

State of Nevada
Board of Continuing Legal Education

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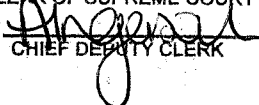
LAURA BOGDEN
EXECUTIVE DIRECTOR

March 29, 2016

Chief Justice Ronald Parraguirre
Nevada Supreme Court
201 South Carson Street
Carson City, NV 89701-4702

FILED

SEP 20 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: 
CHIEF DEPUTY CLERK

Re: Nevada Board of Continuing Legal Education; ADKT 0499

Dear Chief Justice Parraguirre:

This letter is written in follow up to to the joint meeting conducted by Justice Hardesty with the CLE Board represented by Jenny Hubach, Chair, and Laura Bogden, Executive Director and the Board of Governors represented by past President Lawrence Peter Digesti, Kim Farmer, Executive Director and President-Elect Gene Leverty. At that meeting, Justice Hardesty requested a rule change proposal together with an update as to CLE reserves. Attached is a copy of our proposed draft for rule changes to SCR 210 - 215 inclusive. In addition, attached is a current statement of reserves. As can be seen, the reserves have been reduced as a result of implementation of the update computer system. It is anticipated that should the Court approve implementation of the proposed business plan, additional reserves will have to be utilized. The Board is not opposed to advising the Court and the Board of Governors whenever any additional reserves are utilized and for what purpose. It is anticipated that ultimately, once the new system is in place (should the Court so approve) that finances will stabilize and the reserves will be revisited to determine appropriate use.

For informational purposes, the Board prepared a working draft and provided that draft to the BOG. The BOG then provided detailed input which was considered and additional changes to the draft were made based upon such input.

The NVCLE Board looks forward to the anticipated Court ruling on this matter so as to continue movement in a positive direction. As always, please do not hesitate to call upon me for further information as needed.

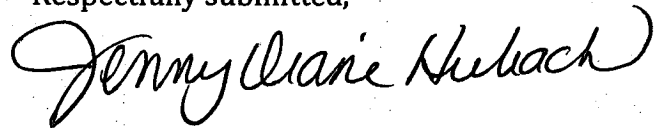
JENNY D. HUBACH - CHAIR

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16-29122

Respectfully submitted,

A handwritten signature in black ink that reads "Jenny Diane Hubach". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jenny Diane Hubach, Chair
Nevada Board of Continuing Legal Education

cc: Bryan K. Scott, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada

PROPOSED CHANGES:

Rule 210. Minimum continuing legal education requirements. To meet the annual minimum continuing legal education requirements imposed by these rules, each attorney subject to these rules must timely: submit an annual fee, complete the requisite number of credit hours, and submit an annual compliance report.

1. **Annual Fee.** The amount of the annual fee is \$40, made payable to the Nevada Board of Continuing Legal Education, and must be postmarked on or before ~~March 1~~ **February 15th** of the year for which the fee is required to be paid.

2. **Credit hours.**

(a) Subject to the carry forward provisions of subparagraph (c), a minimum of twelve (12) hours of accredited educational activity, as defined by the regulations adopted by the Board, must be completed by December 31 of each year. Of the twelve (12) hours, at least two (2) shall be exclusively in the area of ethics and professional conduct. At least one (1) hour every three (3) years shall be exclusively in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence. In a year in which the attorney is subject to the requirement in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence, the attorney shall complete at least nine (9) hours of general continuing legal education, at least two (2) hours exclusively in the area of ethics and professional conduct, and at least one (1) hour exclusively in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence; in the remaining two years of the three-year cycle, the attorney shall complete at least ten (10) hours of general continuing legal education and at least two (2) hours exclusively in the area of ethics and professional conduct. Credit hours in the area of ethics and professional conduct, and credit hours in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence, shall be tracked separately from general educational credit hours.

(b) The three-year cycle for completion of the requirement regarding substance abuse, addictive disorders and/or mental health issues that impair professional competence shall be determined as follows:

(1) Attorneys subject to these rules must complete the requirement within the same calendar year that this amendment becomes effective; except that attorneys who completed the requirement in the calendar year preceding this amendment shall receive credit as though they completed it

within the same calendar year that this amendment becomes effective.

