

MANDATORY CLE IN WEST VIRGINIA

Rules and State Bar By-Law Amendments

Effective July 1, 1986

1. PURPOSE. These rules establish minimum objective requirements, and the means by which such requirement shall be enforced, to satisfy every lawyer's obligation to continue his or her legal education throughout the period of his or her active practice.

2. CONTINUING LEGAL EDUCATION COMMISSION. There is hereby established a Continuing Legal Education Commission ("Commission") to administer the program of mandatory continuing legal education established by these rules.

2.1 The Commission shall consist of nine members, at least seven of which shall be active members of The West Virginia State Bar. It will elect its own chairperson.

2.2 Members of the Commission shall be appointed by the Board of Governors of The West Virginia State Bar, and confirmed by the Supreme Court of Appeals. Any vacancy occurring on the Commission shall be filled by the same appointment procedure. Members shall continue to serve until their successors are appointed and confirmed notwithstanding any age restrictions.

2.3 At least three members of the Commission shall be under the age of 36 or admitted to The West Virginia State Bar for less than ten years.

2.4 Of the members first appointed, three shall be appointed for 1 year, three for 2 years and three for 3 years. Thereafter, appointments shall be for a 3-year term. No member may serve more than two consecutive 3-year terms. Terms shall expire on June 30 of the applicable year.

2.5 For any meeting of the Commission a majority of the duly appointed members shall constitute a quorum.

2.6 The members of the Commission shall have judicial immunity from civil liability for acts or omissions occurring in the performance of their duties. Any members of the Commission may be removed by the Supreme Court of Appeals for cause, which may include failure to attend Commission meetings, disability or misconduct.

2.7 Members of the Commission shall serve without compensation, but each member is entitled to reimbursement for his or her actual and necessary expenses in the performance of Commission duties.

3. POWERS AND DUTIES OF THE COMMISSION. The Commission shall administer the program of mandatory continuing legal education established by these rules and shall have the following powers and duties:

3.1 To accredit, pursuant to its rules and regulations, individual courses and all or portions of the entire continuing legal education program of specific sponsors which, in the judgment of the Commission, will satisfy the educational objectives of these rules.

3.2 To determine the number of credit hours to be allowed for each accredited course.

3.3 To grant conditional, partial or complete exemptions from the education requirements of these rules on an individual basis in cases of extreme hardship or extenuating circumstances.

3.4 To seek appropriate disciplinary action by the Supreme Court of Appeals in the case of any active member of The West Virginia State Bar failing to comply with the requirements of these rules.

3.5 To meet, conduct hearings and make determinations as required to administer the program of mandatory continuing legal education established by these rules.

3.6 To recommend reinstatement to active status in the case of any member of The West Virginia State Bar attaining compliance with the requirements of these rules

after having been suspended from active status for noncompliance.

3.7 To submit annually a written report to the Supreme Court of Appeals and to the Board of Governors of The West Virginia State Bar of the Commission's activities during the preceding year and including any recommendations for changes in these rules.

3.8 To report to the Board of Governors of The West Virginia State Bar any significant deficiency in the availability of continuing legal education courses or programs within the State of West Virginia, considering the educational requirements of these rules.

3.9 To adopt, publish and enforce rules and regulations pertaining to its power and duties.

4. Accreditation for Courses. Only the Commission may accredit courses and programs for purposes of the mandatory continuing legal education requirements established by these rules.

4.1 Courses (including video and audio tapes) from the continuing legal education programs sponsored by the following organizations are presumptively-accredited unless the Commission determines otherwise:

(See updated list attached)

4.2 Courses sponsored by other organizations may be accredited by the Commission upon the request of an individual lawyer in accordance with the procedures, rules and regulations of the Commission pertaining to accreditation.

4.3 Continuing legal education courses or programs sponsored by other organizations may be accredited by the Commission upon the request of the organization in accordance with the procedures, rules and regulations of the Commission pertaining to accreditations.

4.4 To be accredited, a course shall have significant intellectual or practical content; it shall deal primarily with matter directly related to the practice of law (which includes professional responsibility and office practice); it shall be taught by persons who are qualified by practical or academic experience in the subjects covered and preferably should include the distribution of good quality written materials pertaining to the subjects covered.

4.5 One hour of credit for purposes of the mandatory continuing legal education requirements established by these rules shall be given for each period of fifty minutes of instruction of an accredited course. Based upon this standard, sponsors of accredited courses given in West Virginia shall include with their course materials a statement that, "This course or program qualifies for _____ hours of credit under the West Virginia Rules for Mandatory Continuing Legal Education."

