

M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered November 19, 2015.

(Deleted material is struck through and new material is underscored.)

Effective immediately, Supreme Court Rule 792 is amended, and effective February 1, 2016, Supreme Court Rule 796 is amended, as follows.

Amended Rule 792

Rule 792. The MCLE Board

(a) Administration

The administration of the program for MCLE shall be under the supervision of the Minimum Continuing Legal Education Board (“Board”).

(b) Selection of Members; Qualifications; Terms

(1) The Board shall consist of nine members, appointed by the Supreme Court (“Court”). At least one member may ~~shall~~ be a nonattorney and at least one member shall be a circuit court judge. The Executive Director of the Supreme Court Commission on Professionalism and the Administrator of the Attorney Registration and Disciplinary Commission shall serve as *ex-officio* members in addition to the nine members appointed by the Court but shall have no vote.

(2) To be eligible for appointment to the Board, an attorney must have actively practiced law in Illinois for a minimum of 10 years.

(3) Three members, including the chairperson, shall initially be appointed to a three-year term. Three members shall be appointed to an initial two-year term, and three members shall be appointed to an initial one-year term. Thereafter, all members shall be appointed or re-appointed to three-year terms.

(4) Board members shall be limited to serving three consecutive three-year terms.

(5) No individual may be appointed to the Board who stands to gain financially, directly or indirectly, from accreditation or other decisions made by the Board.

(6) Any member of the Board may be removed by the Court at any time, without cause.

(7) Should a vacancy occur, the Court shall appoint a replacement to serve for the unexpired term of the member.

(8) Board members shall serve without compensation, but shall be reimbursed for

reasonable and necessary expenses incurred in performing their official duties, including reasonable travel costs to and from Board meetings.

(9) The chairperson and vice-chairperson shall be designated by the Court. Other officers shall be elected by the members of the Board at the first meeting of each year.

(c) Powers and Duties

The Board shall have the following powers and duties:

(1) To recommend to the Court rules and regulations for MCLE not inconsistent with the rules of the Court and these Rules, including fees sufficient to ensure that the MCLE program is financially self-supporting; to implement MCLE rules and regulations adopted by the Court; and to adopt forms necessary to insure attorneys' compliance with the rules and regulations.

(2) To meet at least twice a year, or more frequently as needed, either in person, by conference telephone communications, or by electronic means. Six members of the Board shall constitute a quorum for the transaction of business. A majority of the quorum present shall be required for any official action taken by the Board.

(3) To accredit commercial and noncommercial continuing legal education ("CLE") courses and activities, and to determine the number of hours to be awarded for attending such courses or participating in such activities.

(4) To review applications for accreditation of those courses, activities or portions of either that are offered to fulfill the professional responsibility requirement in Rule 794(d)(1) for conformity with the accreditation standards and hours enumerated in Rule 795, exclusive of review as to substantive content. Those courses and activities determined to be in conformance shall be referred to the Supreme Court Commission on Professionalism for substantive review and approval as provided in Rules 799(c)(5) and (d)(6)(i). Professional responsibility courses or activities approved by both the Commission on Professionalism and the MCLE Board as specified in this subsection shall be eligible for accreditation by the MCLE Board.

(5) To submit an annual report to the Court evaluating the effectiveness of the MCLE Rules and the quality of the CLE courses, and presenting the Board's recommendations, if any, for changes in the Rules or their implementation, a financial report for the previous fiscal year, and its recommendations for the new fiscal year. There shall be an independent annual audit of the MCLE fund as directed by the Court, the expenses of which shall be paid out of the fund. The audit shall be submitted as part of the annual report to the Court.

(6) To coordinate its administrative responsibilities with the Attorney Registration and Disciplinary Commission ("ARDC"), and to reimburse expenses incurred by the ARDC attributable to enforcement of MCLE requirements.

(7) To take all action reasonably necessary to implement, administer and enforce these rules and the decisions of the MCLE Director, staff and Board.

(8) To establish policies and procedures for notification and reimbursement of course fees, if appropriate, in those instances where course accreditation is withheld or withdrawn.

(d) Administration

The Board shall appoint, with the approval of the Supreme Court, a Director of MCLE (“Director”) to serve as the principal executive officer of the MCLE program. The Director, with the Board’s authorization, will hire sufficient staff to administer the program. The Board will delegate to the Director and staff authority to conduct the business of the Board within the scope of this Rule, subject to review by the Board. The Director and staff shall be authorized to acquire or rent physical space, computer hardware and software systems and other items and services necessary to the administration of the MCLE program.

