

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 06-0163

IN RE THE RULES OF CONTINUING
LEGAL EDUCATIONPETITION TO ADOPT
REVISIONS TO THE
MONTANA RULES FOR
CONTINUING LEGAL
EDUCATION

The Commission of Mandatory Continuing Legal Education submitted to the Court proposed amendments to Rules 5, 8, 9, 10, and 12 of the Montana Rules And Regulations for Continuing Legal Education. On August 12, 2021, the Court, via Order, provided opportunity to comment on the proposed amendments.

On May 23, 2022, the Court appointed an ad hoc committee to review the CLE Rules, the Commission's proposed amendments, and the comments, and to thereafter provide recommendations to the Commission.

On September 14, 2022, the ad hoc committee timely submitted its Recommendations to the Commission and filed its Report to the Court.

The Commission met, and after reviewing the comments and the Committee's proposed amendments, the Commission concurred with the Committee's proposal.

The Commission has inserted proposed amendments into the attached proposed Rules and Regulations for Continuing Legal Education (PR). The attached Outline is a staccato analysis of the amendments.

Summary of Proposed Substantive Amendments

The Commission has inserted the Court's proposed amendment (3B2h).

The Commission has inserted the amendment regarding fees (7B) adopted in an earlier order.

The Commission has inserted proposed amendments recommended by the Committee,

The Commission has proposed amendments that were determined by the Committee to be beyond its scope but were a part of the Commission's original petition. The Commission has inserted proposed substantive amendments:

1. Deleting Rule 10, Accredited Sponsors;
2. Deleting all references to Accredited Sponsors;
3. Adding the definition of Accreditation in Rule 1.

The Commission has inserted non-substantive amendments throughout the proposed rules correcting grammar, adding consistency, changing word choice, and altering sentence structure. (Rule 11 contains considerable alteration of language but no substantive change.)

Renewed Argument for Deletion of OLD Rule 10, Accredited Sponsors

The Commission proposes the deletion of Rule 10, Accredited Sponsors, for the following reasons:

1. Fairness

Under the existing Rule, some Accredited Sponsors pay a one-time fee for accreditation of approximately 300 activities (as little as \$5 per activity). Non-accredited sponsors (small and mostly in-state) pay a fee for each activity (\$60 per activity).

Activities presented by Accredited Sponsors receive automatic approval, notwithstanding content deficiencies. In contrast, activities presented by other than Accredited Sponsors are reviewed for content prior to approval. At times Accredited

Sponsors with automatic approval receive accreditation for activities not approved otherwise. Very few in-state sponsors are Accredited Sponsors

The Commission does randomly check on compliance of Accredited Sponsor activities, but the time needed to complete that check reduces staff's ability to perform other vital and necessary tasks.

2. Enforcement Hassle and Conflict

Lawyers attend activities advertised as CLE compliant (or not). Those lawyers then claim that the sponsor is accredited, or the sponsor claims the activity is accredited. When the Commission determines the claim is mistaken, staff has discussions, angry phone calls, and rude and obnoxious emails from lawyers individually and from powerful presenters – NBI, ABA, etc. These discussions create increased and unnecessary stress and are very time intensive.

3. Revenue

The Commission, three years ago, by policy, suspended the Accredited Sponsors rule. Generalizing, Accredited Sponsors paid \$300 for 500 courses. Other sponsors paid \$60 for each activity. Deleting Rule 10 increases revenue significantly because, after the suspension of the rule by the Commission, accredited sponsors are paying at least five times what they previously paid.

4. Workload

The original intent of Rule 10 was to reduce staff workload. After several years, Montana and many other states determined that it did not and does not. The rule is unworkable without additional staff.

Withdrawal of proposed amendment to Rule 12

The Commission withdraws its proposed amendment of Rule 12, Noncompliance.

Conclusion


The Commission urges the Court to adopt the proposed amendments including

amendments recommended by the Committee, amendments proposed by the Court, amendments reflected in an earlier Court order, and amendments proposed in the Commission's original petition.

The Committee's proposed Rules for Continuing Legal Education are attached and respectfully submitted to the Montana Supreme Court.

DATED this 12th day of December, 2022.