4.6 The Commission may refuse to accredit or change or remove the accredited status of any sponsor which misrepresents the extent to which a course or program is qualified under these rules.

4.7 In cases where accreditation could not be reasonably obtained in advance for a given course, an individual lawyer may request, in accordance with the procedures, rules and regulations of the Commission, accreditation for a course after he or she has attended such course.

4.8 All decisions of the Commission concerning accreditation shall be final.

5. MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENTS. As a condition of maintaining his or her license to practice law in the State of West Virginia, every active member of The West Virginia State Bar shall satisfy the following minimum continuing legal education requirements:

5.1 During each of the two fiscal years (July 1-June 30) following the adoption of these rules, each active member of The West Virginia State Bar shall complete a minimum of six hours of continuing legal education, as approved by these rules or accredited by the Commission. Completion of such activities should be reported by the attorney no later than July 31 of each phase-in year.

5.2 After the above two year phase-in period, each active member of The West Virginia State Bar shall complete a minimum of twenty-four hours of continuing legal education, as approved by these rules or accredited by the Commission, every two fiscal years. At least three of such twenty-four hours shall be taken in courses in legal ethics, office management, substance abuse, or elimination of bias in the legal profession. On or before July 31, 1990, and every other July 31 thereafter, each attorney must file a report of completion of such activities. The Commission recommends that such a report be completed on Form C-Certification of Completion of Approved MCLE Activity. Attorneys who exceed the minimum MCLE requirement may carry a maximum of six credit-hours forward to only the next reporting period, except that no carryover credits can be applied to the legal ethics, office management, substance abuse requirement and/or elimination of bias in the legal profession. (Note from MCLE Coordinator-Reporting Periods Cover Even Years-Example 7/1/02 through 6/30/04 ; 7/1/04 through 6/30/06, etc. Credits may also be reported on certificates of attendance or online. The carryover applies to excess credits earned beginning with the July 1, 2002 - June 30, 2004 reporting period, and those reporting periods thereafter. No credit can be carried over from the previous July 1, 2000 - June 30, 2002 reporting period).

5.3(A) New graduates and new admittees, beginning July 1, 1999, are required to complete a mandatory Bridge-the-Gap seminar sponsored by the West Virginia State Bar within six months prior to admission or within twelve months after admission to the West Virginia State Bar. The mandatory Bridge-the-Gap seminar shall be recorded at least once per year. The Bridge-the-Gap course will be provided free of charge to new admittees as an audio tape or video tape or CD-Rom/DVD. MCLE credit shall be available for completing the mandatory Bridge-the-Gap seminar.

Any lawyer subject to this requirement who fails to complete the mandatory Bridge-the-Gap seminar within sixty days after written notice of noncompliance from the MCLE Commission shall have such lawyer's license to practice law in the State of West Virginia automatically suspended until such lawyer has complied with such requirement. Any member of the West Virginia State Bar otherwise in good standing who is suspended for failure to complete the mandatory Bridge-the-Gap program shall be reinstated as a member of the West Virginia State Bar upon completion of the mandatory course and fulfillment of other such administrative requirements.

5.3(B) Any lawyer not previously admitted to practice in West Virginia who is admitted during the first twelve months of any 24-month reporting period is required to complete 12 hours in approved MCLE activities including at least 3 hours in legal ethics, office management, substance abuse, or elimination of bias in the legal profession, before the end of the current reporting period. Any lawyer not previously admitted to practice in West Virginia who is admitted during the second twelve months of any 24-month reporting period is exempt for that entire reporting period.

5.4 For good cause shown, the Commission may, in individual cases involving extreme hardship or extenuating circumstances, grant conditional, partial, or complete exemptions of these minimum continuing legal education requirements. Any such exemption shall be reviewed by the Commission at least once during each reporting period, unless a lifetime conditional exemption has been granted.

5.5 Active but not practicing members, Justices of the Supreme Court of Appeals, Circuit Judges, Family Court Judges, Senior Status Justices, Senior Status Circuit Judges, the Clerk of the Supreme Court of Appeals, the Deputy Clerk of the Supreme Court of Appeals, and any other individuals as may hereafter, from time to time, be designated by the Supreme Court of Appeals, are not required to comply with these requirements.

6. OBTAINING CREDITS TO SATISFY MANDATORY CONTINUING LEGAL EDUCATION REQUIREMENTS. Members of The West Virginia State Bar may obtain credits for purposes of the mandatory continuing legal education requirements established by these rules as follows:

6.1 One hour of credit may be obtained for each period of fifty minutes of instruction attended in an accredited course.

6.2 One hour of credit may be obtained for each period of fifty minutes of video cassette, videotape, or audio cassette instructions, providing that such video/audio tape is accredited by the Commission.

