

ORIGINAL

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December 21 2012

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. AF06-0163

IN RE REVISION OF THE RULES FOR CONTINUING LEGAL  
EDUCATION

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P E T I T I O N  
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The Montana Commission of Continuing Legal Education (Commission) petitions the Court to amend its Rules for Continuing Legal Education (Rules).

The Rules, with the proposed changes underlined together with a rationale for each substantive change, are provided in "Attachment A."

The proposed changes reflect a review of the Rules conducted by the Commission over the course of the past 15 months. The Commission believes that the proposed amendments simplify CLE processes, expand CLE options, provide greater flexibility for attorneys, and improve clarity and consistency in interpretation and application of the rules.

The Commission respectfully requests the Court to adopt these amendments.

DATED this 21<sup>st</sup> day of DECEMBER, 2012.

BY: *K. Paul Stahl*

K. Paul Stahl, Chair  
Montana Commission of CLE

**Attachment A**  
**Proposed Amendments to CLE Rules**  
**Rationale for Each Substantive Amendment**

***Proposed Principle 2:***

The MCLE program should function in the interest of consumer protection, assisting Montana attorneys in remaining abreast of changes in the law and in the practice of law in order to better serve the public.

***Proposed Rule 6B(1):***

**Rule 6 – Credit Hours and Accreditation Standards**

A. Credit Hours.

The Commission shall designate the number of credit hours to be earned by participation in or teaching of approved continuing legal education activities.

Credit shall be earned on the basis of one (1) credit hour for each sixty (60) minutes actually spent by a member in attendance at an approved activity or in preparation for and teaching of an approved activity. Credit will not be earned for time spent in introductory remarks, coffee and luncheon breaks, or business meetings. Further, credit will not be earned for speeches presented at, or attendance at, luncheons or banquets. Repetition of an activity does not qualify for credit.

B. Accreditation and Accreditation Standards - General.

The Commission may approve continuing legal education activities when consistent with these Rules. The following standards as to content shall govern the approval of a continuing legal education activity:

1. It shall have significant legal content or application;
2. Its primary objective shall be to increase professional competence as a lawyer;

3. It shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional conduct, or the ethical obligations of lawyers;

4. It shall be conducted by an individual or group qualified by practical or academic experience in a setting physically suited to the educational activity of the program; and

5. It shall include thorough, high-quality, and carefully prepared written materials to be distributed to all attendees at or before the time the course is presented. While it is recognized that written materials are not suitable or readily available for some types of subjects, the absence of written materials for distribution should be the exception and not the rule.

6. It shall not be offered on a basis that discriminates against attendees on account of race, color, sex, sexual orientation, culture, social origin or condition, or political or religious ideas.

C. Burden.

The burden is on the member to submit and satisfy the requirements of these rules.

***Rationale for Proposed Amendments to Principal 2 and to Rule 6B(1):***

The proposed change in Principle 2 recognizes the value of CLE activities focused on such areas as office practice and technical support that, although not “changes in the law” as is generally understood, do represent innovations and developments that improve the competence of attorneys.

The proposed change in Rule 6B(1) reflects the same expansion of permissible content for accredited CLE activities.

***Proposed Principle 5:***

Based on the belief that interaction with fellow attorneys contributes to the learning process and advances the goal of civility in the practice of law, a significant portion of the MCLE requirement should be satisfied by interactive seminars or by such methods that allow for interaction among the participants and the instructor by electronic means.

***Rationale for Proposed Amendment to Principle 5:***

Although the benefit of personal professional interaction among attorneys has been recognized as desirable by the CLE Commission since the inception of CLE in Montana, this desirable goal has not been included explicitly in the Rules of Continuing Legal Education. The proposed change explicitly recognizes the desirability of such interaction.

***Proposed Rule 4A:***

**Rule 4 – Education Requirements, Exemptions, and Extensions**

A. Active Member Minimum ~~Continuing Legal Education~~ MCLE Requirements:

Each active member ~~shall~~ must complete ~~earn~~ a minimum of fifteen (15) credit hours of approved continuing legal education ~~activity~~ each reporting year. Of those fifteen (15) credit hours, at least ten (10) credit hours must be earned by attendance at interactive seminars as defined in Rule 7. No more than five (5) credit hours may be earned through “other methods” as defined in Rule 7.

~~—Every three years, each active member must complete a minimum of five (5) credit hours in ethics. Of the fifteen (15) credit hours of continuing legal education required each reporting year, at least two (2) credit hours must be in ethics.~~

“Ethics” means the accepted principles of professional conduct and responsibility as established by the Montana Rules of Professional Conduct or established by other state or national rules of professional conduct for lawyers. ~~Ethics credits~~

~~may be used to fulfill the 15 credit hours of required continuing legal education. Ethics credits may not be carried forward to subsequent 3-year reporting periods. Of the five (5) credit hours in ethics, one hour must be satisfied by a program on the relationship between a lawyer's professional responsibilities and substance abuse, chemical dependency or debilitating mental conditions.~~

Approved programs on the relationship between substance abuse, chemical dependency, or debilitating mental illness as they relate to a lawyer's professional responsibilities, satisfy the requirement for ethics credits.

