filing fee;

(b) if the basis for the suspension is (A)(2), a certification of compliance with the makeup plan;

(c) if the basis for the suspension is (A)(3), an acceptable makeup plan and makeup plan filing fee; or

(d) a written answer to the Board's notice of suspension.

(3) *Failure to Respond; Admission of Noncompliance; Suspension.* If an attorney fails to timely respond to the Board's notice of suspension, or files an answer that admits noncompliance, the attorney's license to practice law in Vermont will be immediately suspended on a nondisciplinary, administrative basis. The State Court Administrator or designee will send notice of the suspension to the attorney by email and to the courts of the State of Vermont.

(4) *Hearing.* If an attorney files a written answer under (2)(d) and does not admit noncompliance, the Board will schedule a hearing within 30 days of the filing.

(C) **Hearing Process.** A hearing convened pursuant to (B)(4) will be conducted as follows:

(1) *Panel.* The hearing will be before a 3-member panel of the Board. At the commencement of the hearing, one panel member will be designated as the presiding member.

(2) *Attorney's Participation.* The Board must provide the attorney with written notice of the hearing. The attorney may appear and present information to substantiate compliance with the Rules.

(3) *Counsel.* The attorney is entitled to be represented by counsel at the hearing. The panel may appoint counsel to present evidence of the attorney's noncompliance with the Rules.

(4) *Rules of Evidence; Subpoena Power.*

(a) The Vermont Rules of Evidence apply, but evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs and not precluded by statute or privilege. All testimony must be under oath administered by the presiding member of the panel.

(b) The Board may issue subpoenas or compel testimony.

(5) *Hearing Closed.* Unless the attorney requests otherwise, the hearing will be closed except to members, agents of the Board, the attorney, and the attorney's counsel and witnesses.

(6) *Recording of Hearing.* The panel will record the hearing. If the panel finds that the attorney has not complied with the Rules, it must produce a transcript of the hearing at the Board's expense.

(7) *Expansion of Record.* If, after the hearing, the panel seeks to expand the record to consider additional evidence, it may do so after providing the attorney with notice and an opportunity to be heard.

(8) *Dismissal.* At any time before the panel makes a decision pursuant to (D)(1), the Board may, in its discretion, dismiss the proceeding if the Board finds that the attorney is in compliance with these rules and that dismissal will serve the policy of these rules.

(D) Panel’s Decision After Hearing.

(1) *Decision.* After the conclusion of the hearing, or the time necessary to expand the record, the panel will prepare a written decision setting forth its findings, conclusions, and recommendations.

(2) *Parties Served.* The panel must serve its decision on the attorney and attorney’s counsel and file a copy with the Supreme Court. The decision must inform the attorney of the right to appeal.

(3) *Right to Appeal; Supreme Court’s Review.* The attorney has the right to appeal the decision to the Supreme Court. The attorney’s notice of appeal must be filed within 30 days of the date the decision is filed with the Supreme Court. Within 30 days of the date the decision is filed, the Court may also order review of the decision on its own motion. If the attorney does not file a timely notice of appeal and the Court does not order review on its own motion, the panel decision will be final.

(4) *Supreme Court Review.* The Court may take any action consistent with its constitutional authority. The Vermont Rules of Appellate Procedure apply to an appeal. If the Court orders review on its own motion, it will specify the issue(s) to be addressed by the parties. The Court may remand the decision to the Board, with appropriate directions for an expanded record or additional findings, while retaining jurisdiction of the matter. The matter will be continued pending the Court’s receipt of the requested expanded record or additional findings.

(5) *Appeal Public Record.* The notice of appeal and all subsequent proceedings are public.

(6) *Suspension.* The attorney’s license will be immediately suspended on a nondisciplinary, administrative basis as in (B)(3) if:

- (a) the panel decision recommends suspension and there is no appeal or review under (A)(3); or
- (b) following appeal or review, the Supreme Court orders suspension.

Board’s Notes

This rule is drawn from the prior rules § 9(d)-(i), and (k), although the suspension and hearing processes have been revised substantially to fully lay out attorneys’ rights and obligations and to make these processes consistent with the reporting process of Rule 7(B) and with A.O. 41 and the Rules of Admission.

In the prior rule § 9, when faced with an attorney who does not challenge the Board’s statement of noncompliance, the Board could not suspend the attorney but could only make a recommendation of suspension to the Supreme Court. In contrast, the new rule parallels the suspension process in A.O. 41 and the Rules of Admission, in which the authority to make the initial suspension decision is given

to the licensing authorities, in this case, the Board. Like A.O. 41, the new rule makes it clear that any suspension under these rules is a nondisciplinary, administrative suspension.

The new rule follows the prior rule in allowing an attorney who contests noncompliance to have an evidentiary hearing. The hearing process in the new rule is based on the hearing process for character and fitness hearings laid out in the Rules of Admission and provides that the ultimate arbiter in cases where an attorney contests noncompliance is the Supreme Court.

The Board notes that any action it may take in response to a violation of this Rule does not deprive either Disciplinary Counsel or the Professional Responsibility Board of pursuing such disciplinary action as may also be warranted.

RULE 9. REINSTATEMENT

(A) **Reinstatement.** An attorney suspended under Rule 8 may file with the Board a petition seeking reinstatement.

(B) **Petition.** The petition must state with particularity how the attorney has rectified the noncompliance. The petition must be accompanied by a reinstatement filing fee.

(C) **Board Decision.** If the Board determines that the attorney has rectified the noncompliance, the attorney's license will be promptly reinstated. The Board will give the attorney notice in writing of any decision. The Board's decision is final.

(D) **Notice.** The State Court Administrator or designee will inform the courts of the State of Vermont that the attorney's license has been reinstated.

Board's Notes

This rule is drawn from the prior rule § 9(j), with the change that the petition for reinstatement is now directed to the authority of the Board rather than to the Supreme Court.

RULE 10. STATUS TRANSFERS

(A) **Prohibition on Improper Status Transfers.** An attorney may not transfer between licensing statuses to circumvent the requirements of these Rules.

(B) **Reporting period.** When an attorney transfers from one licensing status to another, the reporting period ends on June 30 of the same year as it would have been absent the transfer.

(C) **Transfers to Active or Pro Bono Emeritus Status.**

(1) *Limit on Transfer.* An attorney may transfer to active or pro bono emeritus status without completing additional Credit Hours unless the attorney:

(a) has been on other than active status for three years or more, or

(b) had previously transferred from active or pro bono emeritus status to inactive status before completing the applicable Rule 3 requirements for the reporting period.

(2) *Additional Requirements.* An attorney meeting (1)(a) or (1)(b) above must file with the Board a compliance form reflecting completion of the applicable Rule 3 requirements within the two years immediately preceding the date the status transfer is to occur.

Board's Notes

This rule is drawn from the prior rule § 11. The prior rule has been slightly reorganized for clarity and revised to incorporate pro bono emeritus status and to remove the double penalty in prior rule § 11(c).

RULE 11. FEES

All required fees must be timely paid. Required fees are set by the State Court Administrator and published on the Judiciary website. All fees received under these Rules will be deposited in the General Fund.

Board's Notes

This rule is drawn from the prior rule § 12, amended slightly for consistency with the Rules of Admission.