

NOTICE TO THE BAR

CONTINUING LEGAL EDUCATION (CLE) – PROPOSED AMENDMENTS TO CLE REGULATIONS – PUBLICATION FOR COMMENT

The Supreme Court invites written comments on proposed amendments to the Regulations of the Board on Continuing Legal Education (Board).

As set out in the attached memo, the Board proposes both substantive and housekeeping/clarifying amendments. Proposed additions are shown with **bold underline** while proposed deletions are indicated with [brackets]. The rationale for each proposed amendment to the Regulations follows the amended text.

Please send any comments on this proposal in writing by **Friday, January 13, 2023** to:

Glenn A. Grant
Administrative Director of the Courts
Comments on Proposal to Amend the CLE Regulations
Hughes Justice Complex, P.O. Box 037
Trenton, NJ 08625-0037

Comments may also be submitted via email at the following address:
Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address, and those submitting comments by email should include their name and email address. Comments are subject to disclosure upon receipt.

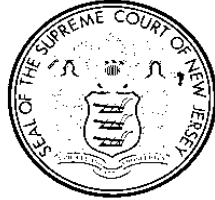


Glenn A. Grant
Administrative Director of the Courts

Dated: December 13, 2022

SUPREME COURT OF NEW JERSEY
BOARD ON CONTINUING LEGAL EDUCATION

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Memorandum in Support of Proposed Amendments to the Regulations of the
Board on Continuing Legal Education

The Board on Continuing Legal Education (Board) has recently finished a review and overhaul of its Regulations and respectfully requests the Court review and approve the Board's proposed amendments. Please note the Board had not done a complete review of its Regulations for many years. Thus, there are numerous proposed regulation changes, several are substantive, including an expansion of the definition of live instructions, as well as housekeeping/clarifying language that will serve to conform each of the proposed amended regulations to current Board policy and/or procedure.

REGULATION 102. Authority, Scope and Purpose.

102:1. Authority. ...no change

102:2. Scope. ...no change

102:3. Purpose. Lawyers holding a license to practice law in this State are required to maintain certain standards of professional competence throughout their careers. These regulations, implementing the mandatory continuing legal education requirement embodied in Rule 1:42, are intended (a) to guide lawyers in respect of those requirements; (b) to assure the public that those lawyers licensed to practice law in New Jersey remain current in respect of the requisite knowledge and skills necessary to fulfill their professional responsibilities and obligations; and (c) to improve the standards of the legal profession in general. **It is expected**

that a licensed New Jersey attorney shall attend a continuing legal education course in good faith, whether taken by either a live classroom or alternative verifiable learning format and shall be paying attention and fully participating in order to obtain credit for the course.

The Board discussed expanding what is considered live instruction, especially in view of the need, during the pandemic, to waive the live classroom instruction requirement. In enhancing a live instruction definition to include certain interactive alternative verifiable learning format (AVLF) courses, the Board expressed concern that attorneys remain aware of their obligation to remain attentive and participate during instruction in order to obtain CLE credit. It was determined that this language in this regard belongs in the purpose section of the Regulations.

REGULATION 103. Definitions and Filings.

103:1. Definitions. As used in these regulations, the following defined terms shall have the meanings ascribed to them unless otherwise required by the context:

- (a) “active lawyer” shall mean a member in good standing of the New Jersey Bar, whether possessing a plenary or limited license **and whether or not practicing New Jersey law**. Any lawyer licensed in New Jersey who is active for any part of a year **or compliance period** and not otherwise exempt from these continuing legal education requirements must comply with these regulations;
- (b) “alternative verifiable learning format courses” shall mean any videotape, audiotape, remote place viewing or on-line internet computer presentations, **webinar, webcast,** satellite simulcast, teleconferencing, videoconferencing, internet computer self-study, **or other computer or telephonic presentation,** or other alternative format hereafter developed by an approved service provider and authorized by the Board;
- (c) “approved educational activity” or “approved course” shall mean a specific, individual legal education activity or

course presented by an approved service provider or presented by other than an approved service provider if such activity or course is accredited by the Board as a legal education activity under these regulations. **A CLE course approved in another mandatory CLE jurisdiction and relied on by licensed attorneys toward their compliance in New Jersey through reciprocity as defined in BCLE Reg. 201:4, is not considered a New Jersey approved course but nonetheless can qualify for New Jersey CLE credit;**

(d)... no change

(e)... no change

(f)... no change

(g)... no change

(h)... no change

The proposed changes to BCLE Regs.103:1(a) and (b) are for clarification. BCLE Reg. 103:1(a) makes clear that an attorney with an active license has a CLE obligation regardless of whether the attorney is practicing New Jersey law, while subsection 1(b) provides for additional AVLF technologies that are in common use today. The proposed amendment to BCLE Reg. 103:1(c) is important, explaining that a course taken in another mandatory CLE jurisdiction can be used toward CLE compliance in New Jersey, but it is not an approved New Jersey course, as the provider has not applied for CLE credit here.