For the Commission

By 

K Paul Stahl, Chair

Commission of Continuing Legal Education

PROPOSED

RULES AND REGULATIONS FOR CONTINUING LEGAL EDUCATION

Principles

1. The primary purpose of Mandatory Continuing Legal Education (MCLE) in Montana is to improve the competence of attorneys.
2. To better serve the public, the MCLE program should functions in the interest of consumer protection, assisting Montana attorneys ~~in remaining to keep~~ to keep abreast of changes in both the law and ~~in~~ the practice of law ~~in order~~ to better serve the public.
3. Regulatory authority for MCLE rests with the Montana Supreme Court. In light of the authority of the Court provided in Article VII, Section 2 of the Montana Constitution permitting the Court to make rules governing admission to the bar and the conduct of its members, the Court oversees the continuing legal education system ~~with the same thoughtful deliberation it devotes to deciding cases.~~
4. The MCLE program should be a means of inculcating principles of ethics and professional conduct, as well as providing knowledge and training in substantive areas of the law.
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~~ by in-person activities or by other methods that allow for interaction among the participants and the instructor by electronic means.
6. Because the profession's obligation to the public is paramount, all active attorneys must comply with MCLE, subject to the need to accommodate special circumstances, ~~as long as they remain in the practice.~~
7. The MCLE program should be administered for the Court by the State Bar in a cost effective manner, with the aim being neither to generate revenue nor produce financial losses for the Bar.
8. The Commission should conduct ~~There should be~~ an on-going evaluation of the effectiveness of MCLE, particularly in terms of whether it helps attorneys meet their obligations to the public.

Rule 1 – Purpose

These Rules establish standards for the continuing legal education (CLE) required of all persons licensed to practice law in the State of Montana. It is of primary importance to the members of the State Bar of Montana and to the public that attorneys continue their legal education throughout their active practice of law.

Rule 2 – Definitions

A. “Accreditation” means verification under the Rules that an educational activity qualifies for Mandatory Continuing Legal Education credit.

B. “Active Member” means any person who is licensed to practice law in the State of Montana and who pays “Active Member” dues to the State Bar of Montana.

BC. “Approved Legal Education Activity” means an individual seminar, course, or other activity approved by the Commission.

CD. “Commission” means the Montana Commission of Continuing Legal Education.

DE. “Board of Trustees” means the Board of Trustees of the State Bar of Montana.

EF. “Legislator Member” means a member of the State Bar of Montana who is holding office as a duly elected or appointed member of the Montana House of Representatives or the Montana Senate.

FG. “Chairperson” means the chairperson of the Commission.

GH. “Credit Hour” means sixty (60) minutes of approved legal education activity.

HI. “Emeritus Members” ~~are those~~ means members who have been granted emeritus status under Article I, Section 3(g) of the ~~By-Laws~~ Bylaws of the State Bar of Montana.

IJ. “Inactive Member” means any person who is licensed to practice law in the State of Montana and who pays “Inactive Member” dues to the State Bar of Montana.

JK. “MCLE Administrator” is means the person designated by the Commission, with the approval of the Executive Director of the State Bar of Montana.

KL. “Rule” or “Rules” refers to means the Rules for Continuing Legal Education.

LM. “Reporting Year” means April 1st through March 31st.

Rule 3 - Commission

A. Membership, Appointment, and Terms.

The Commission consists of nine ~~(9) members~~ Commissioners, six ~~(6) of whom shall be~~ are members admitted to practice law in the State of Montana, and three ~~(3) of whom shall~~ be are residents of the State not admitted to the practice of law. The State Bar shall nominate

and the Court shall appoint ~~members~~ Commissioners for three-year terms. Each yearly class of ~~members~~ shall include two lawyers and one layperson. In addition, one member of the Montana Supreme Court shall serve as an ex-officio member of the Commission.

The Commission shall designate one of its attorney members to serve as Chairperson for a term of two years. A Commission member may serve no more than two consecutive terms as Chairperson. The MCLE Administrator shall serve as Secretary to the Commission. The Court may terminate membership on the Commission in accordance with the ~~By-Laws~~ Bylaws of the State Bar. In the event of a vacancy, ~~a successor will be appointed by the State Bar of Montana~~ the State Bar shall appoint a successor to serve the unexpired term. The successor will be given first consideration for appointment to a full term at the expiration of the interim appointment.

The Commission has authority to act when a quorum is present. A quorum of the Commission consists of five ~~(5)~~ or more of its members.