(2) Attorneys entitled to an exemption pursuant to Rule 214(1)(a) must complete the requirement within the same calendar year in which they are first subject to continuing legal education requirements.

(3) Attorneys who, for reasons other than an exemption pursuant to Rule 214(1)(a), become subject to these rules subsequent to or in the same calendar year that this amendment becomes effective, must complete the requirement within the same calendar year in which they become subject to these rules.

(c) Any attorney subject to these rules who completes more than twelve (12) hours of accredited educational activity in any calendar year may carry forward up to twenty (20) hours of excess credit and apply the same to the attorney's general educational requirement for the next two (2) calendar years. Likewise, any attorney subject to these rules who completes more than two (2) hours of ethics and professional conduct credit in any calendar year may carry forward up to four (4) hours of excess credit and apply the same to the attorney's ethics and professional conduct educational requirement for the next two (2) calendar years.

(d) Any attorney subject to these rules who completes more than one (1) hour in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence in a three-year cycle may not carry forward the excess credit hours to the next three-year cycle, but may have the excess hour(s) credited toward the attorney's ethics and professional conduct requirement, subject to the carry forward provisions set forth in subparagraph (c) above. Excess hour(s) in the area of ethics and professional conduct may be credited toward the attorney's general educational requirement, subject to the carry forward provisions set forth in subparagraph (c) above.

3. ~~Annual compliance report. Transcript. A properly completed and verified written compliance report must be submitted to the board, and must be postmarked on or before March 1 each year. The report must be submitted on a form to be provided by the board. The board shall, no later than six (6) weeks prior to the due date, send a compliance report form to each attorney subject to these rules. The report shall include the attorney's mailing address and shall state the attorney's compliance with the credit hour requirements during the preceding calendar year. It shall not be a defense to noncompliance that the attorney did not receive the compliance report form.~~

[Added; effective February 19, 1982; amended effective April 21, 2014.]

(a). At least thirty (30) days prior to the annual reporting date, the Board shall provide a transcript of completed educational credits to each active attorney by posting the transcripts online. To avoid being delinquent and in compliance with these rules, the attorney must report additional credits, corrections or changes to the transcript to the Board prior to the annual reporting date.

(b). The attorney whose transcript indicates compliance with CLE requirements may assume he or she is in compliance.

(c). The Board shall establish regulations providing for review of its determination of the CLE credits earned by an attorney and for resolving disputes.

Comments: This proposed rule change would negate the need for signed and returned compliance reports. This will increase compliance. Many attorneys are non-compliant simply because of failure to sign and return the compliance report. A majority of States utilize this method to monitor compliance. This will also save on staff time and postage. With staff no longer sending courtesy notices in September of each year, postage savings alone will be \$3,760.00. In addition, by doing away with the Petition portion of the suspension process, which are currently mailed via certified U.S. mail, this will provide additional postage savings in the amount of \$1,665.55. This language mirrors the ABA proposed Model language as set forth in the report presented by the ABA Standing Committee on Continuing Legal Education for uniform standards in CLE regulation. (July 2016). The transcripts would be posted online and not mailed.

***As to the Nevada State Bar's ADKT 0478 filed June 15, 2016, requesting a change from 12 to 13 credits per year adding an annual requirement of one educational credit in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence, the Board fully supports this change. In addition, the Board supports the proposal that substance abuse, addictive disorders and/or mental health issue educational credits not be carried forward. Rather, the requirement would be a yearly requirement.

The following is a sample of how other states handle the issue of transcripts.

ALABAMA:

Alabama has an online certification that the online transcript is true and correct. The attorney must check his/her transcript online and certify that it is true and correct.

ARKANSAS:

In Arkansas, a year-end transcript is mailed to all attorneys stating that this record is presumed to be correct unless the attorney signs and makes additions or corrections to the record. That is their opportunity to add, delete or change any hours reported for the reporting period.

