
In the Matter of the Petition for Amendment to Supreme Court Rules (SCR) 31.01, 31.03, 31.05, and 31.07, Relating to Procedures for Reporting Continuing Legal Education (CLE) Credits

PETITION

To: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David Prosser, Jr.
Justice Patience D. Roggensack
Justice Louis B. Butler
Justice Annette Kingsland Ziegler

Filed with the Clerk of Court David R. Schanker
Clerk of Supreme Court Office
110 East Main Street, Suite #215
Madison, Wisconsin 53703

The Board of Bar Examiners, by its director John E. Kosobucki, petitions the Supreme Court of Wisconsin for orders amending Supreme Court Rules 31.01, 31.03, 31.05 and 31.07, relating to procedures for reporting Continuing Legal Education (CLE) credits. If the Court issues these orders, the affected sections of these rules will read as follows:

SCR 31.01 Definitions.

In this chapter:

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(1m) "CLE" means continuing legal education.

(2) "Committee" means a panel ~~comprised of~~ comprising at least 3 members of the board.

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(6m) "Repeated on-demand program" means an on-line program delivered over the Internet, repeating a program previously approved by the board, ~~and given at a time of the attendee's choosing within twelve (12) months of the approval of the on-demand on-line program.~~

SCR 31.03 Reporting requirement.

(1) ~~A lawyer shall file~~ a written report under oath or affirmation on designated CLE Form 1 ~~shall be filed with the board by a lawyer on or before the last day of the reporting period~~ February 1 following the last day of the reporting period. The written report shall establish compliance with the attendance requirement of SCR 31.02.

(2) A lawyer who has not satisfied SCR 31.02 and completed the reporting requirement under sub. (1) by the close of business on the February 1 following the last day of the reporting period shall be assessed a late fee of ~~\$50~~ \$100.

SCR 31.05 Approved hours.

(1) ~~Only~~ (A)ctivities that are approved by the board either before or after the close of the reporting period may be used to satisfy the requirement of SCR 31.02.

(2)(a) Up to 15 hours of ~~approved continuing legal education~~ CLE may be carried forward to the next reporting period if all of the following conditions are met:

1. ~~The CLE Form 1 reflecting the hours that are to be carried forward is filed by the close of business on the February 1 following the last day of the reporting period.~~ The hours that are to be carried forward reflect attendance during the reporting period covered by the CLE Form 1.

2. ~~The hours that are to be carried forward reflect attendance during the reporting period covered by the CLE Form 1.~~ These hours reflect attendance at courses that are approved by the board either before or after the close of the reporting period.

3. ~~The hours that are to be carried forward reflect attendance at courses that are approved by the Board at the time that the CLE Form 1 is filed.~~

~~(e)~~ (b) Continuing legal education CLE Programs approved by the board for legal ethics and professional responsibility may not be carried forward under this subsection for the purpose of fulfilling the legal ethics and professional responsibility requirement of SCR 31.02(2) but may be carried forward under par. (a) ~~subject to par.(b).~~

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(5)(a) A repeated on-demand program may be used to satisfy the requirement of SCR 31.02, if all of the following conditions are met:

1. The repeated on-demand program is approved prior to being claimed for credit by a lawyer on CLE Form 1, and the lawyer must take the on-demand program no later than December 31 of the year after the year in which approval was

given.

2. Sponsors of the approved on-demand on-line program must maintain a roster verifying the attendance of all attorneys logged-in and paying for the program and provide the roster to the board if requested.

(b) No more than 10.0 credits may be claimed for repeated on-demand programs during a lawyer's reporting period.

(c) No legal ethics and professional responsibility credit is allowed for a repeated on-demand program.

(d) Repeated on-demand programs may not be used for reinstatement, readmission, or reactivation.

SCR 31.07 Standards for approval of continuing legal education activities.

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(2) The following standards shall govern the approval of ~~continuing legal education~~ CLE activities by the board:

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(c) Except for repeated on-demand programs, a mechanically or electronically recorded activity will be approved only if a qualified instructor is available to comment and answer questions.

(d) ~~Continuing legal education~~ CLE materials shall be prepared by and activities shall be conducted by an individual or group qualified by practical or academic experience.

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JUSTIFICATION

All of the proposed changes to SCR 31.01, 31.03, 31.05 and 31.07 are designed to make CLE compliance easier for attorneys. Some of the changes are based on the idea that a lawyer who takes a CLE program should have CLE credit for it. At least one of the changes reflects current practice. Some of the others are insubstantial.

The proposed creation of SCR 31.01(1m), encompassing a definition of the abbreviation "CLE," is insubstantial. So is the proposed amendment to SCR 31.01(2), which corrects a grammatical lapse. The proposed amendment to SCR 31.01(6m) makes clear that the board is

authorized to approve CLE credits not only for programs recorded before live audiences but also for programs that are produced in studios. The change conforms with present board practice.

The proposed amendment to SCR 31.01(6m), when read with the proposed amendment to SCR 31.05(5)(a)1, makes the board's approval of an on-line on-demand program valid for up to two years, and thus corresponds more closely to all lawyers' two-year reporting periods. It will be less confusing for lawyers to take advantage of these programs if their approval does not lapse until the end of a calendar year.

The proposed amendment to SCR 31.03(1) eliminates an ambiguity. It is the current practice for lawyers to report their CLE credits by the February 1 following their reporting period, not (as the rule appears to require) by the second December 31 of their reporting period.

The board has two reasons for proposing an increase to \$100 from \$50 in the fee for late CLE reporting. First, the BBE regularly runs a deficit on the CLE side of its operations. Second, the board hopes that increasing the late fee will make it more likely that lawyers will file their CLE reports on time.

The proposed amendments to SCR 31.05 are intended to eliminate penalties that lawyers sometimes incur (unfairly, in the board's view) in reporting CLE credits. Under the change to SCR 31.05(1), lawyers will be entitled to credits for programs they attend even if program approval is not given until after a lawyer claims credit for it. Under the present SCR 31.05(2), lawyers lose up to 15 carry-over credits for programs they attend if there is any technical deficiency in their reporting. For example, lawyers who have not yet satisfied the ethics-credit requirement, or who file their reports after the February 1 deadline lose all the carry-over credits they would otherwise be entitled to. The proposed amendments eliminate that unfairness.

The proposed amendments to SCR 31.07(2)(c) and (d) are insubstantial and reflect current practice.

Dated this 31st day of March, 2008.

Respectfully submitted,

// Original Signed //

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