


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS
TO SUPREME COURT RULE 207:
CREATION OF THE BOARD OF
CONTINUING LEGAL EDUCATION

ADKT 0499

FILED

NOV 15 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER

WHEREAS, on July 30, 2014, the Honorable Brent T. Adams filed a petition in this court seeking the amendment of Supreme Court Rule 207 concerning the selection of members for the board of continuing legal education and clarification of the supervision of the board of continuing legal education (CLE); and

WHEREAS, following a hearing and public comment, this court entered an order on February 2, 2015, appointing a committee to consider amendments to Supreme Court Rule 207, the organization and operations of the CLE board and all appropriate matters related thereto and make recommendations to this court as the committee deems appropriate.

WHEREAS, the committee filed its report on September 15, 2015, with the following recommendations:

- (a) A majority of the committee believes that a hybrid approach to the appointment of the CLE board members should be adopted and recommends amending Supreme Court Rule 207(3) to provide that three (3) active members be appointed by the state bar, three (3) active members be appointed by the court and one (1) member of the judiciary be appointed by the court.

(b) A unanimous committee recommends:

- (1) The CLE board provide reports, at least annually, to the court and the state bar of its operations and financial condition within 90 days of the close of each calendar year;
- (2) Within 90 days of the committee's meeting, the CLE board should submit a thorough business plan for consideration by the court and the state bar that addresses the CLE board's long term strategy for funding, administration, operations, technology, CLE course approval, and use of excess or surplus funds;
- (3) The court should amend the CLE rules and regulations concerning enforcement, administrative suspensions and delinquent fees, making persistent violations of CLE requirements by attorneys the subject of professional misconduct;
- (4) The court should amend the CLE rules and regulations requiring that continuing legal education be relevant to the practice of active members;
- (5) The CLE board and the state bar should adopt the informational sharing plan generally outlined in the state bar report of May 15, 2015, and create a "one stop shop" communication model with the members of the state bar concerning CLE requirements and state bar dues and requirements; and,
- (6) The CLE board and the state bar should adopt and use educational methods and technology that increases the availability of continuing legal education to active members of the state bar.

WHEREAS, on September 15, 2015, in response to the committee's recommendation, the CLE board submitted a business plan

providing, in part, for a transition of its funding source from annual dues to fees assessed to CLE providers;

WHEREAS, the board of governors submitted detailed comments to the proposed business plan;

WHEREAS, in response to the comments by the board of governors and others, the CLE board submitted an amended business plan;

WHEREAS, the court held a public hearing on December 8, 2015;

WHEREAS, on January 27, 2016, the state bar of Nevada filed a response to the amended business plan and provided additional information as requested by the court;

WHEREAS, on January 28, 2016, the CLE board filed a response to the state bar of Nevada's response to the amended business plan as requested by the court; and

WHEREAS, the CLE board provided additional clarification of the amended business plan and operations in submittals filed on April 12, 2016, and September 20, 2016; accordingly,

IT IS HEREBY ORDERED that Supreme Court Rule 207 shall be amended and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that the terms for the current board members are set forth in Exhibit B and the term limit provisions set forth in Supreme Court Rule 207(4)(a) as amended shall commence from the original appointment date of the board member.

IT IS FURTHER ORDERED that Supreme Court Rule 208(10) shall be amended and shall read as set forth in Exhibit C.

IT IS FURTHER ORDERED that Supreme Court Rules 210, 212, 213, and 215 shall be amended consistent with CLE board's submissions to this court on September 20, 2016, and read as set forth in Exhibit D.

IT IS FURTHER ORDERED that this court approves of the amended business plan proposed by the CLE board subject, however, to the following amendments:

- (1) The state bar of Nevada and its recognized sections, Nevada county bar associations, and Nevada chapters of local and specialty bar associations are exempt from the per attorney per credit hour fee, regardless of the format in which it is presented, if one of the following conditions are met: (a) proceeds from the CLE directly benefit legal aid providers located within the State of Nevada; or (b) the CLE credit is awarded to approved mentors in the Transitioning into Practice program; or (c) the course for which CLE approval is sought is of a duration not to exceed 1.5 hours and for which the registration fee does not exceed \$75. For the purpose of this provision, for full-day conferences or multiple-day conferences in which multiple individual CLE sessions are taught, credits may be sought as component units of the conference and applicable fees assessed individually.
- (2) The CLE board shall maintain all reserves on hand and any use or draw on the reserves is subject to the prior approval by the court. The court shall conduct a review of the reserves held by the CLE board within 45 days of receipt of the board's annual report for 2017.

IT IS FURTHER ORDERED that the amendments to the Supreme Court Rules shall be effective on January 1, 2017. The clerk of this court shall cause a notice of entry of this order to be published in the

official publication of the state bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the state bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rules.

Dated this 15th day of November, 2016.

Parraguirre, C.J.
Parraguirre

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Bryan K. Scott, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
Nevada CLE Board
Administrative Office of the Courts

EXHIBIT A
AMENDMENT TO SUPREME COURT RULE 207

Rule 207. Creation of board.