- (i) “continuing legal education” or “CLE” shall mean any legal, judicial, or other educational activity or course accredited by the Board. Generally, CLE will include educational activities designed principally to maintain or advance the professional competence of lawyers, **to enhance knowledge and skill in matters related to an attorney’s practice or employment,** and/or to expand an appreciation and understanding of the ethical and professional responsibility of lawyers;

- (j) “credit hour” shall mean an increment of time of 50 minutes of instruction, not including introductory remarks, keynote speeches, luncheon/dinner speeches or breaks, but including question-and-answer periods; provided, however, that no CLE credit will be awarded for any period of instruction of less than [a] **one-half a credit hour or twenty-five minutes**, including ethics credits which also must be a minimum of a total of [50] **twenty-five** minutes;
- (k)... no change
- (l) inactive member” or “inactive attorney” **for purposes of these regulations** shall mean a member of the New Jersey Bar on exempt status as defined in Rule 1:28-2(b);
- (m)...no change

The proposed amendments to BCLE Regs.103:1(i) and (l) are housekeeping/clarifying amendments. The language proposed in definitional subsection (i) further provides that CLE enhances knowledge and skill related to law practice or other employment. The recommended change to BCLE Reg. 103:1(j) enables the New Jersey program to conform with out of state jurisdictions that allow for a one-half total credit course. The Board noted the fact that other jurisdictions allowing for this tends to prejudice the New Jersey attorney. New Jersey attorneys taking a New Jersey approved course cannot obtain ½ of one credit since the minimum is 50 minutes but, through reciprocity, an attorney taking a course in another mandatory CLE jurisdiction can get ½ of one credit. This difference also has created difficulty for providers who are seek course approval in both New Jersey as well as another jurisdiction, such as New York or Pennsylvania, that allow for ½ of one credit. It should be noted that this proposed amendment will require BCLE system programming to remove the minimum allowable entry of 50 minutes in a course credit application.

- (n) **“live instruction” shall mean courses where the instructor is physically in the room with the attendees or where the instruction is through an alternative verifiable learning format simultaneously broadcasting the live classroom instruction, so long as**

those off-site attendees are able to interact with the instructor during the presentation of the course, which course shall be conducted via a video and audio format and shall allocate a defined period for questions, comments, or group discussion;

([n]o) ...re-lettering only

([o]p) ...re-lettering only

([p]q) ...re-lettering only

([q]r) “professionalism” courses shall mean courses or segments of courses devoted to the examination and identification of principles of [competence,] civility, improvement of the justice system, advancement of the rule of law, and service to the community. **Generally, courses on substantive law topics do not come under the definition of professionalism, except as provided in 103:1 (k) (4);**

([r]s) ...re-lettering only

([s]t) ...re-lettering only

([t]u) ...re-lettering only

103:2 Filings. All filings under these regulations shall be on forms or applications provided by the Board and accessed from the Board’s webpage on the Judiciary’s website.

The Board recommends the addition of a section defining live instruction, BCLE Reg. 103:1(n). At present, to obtain live instruction credit, an attorney must be physically in the same room as the instructor. The Board, in suggesting a new definition of live instruction, seeks to ensure overall fairness and accessibility. For example, a law firm with multiple office offers a CLE course that is being viewed in real time through both live classroom instruction and through the internet. Under the current regulations, only the office where the instructor is located physically in the room, and only those attorneys in the room with the instructor, will obtain live instruction credit, all other attorneys get

alternative verifiable learning format (AVLF) credit. This is so, even though the attorneys in the remote locations can interact with the instructor during the class. Additionally, attorneys have had to rely on obtaining CLE credit solely through ALVF formats during the pandemic and they have gotten used to taking courses through AVLF formats. The Board is of the view that this should be encouraged, so long as there is some form of interaction during the course to be considered live instruction. This proposed amendment will consider live instruction the viewing of AVLF formats that are interactive, leaving time for questions, comments, or group discussion. Thus, it will be possible that an attorney can fully meet the live instruction course requirement by participating in these specific types of AVLF courses as defined above. The Board contends that requirement for time for questions, comments, or group discussion should equate with classroom instruction. Newly lettered BCLE Reg. 301:1(r) clarifies that courses on substantive law topics generally are not considered professionalism, even though attorneys argue that substantive course work increases competence. Finally, BCLE Reg. 103:2 as proposed would codify Board policy/procedure requiring that providers and attorneys use the appropriate Board forms, accessible on the Judiciary's website.