DELAWARE:

Delaware attorneys must verify their online transcript at the end of every 2-year compliance period. To do so, they login to the Lawyer Management System, review their transcript and complete a verification page which requires them to enter their initials and bar identification number. Their bar identification number constitutes their online signature. No paper transcripts are issued.

GEORGIA:

Georgia eliminated signed compliance reports 8 years ago.

ILLINOIS:

Illinois this year began to require website submissions. Illinois no longer accepts paper.

KANSAS:

Kansas tracks hours throughout the year so at year end of the year, an email is sent out that the final report is ready to review online and will be filed with the Court. Unless there are changes, there is nothing else the attorneys need to do.

Rule 807(a) Annual Report. The Commission will issue an annual report in August for the preceding compliance period for each attorney subject to the Commission's jurisdiction. If the report is accurate, the attorney is not required to respond; the report will be filed automatically as the attorney's annual report. If the report is not accurate, the attorney must notify the Commission within 30 days of the issuance of the report.

MINNESOTA:

Minnesota has an online reporting system that most attorneys use. They have to certify each course attendance they add to the system. If they do file by paper affidavit they are required to provide a signed copy in paper form.

QUEBEC:

Québec requires an online transcript that includes an electronic certification that the online transcript is true and correct.

SOUTH CAROLINA:

South Carolina requires the attorney's to sign and return their annual (paper) report of compliance by March 1 via mail or hand delivery to the CLE office. South Carolina does not currently accept electronic reports or signatures.

TENNESSEE:

Tennessee requires all attorneys that have not completed their required hours by the end of the year and those that are claiming exemption to sign and return an Annual Report Statement by March 31st. If an Attorney has earned

all of their hours and does not owe a fee, then they do not have to return the Annual Reporting Statement.

UTAH:

Utah has an online reporting system that is new this year. If lawyers choose to file a paper affidavit, then they are required to provide a signed copy.

VIRGINIA:

Paper transcripts are sent out each year to the attorneys. It is also available 24/7 at the website; however, the Court still requires the CLE Board to mail a copy.

Most attorneys comply online. The online process includes a certification each time a certificate is added. If an attorney must or chooses to comply with paper they must then sign and return the paper transcript.

WEST VIRGINIA:

West Virginia does not require a signed compliance report at the end of the reporting period. West Virginia strongly encourages members to file credits online. If they submit a paper form that has to be posted by CLE staff, then, a \$10 paper processing fee is charged.

Rule 211. Reserved.

Rule 212. Penalties for noncompliance.

1. **Procedure in event of noncompliance.** An attorney who is subject to these rules and who fails to timely comply with their provisions shall be subject to the following:

(a) **Extension fee for additional time to complete requisite continuing education credit hours.** In the event that an attorney subject to the requirements of Rule 210(2) fails to complete the requisite continuing education credit hours by December 31, the Board may grant, upon written request, an extension of time to ~~March 4~~ **February 15th** to obtain credits to cure the deficiency from the preceding calendar year. The request for an extension of time must be accompanied by an extension fee of ~~\$50~~ **\$100.00**. The fee for an extension of time is separate from and in addition to the

annual fee. **Once an extension fee is paid, it is nonrefundable.**

(b) ~~Late fee for failure to timely pay annual fee or submit compliance report: notice of noncompliance~~ **proof of sufficient educational credits to be in compliance.** In the event that an attorney subject to the requirements of Rule 210 fails to meet the ~~March 1~~ **February 15th** deadline for paying the annual fee and/or ~~submitting the annual compliance report,~~ **completion of required educational credits,** the Board shall assess a late fee of ~~\$100~~ **\$250**. The late fee is separate from and in addition to the annual fee and any other fees owed. The late fee shall be assessed in a notice of noncompliance, which shall be mailed by the Board via first-class mail to the attorney's last known address on or about ~~April 1~~ **March 1**. The notice of noncompliance shall:

(1) state the manner in which the attorney has failed, or appears to have failed, to comply with the requirements of Rule 210 resulting in a deficiency;

(2) advise the attorney that to cure the deficiency the attorney must comply with the applicable rules and pay all applicable fees including late fees; and

(3) advise the attorney that to avoid being ~~the subject of a petition for suspension,~~ **administratively CLE suspended,** the deficiency must be completely cured on or before ~~May 1~~ **April 1**. It shall not be a defense to noncompliance that the attorney did not receive the notice of noncompliance.

