

FILED

2009 JUL 15 AM 8:31

E. M. Orlando
CLERK, APPELLATE COURTS
STATE OF HAWAII

IN THE SUPREME COURT OF THE STATE OF HAWAII

In the Matter of the Amendment
of the

Rules of the Supreme Court of the State of Hawai'i

ORDER AMENDING RULE 17, AND ADOPTING NEW RULE 22,
OF THE RULES OF THE SUPREME COURT OF THE STATE OF HAWAII
(By: Moon, C.J., for the court¹)

IT IS HEREBY ORDERED that Rules 17 and 22 of the Rules of the Supreme Court of the State of Hawai'i are, respectively, amended and adopted, effective January 1, 2010, as follows (deleted material is bracketed and stricken; new material is underscored) :

Rule 17. THE HAWAII STATE BAR.

* * *

(d) Member registration, information, assessment, suspension and status.

(1) MEMBER REGISTRATION. Each member of the Hawai'i State Bar shall file an attorney registration statement and provide such information as the Board of Directors may require. A member shall notify the Hawai'i State Bar, in writing, within ~~[thirty (30)]~~ days of any change of such required information. At minimum, the registration statement shall require disclosure of:

(i) professional discipline or convictions in any jurisdiction, provided that convictions for offenses that are or would be classified under Hawai'i law as petty misdemeanors, violations, or infractions need not be disclosed;

(ii) hours of pro bono service for the previous year. Pro bono service hours for individual members shall be confidential, and the Hawai'i State Bar shall disclose such information only in aggregate reports of pro bono hours for the entire membership; ~~[and]~~

¹ Considered by: Moon, C.J., Nakayama, Acoba, Duffy, and Recktenwald, JJ.

(iii) professional liability insurance, if any; provided that each active member who certifies the member is a government lawyer or in-house counsel and does not represent clients outside that capacity is exempt from providing professional liability insurance information; and

(iv) the number of credit hours of Mandatory Continuing Professional Education (MCPE) and Voluntary Continuing Legal Education (VCLE) completed in the previous year, specifying the number of VCLE hours, if any, satisfied by Rule 22(e)(4).

* * *

(4) ADMINISTRATIVE SUSPENSION.

(i) Failure to file or pay. Failure to file a properly completed attorney registration statement or nonpayment of any dues, fees, or charges required by these rules, after 15 days written notice, shall result in automatic suspension by the Hawai'i State Bar, of membership and the right to practice law until reinstatement. The Board of Directors of the Bar (1) may establish late processing fees and reinstatement charges and (2) may exempt from the registration requirements inactive attorneys who do not maintain active licenses and do not practice law in any other jurisdiction.

(ii) Failure to meet MCPE requirements; notice of noncompliance; subsequent acquisition of hours; contest; suspension. Within 60 days after the deadline for filing the disclosure required by Rule 17(d)(iv), the Executive Director of the Bar shall send a certified notice of noncompliance to each member whose disclosure shows the MCPE requirement has not been met. A member who receives a certified notice of noncompliance may, within 15 days after the notice was mailed, submit to the Executive Director of the Bar evidence the member has acquired the mandated credit hours (which hours may not be counted for the current year); that the notice of noncompliance was issued erroneously, or that the member has resigned his or her license to practice law. A member who fails to prove the member acquired the mandated credit hours or that the notice of noncompliance was issued erroneously shall be automatically and immediately suspended by the Bar.

(5) REINSTATEMENT.

(i) After failure to file or pay. Any attorney suspended [~~under the provisions of (4) above~~] for failure to file a complete registration statement or pay dues and fees shall be reinstated by the Hawai'i State Bar without further order upon:

([i]a) payment to the Bar of all arrears and a late processing and reinstatement [~~charge~~]fee in such amount as shall be determined by the Board of ~~[d]~~Directors of the Bar from time to time, and

([ii]b) satisfaction of such other requirements as may be imposed by the Board of Directors of the Bar and/or [~~this~~] the supreme court.

(ii) After failure to comply with MCPE requirements. An attorney suspended for failure to comply with MCPE requirements shall be reinstated upon sufficient proof the member has:

(a) completed 3 hours of MCPE, which hours shall not be counted for the current year;

(b) paid the reinstatement fee set by the Bar; and
(c) paid all required fees and dues.
(iii) Review by supreme court. A member may petition the supreme court for review of the Executive Director's determination the member failed to prove completion of the mandated credit hours or that a notice of noncompliance was issued erroneously. Such petition shall not stay the effective date of the suspension.

* * *

Rule 22. Mandatory Continuing Professional Education and Voluntary Continuing Legal Education.

(a) Mandatory Continuing Professional Education. Except as otherwise provided herein, every active member of the Bar shall complete at least 3 credit hours per year of approved Mandatory Continuing Professional Education (MCPE). Qualifying professional education topics include the Hawai'i Rules of Professional Conduct, legal ethics and related topics, law office management, client trust account administration, bias awareness and prevention, access to justice, case and client management, and malpractice insurance and prevention.

(b) Voluntary Continuing Legal Education. In addition to MCPE, all active members of the Bar are encouraged to complete 9 or more credit hours per year of approved Voluntary Continuing Legal Education (VCLE).

(c) Carry Forward of Credit Hours. A member may carry forward from the previous reporting period a maximum of 3 excess MCPE credit hours. To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.

(d) Mandatory Certification, Reporting, and Record Keeping. Each active Bar member shall annually:

(1) certify the number of approved MCPE hours completed during the preceding year or carried forward, and

(2) report the number of approved VCLE hours completed during the preceding year, specifying the number of such hours, if any, satisfied by section (e)(4) of this rule. A member shall maintain records of approved MCPE credit hours and of approved VCLE credit hours for the 2 most recent reporting periods, and these records shall be subject to audit.