(e) Funding

The MCLE program shall initially be funded in a manner to be determined by the Court. Thereafter, funding shall be derived solely from the fees charged to CLE providers and from late fees and reinstatement fees assessed to individual attorneys. This schedule of CLE provider fees, late fees, and reinstatement fees must be approved by the Court, and any reference in these Rules to a fee assessed or set by the Board means a fee based on the Court-approved fee schedule. The Board may elect to charge fees up to the amount approved by the Court and the Board may, as it deems appropriate, charge fees less than the amount approved by the Court.

Adopted September 29, 2005, effective immediately; amended December 6, 2005, effective immediately; amended June 5, 2007, effective immediately; amended November 23, 2009, effective December 1, 2009; amended September 27, 2011, effective immediately; amended Jan. 17, 2013, eff. immediately; amended Nov. 19, 2015, eff. immediately.

Amended Rule 796

Rule 796. Enforcement of MCLE Requirements

(a) Reporting Compliance

(1) Notice of Requirement to Submit MCLE Certification

The MCLE Board shall send to attorneys as set forth in (i), (ii) and (iii) below a notice of requirement to submit an MCLE certification (“Initial MCLE Notice”). The attorney’s certification shall state whether the attorney complied with these Rules, has not complied with these Rules or is exempt.

(i) Newly-admitted attorney requirement

On or before the first day of the month preceding the end of an attorney’s newly-admitted attorney requirement reporting period, ~~or two-year reporting period,~~ the Director shall mail or email to the attorney, at a mailing or email address maintained by the ARDC, an Initial MCLE Notice, a certification, to be completed by the attorney, stating whether, with respect to that reporting period, the attorney either has complied with these Rules, has not complied with these Rules, or is exempt from these Rules.

(ii) Two-year reporting period and deferred credits requirements

On or before May 1 of each two-year reporting period, the Director shall mail or email to the attorney, at a mailing or email address maintained by the ARDC, an Initial MCLE notice.

(iii) Attorneys Known to be Exempt or Removed for MCLE Noncompliance

An Initial MCLE Notice A certification need not be sent to an attorney known by the Director to be fully exempt from these Rules pursuant to Rule 791(b) or to an attorney who has already been removed from the master roll of attorneys due to the attorney's failure to comply with the MCLE requirements for two consecutive reporting periods or more.

(2) Every Illinois attorney who is either subject to these Rules or who is sent receives an MCLE Initial Notice certification shall complete, sign and submit a the certification to the Board, by means of the Board's online reporting system or other means specified by the Director, within 31 days after the end of the attorney's reporting period. It is the responsibility of each attorney on the master roll to notify the ARDC of any change of address or email address. Failure to receive an Initial MCLE Notice certification shall not constitute an excuse for failure to file the certification.

(b) Failure to Report Compliance

Attorneys who fail to submit an MCLE certification ~~that is received by the MCLE Board~~ within 45 31 days after the end of their reporting period, or who file a certification ~~that is received by the MCLE Board~~ within 45 31 days after the end of their reporting stating that they have not complied with these Rules during the reporting period, shall be mailed or emailed a notice by the Director to inform them of their noncompliance. Attorneys shall be given 61 additional days from the original certification due date provided in Rule 796(a)(2) to achieve compliance and ~~file~~ submit a certification, by means of the Board's online reporting system or other means specified by the Director, stating that they have complied with these Rules or are exempt. The Director shall not send a notice of noncompliance to attorneys whom the Director knows, based on the status of the attorneys' licenses as inactive, retirement, disability inactive, judicial or military with the ARDC, are fully exempt from these Rules.

(c) Grace Period

Attorneys given additional time pursuant to paragraph (b) to comply with the requirements of these Rules may use that "grace period" to attain the adequate number of hours for compliance. Credit hours earned during a grace period may be counted toward compliance with the previous reporting period requirement, and hours in excess of the requirement may be used to meet the current reporting period's requirement. No attorney may receive more than one grace period with respect to the same reporting period, and the grace period shall not be extended if the Director fails to send, or the attorney fails to receive, a notice pursuant to paragraph (b).

(d) Late Fees

(1) Attorneys who are not fully exempt under Rule 791(a)(1), (2), (3) or (5) and who, for whatever reason, fail to submit complete, sign and submit to the MCLE Board an MCLE certification pursuant to Rule 796(a)(2) ~~that is received by the Board~~ within 45 31 days after

the end of their reporting period, and who are sent a notice of noncompliance from the Director pursuant to paragraph (b), shall pay a late fee, in an amount to be set by the Board. The Director shall not assess a late fee to an attorney whom the Director knows, based on the status of the attorney's license as inactive, retirement, disability inactive, judicial or military with the ARDC, are fully exempt from these Rules.