~~2. **Petition for suspension. Administrative CLE Suspension.** Failure to timely comply with the provisions of these rules shall result in the board placing the attorney's name on a petition to be filed with the court to have the attorney's status changed to CLE suspended and to be barred from practicing law in the State of Nevada until such time as the attorney is reinstated pursuant to Rule 213. The petition shall conform, to the extent practicable, to the requirements of NRAP 21 and shall be served on the attorney via certified mail to the attorney's last known address on or about June 1. It shall not be a defense to noncompliance that the attorney did not receive the petition. An attorney who does not completely cure any deficiency on or before April 1 will be administratively CLE suspended.~~

~~3. **Order to show cause.** The court, after reviewing the petition, may order the attorney to show cause why the attorney's status should not be changed to CLE suspended and why the attorney should not be barred from practicing law in the State of Nevada until such time as the attorney is~~

reinstated pursuant to Rule 213.

4. 3. ~~Consent to dismissal~~ Reinstatement to Active Status; increased penalties for repeat offenders.

(a) ~~Consent to dismissal~~ **Reinstatement.** In the event that an attorney who has been placed on a ~~petition~~ **administrative CLE suspension** pursuant to subsection 2 demonstrates compliance with these rules, ~~prior to suspension by the court, the Board may consent to dismissal of the petition with prejudice as to that attorney, reinstate the attorney~~ subject to the payment of the requisite fee.

(b) **Fee: penalties for repeat offenders.** The fee for processing the ~~consent to dismissal reinstatement~~ shall be as follows:

(1) \$250 the first time an attorney has been placed on ~~petition~~ **CLE suspension** in the preceding five-year period.

(2) \$350 the second time an attorney has been placed on ~~petition~~ **CLE suspension** in the preceding five-year period.

(3) \$550 the third time an attorney has been placed on ~~petition~~ **CLE suspension** in the preceding five-year period.

(4) \$850 the fourth time an attorney has been placed on ~~petition~~ **CLE suspension** in the preceding five-year period.

(5) \$1,250 the fifth time an attorney has been placed on ~~petition~~ **CLE administrative suspension** in the preceding five-year period.

The ~~consent to dismissal reinstatement~~ fee is separate from and in addition to any other fees owed, and the payment of the fee does not excuse the attorney from compliance with Rule 210 for each and every year the attorney is or was noncompliant.

5. 4. Order of CLE administrative suspension; publication required; other requirements. ~~If an~~ An attorney placed on ~~petition and ordered to show cause under this rule fails to demonstrate cause as ordered, the court may order the attorney suspended for noncompliance with these rules~~ **administrative CLE suspension**, ~~The order of suspension shall have his or her name~~ be published in the state bar's official publication. In the event that the court ~~suspends an attorney is~~ **administratively CLE suspended** for noncompliance with these rules, the attorney is not entitled to engage in the practice of law in the State of Nevada until such time as the attorney is reinstated under Rule 213. An attorney who is suspended for noncompliance with these rules must comply with Rule 115. If the attorney fails to comply with Rule 115, then the Board shall proceed under Rule 118. The Board shall also comply with Rule 121.1.

~~6.~~ **5. Multiple suspensions; referral to state bar.** In the event that an attorney is ~~suspended by the court~~ **administratively CLE suspended** for noncompliance with all or any portion of these rules more than once within a five-year period, that attorney shall be referred by the **Board** to the state bar for appropriate disciplinary action.

[Added; effective February 19, 1982; amended effective January 15, 2010.]

COMMENTS:

STATE RESEARCH REGARDING ADMINISTRATIVE CLE SUSPENSIONS:

ALABAMA:

In Alabama, the CLE Board cannot administratively suspend an attorney for non-compliance. After the compliance deadline passes, the Board makes an official referral to the Office of General Counsel and their Disciplinary Board does the "notice and opportunity to be heard" before discipline is imposed.