REGULATION 201. Continuing Legal Education Requirements of Lawyers.

201:1. Mandatory requirement. ... no change

201:2. Additional mandatory requirements for newly admitted lawyers. By the end of a newly admitted lawyer's first two-year compliance period after admission to the Bar of New Jersey, the newly admitted lawyer must satisfy fifteen of his or her required credit hours in [any] **at least** five of the following [nine] **eleven** subject areas: New Jersey basic estate administration; New Jersey basic estate planning; New Jersey civil or criminal trial preparation; New Jersey family law practice; New Jersey real estate closing procedures; New Jersey trust and business accounting; New Jersey landlord/tenant practice; New Jersey municipal court practice; [and] New Jersey law office management; **administrative law; and workers' compensation law.** [A lawyer who has completed at least the first full year's requirements of the Skills and Methods Course will be considered to have met the additional requirements for a newly admitted lawyer.]

201:3. Carryover. No more than a total of twelve **previously unallocated**

credit hours may be carried over to a subsequent compliance period.

201:4. Reciprocity. Except for the courses required under BCLE Reg. 201:2, all active lawyers will receive 1:1 credit for courses approved as satisfying the continuing legal education requirements of any other mandatory CLE jurisdiction, so long as they [comply with] **do not violate any course accreditation restrictions in New Jersey. As such, the attorney relying on reciprocity will be awarded the amount of CLE credits awarded by the other jurisdiction.** Lawyers complying with requirements in other states that do not have an ethics/professionalism requirement nevertheless must satisfy the ethics/professionalism requirement set forth in BCLE Reg. 201 to be considered in full compliance with New Jersey's CLE requirement. **In order to meet the requirement for diversity, inclusion, and elimination of bias ethics credit through reciprocity, the course being relied upon through reciprocity must be approved in another mandatory CLE jurisdiction that has such a requirement. Courses taken in this subject area in another mandatory jurisdiction that does not have such a requirement will not be accredited through reciprocity or through individual attorney course accreditation applications.**

201:5. Certified attorneys. ... no change

201:6. Teaching CLE. A lawyer who teaches an approved course designed principally to maintain or advance the professional competence of lawyers and/or expand an appreciation and understanding of the ethical and professional responsibility of lawyers, and/or teach law to non-lawyers is entitled to twice the credit hours authorized for that portion of the course taught by the lawyer claiming teaching credit. Teaching credit for the same course offered more than once during a compliance period shall be claimed only once during each compliance period. Nevertheless, customary credit will be allowed for the teacher's attendance at the same course for any second or subsequent course taught during that compliance period. Law school professors and instructors shall not be awarded CLE credit for teaching full or part-time law students. No more than six total credits of CLE can be obtained in any one compliance period for participation in moot court or mock trial educational activities. **In addition, no more than six total credits of CLE, of which two may be considered professionalism credits, can be obtained in any one compliance period for participation in any program modeled after the**

Joint Unified Mentor Program sponsored by the New Jersey Commission on Professionalism in the Law and approved by the Board for mentors and proteges that are unaffiliated through partnership, law firm, corporation or governmental entity or through a close family or blood relationship.

201:7. Inns of Court programs. ... no change

201:8. Alternative verifiable learning formats.

(a) Lawyers who reside or work on a regular and continuous basis in New Jersey or in another mandatory CLE jurisdiction for the entire compliance period: Courses taken through alternative verifiable learning formats, if approved for CLE course accreditation, shall account for no more than twelve credit hours per compliance period. Lawyers who reside in, work in, and are licensed in a mandatory CLE jurisdiction that allows for 100% of CLE courses to be taken through alternative verifiable learning formats shall, through reciprocity, be able to satisfy their CLE obligation in New Jersey through 100% alternative verifiable learning formats.

(b) Lawyers who do not reside or work on a regular and continuous basis in New Jersey or **reside and work** in another mandatory CLE jurisdiction for the entire compliance period or who are medically certified as unable to attend live courses: Courses taken through alternative verifiable learning formats, if approved for CLE course accreditation, may account for 100% of the credit hours required in a compliance period; provided, however, that this shall apply only during such time as (i) the lawyer does not reside or work on a regular and continuous basis for the entire compliance period in New Jersey or **resides and works** in another mandatory CLE jurisdiction or (ii) a licensed physician certifies to the Board that the lawyer is unable to attend live courses.