(2) Attorneys who submit an MCLE certification to the Board within 31 days after their reporting period ends and who certify ~~were not sent a notice of noncompliance from the Director pursuant to paragraph (b), but who certify~~ that they failed to comply with these Rules during the applicable reporting period, shall pay a late fee, in an amount to be set by the Board that is less than the late fee imposed pursuant to paragraph (d)(1).

(e) Failure to Comply or Failure to Report

The Director shall refer to the ARDC the names of attorneys who were mailed or emailed a notice of noncompliance and who, by the end of their grace periods, failed either: (1) to comply or to report compliance with the requirements of these Rules to the MCLE Board; or (2) to report an exemption from the requirements of these Rules to the MCLE Board. The Director shall also refer to the ARDC the names of attorneys who, by the end of their grace period, failed to pay any outstanding MCLE fee. The ARDC shall then send notice, by mail or email, to any such attorneys that they will be removed from the master roll on the date specified in the notice, which shall be no sooner than 21 days from the date of the notice, because of their failure to comply or report compliance, failure to report an exemption, or failure to pay an outstanding MCLE fee. The ARDC shall remove such attorneys from the master roll of attorneys on the date specified in the notice unless the Director certifies before that date that an attorney has complied. Such removal is not a disciplinary sanction.

(f) Recordkeeping and Audits

(1) Each attorney subject to these Rules shall maintain, for three years after the end of the relevant reporting period, certificates of attendance received pursuant to Rules 795(a)(8), (c)(4), (d)(1)(ix), (d)(2)(v), (d)(3), as well as sufficient documentation necessary to corroborate CLE activity hours earned pursuant to Rules 795(d)(4) through (d)(9).

(2) The Board may conduct a reasonable number of audits, under a plan approved by the Court. At least some of these audits shall be randomly selected, to determine the accuracy of attorneys' certifications of compliance or exemption. With respect to audits that are not randomly selected, in choosing subjects for those audits the Board shall give increased consideration to attorneys who assumed inactive or retirement status under Supreme Court Rule 756(a)(5) or (a)(6), and were thereby fully or partially exempt from these Rules pursuant to Rule 791(b) or (c), and who subsequently resumed active status.

(3) The ARDC may investigate an attorney's compliance with these Rules only upon referral from the Director; the ARDC will not investigate an attorney's compliance with these Rules as part of its other investigations. When the Director refers a matter to the ARDC, the investigation, and any resulting prosecution, shall be conducted in accordance with the rules pertaining to ARDC proceedings.

(g) Audits That Reveal an Inaccurate Certification

(1) If an audit conducted pursuant to paragraph (f)(2) reveals that the attorney was not in

compliance with or exempt from these Rules for any reporting period for which the attorney had filed a certification of compliance or exemption, the Director shall provide the attorney with written notice containing: (i) the results of the audit, specifying each aspect of the Rules with which the attorney did not comply or the reason why the attorney is not exempt; (ii) a summary of the basis of that determination; and (iii) a deadline, which shall be at least 30 days from the date of the notice, for the attorney to file a written response if the attorney objects to any of the contents of the notice.

(2) After considering any response from the attorney, if the Board determines that the attorney filed an inaccurate certification, the attorney shall be given 60 days in which to file an amended certification, together with all documentation specified in paragraph (f)(1), demonstrating full compliance with the applicable MCLE requirements. The attorney also shall pay a late fee in an amount to be set by the Board. The assessment of a late fee is not a disciplinary sanction.

(3) If the results of the audit suggest that the attorney willfully filed a false certification, the Board through its Director shall provide that information to the ARDC.

(h) Reinstatement

An attorney who has been removed from the master roll due to noncompliance with these Rules may be reinstated by the ARDC, upon recommendation of the Board. Such recommendation may be made only after the removed attorney files a certification which the Board determines shows full compliance with the applicable MCLE requirements for each reporting period for which the attorney was removed from the master roll due to MCLE noncompliance. To be reinstated, the attorney shall pay a reinstatement fee for each reporting period for which the attorney was removed from the master roll due to MCLE noncompliance with the request, in an amount to be set by the Board. The Board may elect to cap the total amount of the reinstatement fee when an attorney has been removed from the master roll due to MCLE noncompliance in more than six consecutive reporting periods. The attorney must also meet any further conditions and pay any additional fees as may be required by Rule 756. The removed attorney may attain the necessary credit hours during the period of removal to meet the requirements for the years of noncompliance. Excess hours earned during the period of removal, however, may not be counted towards meeting the current or future reporting periods' requirements.

Adopted September 29, 2005, effective immediately; amended October 5, 2006, effective immediately; amended September 27, 2011; effective immediately; amended Nov. 19, 2015, eff. Feb. 1, 2016.