CALIFORNIA:

In California, a 60-Day Notice is provided in advance of the final deadline, and the Board annually approves a resolution that whoever was sent a 60-Day Notice and is not in compliance by the final deadline be placed on Administrative Inactive status. In between the Board approval and the final deadline, one more final notice is sent by certified mail.

DELAWARE:

In Delaware, the CLE office cannot do administrative suspensions. Once all deadlines pass, a "notice of noncompliance" is sent to the attorneys

providing the attorney 20 days to rectify before referral to ODC. At that point a "statement of noncompliance" is sent to ODC and they handle the matter from there. Statistics have shown that this typically prompts compliance; however, those that still remain noncompliant can result in disciplinary action being taken.

ILLINOIS:

There are two deadlines for an attorney to comply. A notice is mailed several weeks before each of those two deadlines. Those notices are sent via first class U.S. Mail but the Court's Rules allow staff to use email instead.

After the second deadline passes, a list of all non-compliant attorneys' names is sent to the licensing and disciplinary entity. That entity then sends each attorney a final notice of impending removal from the master roll with a third deadline. That notice is sent via first class U.S. Mail.

If the attorney does not comply (complete credits, report compliance and pay the \$250.00 late fee) by that third deadline, the licensing and disciplinary entity removes the attorney's name from the master roll due to MCLE noncompliance.

The removal is not a disciplinary action but the removal appears on the licensing and disciplinary entity's public website. The attorney may address the removal by reporting compliance and paying a \$500.00 reinstatement fee.

The Rules state that failure to receive this notice "shall not constitute an excuse for failure to file the certification."

KANSAS:

Kansas administratively suspends attorneys for noncompliance nearly 60-90 days after the June 30 deadline but only after a certified notice is issued to the noncompliant attorneys. The certified notice is their due

process. The Court does the suspension although the CLE office prepares the orders for the Court.

LOUISIANA:

Louisiana's rules are a bit more detailed and are set forth as follows:

RULE 6. NONCOMPLIANCE AND SANCTIONS

(a) As soon as practical after January 31 of each year, the Committee shall compile the following:

(1) A list of those Members who have complied with Rule 3.

(2) A list of Members whose transcripts indicate that they have not complied with the requirements of Rule 3.

[Amended effective July 26, 2011]

(b) The Committee shall then mail a notice of noncompliance with MCLE requirements to each attorney at the Member's official address of record. That attorney must, within sixty (60) days of the date the notice is mailed, furnish the Committee with the following:

(1) Documentary proof that the Member has complied with the requirements, or

(2) An affidavit or documentary proof setting forth the reasons for failure to comply with the requirements because of illness or other good cause, or

(3) Documentary proof indicating compliance with satisfactory substitutes to compensate for failure to comply timely.

[Amended effective April 1, 2005]

(c) Any Member who fails to timely comply with the requirements of these Rules and Regulations for earning hours by the December 31st deadline or for reporting compliance by the January 31st deadline shall be assessed a delinquency penalty of \$150.

Any Member, whether in regular practice or claiming an exemption, who has previously been noncompliant within the five years preceding the current reporting year will automatically incur an additional \$50 penalty calculated at the rate of \$50 per year for each noncompliant year within the five year period. [Amended effective July 26, 2011]

(d) Documentary proof of compliance furnished after the January 31 deadline must be accompanied by the delinquency penalty or the documentary proof will not be accepted by the Committee.

(e) At the expiration of sixty (60) days from the date of notice to the Member, the Committee shall notify the Supreme Court of Louisiana of a Member's failure to furnish documentation as described in Rule 6(b) above, satisfactory to the Committee, to establish compliance or a valid excuse for noncompliance, or failure to comply with a satisfactory substitute, or failure to pay the delinquency penalty described in Rules 6(c) and (d) above, and shall request that the Court certify the Member ineligible to practice law. The Committee shall not request certification of ineligibility for a judge, but rather shall report to the Judiciary Commission any judge's failure to comply with the requirements of these rules.

