

Del Ciampo, Joseph

From: Bowler, Michael
Sent: Friday, September 20, 2019 8:28 AM
To: Del Ciampo, Joseph
Cc: Staines, Brian; Harrington, Kathleen
Subject: Rules Committee Submission - Proposed Administrative Suspension Rule for Attorneys Who Fail to Register or Comply with MCLE
Attachments: Administrative Suspension Rule (Registration and MCLE) (DRAFT FINAL) (2) (8-7-19).pdf
Follow Up Flag: Follow up
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Attorney Del Ciampo:

Good morning. Attached are proposed amendments to Practice Book Sections 2-27, 2-27A, and 2-65, and a proposed new rule, Practice Book Section 2-27B. The purpose of the proposal is to establish a mechanism by which attorneys who fail to register annually with the Statewide Grievance Committee or who fail to complete their annual minimum continuing legal education requirements shall be administratively suspended from the bar until they are in compliance.

As you know, attorneys register annually with the Statewide Grievance Committee pursuant to Connecticut Practice Book Section 2-27(d). The registration requirement is mandatory, and the vast number of registrations are completed online through E-Services. There is no fee associated with the attorney registration process. On their registration forms, attorneys certify their compliance with the MCLE requirement pursuant to Connecticut Practice Book Section 2-27A. MCLE is also mandatory unless the attorney is exempted. Both the registration and MCLE rules provide that the failure to comply with these requirements "shall constitute misconduct." In 2019, approximately 25% of the bar failed to register (a statistically average year), and in 2018 and 2019 between 400 and 500 attorneys registered but certified that they had not completed their MCLE requirement for the previous year. No disciplinary action has been taken against any of these attorneys despite the clear indication of misconduct.

The misconduct provisions of Sections 2-27 (d) and (f), and 2-27A(e) have proven to be paper tigers, mostly for practical purposes. In a typical year, the Statewide Grievance Committee receives between 800 and 1000 grievance complaints, a number that already stresses the resources available to investigate, prosecute, and adjudicate them. Instituting grievance complaints against attorneys who do not register or comply with MCLE is simply not feasible.

Recently, the Judicial Branch administration asked me to draft a rule proposal that would respond to the ongoing problem of lawyers who do not comply with two very basic conditions of their license. After considering options, we drafted the attached proposal which, if adopted, would authorize the Branch to administratively suspend attorneys who were not in compliance with either registration or MCLE. Attorneys who remedy the problem would be reinstated. The administrative suspension is not considered discipline but an attorney who is administratively suspended is not in good standing as that term is defined by Connecticut Practice Book Section 2-65 and the attorney cannot practice until he or she is reinstated.

Importantly, the Chief Justice and Chief Court Administrator reviewed the language of this proposal and back it. Additionally, the MCLE Commission reviewed the proposal at its September 5, 2019 meeting and unanimously supported it. Finally, the Statewide Grievance Committee reviewed the proposal at its September 19, 2019 meeting and also unanimously supported it.

We ask that the proposal be placed on the next available agenda of the Rules Committee of the Superior Court for the Committee to consider it.

Please let us know if you have any questions.

Thank you.

Mike

Michael P. Bowler

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Sec. 2-27. Clients' Funds; Lawyer Attorney Registration

(a) Consistent with the requirement of Rule 1.15 of the Rules of Professional Conduct, each ~~lawyer~~ attorney or law firm shall maintain, separate from the ~~lawyer's~~ attorney's or the firm's personal funds, one or more accounts accurately reflecting the status of funds handled by the ~~lawyer~~ attorney or firm as fiduciary or attorney, and shall not use such funds for any unauthorized purpose.

(b) Each ~~lawyer~~ attorney or law firm maintaining one or more trust accounts as defined in Rule 1.15 of the Rules of Professional Conduct and Section 2- 28 (b) shall keep records of the maintenance and disposition of all funds of clients or of third persons held by the ~~lawyer~~ attorney or firm in a fiduciary capacity from the time of receipt to the time of final distribution. Each attorney or law firm shall retain the records required by Rule 1.15 of the Rules of Professional Conduct for a period of seven years after termination of the representation.

(c) Such books of account and statements of reconciliation, and any other records required to be maintained pursuant to Rule 1.15 of the Rules of Professional Conduct, shall be made available upon request of the ~~Statewide Grievance Committee~~ statewide grievance committee or its counsel, or the disciplinary counsel for review, examination or audit upon receipt of notice by the ~~Statewide Grievance Committee~~ statewide grievance committee of an overdraft notice as provided by Section 2-28 (f). Upon the filing of a grievance complaint or a finding of probable cause, such records shall be made available upon request of the statewide grievance committee, its counsel or the disciplinary counsel for review or audit.