B. Powers of the Commission.

1. The Commission shall administer and interpret these Rules.

2. The Commission shall:

a. Determine whether, under Rules ~~68~~ and ~~79~~, all or portions of individual ~~courses and programs~~ activities not presented by an Accredited Sponsor ~~are~~ qualify as approved ~~legal education~~ CLE activities;

b. Determine the number of credit hours allowed for each approved ~~legal education~~ CLE activity, ~~including those of Accredited Sponsors;~~

~~c. Designate Accredited Sponsors and annually review such designations;~~

~~d.~~ Report annually to the Board of Trustees;

~~e.~~ Assess annual affidavit filing fees to pay the reasonable and necessary costs of administering these rules, assess penalty fees for failure to file affidavits as required by Rule ~~57~~, assess a fee for the reinstatement ~~to active practice~~ of ~~attorneys~~ members under Rule ~~1214~~, assess sponsor fees, and assess other fees deemed necessary by the Commission;

~~f.~~ Meet at least three times per year. The time, method, and place of meetings shall be at the discretion of the Commission, subject to these Rules; ~~and~~

~~g.~~ Place upon any member seeking to qualify under these Rules the burden of proof;

~~h.~~ Direct the State Bar of Montana to transfer ~~attorneys~~ members who are not in compliance with Rule ~~57~~ from active status to inactive status; ~~and~~

h. Refer to the Office of Disciplinary Counsel any member ~~attorney~~ the Commission has reason to believe made misrepresentations regarding the completion of CLE requirements.

3. The Commission may take other action deemed necessary to administer these Rules.

C. Committees.

The Chairperson may appoint one or more committees, ~~which shall either be standing or~~

ad hoc, as appropriate, ~~but there.~~ The Chairperson shall be appoint a standing committee known as the “Accreditation Committee”; consisting of a least three ~~(3) members of the Commissioners.~~ The Accreditation Committee shall have the interim authority to determine requests for exemption or extension under Rule ~~46~~ and earned hours of accreditation under Rules ~~68~~ and ~~79~~.

D. Expenses of the Commission.

Members of the Commission shall not be compensated except for actual and necessary expenses incurred in the performance of Commission duties.

E. Annual Budget.

The Commission shall submit an annual budget to the Board of Trustees for approval. Expenses of the Commission shall not exceed the annual budget approved by the Board of Trustees.

F. MCLE Administrator.

The Commission may delegate its power to the MCLE Administrator pursuant to guidelines established by the Commission. At each meeting of the Commission, the MCLE Administrator shall report on all determinations made ~~since~~ subsequent to the preceding meeting of the Commission.

G. Authority.

The Commission shall operate, for administrative purposes only, under the general authority of the Board of Trustees. For all other purposes including amendments to the rules, recommendations for changes in the methods of operation, and reports on the effectiveness of enforcement, the Commission shall operate under the authority of the Court.

[NEW] Rule 4 – Burden of Proof

The member has the burden to satisfy and document compliance with the requirements of these Rules.

Rule 45 – Education Requirements, Exemptions, and Extensions for MCLE Compliance

A. Active Member Minimum MCLE Requirements:

~~Each~~ Active Members must earn a minimum of fifteen ~~(15)~~ credit hours of approved ~~continuing legal education~~ CLE each reporting year. Of those ~~fifteen (15)~~ credit hours, the member must earn at least ten ~~(10)~~ credit hours ~~must be earned by attendance at attending~~ interactive seminars as defined in Rule ~~79~~. ~~No~~ The member may not earn more than five ~~(5)~~ credit hours ~~may be earned~~ through “other methods” as defined in Rule ~~79~~.

B. Professional Fitness and Integrity Requirements:

Of the fifteen (15) credit hours of ~~continuing legal education~~ CLE required each reporting year, at least two (2) credit hours must be in ~~ethics~~ Professional Fitness and Integrity activities. These activities must meet the standards set out in Rule 8B and may be in any or all of the following three content areas:

1. Professional Responsibilities/Ethics: Activities on understanding and complying with- “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.

2. Fitness to Practice: Subject to the limitations in subsection (d) below:

a. Activities on preventing, recognizing, and responding effectively to personal substance abuse, addictive disorders, stress, and/or mental health issues, including information on available lawyer assistance programs.

b. Activities on recognizing, reporting, assisting, and supporting attorneys affected by substance abuse, addictive disorders, stress, and/or mental health issues.

c. Stress management activities as they relate to the practice of law if they focus on developing awareness of stress-related problems in the practice of law, including activities that focus on personality traits susceptible to stress, work/life balance, recognizing signs of stress in oneself or one’s colleagues, instituting preventative measures individually, and the development of policies within the law firm or legal department for dealing with stress-impaired attorneys.

d. A member shall not receive credit under this Rule for activities focusing in significant part on techniques or exercises related to these issues—e.g. breathing exercises, meditation, yoga.