The Board recommends in the proposed amendment to BCLE Reg. 202:2, that two additional common areas of legal practice be added to the newly admitted attorney subject matter list: workers' compensation law and

administrative law. The impetus for the proposal comes from various requests made by newly admitted attorneys. The proposed amendment to the carryover subsection clarifies that any carryover must be of unallocated credits. Board staff requested this proposed language since many attorneys continue to improperly determine carryover credit. The proposed amendment to BCLE Reg. 202:4 is important. Attorneys often recalculate a 60-minute-hour based course into New Jersey's 50-minute hour calculation, even though the course was taken in another jurisdiction. Reciprocity was not meant to allow for recalculation to a 50-minute hour when a course has not been approved in New Jersey. Courses relied on through reciprocity obtain the credit the other mandatory jurisdiction awarded the course. The proposed amended language makes this fact much clearer.

The additional proposed language related to the new diversity requirement comes in response to an ever-increasing number of attorneys seeking a course credit determination from Board staff for a course taken in another jurisdiction that does not have the diversity, inclusion, and elimination of bias (DIEB) requirement, even though the CLE course provider has not applied for course credit in New Jersey, instead relying on reciprocity. Slightly more than a handful of mandatory CLE jurisdictions have a DIEB requirement, while most, if not all, jurisdictions have a general ethics requirement. Therefore, a certificate of attendance would show general substantive and/or ethics credits obtained by an attendee-attorney but nothing related to DIEB credits, unless the course has been approved for credit in a jurisdiction that requires DIEB coursework. For example, the New Jersey and New York certificates of attendance have a place on the attendance form attributable to and readily identifiable as DIEB credits since these are jurisdictions that have a requirement to obtain a specific amount of DIEB credits per compliance period. On the other hand, a Pennsylvania certificate of attendance only provides for general substantive law and/or ethics credits and has nothing specifically attributable to and readily identifiable as DIEB coursework, even if the course or part of the course provides DIEB education. Because attorneys in non-DIEB mandatory CLE jurisdictions cannot prove coursework in DIEB through a certificate of attendance, many are seeking separate Board approval of the DIEB portion of courses taken in these jurisdictions. This can become unwieldy in view of the number of licensed attorneys in the state who must meet the DIEB requirement. The point of reciprocity is that CLE providers of courses approved in another mandatory CLE jurisdiction do not have to apply for course credit approval in New Jersey. Attorneys requesting credit for courses or parts of courses sounding in DIEB that have not been specifically applied for and approved for course

credit in New Jersey defeats the purpose of reciprocity. It also requires the Board approve a course or portion of a course where, because the provider has not sought New Jersey accreditation, the appropriateness of the DIEB course content is not readily discernable. Thus, the Board suggests language that reciprocity for DIEB specific credits will only be offered to courses approved in another mandatory CLE jurisdiction that also has a DIEB-type requirement. Attorneys in other jurisdictions that do not have a DIEB requirement always have the option of taking New Jersey approved DIEB courses. In addition, this proposed amendment does not impact the credits the course obtains through reciprocity for substantive law and/or general ethics credits.

Finally, the proposed amendments to BCLE Reg 201:6 regarding credit for Joint Unified Mentor program conforms to this already existing CLE program and the amendment to BCLE Reg. 201:8 serves to better define meaning of the provision related to exemptions from the live instruction requirement.

REGULATION 202. Exemptions, waivers, extensions of time, undue hardship.

202:1. Exemptions.

(a) Consistent with the provisions of Rule 1:28-2(b) **or otherwise provided herein**, only attorneys who have been admitted to practice law in any State or the District of Columbia for fifty years or more, those who have reached age seventy-five regardless of length of tenure at the Bar, those on full-time active duty in the military, VISTA or Peace Corps, and those retired completely from the practice of law are exempted from the mandatory CLE requirement.

(b) ...no change

202:2. Waivers/undue hardship. The Board, in its discretion and for good cause appearing, may waive the mandatory CLE requirements of Rule 1:42 and these regulations for such period as the Board may determine, upon a finding of the Board, by clear and convincing evidence, of either (a) undue hardship, or (b) circumstances beyond the control of the lawyer that prevent the lawyer from complying in any reasonable

manner with the CLE requirement. An application for a waiver shall be in writing addressed to the Board, with payment of the requisite fee, shall be certified as true under penalties of perjury, and, at a minimum, shall set forth: the reason(s) the lawyer cannot comply with the minimum requirements of these regulations; the efforts the lawyer made to comply; and a plan for compliance during the waiver period or upon termination of the waiver period. **To obtain a full waiver or a waiver of the live instruction requirement based on undue hardship related to severe medical condition or physical disability, the applicant must submit a statement from a state licensed medical provider providing that the attorney cannot complete some or all of the required CLE during the compliance period or cannot complete some or all of the live instruction portion of the CLE requirement.** A waiver may be extended upon a written and certified application to the Board and subsequent Board approval. Upon expiration of the waiver, the Board may impose such additional CLE requirements upon the lawyer as it deems appropriate.