6.3 No more than half of the mandatory continuing legal education requirements may be satisfied by video/audio tape instructions.

6.4 Six hours of credit may be obtained for the teaching of an accredited course when the period of teaching lasts for at least fifty minutes. If the teacher participates in a panel discussion or teaches for a period of less than fifty minutes, three hours of credit may be obtained.

6.5 The Commission may give credit for the following forms of publication, including, but not limited to, publishing an article in the official publication of The West Virginia State Bar; authorship or co-authorship of a book; contribution of a paper published in a legal society's annual, hardbound collection; publication of an article in a bar journal in another state; and contribution through either editing or authorship to periodic newsletters designed to serve the interests of specialists.

6.6 The Commission has the authority to allocate the amount of credits to be given for publication as in Rule 6.5 above.

6.7 The Commission may by its rules and regulations establish additional methods or standards for obtaining credits to satisfy the mandatory continuing legal education requirements.

7. NONCOMPLIANCE AND SANCTIONS. Noncompliance with the reporting or minimum continuing education requirements of these rules may result in the suspension of a lawyer's license to practice law until such lawyer has complied with such requirements.

7.1 As soon as practicable after July 1, the Commission shall notify all active members of The West Virginia State Bar who are not in compliance with the reporting or minimum continuing education requirements of these rules of the specific manner in which such member has failed, or appears to have failed, to comply with these rules. Any member of The West Virginia State Bar shall have until October 1 to correct such noncompliance or provide the Commission with proper and adequate information to establish that such member is in compliance with these rules. The following delinquency fee schedule for any lawyer requiring notice of noncompliance with reporting or minimum continuing legal education requirements is hereby established, effective July 1, 1990 (**REVISED EFFECTIVE 01/26/06**):

Form C not received by July 31.....\$50.00
Form C not received by October 1.....\$100.00

Form D or Form E (request for publication or teaching credit) received after July 31\$50.00

An additional fee of \$100.00 shall be paid upon application for reinstatement by those attorneys whose licenses have been suspended for failure to comply with the MCLE requirement. This fee is in addition to the reinstatement fee charged for non-payment of membership fees. The attorney will not be reinstated unless all outstanding fees have been paid.

MCLE credits, if reported on a delinquent Form C, will not be entered until all outstanding fees have been paid.

7.2 As soon as practicable after October 1, the Commission shall give notice, by certified or registered mail to the most recent address maintained on the records of The West Virginia State Bar, to any active member of The West Virginia State Bar who has still not established himself or herself to be in compliance with these rules for the preceding two year reporting period that after thirty days, the Commission will notify the Supreme Court of Appeals of such fact and request the Court to suspend such lawyer's license until such time as the lawyer has established that he or she has complied with the requirements of these rules for the preceding two year reporting period.

7.3 During such thirty day period, any lawyer having received a thirty day notice may demand a hearing before the Commission. Any such hearing shall be conducted within a reasonable period of time after receipt of the demand. At such hearing the lawyer shall have the burden of establishing either (a) that he or she is in compliance with the requirements of these rules or (b) that he or she is entitled to an exemption. In the event such burden is not carried, the Commission shall by

appropriate petition notify the Supreme Court of Appeals that the lawyer has failed to comply with the reporting or education requirements for the preceding two year reporting period and request the Court to enter an appropriate order suspending such lawyer's license to practice law in the State of West Virginia until such time as such lawyer has complied with such requirements. Any adverse decision by the Commission may be appealed to the Supreme Court of Appeals. In the event such lawyer does not prevail at such hearing or appeal, he or she shall be assessed with the costs thereof.

7.4 In the event no demand for a hearing is received within the thirty day period, the Commission shall by appropriate petition notify the Supreme Court of Appeals of the names of any members of The West Virginia State Bar who have failed to comply with the reporting or education requirements of these rules for the preceding two year reporting period and request the Court to enter an appropriate order suspending each such lawyer's license to practice law in the State of West Virginia until such time as such lawyer has complied with such requirements.

7.5 A lawyer who has not complied with the mandatory continuing legal education requirements by June 30 may thereafter obtain credits to be carried back to meet the requirements of the preceding two year reporting period. However, any credit obtained may only be used to satisfy the mandatory continuing legal education requirements for one reporting period.

