

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 499

FILED

JUL 23 2018

*ORDER SCHEDULING PUBLIC HEARING
AND REQUESTING PUBLIC COMMENT*

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

On July 3, 2018, the Honorable Lynne K. Simons filed a petition to amend Supreme Court Rule 207-215 to establish identical fee compliance deadlines of the State Bar of Nevada (SBN) and the Nevada Board of Continuing Legal Education (CLE) and amend the Regulations of the CLE Board. The proposed amendments are attached as Exhibit A.

The Nevada Supreme Court will conduct a public hearing on the petition on Wednesday, September 5, 2018, at 2:00 p.m. in the Nevada Supreme Court Courtroom, 201 South Carson Street, Carson City, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom, 408 East Clark Avenue, Las Vegas, Nevada.

Further, this court invites written comment from the bench, bar, and public regarding the proposed amendments. Comments may be submitted electronically or in hard-copy format to: Elizabeth A. Brown, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., August 29, 2018. Persons interested in participating in the hearing must notify the Clerk no later than August 29, 2018.

Hearing date: September 5, 2018, at 2:00 p.m.
Supreme Court Courtroom
201 South Carson Street
Carson City, Nevada 89701

Comment deadline: August 29, 2018, at 5:00 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

DATED this 23rd day of July, 2018


_____, C.J.

cc: All District Court Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Richard Pocker, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Administrative Office of the Courts

EXHIBIT A

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. Three (3) members of the board shall be appointed by the board of governors for seats A, B and C, and three (3) members of the board shall be appointed by the court for seats D, E and F. The court shall appoint the member of the judiciary for seat J. 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 members of the board shall be appointed for three-year terms; however, to ensure that no more than three (3) member's regular terms expire at once, the board of governors or the court may, in their discretion, appoint or re-appoint a member to a term of less than three (3) years. 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 or appointment or re-appointment to a term of less than three (3) years 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.

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 and to assess fees regarding such programs upon sponsors and attorneys subject to these rules in accordance with 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. 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, no later than ninety (90) days after December 31, to the court and board of governors concerning its 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.

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.

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]~~ required fees, complete the requisite number of credit hours, and ~~[check his or her online transcript for accuracy]~~ provide such other information as the board may require.

1. **Annual fee.** The amount of the annual fee ~~[is]~~ will be determined by the board, but will not exceed \$40 [.]. ~~[made payable to the Nevada Board of Continuing Legal Education, and]~~ The annual fee must be [postmarked] paid on or before [February 15] March 1 of the year for which the fee is required to be paid.

2. **Credit hours.**

(a) Subject to the carry forward provisions of subparagraph (b), a minimum of thirteen (13) 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 thirteen (13) hours, at least two (2) shall be exclusively in the area of ethics and professional conduct and one (1) shall be exclusively in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence. ~~[(1)]~~ 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.

~~[(2) 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.]~~

(b) Any attorney subject to these rules who completes more than thirteen (13) 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. ~~[(c)]~~ 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 may carry forward up to two (2) hours of excess credit and apply the same to the attorney's substance abuse, addictive disorders and/or mental health issues requirement for the next two (2) calendar years.

3. Annual transcript.

(a) At least thirty (30) days prior to December 31, 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]~~ to comply with these rules, ~~[the]~~ attorneys must check their transcripts online and report additional credits, corrections, or changes to the transcript to the board prior to the annual reporting date.

(b) ~~[The]~~ An attorney whose online transcript posted by the board indicates compliance with the CLE requirements may assume he or she is in compliance for credits.

(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 ~~[February 15]~~ March 1 to obtain credits to cure the deficiency from the preceding calendar year. ~~[The request for]~~ An attorney granted an extension of time ~~[must be accompanied by an]~~ will be assessed an extension fee of \$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 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 ~~[February 15]~~ March 1 deadline for paying the annual fee and/or completion of required educational credits, the board shall assess a late fee of \$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 March ~~[4]~~ 5. 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 administratively CLE suspended, the deficiency must be completely cured on or before April 1. It shall not be a defense to noncompliance that the attorney did not receive the notice of noncompliance.

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

3. Reinstatement to active status: increased penalties for repeat offenders.

(a) **Reinstatement.** In the event that an attorney who has been placed on administrative CLE suspension pursuant to subsection 2 demonstrates compliance with these rules, the board may reinstate the attorney subject to the payment of the requisite fee.

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

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

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

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

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

(5) \$1,250 the fifth time an attorney has been placed on administrative CLE [~~administrative~~] suspension in the preceding five-year period. The reinstatement fee is separate from and in addition to any other fee, 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.

4. Order of [~~CLE~~] administrative CLE suspension; publication required; other requirements. An attorney placed on administrative CLE suspension shall have his or her name published in the state bar's official publication. In the event that the 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.

5. Multiple suspensions; referral to state bar. In the event that an attorney is 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 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, if any attorney has been administratively CLE suspended more than once in the preceding five-year period, for every year the attorney has been administratively CLE suspended, he or she must complete an additional requirement of five (5) additional credits for each additional suspension.

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 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;

(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; and

(d) All active members of the judiciary shall be exempted from payment of the \$40 annual fee under SCR 210(1).

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. The attorney must advise the 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 of a change of address or change of email address pursuant to this rule shall result in assessment of a penalty of \$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 being administratively CLE suspended.