

# Proposed Changes in MCLE Rules

A growing number of Virginia attorneys are waiting until after the close of the bar year to complete their MCLE requirements during the month of July, a phenomenon that was never intended when the system was structured around completing the annual requirements during the period July 1 through June 30 of the following year. This has caused problems with both CLE providers having to offer a large number of July courses, and the bar staff in processing course approvals and current attendance certificates during July, a time which was supposed to be devoted primarily to processing end-of-year reports from members, requests for extensions of time and the like.

Accordingly, the MCLE Board voted unanimously at their meeting in April, 1999 to approve a new \$50 delinquency fee for active members who do not complete their annual MCLE requirement by June 30. This fee will be in addition to the present delinquency fee, also \$50, which applies for members who wait until after the July 31 deadline to file their final attendance certifications.

In a further effort to motivate timely compliance with member MCLE obligations, the board also voted unanimously to increase the reinstatement fee for attorneys who

are suspended on multiple occasions for not meeting their MCLE obligations. The present \$250 reinstatement fee would increase by \$50 for each subsequent suspension, up to a maximum of \$500.

Not only should these new and increased fees help even out the workload of both providers and the MCLE department, as well as improve compliance rates, but they will also mean that members who do not comply in a timely fashion will bear a more significant part of the cost of the bar's operation in this area.

The following rule changes reflect the new and increased fees that the board plans to begin charging, effective July 1, 2000. They are published here for comment, with the expectation they will be placed on the October Executive Committee and Council agendas for action. Also, following are examples of how the new and increased fees would work in particular situations.

Comments should be addressed to the MCLE Board, Virginia State Bar, 707 E Main St., Ste. 1500, Richmond, VA 23219, no later than October 1, 1999.

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## Proposed Amendment to Part 6, Section IV, Paragraphs 17 and 19, Rules of the Virginia Supreme Court

**17. MANDATORY CONTINUING LEGAL EDUCATION RULE.** — The Virginia Supreme Court hereby establishes a Mandatory Continuing Legal Education Program in the Commonwealth of Virginia.

**A. Purpose.** — Continuing professional education of lawyers serves to improve the administration of justice and benefit the public interest. Regular participation in Continuing Legal Education programs will enhance the professional skills of practicing lawyers, afford them periodic opportunities for professional self-evaluation and improve the quality of legal services rendered to the public. All active members of the Virginia State Bar shall participate in an additional amount of further legal study throughout the period of their active practice of law, and failure to do so shall result in their suspension from membership in the Virginia State Bar.

**B. Continuing Legal Education Board.** — A Continuing Legal Education Board shall be established for the purpose of administering the program.

**(1) Appointment:** The Chief Justice of the Supreme Court shall appoint, after consulta-

tion with the Council, the members of the board who shall be members of the Bar and twelve in number. One member shall be designated by the Chief Justice as Chair and another as Vice-chairman. Members shall serve terms of three years each, except that, initially, four members shall be appointed for terms of one year, four for terms of two years, and four for terms of three years. No member shall serve more than two consecutive terms but shall be eligible for reappointment after the lapse of one or more years following expiration of the previous term. The Executive Director of the Virginia State Bar shall be an ex-officio member of the board.

**(2) Notice of Meetings/Quorum:** The board shall meet on reasonable notice by the Chair, Vice-chairman or the Executive Director. Five members shall constitute a quorum and the action of a majority of a quorum shall constitute action of the board.

**(3) Powers:** The board shall have those general administrative and supervisory powers necessary to effectuate the purposes of this Rule, including the power to adopt reasonable and necessary regulations consistent with this Rule. The Virginia State Bar shall have the responsibility for funding the board and for enforcing

Mandatory Continuing Legal Education requirements.

The board shall specifically have the following powers and duties:

- (a) To approve, on an individual basis, CLE programs and sponsors and publish a list of those approved. The publication shall include the number of credits earned for completion of a particular program;
- (b) To establish procedures for the approval of Continuing Legal Education courses, whether those courses are offered within the Commonwealth or elsewhere. These procedures should include the method by which CLE sponsors could make application to the board for approval, and if necessary, make amendments to their application;
- (c) To authorize sponsors of Continuing Legal Education programs to advertise that participation in their program fulfills the CLE requirements of this Rule;
- (d) To formulate and distribute to all members of the Virginia State Bar appropriate information regarding the requirements of this Rule, including the distribution of a certification form to be filed annually by each active member.

#### C. Continuing Legal Education Requirements.—

- (1) All active members of the Virginia State Bar shall annually complete **and certify attendance at** a minimum of twelve (12) credit hours of approved Continuing Legal Education courses of which at least two (2) hours shall be in the area of legal ethics or professionalism, except those lawyers expressly exempted from the requirement by this Rule or by decision of the Continuing Legal Education Board. **Each active member shall complete the required Continuing Legal Education courses each year during the period July 1 through June 30 of the following year.**
- (2) In order to provide flexibility in fulfilling the annual requirement, a one-year carryover of credit hours is permitted, so that accrued credit hours in excess of one year's requirement may be carried forward from one year to meet the requirement for the next year. ~~However, from the 1990-91 reporting period, an active member may carry forward a maximum of 10 credit hours toward the 1991-92 requirement, none of which may be counted toward the two (2) hours required in legal ethics or professionalism. Thereafter, a A member may~~

carry forward a maximum of twelve (12) credit hours, two (2) of which, if earned in legal ethics or professionalism, may be counted toward the two (2) hours required in legal ethics or professionalism.