202:3. Extensions of time. ... no change

The proposed amendment to BCLE Reg. 202:2 is a housekeeping change and requires no discussion. The proposed change to BCLE Reg 202:3 codifies current practice. To obtain a medical waiver of the full CLE requirement or the live instruction requirement due to a medical condition, the attorney need not describe or provide information describing his or her medical condition; instead, the attorney need only provide a medical professional's note stating that a medical condition precludes taking any CLE during the compliance reporting period or appearing for live classroom instruction.

PART THREE: COURSE ACCREDITATION AND APPROVAL

REGULATION 301. Course Accreditation standards and requirements for course approval.

301:1. Course accreditation standards. The Board shall approve CLE consisting of approved education activities or approved courses that satisfy, at a minimum, the following standards:

(a) ...no change

(b) the course or activity shall constitute an organized program

of learning dealing with matters directly related to the practice of law, professional responsibility, professionalism, or ethical obligations of lawyers, **including those courses that meet the definition and content of the diversity, inclusion, and elimination of bias requirement;**

(c)... no change

(d) thorough, high-quality, and carefully written materials are to be distributed to all attendees at or before the time the approved education activity or approved course is presented. These may include written materials printed from a computer presentation, computer website, [or] CD-ROM, **or other technology enabling the attendee to view the course materials.** A written agenda or outline for a presentation shall satisfy this requirement when written materials are not suitable or readily available for a particular subject. The absence of written material, however, shall be the exception.

Notwithstanding the foregoing, any CLE activity or course that is approved for credit by any state that also requires mandatory continuing legal education for its Bar presumptively shall be deemed approved by the Board, **unless specifically excluded by these regulations.**

301:2. Fees, recordkeeping and record retention requirements. ...no change

301:3. In-house continuing legal education activities. ...no change

301:4. Law school CLE and other degree programs. Law school courses offered by a law school accredited by the American Bar Association, other than those tailored to the completion of a law degree, and which otherwise comply with these regulations shall qualify for credit. **Educational courses taken to satisfy a degree program, such as an L.L.M. or M.B.A., are not considered CLE courses.**

301:5. Hybrid programs. ... no change

301:6. Access. ... no change

301:7. Presumption against approval. ... no change

301:8. Proof of attendance and Certificates of Attendance for live classroom instruction. Sign-in/sign-out sheets designating attendance and/or bar code scanning at an approved course shall be maintained by the provider thereof, and New Jersey certificates of attendance approved by the Board shall be provided to all attendees within thirty calendar days of successful completion of the approved course.

301:9. Alternative verifiable learning formats. Any course offered under an alternative verifiable learning format must have a reliable method of verifying and recording lawyer attendance to qualify for accreditation, as determined by the Board in its discretion. Pursuant to BCLE Reg. 301:8, the provider shall provide to the active lawyer a New Jersey certificate of attendance approved by the Board confirming successful completion of the approved alternative verifiable learning format course only upon verification that the course in fact was completed.

301:10. Timeliness. ... no change

301:11. Compliance obligation. Before beginning a course, it is the lawyer's sole and exclusive responsibility to ensure eligibility for CLE accreditation of the course of study.

301:12. Per-course approval. On an individual program basis, CLE activities may be approved upon [the written] application of a per-course service provider, other than an approved service provider, or an active lawyer on an individual program basis. If approval of a course is requested in advance by a per-course service provider, the application and supporting documentation[, including two substantially complete sets of written materials to be distributed at the course or program,] shall be submitted to the Board at least thirty days prior to the date the course is scheduled. [If approval of a course is requested by an active lawyer in advance, the application need not include a complete set of written materials.] If approval of a course is requested by either a per-course service provider or an active lawyer after the course has been presented, the application and supporting documentation[, including a substantially complete set of written materials distributed at the course or program,]

shall be submitted no later than thirty days after the date the course was presented. **For lawyers making an individual application for course accreditation, a representative sample of the written materials or a table of contents shall be submitted with the application.**

301:13. Procedure for approval. All applications for approval of an [approved] educational activity or [approved] course must be submitted [on a form furnished by] **to the Board in a manner prescribed by the Board.** The submitted application must contain all information requested [on the form], and [the] **any** representations made [on the form] must be certified pursuant to Rule 1:4-4(b). Each application shall be accompanied by a course outline **or agenda** [or] **and** brochure that describes the course content, identifies the teachers **and their background**, lists the times devoted to each topic, and shows the date and location of each course offering[, together with copies of all applicable course materials appended]. The application also shall include a detailed calculation of the total number of **minutes of general** CLE [hours and hours] **and minutes** of ethics/professional responsibility/**professionalism** for which approval is sought.