(f) At any time after notice of noncompliance to the Supreme Court, a Member may file with the Committee documentary proof indicating compliance with Rule 3 of these Rules or compliance with satisfactory substitutes to compensate for failure to comply timely with such Rule; and if satisfactory to the Committee, it shall forthwith notify the Supreme Court for appropriate action, including reinstatement if the Member has been certified ineligible to practice law.

(g) Any Member affected adversely by a decision of the Committee, including a decision to request that the Supreme Court certify the Member ineligible to practice law, may apply for review of the decision by filing a written petition, with supporting materials, to the Supreme Court of Louisiana, within thirty (30) days of such adverse decision.
[Amended effective July 26, 2011]

REGULATIONS/RULE 6

Regulation 6.1. When a Member fails to comply with the requirements of these Rules and Regulations, the Committee will send a notice of noncompliance (hereafter "Noncompliance Report Form") specifying the failure and giving the Member sixty (60) days from the date of the

mailing of the notice to correct the deficiency and show compliance with the requirements. [Amended effective April 1, 2005]

Regulation 6.2. A Member to whom the Noncompliance Report Form is sent must use the sixty-day period to obtain the required number of credit hours needed for compliance. Credit hours earned during this period shall be applied toward the previous year's requirement until the necessary hours are earned, and then up to eight hours may be carried forward to meet the current year's requirement. [Amended effective January 1, 2003]

Regulation 6.3 A Member who fails to comply with the requirements within the sixty-day period shall be reported to the Clerk of the Supreme Court for certification of the Member's ineligibility to practice law.

Regulation 6.4 The Committee shall transmit the name of a Member who receives an Order certifying the Member's ineligibility to practice law to all courts in this state thirty days after the Supreme Court has notified the Member of the certification of ineligibility for failure to comply with the Rule.

Regulation 6.5. A Member who has been certified ineligible to practice law because of noncompliance may be reinstated by filing a report with the MCLE Committee that complies with the requirements and by paying a nonwaivable reinstatement fee of \$100. The Member must obtain the necessary credit hours during the period of ineligibility to meet the requirements for all years of noncompliance. [Amended effective October 11, 2007]

Regulation 6.6. Upon receipt of a report showing satisfactory compliance with the requirements and payment of the reinstatement fee, the Committee will notify the Clerk of the Supreme Court that the member has satisfied the requirements.

MINNESOTA:

In Minnesota, the CLE Board will draft an Order and send it to the Court with a recommendation that they suspend the lawyers who failed to comply with that year's reporting requirement. This is done after a notice of non-compliance is issued by the Board giving 30 days to comply or make arrangements to do so.

NEBRASKA:

In Nebraska there is time to show cause to the Commission as to why a suspension should not take place, then the Commission enters a recommendation to suspend, and then a second order to show cause from the Supreme Court is set and finally, the Supreme Court enters a suspension order.

OREGON:

In Oregon, a Court Order is issued for members who are not in compliance with the MCLE Rules. Members are given plenty of notice about the deadlines, but the suspension only occurs via court order. It's not an administrative suspension.

PENNSYLVANIA:

In Pennsylvania, the Board takes on the responsibility of tracking the compliance of all lawyers and then putting together a list of non-compliant lawyers who have failed to meet CLE requirements. After all the grace periods expire, a final list is sent to the Court and the Court will then issue an Order to Administratively Suspend licenses.

SOUTH CAROLINA:

In South Carolina, the annual filing deadline is March 1 with a late fee deadline imposed for any attorney who files after March 1 until April 15th. The CLE Board is required to furnish a list of all non-remitting attorneys to the Court after April 15. The Court will then issue administrative suspensions to all non-remitting members that have been reported by the CLE Board.

TEXAS:

The Texas Supreme Court signed an order that allows the CLE Board to administratively suspend attorneys who have not complied with their MCLE requirements by the last business day of the 4th month following the birth month.

Specifically, Texas MCLE Rules Section 8 (E):

If by the last business day of the fourth month following the birth month (or reporting month if the member has been granted an extension in accordance with this article for completion of CLE requirements) the member has still not cured his or her non-compliance, the member shall be automatically suspended from the practice of law in Texas as directed by Order of the Supreme Court dated December 23, 2002.

