
IN THE SUPREME COURT

STATE OF UTAH

STATE OF UTAH	:	PETITION FOR MODIFICATION
SUPREME COURT	:	OF RULES AND REGULATIONS
BOARD OF CONTINUING	:	GOVERNING MANDATORY
LEGAL EDUCATION	:	CONTINUING LEGAL
	:	EDUCATION FOR THE STATE
	:	OF UTAH

Pursuant to Article II, Sections 1(f) of the By-Laws of the State of Utah Supreme Court Board of Continuing Legal Education, as amended, the Board of Continuing Legal Education (the “Board”) hereby petitions the Court to amend Rule 14-414 (b), Rule 14-417 (b), Rule 14-417 (d) and Rule 14-417 (e) of the Rules and Regulations Governing Mandatory Continuing Legal Education for the State of Utah (the “Rules”) to read as follows:

Rule 14-414

(b) Filing fee, late fees and reinstatement fees.

- (1) Each lawyer shall pay a filing fee in the amount of \$15.00 at the time of filing the certificate of compliance under paragraph (a).
- (2) Any lawyer who fails to complete the MCLE requirement by the December 31 deadline shall be assessed a \$100.00 late fee.
- (3) Lawyers who fail to comply with the MCLE requirements and file within a reasonable time, as determined by the Board in its discretion, and who are subject to an administrative suspension pursuant to Rule 14-415, after the late

fee has been assessed shall be assessed a \$200.00 reinstatement fee, plus an additional \$500.00 fee if the failure to comply is a repeat violation within the past 5 years.

A lawyer who fails to comply with Rule 14-414 (b) or who files a certificate of compliance showing that he or she has failed to complete the required number of hours of MCLE shall be notified that unless all requirements are completed and reported within 30 days, a petition for the lawyer's suspension from the practice of law will be submitted to the Supreme Court. The lawyer shall be given the opportunity during the 30-day period to file an affidavit with the Board, disclosing facts demonstrating that the lawyers noncompliance was not willful and tendering such documents, which, if accepted, would cure the delinquency.

Rule 14-414 (b) of the Rules articulates the intention that the \$15.00 filing fee should defray administrative costs of the MCLE program. The \$100.00 late fee is intended to defray the additional costs for extra administrative work associated with processing late reports or bringing late filers into last-minute compliance, and it should also serve as a penalty or disincentive for lawyers to file late or insufficient reports. However, in practice, the compliance fee and the late fees have proven inadequate for either of these purposes and should be increased.

- I. The \$50.00 Late Fee and \$100.00 Reinstatement Fee Are Inadequate as Incentives for Timely Compliance and Reporting.

The Board believes increasing the late fees and reinstatement fees may result in a greater incentive for meeting the compliance deadline, thereby increasing the number of timely compliance reports.

II. The \$50.00 Late Fee and \$100.00 Reinstatement Fee Are Inadequate to Offset Administrative Expenses Incident to Late Compliance and Reinstatement.

To date, over each two-year period in which all Utah Bar members should have met their MCLE requirements, approximately 35% missed the compliance deadline. The vast majority of these lawyers have complied before suspension, but the costs attendant to shepherding them through the process of late compliance are borne by the MCLE department and not by the non-compliant lawyers themselves. There are additional costs to notify lawyers by certified mail, return receipt requested, that unless all requirements are completed and reported within 30 days, a petition for the lawyer's suspension from the practice of law will be submitted to the Supreme Court. The lawyer shall be given the opportunity during the 30-day period to file an affidavit with the Board, disclosing facts demonstrating that the lawyer's noncompliance was not willful and tendering such documents which, if accepted, would cure the delinquency. A hearing before the Board shall be granted if requested. In addition, bringing late-filing lawyers into compliance requires several month's work, delaying the suspension date and, in effect, allowing those lawyers who ignore the filing deadline extra time to practice law without being in compliance. As a result, when Bar members fail to meet the reporting deadline, they receive an extension, and it is the MCLE program and its staff who are penalized in extra costs and extra work.

If, after a hearing, or failure to cure the delinquency by satisfactory affidavit and compliance, the lawyer is suspended by the Supreme Court, the lawyer shall be notified once again by certified mail, return receipt requested.

A lawyer suspended by the Supreme Court under the provisions of this rule may be reinstated by the Court upon showing that the lawyer has cured the delinquency for which the lawyer has been suspended. If a lawyer has been suspended by the Supreme Court for non-compliance, the lawyer must then comply with all applicable rules to be eligible to return to active or inactive status.