The proposed amendments to BCLE Reg. 301:1 through BCLE Reg. 301:13 are all housekeeping in nature, further spelling out the responsibilities of providers in making an application for course accreditation, including what must be submitted, the COAS that must be provided to the attendees, information regarding the DIEB requirement, and codifying existing Board policy declining to consider degree programs for CLE credit. Modification to language related to submission of written materials has been recommended because the Board is unable to continue to store the voluminous written materials submitted by several thousand CLE providers.

REGULATION 302. Approval of service providers or per-course approval.

302:1. In general. A provider may seek either approved service provider status or seek credit for individual courses on a per-course basis. The following are eligible for “approved service provider” status from the Board: local, state and specialty bar associations; for profit and nonprofit legal education providers; Inns of Court; educational institutions, including but not limited to law schools accredited by the American Bar

Association; **professional education entities**, and in-house providers, including law firms, profit and nonprofit corporations, **public service organizations**, and governmental entities. Providers seeking either approved service provider status or individual course accreditation shall meet the course approval requirements established in BCLE Reg. 301.

302:2. Standards for approved service providers. ... no change

302:3. Application procedure. An application for accreditation as an approved service provider shall be made by submitting the appropriate fully completed [form] **application and required documentation** and paying the required fee as set by the Board.

302:4. Effect of approval as an approved service provider; reporting obligations. Once a person, entity, organization or association is granted approved service provider status by the Board, its continuing legal education activities or courses are presumptively accredited and no separate application must be made to the Board for course approval. Approved service providers shall file with the Board, by no later than January 15 and July 15 of each year, a report describing in detail the CLE activities it conducted during the prior six months. Approved service providers also shall file with the Board, prior to the presentation of any CLE activity or course, but no later than 30 days after the presentation of the course, an on-line course announcement of such CLE activity that shall specify, among other things, the areas of law covered in the activity or course **a detailed course description, including information regarding any ethics/professionalism topics, including those on diversity, inclusion and elimination of bias, and/or any New Jersey new admit categories** and the [credit hours] **minutes of instruction** claimed for the activity or course. **In addition, all appropriate law codes shall be listed.** [All filings under this regulation shall be on forms provided by the Board.]

302:5. Continuing review. The Board retains the discretion to evaluate any activity or course offered by an approved service provider and, upon the Board's preliminary determination that the educational activity or course does not satisfy the standards for course approval, the Board may notify the approved service provider that any future presentation of the deficient program will not be approved for credit. Any such notice of disapproval shall be sent by the Board to the approved service provider [no later than forty-five days] **within a reasonable time** after the Board's

receipt of the announcement of the course offering. The approved service provider may request reconsideration of the Board's decision by submitting a letter of appeal to the Board within fifteen days of the date of the Board's notice of disapproval. An approved service provider's failure to appeal timely any disapproval by the Board renders that disapproval final, and any decision of the Board on an appeal also is final.

302:6. Term of approval; renewal; procedure. Save for any earlier revocation by the Board, the grant of accreditation as an approved service provider shall be valid for a period of two consecutive years from the date of the grant. A grant of accreditation as an approved service provider may be continued for [an] additional, consecutive two-year periods upon the filing of a new and fully completed application and payment of the required fee before the expiration of the approved service provider's current accreditation period. The Board, in its discretion, shall determine if there are any pending or past breaches of Rule 1:42 or these regulations and the Board may condition continuation of approved service provider status on the satisfactory completion of such additional requirements or conditions as the Board, in its discretion, may specify. If an application for renewal is not filed before the expiration of the approved service provider's accreditation period, the approved service provider's status will terminate automatically at the expiration of the earlier approval. Any renewal application received thereafter instead shall be considered by the Board as an initial application for approved service provider status.