(e) Courses and Activities. The requirements of this rule may be met, subject to prior approval as set out in sections (f) and (g) of this rule, by:

(1) attending approved courses or activities, including but not limited to, presentations conducted in-house or for Inns of Court, bar sections, professional legal organizations, and the like;

(2) preparing for and teaching approved professional education courses or activities. Two hours of preparation time may be certified or reported for each hour of time spent teaching, *i.e.* 3 hours may be claimed for teaching a 1 hour course;

(3) studying approved audio, video, or other technology-delivered professional education courses or activities; and

(4) with regard to the VCLE standard of this rule, up to 3 hours of that standard may be satisfied by providing *pro bono* service, as defined in Rule 6.1 of the Hawai'i Rules of Professional Conduct.

(f) Approved Courses or Activities. Courses and activities sponsored by the Hawai'i State Bar Association (HSBA) or the American Bar Association, and classified by the HSBA as MCPE or VCLE, qualify for credit under this rule.

(g) Approval and Accreditation Authorization. The HSBA is authorized to approve or disapprove:

(1) other educational courses and activities for mandatory or voluntary credit and

(2) applications by an entity for accreditation as a course or activity provider. Approved courses and activities may include, but are not limited to, courses and activities conducted in-house or sponsored by Inns of Court, bar sections or other professional legal organizations. Accreditation shall constitute prior approval of MCPE and VCLE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the HSBA. The HSBA shall establish the procedures, minimum standards, and fees for approval of specific courses and activities or accreditation of providers and for revocation of such approval or accreditation.

(h) Full-time Judges. Federal judges are exempt from the requirements of this rule. Full-time state judges shall participate for at least 3 hours each year in a program of judicial education approved by the Committee on Judicial Education. Full-time state judges who are unable to attend, in person, a program approved by the Committee on Judicial Education or who are excused from that program shall comply with this requirement by such other means as the supreme court approves. Full-time state judges shall report the number of approved judicial education hours attended on the judges' annual financial disclosure form.

(i) Inactive members. Inactive members of the Bar who subsequently elect active status shall complete and report 3 hours of MCPE within 3 months of electing active status.

(j) Newly licensed members. Each person licensed to practice law who elects active status in the year in which he or she is licensed shall not be required to comply with the requirements of section (a) of this rule for that year, provided that nothing herein shall modify the obligations imposed by Rule 1.14 of these rules.

(k) Effective Date; Reporting Period. This rule is effective January 1, 2010. The initial reporting period will be the calendar year beginning January 1, 2010, and reports for that year shall be submitted in accordance with section (d) of this rule.

COMMENT:

Continuing professional and legal education contributes to lawyer competence and benefits the public and the legal profession by assuring that attorneys remain current regarding

the law, the obligations and standards of the profession, and the management of their practices. Voluntary continuing legal education is valuable to lawyers and attendance at courses is encouraged. These new rules are expected to result in a substantial increase in course attendance and participation in activities that earn MCPE and VCLE credit, with resulting enhancement of lawyer services to clients.

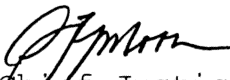
The state and federal judicial systems sponsor programs of judicial education for federal and state judges and, accordingly, full-time state and federal judges are excluded from the provisions applicable to active members of the Bar.

Rules 17, 22, and other Rules of the Supreme Court of the State of Hawai‘i (RSCH) refer to the Bar, the Hawai‘i State Bar, the Bar Administrator, the Hawai‘i State Bar Association, and the Executive Director of the Bar. References to the Bar or the Hawai‘i State Bar are to the unified Bar established by the Hawai‘i Supreme Court upon adoption of RSCH Rule 17. Historically, the unorganized bar consisted of all attorneys admitted to the practice of law in the State of Hawai‘i, and the Hawai‘i State Bar Association was a voluntary organization. In 1989, the supreme court “unified” the bar by requiring all members of the bar to be part of “an organization to be known as the Hawai‘i State Bar.” RSCH Rule 17 also defined the unified Bar organizational structure. The supreme court ordered the Committee on Integration of the Bar to seek nominations for the “initial officers and Board of Directors of the Hawai‘i State Bar.” See UNIFICATION OF THE HAWAI‘I STATE BAR IMPLEMENTATION ORDER NO. 1. Subsequently, the Hawai‘i State Bar Association amended its rules and bylaws to conform to RSCH Rule 17 “to permit [the Association] to become the administrative body of the unified bar of this State . . . if this Court should appoint it to such capacity[.]” See UNIFICATION OF THE HAWAI‘I STATE BAR IMPLEMENTATION ORDER NO. 2. The supreme court appointed the Hawai‘i State Bar Association “as the administrative entity of the Hawai‘i State Bar, to carry out the purposes and to have the powers set forth in Rule 17(b) . . . and other rules of this court, according to the terms of said rules.” Id. Implementation Order Number 2 rescinded Implementation Order Number 1’s search for candidates. The Hawai‘i State Bar Association assumed its role as administrator of the Hawai‘i State Bar. By operation of Implementation Order No. 2, the Hawai‘i State Bar Association is the Bar Administrator. Consequently, the Executive Director of the Hawai‘i State Bar Association is the Executive Director referred to by the rules for as long as the Hawai‘i State Bar Association remains the Bar Administrator.

IT IS FURTHER ORDERED that Comments and Commentary are provided for interpretive assistance and are not binding on the courts.

DATED: Honolulu, Hawai'i, July 15, 2009.

FOR THE COURT:


Chief Justice