3. Activities on acknowledging and advancing the elimination of bias and encouraging diversity and inclusion of all persons in the legal system regardless of race, ethnicity, religion, culture, national origin, social origin or condition, sex, sexual orientation, gender identity, or disabilities.

~~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.~~

C. Carry-over Credits

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

2. A member may not carry forward credits, including ethics Professional Fitness and Integrity credits, earned in any reporting year by “other methods” as defined in Rule 79, may not be carried forward or applied apply those credits to satisfy any requirement of these Rules for any subsequent reporting year.

D. “Comity-Plus” Compliance for Members in Other States and Jurisdictions

A member who has an active license to practice law in another state or jurisdiction where the member resides (“Resident Jurisdiction”) may transfer the number of credits required to meet MCLE requirements of that state or jurisdiction. In order to meet its obligations to the public and the legal profession, the Commission requires the member to complete additional activities, if needed, to satisfy Montana’s standards for the total number of credits, and/or the total number of Professional Fitness and Integrity credits, required for CLE compliance.

1. To seek comity-plus compliance, the member must meet all of these criteria:

a. the member has an active license issued by the member’s Resident Jurisdiction that has mandatory CLE requirements;

b. the member’s address on file with the State Bar of Montana is in that Resident Jurisdiction and has been for a minimum of 45 days prior to the end of the member’s compliance period in Montana;

c. the member’s Resident Jurisdiction requires the completion of CLE credits to be in compliance with the CLE requirements established by court rule or legislation in the Resident Jurisdiction;

d. the member provides a certificate of good standing verifying CLE compliance in the Resident Jurisdiction and a copy of the member’s CLE transcript of activities undertaken to complete the CLE requirements of the Resident Jurisdiction;

e. the member documents completion of the additional number and types of activities, if any, required to meet Montana’s standards for CLE compliance; and

f. the member submits all proper documentation and the comity-plus compliance processing fee by December 31 of the reporting year.

2. The Commission will not consider any comity-plus requests submitted after December 31 of the reporting year. If a member does not submit a comity-plus request by December 31 of the reporting year, the member must comply with Montana’s CLE requirements as set forth in Rule 9.

3. Only complete compliance with a Resident Jurisdiction’s CLE requirements will be eligible for comity-plus compliance in Montana. Individual credits or activities will require individual review under the guidelines established by these Rules.

4. Only the number of credits required for compliance in the member’s Resident Jurisdiction will be credited towards comity-plus compliance in Montana. Carry-over credits will not be recognized or carried over in Montana.

5. If additional activities are required for the member to reach Montana’s standards for total number of credits, and/or total number of Professional Fitness and Integrity credits, such activities must meet all other Montana CLE Rules for eligible activities and must be interactive in format, as defined in Rule 9.

E. Burden of Proof

The member has the burden to satisfy and document compliance with the requirements of these Rules.

[NEW NUMBER] Rule 6: Exemptions, Extensions, and Waivers

BA. Emeritus Member ~~Continuing Legal Education~~ CLE Requirement:

1. Each emeritus member shall complete a minimum of ten ~~(10)~~-credit hours of approved ~~continuing legal education~~ CLE activities each year. Each of those ten ~~(10)~~-credit hours must be certified by a qualified provider of legal services, as defined in Article I, Section 3(g)(vi), of the Bylaws of the State Bar of Montana, as training prescribed for emeritus lawyers and related to the field of law for which such lawyers provide legal services to persons unable to pay for such services.
2. ~~In addition,~~ Of the ten ~~(10)~~-credit hours, at least five ~~(5)~~-credit hours must be earned by attendance at interactive seminars as defined in Rule 79. No more than five ~~(5)~~ credit hours may be earned through “other methods” as defined in Rule 79.
3. If an emeritus member accumulates more interactive credits than required in a year, the excess interactive credits may be carried forward and applied to either or both of the next two succeeding years. Credits earned by “other methods” may not be carried forward. A maximum of twenty ~~(20)~~ interactive credit hours may be carried forward.
4. Emeritus members are subject to the same requirements as active members for credit hours in ~~ethics~~Professional Fitness and Integrity requirements.
5. All CLE filing fees ~~shall be~~ are waived for emeritus members.