7.6 No lawyer shall be permitted to make use of a transfer from active to inactive or active but not practicing membership in The West Virginia State Bar as a means to circumvent the requirements of these rules.

7.7 During the two year phase-in period all references in this section 7 to "two year reporting period" shall be read as "one year reporting period."

8. CONFIDENTIALITY. The files, records, and proceedings of the Commission, as they relate to or arise out of the compliance or noncompliance of any active member of The West Virginia State Bar with the requirements of these rules, shall be deemed confidential and shall not be disclosed, except in furtherance of the Commission's duties, or upon written request of the lawyer affected, or as directed by the Supreme Court of Appeals.

9. CHANGE TO ACTIVE STATUS. Any person previously enrolled as an active member of the state bar who has been an inactive member of the state bar, suspended for nonpayment of dues, or suspended or disbarred by the Supreme Court of Appeals, shall demonstrate that he or she has completed a minimum of twelve hours of continuing legal education, as approved by these rules or accredited by the Commission, at least three hours of which shall be taken in courses in legal ethics, office management, or substance abuse, within the twelve months immediately preceding his or her application to change to active status. Effective July 1, 1994, any person previously enrolled as an active member of the state bar who has served as a Justice of the Supreme Court of Appeals or a Judge of a Circuit Court shall be exempt from this requirement.

9.1 Any lawyer who was suspended solely for the nonpayment of dues and who is returned to active status within six months of the date of suspension may be reinstated to active status by bringing the dues current and will not be required to submit any additional information regarding mandatory continuing legal education provided that the attorney has otherwise been in compliance with the continuing legal education requirements.

10. JUDICIAL CLE. Members of the State Bar recommend that a mandatory education plan, similar to the one outlined in these rules, be adopted for West Virginia judges, justices and magistrates.

In order to create an "active but not practicing" membership category (to permit lawyers in that category to have the same rights and responsibilities as active members, with the exception that they would not be required to comply with the mandatory CLE rules and could not practice law), the following amendments to the By-Laws of The West Virginia State Bar have been adopted (Language that would be deleted from the existing rule is crossed through and new language is underlined):

The first paragraph of Article II, Section 1 of the By-Laws is amended to read as follows:

The membership of the state bar shall be divided into ~~two~~ three classes: (a) Active members; ~~and~~ (b) active but not practicing members; and ~~(b)~~ © inactive members.

Article II, Section 5 is amended to read as follows:

5. Transfer from inactive to active membership.

Any inactive member not under suspension may be enrolled as an active member upon written request to the secretary. Upon the filing of such request, and the payment of any unpaid fees and penalties for prior years and the full annual active membership fee for the current fiscal year, less any membership fee paid by him as an inactive member for the current fiscal year, and upon a showing that the member is in compliance with the pertinent mandatory CLE rules and regulations, the member shall be immediately transferred from the inactive roll to the active.

Present Article II, Section 7 shall be redesignated as Section 10 in Article II and new Sections 7,8 and 9 in Article II are adopted as follows:

7. Enrollment as an active but not practicing member.

Any member of the state bar not under suspension who does not desire to engage in the practice of law in this State, may, upon written request to the secretary, be enrolled as an active but not practicing member. No member of the state bar practicing law in this State, or occupying a position in the employ of or rendering any legal service for an active member, or occupying a position wherein he is called upon to or does give legal advice or counsel or examine the law or pass upon the legal effect of any law, transaction, instrument (whether or not of record), or state of facts, except judges of courts of record, shall be enrolled as an active but not practicing member.

8. Transfer from active but not practicing to active membership.

Any active but not practicing member not under suspension may be enrolled as an active member upon written request to the secretary, and upon a showing that the member has complied with pertinent mandatory CLE rules and regulations. Upon such request and showing, the member shall be immediately transferred to the active roll.

9. Privileges of active but not practicing members.

Any active but not practicing member shall not practice law, but may vote in any meeting, election or referendum of the state bar and hold office in the state bar. With the exception of the right to practice, an active but not practicing member shall enjoy the same rights and responsibilities as an active member. An active but not practicing member shall not be required to comply with mandatory continuing legal education rules and regulations.

The first paragraph of Article III, Section 1 shall be amended to read as follows:

Article III.

Active Membership Fees.

1. Amount.

The annual membership fee for active members shall be fixed by the Board. Any time the Board shall desire to increase the annual membership fee, it shall submit the proposed increase to all of the active members, by mail, and if a majority of the members voting consent to the proposed increase, the Board may put such increased fees into effect upon securing the approval of the Supreme Court of Appeals. The fee for an active but not practicing member shall be the same as the fee for an active member.