VIRGINIA:

Virginia has always administratively suspended attorneys for MCLE noncompliance.

Virginia rules state as follows:

13.2 Suspension for Failure to Complete Continuing Legal Education Requirement—

Each active member of the Virginia State Bar shall complete the Continuing Legal Education requirement prescribed by Paragraph 17 of these Rules, and any active member who fails to complete the

requirement shall be suspended unless a waiver is obtained for good cause shown. Any active member licensed on or after July 1, 1986, shall thereafter annually file prior to, but no later than, December 15, certifications that he or she has completed the mandatory continuing legal education programs required by Paragraph 17, or obtain a waiver for good cause shown; provided, however, the next certification deadline following July 31, 2001, shall be December 15, 2002.

Failure to comply with this Rule shall subject the active member to the penalties set forth in Paragraph 19 herein.

“Good cause shown” as used herein shall include illness, hospitalization, or such other cause as may be determined by the Continuing Legal Education Board whose determination shall be final. Any determination by the Continuing Legal Education Board may be reviewed by the Supreme Court upon request of the suspended member.

Updated: February 26, 2010

Part 6, Section IV, Rules of the Virginia Supreme Court Paragraph 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 \$50, for each Rule violated, provided, however, that the 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 \$100, and the delinquency fee for an attorney who does not comply with the certification requirements of Paragraphs 13.2 and 17 (D) of these rules shall be \$100, and shall increase by \$100 on February 1 for noncompliance with the certification requirements. The notice shall be mailed 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 or herself 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 or her membership in the bar and (2) upon payment of a reinstatement fee of \$150 for each Rule violated, provided, however, that the reinstatement fee for an attorney who was suspended for noncompliance with Paragraphs 13.2 and 17 of these rules 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 or her 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 or her 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 or her annual responsibility to attend continuing legal education programs or to pay his or her dues to the Virginia State Bar.

Rule 213. Reinstatement to active status.

1. **Application for reinstatement.** If an attorney has been suspended as a result of noncompliance with all or any portion of these rules, the attorney may apply for reinstatement as follows:

(a) **Application.** The attorney must file with the Board a reinstatement application, properly verified and fully and accurately completed, in a form approved by the Board.

(b) **Reinstatement fee.** The reinstatement application must be accompanied by a fee of ~~\$500~~ as set forth in Rule 212(3)(b). The reinstatement fee is separate from and in addition to the annual fee required to be paid for the year in which reinstatement is sought.

(c) **Reinstatement credits.** The reinstatement application must be accompanied by proof that the attorney has completed a minimum of fifteen

(15) hours of accredited educational activity, at least six (6) of which must be exclusively in the area of ethics and professional conduct, **and one (1) credit in the area of substance abuse** within the period of twelve (12) months immediately preceding the filing of the application with the **Board**. This requirement is separate from and in addition to the annual credit requirement of Rule 210(2). **In addition, for every year the attorney has been administratively CLE suspended, he or she must complete an additional requirement of five (5) additional credits.**

2. **Approval by the ~~board~~ Board.** If the application for reinstatement appears satisfactory to the ~~board~~ **Board**, the ~~board~~ **Board** shall notify the clerk of the court and the state bar that the suspended attorney has completed the requirements for reinstatement, and, so long as the sole condition of reinstatement is compliance with Rule 213, the suspended attorney shall become automatically reinstated upon receipt by the clerk of the court **and the state bar** of the notice from the ~~board~~ **Board** stating that the attorney has complied with the requirements of this rule.

[Added; effective February 19, 1982; amended effective January 15, 2010.]

Comments: The increase in the credit requirement for every year an attorney is administratively CLE suspended is designed to increase compliance and prohibit a “buy out.”

Rule 214. Exemptions.

1. The following attorneys are entitled to an exemption from the requirements of Rule 210:

(a) Any active member who has successfully completed the Nevada state bar examination in the present calendar year. The exemption shall be for the remainder of the calendar year in which the examination was successfully completed and the first full calendar year thereafter. Commencing on January 1 of the second calendar year after the successful completion of the examination, the active member becomes subject to these rules. Notwithstanding this exemption, each active member of the state bar, following admission, shall complete the Transitioning into Practice program.