CB. Inactive Member Continuing Legal Education Exemption:

An Inactive Member is exempt from the ~~continuing legal education~~ CLE requirements of these Rules.

DC. Legislator Member and Governor Continuing Legal Education Exemption:

A Legislator Member or the Governor of the State of Montana is exempt from the ~~continuing legal education~~ CLE requirements of these Rules during his or her term of office as a member of the Montana House of Representatives, as a member of the Montana Senate, or as the Governor.

ED. Judiciary Member Continuing Legal Education Exemption:

A full-time judge or retired judge eligible for temporary judicial assignment and not engaged in the practice of law is exempt from the ~~continuing education~~ CLE requirements of these rules.

A full-time judge is an elected or appointed member of the Judiciary who devotes his or her full-time professional activity to his or her position as a judge. The Judiciary includes Montana Supreme Court justices, Montana district court judges, tribal judges, Montana water court judges, Montana workers’ compensation judge, Montana justices of the peace, Montana city judges, Montana municipal judges, Montana full-time standing masters, ~~and~~ federal administrative law judges, U.S. circuit court judges, U.S. district court judges, U.S. Magistrates, and U.S. bankruptcy judges.

~~FE.~~ Other Exemptions: ~~Exemptions may be granted by t~~The Commission may grant exemptions as follows:

1. Exemptions due to special circumstances: Upon written and sworn application, accompanied by the annual filing fee required by Rule 3B(2)(e), the Commission may exempt ~~an attorney~~ a member from all or a portion of the ~~continuing legal education~~ CLE requirements for a period of not more than one ~~(1)~~ year upon a finding by the Commission of special circumstances, unique to that member, constituting undue hardship. Such circumstances include:

a. Severe or prolonged illness or disability of the member that prevents the member from participating in approved ~~continuing legal education~~ CLE activities. If the member is disabled or hospitalized, a sworn statement from another person who is familiar with the facts may be accepted;

b. Extended absence from the United States; or

c. Other extenuating circumstances.

2. An exemption may not be granted in successive years for the same or similar hardship.

3. Exemption during year of admission: An Active Member is exempt from the ~~continuing legal education~~ CLE requirements of these Rules during the balance of the reporting year during which he or she is admitted.

~~GF.~~ Waiver:

If an Active Member requests to become an Inactive Member after the Commission has notified the Court of noncompliance, the Commission may waive the ~~continuing legal education~~ CLE requirements for the previous year.

~~HG.~~ Extensions:

The Commission may grant an extension of time for the reporting requirement of Rule ~~57~~, upon a finding by the Commission of special circumstances unique to that member constituting undue hardship.

~~I.~~ Burden of Proof:

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

Rule ~~5 7~~ – Reporting Requirements

A. Report.

On or before April 15 of each year, the Commission shall provide each Active Member, except those granted an exemption under Rule 46, a preliminary transcript report of all CLE credits ~~earned~~accumulated by that member in the previous reporting year. If the member finds the preliminary transcript report ~~to be~~ inaccurate or incomplete, the member may ~~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 transcript report, including Commission-approved corrections, if any, will be deemed the official transcript report on June 1.~~

B. Fee.

The Commission shall require payment of a fee not to exceed ~~forty five dollars (\$45.00), which each reporting attorney member must pay~~ to defray the cost of maintaining records and enforcing the Rules. The ~~prescribed fee member shall submit accompany the prescribed fee together with~~ the Supreme Court License Tax and the State Bar of Montana Membership Dues. ~~submitted by each attorney member.~~ Failure to pay the prescribed fee constitutes noncompliance under Rule ~~4214~~.

C. Noncompliance Fees.

In addition to the filing fee prescribed in Rule 3B(2)(e), ~~and any applicable Comity-Plus compliance fee in accordance with Rule 5D, attorneys members deemed noncompliant who correct the deficiency on or before July 1, as provided in Rule 424A, after May 15 shall be assessed an additional fee. Non-compliance after July 1 shall be governed by Rule 4214.~~

~~D. Burden Failure to Respond.~~

~~The burden is on the member to submit and satisfy the requirements of these Rules, and A member's failure to respond in a timely manner shall constitute noncompliance under Rule 4213.~~

Rule 68 – 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~~ CLE 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~~ CLE activities when consistent with these Rules. The following standards ~~as to content shall~~ govern the approval of a