~~If a member accumulates earns more interactive credits than required in a any year, the excess interactive credits may be carried forward and applied to satisfy the requirements of these rules in either one or both of the next two succeeding reporting years. A maximum of thirty (30) interactive credit hours may be carried forward.~~

~~Credits, including ethics credits, earned in any reporting year by "other methods" as defined in Rule 7, may not be carried forward or applied to satisfy any requirement of these rules for any subsequent reporting year. A maximum of thirty (30) interactive credit hours may be carried forward.~~

***Rationale for the Proposed Amendments to Rule 4:***

A number of the proposed amendments are intended to improve the style, clarity, and consistency of the Rules of Continuing Legal Education as a whole. Explanations of and rationales for the three substantive proposed changes follow:

1. Rather than requiring 5 ethics credits over the course of three reporting years, the proposed revision requires the accrual of at least 2 ethics credits every reporting year. Changing the accrual and reporting of ethics credits to align with the yearly reporting of other CLE credits simplifies the process for attorneys and for the CLE Commission administration. This change results in a slight increase in the ethics requirement over a 3-year period, but the increase is justified, not only by the importance of ethics in the practice of law, but also by the greater availability of ethics-related CLE activities than were available when the ethics requirement was established.

2. Rather than requiring 1 credit in every reporting period for CLE activities that focus on the relationship between substance abuse (et al.) and a lawyer's professional responsibilities, the proposed revision not only allows those activities to fulfill the ethics requirement but also leaves the decision as to whether to participate in such activities to the individual attorney.
3. Because of the relative scarcity of CLE activities addressing ethics at the time the ethics requirement was established, the rules allowed attorneys to "carry forward" excess non-interactive ethics credits to meet ethics requirements in subsequent years. This practice is not consistent with the treatment of non-interactive non-ethics activities. Today, access to ethics-related CLEs is no longer limited; therefore, the justification for the inconsistency no longer exists. The proposed revision aligns all CLE activities with Principle 5.

### ***Proposed Rule 5A***

#### **Rule 5 - Reporting Requirements**

##### A. Report.

~~—On or before May 15 of each year, each active member who has not been granted an exemption under Rule 4, shall file an affidavit with the Commission reporting continuing legal education activity in the preceding reporting year. The report may include any carryover credits specified in Rule 4A, together with any proof the Commission may require. The Commission shall mail the prescribed affidavit form to each active member on or before April 15 of each year.~~

On or before April 15 of each year, the Commission shall provide each active member, except those granted an exemption under Rule 4, a preliminary report of all CLE credits accumulated by that member in the previous reporting year. If the member finds the preliminary report to be inaccurate or incomplete, he or she shall provide corrections in writing to the CLE administrator by May 15. If the Commission determines the corrections incomplete or ambiguous, additional information may be required from the reporting member. The

preliminary report, including Commission-approved corrections, if any, will be deemed the official report on June 1.

B. Fee.

The Commission shall require payment of a fee not to exceed twenty-five dollars (\$25.00), which each reporting attorney must pay to defray the cost of maintaining records and enforcing the Rules. The prescribed fee shall accompany the Supreme Court License Tax and the State Bar of Montana Membership Dues submitted by each attorney. Failure to pay the prescribed fee constitutes noncompliance under Rule 12.

C. Noncompliance Fees.

In addition to the filing fee prescribed in Rule 3B2(e), attorneys deemed noncompliant who correct the deficiency on or before July 1, as provided in Rule 12A, shall be assessed an additional fee. Non-compliance after July 1 shall be governed by Rule 12.

~~D. If the prescribed reporting affidavit is deemed incomplete or ambiguous by the Commission or its MCLE Administrator, additional information may be required from the reporting member.~~

D. Burden.

The burden is on the member to submit and satisfy the requirements of these rules, and failure to respond in a timely manner shall constitute noncompliance under Rule 12.

***Rationale for Proposed Amendments in Rule 5A***

The proposed changes take advantage of the newly implemented computerized reporting system to simplify the reporting process for attorneys.

## ***Proposed Rule 12A***

### **Rule 12 – Noncompliance**

#### A. Notice of Noncompliance.

The Commission shall, by June 1 of each year, send a written notice of noncompliance to each attorney who ~~had~~ has not ~~filed an acceptable affidavit~~ fulfilled the CLE requirements for the previous year as documented by the official report compiled through the procedure required by outlined in Rule 5. The notice of noncompliance shall describe the nature of the noncompliance and shall state that, unless the attorney files an acceptable affidavit update to the official report with the Commission by July 1 of that year showing that the noncompliance has been corrected and pays the appropriate fees, the Commission will direct the State Bar of Montana to transfer the attorney to inactive status until the noncompliance is corrected and the fees required by Rule 5 are paid.

#### B. Notice of Transfer.

No later than ten (10) Business days after July 1, the Commission shall furnish the names of the attorneys and the effective date of their transfers to inactive status to the named attorneys, to the Montana Supreme Court, to the Clerk of the Montana Supreme Court, to the Clerks of the District Courts of the State of Montana with the request that they provide a copy to the district judges in their judicial districts, to the Clerk of the Federal District Court of the District of Montana, with a request that the Clerk provide a copy to the United States District Judges in Montana and to the Clerk of the Circuit Court of Appeals of the Ninth Circuit.

#### C. Transfer Not Punishment.

The transfer of an attorney to inactive status pursuant to this Rule shall not be deemed a punishment or disciplinary action for purposes of the Montana Rules of Professional Conduct or the Montana Rules for Lawyer Disciplinary Enforcement.

#### D. Fee for Reinstatement.

An attorney transferred to inactive status pursuant to this Rule shall apply for reinstatement as provided in Section 3 of the By-Laws of the State Bar of Montana

and shall pay to the State Bar of Montana a fee equal to the greater of two hundred dollars (\$200.00) or the usual and customary fee charged by the State Bar of Montana for transferring a member from inactive to active status.

***Rationale for Proposed Amendments to Rule 12***

The proposed changes align the procedures in Rule 12 with the proposed changes in Rule 5A.