(b) Any active member who is a full-time member of the federal judiciary.

(c) Any member of the state bar who, while not in default of the obligations imposed by these rules, has been voluntarily placed on inactive status; provided, however, that such voluntary placement must have been

given in writing to the state bar and the Board prior to the expiration of the applicable calendar year for which the exemption is claimed.

(d) Any active member who has attained the age of 70 years.

(e) Any active member who is deployed on full-time active duty in the armed forces of the United States, until the member's release from active military service and resumption of the practice of law.

2. The Board, in its discretion, may grant an attorney subject to these rules an exemption upon circumstances constituting exceptional, extreme and undue hardship unique to the attorney, subject to the following:

(a) The attorney seeking the exemption shall promptly file with the Board a verified application, specifying in detail the circumstances which the attorney believes afford a basis for an exemption;

(b) The Board may, but need not, exempt the attorney from all or a portion of these rules; and

(c) The Board may condition the exemption upon such terms and conditions, and limit the exemption or partial exemption to such period of time, as the Board may deem appropriate.

[Added; effective February 19, 1982; amended effective March 13, 2014.]

Comments: The Board understands the State Bar is putting forth an ADKT to abolish the over 70 exemption. The Board supports this proposal.

Rule 215. Reporting change of address; penalty for failure to timely report.

1. **Duty to notify of change of address.** Every attorney subject to these rules shall maintain a permanent mailing address, a **current phone number and a current email address** with the ~~board~~ **Board**.~~to which all communications to the attorney shall be addressed.~~ The attorney must advise the ~~board~~ **Board** of any change of address, **including change in email address**, within thirty (30) days after such change. The obligations under this rule are separate and distinct from the requirements of Rule 79; therefore, compliance with Rule 79 is not deemed compliance with this rule.

2. **Penalty for failure to timely report change of address.** Failure to timely advise the ~~board~~ **Board** of a change of address **or change of email address** pursuant to this rule shall result in assessment of a penalty of ~~\$150~~ **\$200**. The penalty for failure to timely report the attorney's change of address **or email address** is separate from and in addition to any other fees collected by the ~~board~~ **Board**. It is also separate and distinct from any fees collected by the state bar under Rule 79. Failure to comply with the

provisions of this rule is also a basis for the ~~attorney's name being placed on a petition for suspension pursuant to Rule 212(2) attorney being~~ **administratively CLE suspended.**

[Added; effective February 19, 1982; amended effective January 15, 2010.]

General comments: It is the purpose of these proposed rule changes to increase compliance. These changes tighten up the timeline for compliance and increase penalties for noncompliance. Changing from a Petition with and Order to Show Cause to an Administrative CLE Suspension cuts the timeline to suspension dramatically and sets a drop-dead date when the attorney will be administratively CLE suspended. Completing a minimum number of credits and paying the annual fee is not and should not be that much of a burden. These changes will also reduce administrative costs as to staff time, printing and postage.

In proposing these amendments, the working draft was submitted to the State Bar of Nevada for comment. As a result, additional changes were made to the draft.

Overall, the Board feels that these proposed rule changes will enhance compliance. That is the ultimate goal of all involved. While the Board strongly considered a doubling of penalty fees for reinstatement, since this did not show much of an impact the last time the Board increased penalty fees in 2014, and, given the SBN input advising that this could make it appear that a "buy out" issue would still be present and, given the fact that the CLE Board has to see how the new business plan (if approved by the Court for implementation) may impact the financial status of the CLE Board, it is felt that it may be best to maintain the current penalty fees for reinstatements and revisit the issue in the future.

Overall, the primary goal of the CLE Board is to enhance compliance, and to ensure quality CLE is being provided to the attorneys, thereby, protecting the public. The Board respectfully submits these proposed changes and appreciates the input provided by the State Bar of Nevada. As has always been the case, this must be a joint effort to ensure our joint goals are met.