~~continuing legal education~~ CLE 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, fitness to practice law, 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 should include thorough, high-quality, and carefully prepared written materials to be distributed to all attendees at or before the time the ~~course~~ activity 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; and
6. It shall not be offered on a basis that discriminates against attendees on account of race, ethnicity, religion, culture, national origin, social origin or condition, sex, sexual orientation, gender identity, or disabilities. ~~race, color, sex, sexual orientation, culture, social origin or condition, or political or religious ideas.~~

~~—C. The burden is on the member to submit and satisfy the requirements of these Rules.~~

Rule 79 – Types of Programs and Activities that Qualify for Credit

A. All activities must meet the standards set forth in Rule 68B. The following methods of presentation will be considered for credit:

1. Interactive seminars – a member must earn a minimum of ten ~~(10)~~ credit hours per year ~~must be earned~~ by attending interactive seminars. An interactive seminar is an activity where the instructor and at least four other participants are available to interact with each other for the purpose of further discussion or answering questions.

2. Other methods – a member may earn a maximum of five ~~(5)~~ credit hours per year ~~may be earned~~ by in any one or a combination of the following other methods:

- a. Using audio- or video-produced material;
- b. Participating in online seminars activities that do not ~~involve~~ necessarily provide interaction with instructors and other participants;
- c. Writing an article which appears in any *Law Review* published by an ABA-accredited law school;
- d. Attending courses taught at an ABA-accredited law school subsequent to being admitted to the State Bar of Montana;
- e. Teaching and preparing written materials for an approved activity. Repetition of such teaching activity does not qualify for credit;
- f. Attending in-house ~~courses~~ activities offered by law firms, corporate legal

departments, or similar entities primarily for the education of their employees or members. The standards set forth in Rule 68B are applicable to the approval of individual in-house ~~courses~~activities. In addition, the following ~~additional~~ standards must be met:

i. An application for approval must be filed with the Commission before the date on which the ~~course~~ activity is to be held. The applicant ~~will be~~ ~~is expected to~~ shall furnish curriculum materials and a schedule and to provide assurances that client-related matters and case studies are not part of the credit hours being sought;

ii. ~~The course must be attended by five (5) or more lawyers, including the instructor, must attend the activity;~~

iii. The ~~course~~ activity must be scheduled at a time and location so as to be free of interruption from telephone calls and other office matters; and

iv. The applicant must agree to permit any member of the Commission, or a designee of the Commission, including the MCLE Administrator, to ~~be in attendance at~~ attend the activity if ~~deemed necessary by the Commission~~ deems it necessary;

g. Satisfactorily completing an approved self-study program; or

h. Utilizing any other method if the applicant can demonstrate the activity has significant legal content and the primary objective of the activity is uniquely connected to the practice of law.

— 3. ~~The burden is on the member to submit and satisfy the requirements of these Rules.~~

B. The following will not be considered for credit:

1. Bar Review Courses. Credit shall not be earned for any bar review course offered in any state or for any other ~~course~~ activity attended before admission to practice law in any state.

2. Teaching at Educational Institutions. Teaching in scheduled activities of any educational institution by ~~an attorney~~ a member who has an employment relationship with the institution, either as an employee or as a contractor, or by ~~an attorney~~ a member who is a guest speaker on a regular basis is not an approved ~~continuing legal education~~ CLE activity under this Rule.

Rule 810 – Presumptive Accreditation of Activities in Other States or Jurisdictions

The Commission ~~may recognize and presumptively will~~ will accredit interactive courses~~activities~~, as defined in Rule 9, ~~that have been accredited by and~~ held in a state or jurisdiction other than Montana only if the Commission determines the activity meets the standards set out in Rule 8B. A member seeking accreditation under this Rule must provide adequate documentation to establish that the activity meets the standards of Rule 8B. At a minimum, such documentation includes the accreditation application, a timed agenda, and a description of the activity's content. states. The Commission will grant the same number of credits to each course that was granted in the state in which the course was presented. The

~~Commission retains the right to~~ may reject accreditation of any course activity, or a portion of any activity, that it believes concludes does not meet the standards set out in rule 6(B) of Rule 8B or for which the member has not provided adequate documentation of accreditation is not provided.