- (3) Each active member of the Virginia State Bar shall be responsible for ascertaining whether or not a particular course satisfies the requirements of this Rule. Each member should exercise discretion in choosing those approved programs which are most likely to enhance professional skills and improve delivery of legal services.

#### D. Certificate of Attendance. —

- (1) Each active member of the Virginia State Bar shall certify prior to July 31 **each year** that such lawyer attended approved Mandatory Continuing Legal Education programs for the minimum number of hours **required** during the **previous year ending June 30 reporting period.** The failure to certify shall cause suspension of such lawyer's license to practice law. An untruthful certification shall subject the lawyer to appropriate disciplinary action.

#### E. Exemptions. — Each active member of the Virginia State Bar shall comply with this Rule except as follows:

- (1) A newly admitted member shall be exempted from filing a certification for the reporting period in which he or she is first admitted.
- (2) A member who has obtained a waiver for good cause shown, as may be determined by the board, shall be exempted from filing a certification for the reporting period for which the waiver is granted.
- (3) An active member who has been admitted pursuant to Virginia Code Section 54.1-3901 for the practice of patent, trademark, copyright, and unfair competition causes shall be exempted from filing a certification.

#### F. Reactivation.— Any member who wishes to resume active membership shall furnish to the Secretary an affidavit stating that he or she has completed twelve (12) hours of continuing legal education, including two (2) hours in legal ethics or professionalism within the previous twelve months. Thereafter, that member shall have the same reporting period as other active members.

**G. Credits.—**

- (1) Credit will be given only for Continuing Legal Education courses or activities approved by the board.
- (2) Hours in excess of the minimum requirements defined in this Rule may not be carried forward for credit beyond the one year provided for in the Rule.
- (3) Credit will not be given for Continuing Legal Education hours accumulated prior to admission to the Virginia State Bar.
- (4) Credit shall be given to active members of the Virginia State Bar who prepare course materials and who personally participate as instructors. The credit, as determined by the board, will reflect the time reasonably required for preparation of materials, as well as the actual time spent instructing.

**H. Standards.—** The board shall evaluate, and where appropriate, approve, those programs which serve to satisfy the requirements of this Rule. In evaluating the specific programs, the board shall consider the following factors:

- (1) Whether the course tends to increase the participant's professional competence as a lawyer.
- (2) The number of hours of actual presentation, lecture, or participation, so that the appropriate number of credit hours can be identified and published.
- (3) The usage of written educational materials which reflect a thorough preparation by the provider of the course, and which assist course participants in improving their legal competence.
- (4) To qualify for mandatory legal education credit, a course is not required to have a component on legal ethics or professionalism, although such components are encouraged. When topics on legal ethics or professionalism are offered, either as an entire course or component thereof, they must be clearly identified as such.

delinquency fee for an attorney who does not comply with the timely completion requirements of Paragraphs 13.2 and 17 C. of these rules shall be \$50, and the delinquency fee for an attorney who does not comply with the certification requirements of Paragraphs ~~Section~~ 13.2 and 17 D. ~~herein~~ of these rules shall be \$50. The notice shall be mailed by certified mail to the member at his last address on file at the Virginia State Bar.

In the event the member fails to comply with the directive of the Secretary-Treasurer within the time allowed, the Secretary-Treasurer will then mail a notice to the member by certified mail to advise (1) that the attorney's membership in the bar has been suspended and (2) that the attorney may no longer practice law in the Commonwealth of Virginia or in any way hold himself out as a member of the Virginia State Bar. Thereafter the attorney's membership in the Virginia State Bar may be reinstated only upon showing to the Secretary-Treasurer (1) that the attorney has complied with all the Court's rules relating to his membership in the bar and (2) upon payment of a reinstatement fee of \$75 for each Rule violated, provided, however, that the reinstatement fee for an attorney who was suspended for noncompliance with ~~Section~~ Paragraphs 13.2 and 17 of these rules ~~herein~~ shall be \$250, and shall increase by \$50 for each subsequent such suspension, not to exceed a maximum of \$500.

Whenever the Secretary-Treasurer notifies a member that his membership in the bar has been administratively suspended, the Secretary-Treasurer shall also (1) advise the Chief Judges of the circuit and district in which the attorney has his office, as well as the clerks of those courts and the Clerk of the Supreme Court, of such suspension and (2) publish notice of the suspension in the next issue of the Virginia Lawyer Register.

An administrative suspension shall not relieve the delinquent member of his annual responsibility to attend continuing legal education programs or to pay his dues to the Virginia State Bar.

**19. PROCEDURE FOR THE ADMINISTRATIVE SUSPENSION OF A MEMBER.** —

Whenever it appears that a member of the Virginia State Bar has failed to comply with any of the Rules of Court relating to such person's membership in the bar, the Secretary-Treasurer shall mail a notice to the member advising of the member's noncompliance and demanding (1) compliance within sixty (60) days of the date of such notice and (2) payment of a delinquency fee of \$25, for each Rule violated, provided, however, that ~~the~~