302:7. Revocation. ... no change

302:8. Financial hardship. ... no change

302:9. Standards for per-course approved service providers. A provider of CLE activities or courses that has not qualified as an approved service provider or an active lawyer may apply for course accreditation of a single CLE activity or course on [a form] an application provided by the Board, which [form] shall include, at a minimum, the name of the provider, a detailed description of the [provider] course content, including ethics/professionalism/professional responsibility, diversity, inclusion and elimination of bias topics, and/or new admit law categories, if any, [the course, the course materials], a timed agenda, and the advertisement or brochure related to the course [and] or any other information requested by the Board [the lectures]. All

appropriate law codes shall be listed in the application. An application for per-course approval should be submitted prior to the presentation of the course, but in [no] **any** event **any application submitted** later than thirty days after the presentation **will be assessed a late fee as determined by the Board.** Applications for per-course approved service providers must comply with the course accreditation standards and requirements of BCLE Reg. 301, the fees, recordkeeping and record retention requirements of BCLE Reg. 301:2, **the application procedures of BCLE Reg. 301:3**, the recordkeeping and filing requirements of BCLE Reg. 302:4, the continuing review requirements of BCLE Reg. 302:5, and the financial hardship requirements of BCLE Reg. 302:[6]8. **Courses approved on a per-course basis are valid for one year from the date of approval.**

302:10. Required notice. When a CLE activity or course has been accredited or the CLE activity or course is offered by an approved service provider, the approved service provider or the per-course approved service provider, as the case may be, shall set forth prominently in its brochures and/or registration materials the following: “This program had been approved by the Board on Continuing Legal Education of the Supreme Court of New Jersey for ___ hours of total CLE credit. Of these, _____ qualify as **total** hours of credit for ethics/professionalism, **including hours in diversity inclusion, and elimination of bias.** **In addition, the provider may denote that the course qualifies for** [and] _____ [qualify as] hours of credit toward certification in civil trial law, criminal trial law, workers compensation law, municipal court law, and/or matrimonial law.”

The proposed amendments to BCLE Reg. 302:1 through BCLE Reg. 301:10 are each housekeeping in nature, further defining the responsibilities of providers in making an application for course accreditation, the standards for that application to be fulfilled, the requirements for notice once a course is approved, when course approval expires, the proper selection of law codes, and information on how to list the course approval on the certificate of attendance, and in any brochure.

PART FOUR: COMPLIANCE

REGULATION 401. Confirmation of compliance by lawyers; audit; fees;

compliance reporting groups.

401:1. Compliance obligation. Every lawyer subject to the mandatory requirements of BCLE Reg. 201:1 or 201:2 shall keep and maintain a record of CLE course attendance for a period of **at least** three years from the date of attendance, regardless of the person, entity, organization or association that offered the CLE course or the format in which the CLE course was offered. At the end of each compliance period and subject to the provisions of BCLE Reg. 401:2, every lawyer subject to the mandatory requirements of BCLE Reg. 201:1 or 201:2 shall certify to the Board, as provided under Rule 1:4-4(b) [and] on the Annual Attorney Registration **and Billing** Statement (or on such other form as provided by the Board), the lawyer's compliance with the mandatory requirements of BCLE Reg. 201:1 or 201:2. The Board retains the right to audit any lawyer's compliance with the mandatory requirements of BCLE Reg. 201:1 or 201:2. Every lawyer subject to the mandatory requirements of BCLE Reg. 201:1 or 201:2 shall cooperate in any such audit and shall reply in writing within thirty days of receipt of a request for information, producing proof of compliance. Where a lawyer is unable to provide to the Board the requested information in writing within thirty days, the lawyer shall, within that time, inform the Board in writing of the reason that the information cannot be so provided and shall give a date certain when it will be provided. A failure to cooperate under BCLE Reg. 401 may qualify as a violation of RPC 8.1(b). Lawyers, at the discretion of the Board, may also be assessed certain fees to assist in the funding of the continuing legal education program.

401:2. Compliance reporting groups. Each active lawyer is permanently assigned to one of two compliance groups for CLE purposes, with one group reporting each year. Those whose birthdays are during the period from January 1 through June 30 must certify their compliance on the Annual Attorney Registration **and Billing** Statement (or on such other form as provided by the Board) of each even numbered year next following the completion of a compliance period (Compliance Group 1); those whose birthdays are during the period from July 1 to December 31 must certify their compliance on the Annual Attorney Registration **and Billing** Statement (or on such other form as provided by the Board) of each odd numbered year next following the completion of a compliance period (Compliance Group 2).