Rule 911 – Accreditation

~~A. A sponsor (other than an Accredited Sponsor) or an individual member may seek advance approval accreditation of an activity on by submitting the Uniform Application for Approval of Continuing Legal Education, together with a timed agenda, a detailed summary for each topic/session, and the filing fee.~~

~~a form provided by the Commission, accompanied with a filing fee in an amount to be determined by the Commission each year. The same procedure may be followed after presentation of the activity, except that, unless waived by the Commission, requests for approval of activities must be submitted before March 31 of the reporting year in which the activity was presented. Courses Activities submitted after the March 31 deadline will incur a late filing fee not to exceed fifty dollars (\$50.00).~~

~~B. If a sponsor fails to seek accreditation, an attorney may seek individual accreditation by submitting the Uniform Application for Approval of Continuing Legal Education for approval, together with a timed agenda, a detailed summary for each topic/session, and the filing fee.~~

~~C. The Commission, with the MCLE Administrator, shall advise the applicant in writing whether the activity is approved and, if approved, will determine the number of continuing legal education credit hours allowed, if any, and advise the applicant in writing.~~

~~BD. Except as provided above, no credit will be recognized The Commission will not accredit an activity without application and approval. Accreditation in another jurisdiction will not guarantee accreditation in Montana.~~

~~E. Any delay which takes place in making a determination on a request for approval in accreditation caused by the timing of the submission of the application or by an incomplete or unclear application does not relieve the member exempt an attorney from compliance complying with the Rules and paying the applicable fees.~~

Rule 1012 – Accredited Sponsors

~~A. An Accredited Sponsor is an organization designated as such by the Commission. Continuing legal education CLE activities presented by an Accredited Sponsor are approved~~

~~legal education activities.~~

~~—B. An application for approval as an Accredited Sponsor shall be submitted annually on a form provided by the Commission and accompanied by a filing fee in an amount to be determined by the Commission each year. Applications shall be evaluated under criteria defined in Rules 68 and 79. A sponsor shall not be accredited unless it has offered five or more separate continuing legal education CLE activities during the preceding year.~~

~~—C. Upon approval as an Accredited Sponsor, the organization is exempt from the requirement of applying for approval of individual programs. Documentation for individual programs must be submitted prior to December 31 of the calendar year in which the activity was presented. The Commission will not consider documentation submitted after the December 31 deadline will not be considered unless it is accompanied by a late filing fee not to exceed fifty dollars (\$50.00). The Commission will determine the number of credit hours for each continuing legal education CLE activity.~~

~~—D. The Commission may at any time re-evaluate and revoke the status of an Accredited Sponsor if a program fails to meet either the accreditation standards set forth in Rule 68B or the methods of presentation set forth in Rule 79.~~

~~—E. A list of organizations or groups which are approved as Accredited Sponsors of continuing legal education CLE activities will be maintained by the MCLE Administrator in the office of the State Bar of Montana. A current list of Accredited Sponsors will be published in the *Montana Lawyer*.~~

Rule ~~11~~12 – Appeals

An attorney or sponsoring agency disagreeing with a determination of the Commission, the Accreditation Committee, or the MCLE Administrator, other than the noncompliance provisions of Rule ~~12~~14, shall submit his or her statement, together with supporting data, to the Commission. The Commission shall consider the matter at its next regular meeting. The Commission shall send written notice to the sponsoring agency or attorney advising of the date, time, and location of the meeting and advise that he or she has the right to appear at the meeting and present any evidence on his or her behalf. Consideration of the matter is not an adversarial or contested proceeding, and formal rules of evidence shall not apply. The Commission shall determine the matter by majority vote of those present and its decision shall be final.

Rule ~~12~~13 – Noncompliance

A. Notice of Noncompliance.

The Commission shall, by June 1 of each year, send a written notice of noncompliance to each ~~attorney~~ member who has not fulfilled the CLE requirements for the previous year as documented by the official report compiled through the procedure outlined in Rule ~~5~~7. The notice of noncompliance shall describe the nature of the noncompliance and shall state that, unless the ~~attorney~~ member files an acceptable 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~~ member to inactive status until the noncompliance is corrected and the fees required by Rule ~~5~~7 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~~ members and the effective date of their transfers to inactive status to the named ~~attorneys~~ members, 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~~ a member 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~~ A member transferred to inactive status pursuant to this Rule shall apply for reinstatement as provided in Article I, Section 3(e) of the By-Laws Bylaws 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.

