

RE: **Proposed Amendment to Rules 17 and 22 of the
Rules of the Supreme Court of the State of Hawai‘i**

MANDATORY CONTINUING LEGAL EDUCATION

The Supreme Court of Hawai‘i seeks public comment regarding proposals to amend Rules 17 and 22 of the Rules of the Supreme Court of the State of Hawai‘i. The proposals amend the system of mandatory continuing legal education required of attorneys licensed in Hawai‘i, with a possible effective date of January 1, 2015. The proposed rules are attached hereto.

Comments about the proposed rules should be submitted, in writing, **no later than Tuesday, August 26, 2014**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary’s website.

Attachment

**PROPOSED AMENDMENTS OF THE
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**

Rule 17. THE HAWAII STATE BAR.

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

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(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 30 days of any change of such required information. At minimum, the registration statement shall require disclosure of:

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(D) the number of approved credit hours of [~~Mandatory~~] Continuing [~~Professional~~] Legal Education [~~(MCPE)~~](CLE)[~~and Voluntary Continuing Legal Education (VCLE)~~] completed in the previous year, specifying the number of [VCLE] CLE hours, if any, satisfied by Rule 22(c)(4); including the specific number of hours of ethics or professional responsibility education.

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(4) ADMINISTRATIVE SUSPENSION.

(A) *Failure to file, cooperate with an audit, or pay.* Failure to file a properly completed attorney registration statement or to cooperate with an audit of the attorneys's continuing legal education hours conducted pursuant to Rule 22(d)(2) of these Rules, 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.

(B) *Failure to meet [~~MCPE~~] CLE 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)(1)(D), the Executive Director of the Bar shall send a certified notice of noncompliance to each member whose disclosure shows the [~~MCPE~~] CLE 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.

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(B) *After failure to comply with [~~MCPE~~] CLE requirements.* An attorney suspended for failure to comply with [~~MCPE~~] CLE requirements shall be reinstated upon sufficient proof the member has:

- (i) completed 3 hours of ~~[MCPE]~~ CLE, which must include a minimum of 1 credit hour of approved ethics or professional responsibility education, and such hours shall not be counted for the current year;
- (ii) paid the reinstatement fee set by the Bar; and
- (iii) paid all required fees and dues.

Rule 22. MANDATORY CONTINUING ~~[PROFESSIONAL EDUCATION AND VOLUNTARY CONTINUING]~~ LEGAL EDUCATION.

(a) Mandatory Continuing ~~[Professional]~~ Legal 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)]~~ of approved continuing legal education (CLE) during each annual reporting period. ~~[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. The Hawai'i Professionalism course required under Rule 1.14 of these rules fulfills the 3 credit hours of this section, but standard MCPE courses described in this section do not conversely fulfill the requirements of Rule 1.14 of these rules.]~~ "Continuing legal education," or "CLE," is any legal educational activity or program that is designed to maintain or improve the professional competency of lawyers or to expand an appreciation and understanding of the ethical and professional responsibility of lawyers and is approved for credit by the Hawai'i State Bar.

(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):]~~ **Ethics and Professional Responsibility Minimum.** At least once every 3 years every member shall complete 1 hour of approved ethics or professional responsibility education. This credit hour shall count toward the annual CLE requirement. "Ethics or professional responsibility education" means those courses or segments of courses devoted to: (1) the Rules of Professional Conduct; (2) the professional obligations of the lawyer to the client, the judicial system, the public and other lawyers; (3) substance abuse and its effects on lawyers and the practice of law; or (4) client trust administration, bias awareness and prevention, and access to justice.

(c) Carry Forward of Credit Hours. A member may carry forward from the previous reporting period a maximum of 3 excess ~~[MCPE]~~ CLE 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 (c)(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 by the Hawai'i State Bar. Any active Bar member who fails to cooperate with the Hawai'i State Bar when audited shall be deemed to be in noncompliance with this rule]~~ certify on the annual registration form whether the member is in compliance with this Rule and shall maintain certification records for the three most recent reporting periods. These records shall be subject to audit by the Hawai'i State Bar. Non-cooperation with an audit shall be deemed noncompliance with this Rule.

(e) Courses and Activities. The requirements of this [r]Rule may be met, subject to prior approval as set out in sections (f) and (g) of this [r]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 or judicial education courses or activities. Two hours of preparation time may be certified or reported for each ~~[hour]~~ 50 minutes of time spent teaching, i.e. 3 hours may be claimed for teaching a ~~[1-hour]~~ 50 minute 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]~~ writing scholarly legal articles that comply with Regulation 3 of the Continuing Legal Education Regulations of the State Board of Continuing Legal Education and are published in a bar journal, law review, book, bar association or similarly recognized journal, or other legal publication may qualify for 2 credit hours per 1500 published words per year.

(f) Approved Courses or Activities. Courses and activities sponsored by the Hawai'i State Bar or the American Bar Association~~[-and classified by the Hawai'i State Bar as MCPE or VCLE,]~~ qualify for CLE credit under this [r]Rule.

(g) Approval and Accreditation Authorization. The Hawai'i State Bar is authorized to approve or disapprove:

(1) other educational courses and activities for ~~[mandatory or voluntary]~~ CLE 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]~~ CLE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the Hawai'i State Bar. The Hawai'i State Bar 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, magistrate judges, bankruptcy judges, U.S. Court of Federal Claims judges and administrative law judges are exempt from the requirements of this [r]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]~~ approved CLE, including 1 hour of approved ethics or professional responsibility education, within 3 months of electing active status. These CLE hours shall fulfill the requirements of Rule 22(a).~~[The 3 hours of MCPE credit required under this rule are separate and distinct from the annual 3 hours of MCPE required pursuant to Rule 22(a), above.]~~CLE credits completed during the year prior to the reporting year, or in the reporting year, although completed while on inactive status, may be credited toward completing this requirement.

(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 required 3 ~~[MCPE]~~ CLE hours mandated by section (a) of this ~~[r]~~ Rule for that year. Nothing herein, however, shall modify the obligations imposed by Rule 1.14 of these rules, that requires completion of a specific Hawai'i Professionalism course, distinct from general ~~[MCPE]~~ CLE courses, sponsored jointly by the Hawai'i State Bar and the Supreme Court and offered only bi-annually. Failure to complete the Hawai'i Professionalism course in a timely manner will result in automatic administrative suspension. *See* Rule 1.14(c) of these ~~[r]~~ Rules.

(k) **Good Cause Exemption or Modification.** An active member may apply to the Hawai'i State Bar for good cause exemption or modification from the ~~[MCPE]~~ CLE requirement. Members seeking an exemption or modification shall furnish substantiation to support their application as requested by the Hawai'i State Bar. Good cause shall exist when a member is unable to comply with the ~~[MCPE]~~ CLE requirement because of illness, medical disability, or other extraordinary hardship or extenuating circumstances that are not willful and are beyond the member's control.

(l) **~~RESERVED.~~**~~[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 beyond the amount required by this Rule is encouraged. The~~[se new rules are expected to result in a substantial increase in course attendance and participation in activities that earn MCPE and VCLE credit,]~~ new requirements of continuing legal education are expected to result in the improvement of the profession and an ~~[with resulting]~~ enhancement of lawyer services to clients.

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