1. The board of continuing legal education is hereby created.
2. The board shall consist of seven (7) members, each of whom must be an active member. At least one (1) member must be concurrently serving as a member of the board of governors. One (1) member must be concurrently serving as a member of the state judiciary. Each member of the board shall have one (1) vote.
3. ~~[Six (6)]~~ Three (3) members of the board shall be appointed by the board of ~~[governors.]~~ governors, and three (3) members of the board shall be appointed by the court. The court shall also appoint the member of the judiciary. The board shall select its own chair. The board may, in its discretion, appoint nonvoting ex officio members to serve in an advisory capacity only.
4. The terms of the members of the board are as follows:
 - (a) ~~[The term of each member shall be three (3) years; however, to ensure that no more than three (3) members' regular terms expire at once, the board of governors may, in its discretion, designate that an appointee's initial term shall be less than three (3) years.]~~ The members of the board shall be appointed for three-year terms. No attorney or judicial representative may serve on the board for more than a lifetime total of nine years. The time served in filling a partial term created by a vacancy shall not be included in computing the nine-year lifetime limit.
 - (b) The term of each member expires on December 31 of the final year of the member's term.

EXHIBIT B

Board member	Original appointment date	Last appointment	Date term expires
Hon. Janet Berry	December 31, 2014	December 31, 2014	December 31, 2017
Frank Flaherty	January 21, 2014	January 21, 2014	December 31, 2016
Jenny Hubach	August 18, 2009	April 3, 2014	December 31, 2017
Vic Drakulich	June 27, 2012	January 13, 2015	December 31, 2017
Kathleen Paustian	April 3, 2014	April 3, 2014	December 31, 2017
Richard Dreitzer	January 13, 2015	January 13, 2015	December 31, 2017
Megan Hoffman	January 13, 2015	January 13, 2015	December 31, 2017

EXHIBIT C
AMENDMENT TO SUPREME COURT RULE 208

Rule 208. Powers and duties of board. The board shall administer these rules. Without limiting the generality of this duty, the board has the following specific powers and duties:

1. To accredit individual courses and all or portions of programs of continuing legal education which, in the judgment of the board, will satisfy the educational requirements of these rules, according to regulations adopted by the board.

2. To grant accredited sponsorship status to certain sponsors of continuing legal education courses or programs, on such terms or conditions as the board may deem appropriate, according to regulations adopted by the board.

3. To determine the number of hours of credit each participant shall be entitled to receive for attendance or participation in each accredited course or educational activity, according to regulations adopted by the board.

4. To discover and encourage the offering of courses and programs which will satisfy the educational requirements of these rules, whether offered within or without the State of Nevada.

5. To adopt, publish and enforce regulations pertinent to these powers and duties.

6. To adopt and publish forms to facilitate compliance with these rules and the board's regulations.

7. ~~[To]~~ Subject to prior court approval, to adopt bylaws to govern the internal conduct of its affairs. Any amendments to existing bylaws shall, however, require prior court approval.

8. To make recommendations to the court concerning these rules.

9. To maintain its own offices and employ an executive director and other such persons as the board deems necessary for the proper administration of these rules.

10. To report at least [~~annually~~] annually, no later than 90 days after December 31, to the court and board of governors [~~and to the court~~] concerning its [~~activities.~~] operations and financial condition. On the application of the board of governors or on its own motion, the court may order the board to review these rules or any of its regulations, forms, or bylaws and to report to the court concerning any proposed amendments thereto. [~~Absent such a court order, the board may amend its regulations, forms, or bylaws without prior court approval.~~]

11. To collect an annual fee from each attorney subject to these rules, and to assess fees and other penalties for noncompliance with these rules. All fees collected must be utilized for the cost of administration by the board of these rules.

12. To sue and be sued in its own name, and to carry out and defend the purposes, duties, and powers imposed upon or granted to the board in these rules. Individual members of the board, its executive director, and all staff persons assisting them shall have absolute immunity from civil liability for all acts undertaken in the course of their official duties pursuant to these rules.

13. To refer to the state bar for appropriate disciplinary action any attorney who engages in perceived illegal or unethical conduct in response to any of the requirements of these rules.

EXHIBIT D

AMENDMENT TO SUPREME COURT RULES 210, 212, 213, 215

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~~ *check his or her online transcript for accuracy.*

1. **Annual ~~[Fee.]~~ 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 15 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

*updated per order
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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.~~]

(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 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 the 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.

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 1~~ February 15 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. 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 15 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. 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.~~

~~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.]~~

Administrative CLE suspension. An attorney who does not completely cure any deficiency on or before April 1 will be administratively CLE suspended.

~~[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,]~~ rules, the board may ~~[consent to dismissal of the petition with prejudice as to that attorney,]~~ reinstatement 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.]~~ fees, 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. The order of suspension shall be]~~ administrative CLE suspension shall have his or her name 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.

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]~~ 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.** If the application for reinstatement appears satisfactory to the board, the 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 stating that the attorney has complied with the requirements of this rule.

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 to which all communications to the attorney shall be addressed.]~~ board. The attorney must advise the board of any change of ~~[address]~~ 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 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. 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.