401:3. Transitional reporting requirements. ... no change

401:4. Reporting requirements for newly admitted lawyers. Commencement of the compliance reporting period for newly admitted lawyers is deferred until January 1 of the year immediately following admission to the New Jersey Bar. Newly admitted attorneys automatically will be assigned to a compliance group based on their respective birthdays, as provided in BLCE Reg. 401.2. For all newly admitted lawyers whose first compliance report must be made in an even-numbered year, those in Compliance Group 1 will have a transitional reporting requirement and will be required to report on the Annual Attorney Registration **and Billing** Statement due in that first compliance reporting period only one-half of the mandatory CLE requirements. For all newly admitted lawyers whose first compliance report must be made in an odd-numbered year, those in Compliance Group 2 will have a transitional reporting requirement and will report one-half of the mandatory CLE requirements on the Annual Attorney Registration **and Billing** Statement in that first compliance reporting period. Continuing thereafter, compliance reports become due as provided in BCLE Reg. 401:2.

[401:5. “Grandfathering” provision. As provided in Notice to the Bar dated August 13, 2009, and upon request by a provider, the Board will grant credit for certain qualifying continuing legal education courses taken after January 1, 2009 but prior to January 1, 2010. At a minimum, the following categories of courses shall be awarded such credit: (a) courses taken in satisfaction of the requirements for New Jersey certified attorneys pursuant to Rule 1:39-2(d); (b) courses that satisfied the skills and methods requirements of former Rule 1:26; and (c) courses that qualify to satisfy another State’s continuing legal education requirements. The number of credit hours that will be awarded for courses taken prior to January 1, 2010 shall not exceed twenty-four.]

The proposed amendments to BCLE Reg. 401:1 through BCLE Reg. 401:5 are each housekeeping in nature, with 401:1 providing that record retention of COAS should be at least three years, which is handy if an attorney must prove a carryover from the prior compliance period. In addition, BCLE Reg. 401:5 is no longer operative and should be deleted; it relates to the grandfathering of courses taken prior to 2010 before the CLE requirement came into effect.

REGULATION 402. Lawyer noncompliance and reinstatement.

402:1. Noncompliance. A lawyer who fails to submit the required certification of compliance by the reporting deadline, or who files a certification stating that he or she has failed to comply with Rule 1:42 and these regulations during the compliance reporting period shall be notified [by the Board] of noncompliance **by the Board**. Upon issuance of that notice, a non-compliant lawyer shall have a grace period [of sixty days from the original certification due date] **to be determined by the Board** to either (a) achieve compliance and file a certification that they have complied with these rules, or (b) apply for an exemption under Rule 1:28-2(b) **and BCLE Reg. 202:1**. During that grace period, a lawyer may attain the numbers of credit hours needed for compliance in the prior reporting period(s). **Only those c[C]**redit hours earned during the grace period in excess of the amount needed toward compliance in the prior reporting period(s) may be used to satisfy the then-current reporting period. No lawyer shall receive more than one grace period with respect to the same reporting period. Grace periods shall not be extended or renewed, unless for good cause shown.

402:2. [Late] Noncompliance fees. Active lawyers who fail to complete, sign, **certify**, and submit the compliance reporting certification to the Board after its due date or who certify a failure to comply with the CLE requirement shall pay [a late] **noncompliance** fees in an amount to be set by the Board.

402:3. Effect of failure to comply. A lawyer who fails to comply in a timely manner with the CLE reporting requirement [may] **shall** be deemed administratively ineligible to practice New Jersey law [in New Jersey]. **Moreover, any lawyer placed in a noncompliant status after the expiration of the grace period but before the publication of the CLE Ineligible list must submit proof of compliance with the CLE requirement before being removed from a noncompliant status into a compliant status.**

402:4. Reinstatement. A lawyer who [has been] **is** administratively [suspended] **ineligible to** [from the] practice [of] New Jersey law for noncompliance with Rule 1:42 and these regulations may be reinstated

administratively by the Board upon the [suspended] **CLE Ineligible** lawyer filing an appropriate certification that he or she has complied with the CLE requirements, **and submitting proof of compliance** and the payment of a **reinstatement** fee in an amount to be determined by the Board.

The proposed amendments to BCLE Reg. 402:1 through 402:4 conform the language of the regulations to Board policy/procedure concerning attorney compliance. BCLE Reg 401:1 removes “sixty-day” grace period and replaces it with a term to be provided by the Board. The grace period has been a period of six months for well over ten years. BCLE Reg 402:2 changes “late” fee to the more accurate “noncompliance” fee. BCLE Reg 402:3 and 402:4 give more specific direction and codifies existing Board policy in respect of the requirement of submitting proof of compliance once the attorney has failed to report and certify compliance by the expiration of the grace period but prior to as well as after the publication of the CLE Ineligible list.

For the reasons discussed above, the Board respectfully requests that the Court approve the Board’s proposed amendments to its Regulations.

Respectfully submitted,

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