Rule ~~13~~14 – CLE Requirement Upon Reinstatement to Active Status or After Suspension

This Rule applies to ~~an attorney~~ a member transferred to inactive status in accordance with Rule ~~1214~~ or suspended from the practice of law who applies for reinstatement to active practice. The Court may reinstate the attorney member ~~may be reinstated by the Court~~ upon the payment of all fees required by the Commission and certification by the Commission that the attorney member has completed the minimum ~~continuing legal education~~ CLE requirements. The attorney member shall have completed fifteen ~~(15)~~ hours of approved ~~continuing legal education~~ CLE for each 12-month period the attorney member was on inactive status or suspended from the practice of law. The total ~~continuing legal education~~ CLE requirements under all of the foregoing shall not exceed ~~thirty (30)~~ hours. The Commission may consider hours of approved ~~continuing legal education~~ CLE that the attorney member has completed within ~~twenty-four~~ 24 months prior to the application for reinstatement.

Rule 1415 – CLE Requirement Upon Change from Voluntary Inactive or Resigned Status to Active Status

This Rule applies to ~~an attorney~~ a member who voluntarily switched from active to inactive status or who resigned membership in the State Bar and who applies for reinstatement to active status. Within ~~6~~six months of re-admission to active status by the Court, the attorney member shall complete 15 hours of approved ~~continuing legal education~~ CLE for each 12-month period of inactive or resigned status, not to exceed a total of 30 hours. The Commission may consider hours of approved ~~continuing legal education~~ CLE which the member has completed within 24 months prior to the application for reinstatement to active status.

Attorneys Members who believe their occupations during inactive or resigned status are sufficient to warrant readmission to active status without being required to make up ~~continuing legal education~~ CLE credits may submit petitions to the Court for such re-admission setting forth the grounds for re-admission.

If an Active Member requests to become an Inactive Member, the ~~continuing legal education~~ CLE requirements may be waived for the preceding year.

Rule 1516 – Confidentiality

Unless otherwise directed by the Supreme Court or these Rules, the files, records and proceedings of the Commission, as they relate to or arise out of any failure of any attorney member to satisfy the requirements of these Rules, ~~shall be deemed~~ are confidential and shall not be disclosed, except in furtherance of the duties of the Commission, upon the request of the Commission on Practice, or the attorney member affected, or as introduced into evidence or otherwise produced in proceedings under these Rules. After the Commission directs the

State Bar of Montana to transfer ~~an attorney~~ a member to inactive status, the matter becomes one of public record and is no longer confidential.

Outline

To assist in understanding the proposed amendments to the Rules, the Commission provides this outline indicating the primary wordsmith – Committee or Commission - and a summary of each proposed amendment.

Note:

The Committee and the Commission are in accord with all “editing” amendments (E). (E is the process of reviewing and correcting/changing grammar, consistency, word choice, and sentence structure.)

The Commission is in accord with the Committee’s extensive and substantive proposed amendments to Rule 4 and has inserted them.

The Commission has inserted into Rule 3 the Court’s proposed amendment regarding Disciplinary Counsel.

The Commission has inserted into Rule 7 the Court’s already approved fee increase.

The Commission has proposed deletion of Old Rule 10 - Accredited Sponsors. The Committee did not propose deletion because it determined the Rule to be beyond the scope of the Court’s direction to the Committee. Thus, the Committee neither supports nor opposes the Commission’s proposed deletion.

The Commission has withdrawn its proposal to delete Rule 10 and has inserted the Committee’s proposed amendment. The Committee’s amendment reorganizes the Rule and deletes confusing language, but it proposes no substantive change.

The Commission has withdrawn its proposed amendment to Rule 12.

Principles – Commission (E)

New 1 (Old 1) – Commission (E)

New 2 (Old 2) - Commission (E); Commission inserts “accreditation” definition

New 3 (Old 3) - Commission and Committee (E); Commission deletes reference to “Accredited Sponsor”; Commission inserts Court’s amendment (3B2i)

New 4 - Committee inserts “Burden of Proof”

New 5 - (Old 4 - part) – Committee extensive proposed amendment inserts “professional fitness and integrity”; inserts “comity plus”; deletes 4B-4I

New 6 - (Old 4 - part) - Committee inserts language (from 4B- 4I); Committee (E)

New 7 (Old 5) – Court ordered amended fees; Commission (E)

New 8 (Old 6) - Committee (E), although extensive, nothing substantive

New 9 (Old 7) - Commission and Committee (E)

New 10 (Old 8) - Committee (E)

New 11 (Old 9) - Commission deletes reference to “accredited sponsor;” reorganizes remaining language (E)

Deleted (Old 10) - Commission deletes “Accredited Sponsor”

New 12-16 (Old 11-15) - Commission and Committee (E)