Rule 14-417 Miscellaneous fees and expenses.

(b) A lawyer shall pay an administrative fee of \$25.00 for preparation and mailing of Certificates of CLE compliance to other MCLE states, for filing of Reciprocal Certificates for lawyers admitted on Motion to the Utah State Bar, for filing of House Counsel Certificates of Compliance from the jurisdiction where the House Counsel maintains an active license, or for lawyers on active status who are not engaged in the practice of law in Utah and request a Certificate of Exemption. The Board may establish other fees to defer administrative costs related to requests for accreditation and Supreme Court approval.

Pursuant to existing Rule 14-417(b) allowing the Board to establish other fees to defer administrative costs with the approval of the Court, the Board desires to assess an administrative fee of \$25.00 for preparation and mailing of Certificates of CLE compliance to other MCLE states, for filing of Reciprocal Certificates for lawyers admitted on Motion to the Utah State Bar, for filing of House Counsel Certificates and for lawyers on active status who are not engaged in the practice of law in Utah and

request a Certificate of Exemption. These fees are necessary to cover administrative expenses of the Certificates. A lawyer who fulfills the requirements for admission on motion must complete and certify with the MCLE Board no later than six months following the lawyer's admission that he or she has attended at least 15 hours of NLCLE on Utah practice and procedure and ethics requirements. House Counsel must file with the MCLE Board by January 31 of each year a certificate of compliance from the jurisdiction where House Counsel maintains an active license establishing that he or she has completed the hours of continuing legal education required of active lawyers in the jurisdiction where House Counsel is licensed.

(d) All CLE sponsors who offer any course for a fee shall pay to the Board, within 60 days of presenting the course, a fee of \$1.50 per credit hour per attendee. The \$1.50 per credit hour fee will cap at \$15 per attendee.

Pursuant to existing Rule 14-417(d) allowing the Board to establish other fees to defer administrative costs with the approval of the Court, the Board desires to assess an administrative fee for all sponsors who offer Utah approved CLE courses that are held outside of Utah for a fee shall pay to the Board, within 60 days of presenting the course, a fee of \$1.50 per credit hour per attendee. The \$1.50 per credit hour fee will cap at \$15 per attendee. These additional fees for Utah approved CLE courses that are held outside of Utah are necessary to cover administrative expenses for reviewing CLE registration lists and for entering CLE registration lists in the database.

(e) Any lawyer who is required by this article to apply to the Board for any special accreditation or approval of an educational activity shall pay a fee of \$10 at the time of application.

Pursuant to existing Rule 14-417(e) allowing the Board to establish other fees to defer administrative costs with the approval of the Court, the Board desires to assess an administrative fee of \$10 for any lawyer who is required by this article to apply to the Board for any special accreditation or approval of an educational activity. These additional fees are necessary to cover administrative expenses with regards to reviewing CLE courses for accreditation, for entering information in the database and for preparation and mailing of CLE applications.

SUMMARY

The Board hopes and believes that the requested modifications in the Rules will draw the attention of Bar members to the commitment of the Utah State Bar and the Utah Judiciary to continued improvement of the quality of legal services available in Utah. The modifications will reiterate and emphasize that compliance with Rule 14-414 (b) is a requirement for all Bar members, it will hasten the reduction of costs incident to prolonging the compliance of those who miss the deadline, and it will support the MCLE department's efforts to administer and enforce both compliance and reporting requirements in accordance with the Rules. The Board hopes that the requested implementation of the fees with Rule 14-417 (b) will help to defer administrative costs related to requests for compliance certificates in other MCLE States, filing of Reciprocal Certificates for lawyers admitted on Motion to the Utah State Bar, for filing of House Counsel Certificates and for lawyers on active status not engaged in the practice of law in Utah requesting a Certificate of Exemption. The Board also hopes that the requested implementation of fees with Rule 14-417(d) will help to defer administrative costs related to reviewing CLE registration lists and for entering CLE registration lists in the database.

Finally, the Board hopes that the requested increase of fees with Rule 14-417(e) will help to defer administrative costs related to reviewing CLE courses for accreditation, for entering information in the database and for preparation and mailing of CLE applications.

RESPECTFULLY SUBMITTED this _____ day of _____, 2007

Chair