(d) Each ~~lawyer~~ attorney shall register with the ~~Statewide Grievance Committee~~ statewide grievance committee, on a form devised by the committee, the address of the ~~lawyer's~~ attorney's office or offices maintained for the practice of law, the ~~lawyer's~~ attorney's office e-mail address and business telephone number, the name and address of every financial institution with which the ~~lawyer~~ attorney maintains any account in which the funds of more than one client are kept and the identification number of any such account. Such registrations will be made on an annual basis and at such time as the ~~lawyer~~ attorney changes his or her address or addresses or location or identification number of any such trust account in which the funds of more than one client are kept. The registration forms filed pursuant to this subsection and pursuant to Section 2-26 shall not be public; however, all information obtained by the ~~Statewide Grievance Committee~~ statewide grievance committee from these forms shall be public, except the following: trust account identification numbers; the attorney's home address; the attorney's office email address; and the attorney's birth date. Unless otherwise ordered by the court, all nonpublic information obtained from these forms shall be available only to the statewide grievance committee and its counsel, the reviewing committees, the grievance panels and their counsel, the bar examining committee, the standing committee on recommendations for admission to the bar, disciplinary counsel, the client security fund committee and its counsel, a judge of the Superior Court, a judge of the United States District Court for the District of Connecticut, any grievance committee or other disciplinary authority of the United States District Court for the District of Connecticut or, with the consent of the

~~lawyer~~ attorney, to any other person. In addition, the trust account identification numbers on the registration forms filed pursuant to Section 2-26 and this section shall be available to the organization designated by the judges of the Superior Court to administer the IOLTA program pursuant to Rule 1.15 of the Rules of Professional Conduct. The registration requirements of this subsection shall not apply to judges of the Supreme, Appellate or Superior Courts, judge trial referees, family support magistrates, federal judges, federal magistrate judges, federal administrative law judges or federal bankruptcy judges.

(e) The ~~Statewide Grievance Committee~~ statewide grievance committee or its counsel may conduct random inspections and audits of accounts maintained pursuant to Rule 1.15 of the Rules of Professional Conduct to determine whether such accounts are in compliance with the rule and this section. If any random inspection or audit performed under this subsection discloses an apparent violation of this section or the Rules of Professional Conduct, the matter may be referred to a grievance panel for further investigation or to the disciplinary counsel for presentment to the Superior Court. Any ~~lawyer~~ attorney whose accounts are selected for inspection or audit under this section shall fully cooperate with the inspection or audit, which cooperation shall not be construed to be a violation of Rule 1.6 (a) of the Rules of Professional Conduct. Any records, documents or information obtained or produced pursuant to a random inspection or audit shall remain confidential unless and until a presentment is initiated by the disciplinary counsel alleging a violation of Rule 1.15 of the Rules of Professional Conduct or of this section, or probable cause is found by the grievance panel, the ~~Statewide Grievance Committee~~ statewide grievance committee or a reviewing committee. Contemporaneously with the commencement of a presentment or the filing of a grievance complaint, notice shall be given in writing by the ~~Statewide Grievance Committee~~ statewide grievance committee to any client or third person whose identity may be publicly disclosed through the disclosure of records obtained or produced in accordance with this subsection. Thereafter, public disclosure of such records shall be subject to the client or third person having thirty days from the issuance of the notice to seek a court order restricting publication of any such records disclosing confidential information. During the thirty day period, or the pendency of any such motion, any document filed with the court or as part of a grievance record shall refer to such clients or third persons by pseudonyms or with appropriate redactions, unless otherwise ordered by the court.

(f) Violation of subsection (a), (b) or (c) of this section shall constitute misconduct. An attorney who fails to register in accordance with subsection (d) shall be administratively suspended from the practice of law in this state pursuant to Section 2-27B.

Sec. 2-27A. Minimum Continuing Legal Education

(a) On an annual basis, each attorney admitted in Connecticut shall certify, on the registration form required by Section 2-27 (d), that the attorney has completed in the last calendar year no less than twelve credit hours of appropriate continuing legal education, at least two hours of which shall be in ethics/professionalism. The ethics and professionalism components may be integrated with other courses. This rule shall apply to all attorneys except the following:

(1) Judges and senior judges of the Supreme, Appellate or Superior Courts, judge trial referees, family support magistrates, family support magistrate referees, workers' compensation commissioners, elected constitutional officers, federal judges, federal magistrate judges, federal administrative law judges or federal bankruptcy judges;

(2) Attorneys who are disbarred, resigned pursuant to Section 2-52, on inactive status pursuant to Section 2-56 et seq., or retired pursuant to Sections 2-55 or 2-55A;

(3) Attorneys who are serving on active duty in the armed forces of the United States for more than six months in such year;

(4) Attorneys for the calendar year in which they are admitted;

(5) Attorneys who earn less than \$1000 in compensation for the provision of legal services in such year;

(6) Attorneys who, for good cause shown, have been granted temporary or permanent exempt status by the Statewide Grievance Committee.

(b) Attorneys may satisfy the required hours of continuing legal education:

(1) By attending legal education courses provided by any local, state or special interest bar association in this state or regional or national bar associations recognized in this state or another state or territory of the United States or the District of Columbia (hereinafter referred to as "bar association"); any private or government legal employer; any court of this or any other state or territory of the United States or the District of Columbia; any organization whose program or course has been reviewed and approved by any bar association or organization that has been established in any state or territory of the United States or the District of Columbia to certify and approve continuing legal education courses; and any other nonprofit or for-profit legal education providers, including law schools and other appropriate continuing legal education providers, and including courses remotely presented by video conference, webcasts, webinars, or the like by said providers.

(2) By self-study of appropriate programs or courses directly related to substantive or procedural law or related topics, including professional responsibility, legal ethics, or law office management and prepared by those continuing legal education providers in subsection (b) (1). Said self-study may include viewing and listening to all manner of communication, including, but not limited to, video or audio recordings or taking online legal courses. The selection of self-study courses or programs shall be consistent with the objective of this rule, which is to maintain and enhance the skill level, knowledge, ethics and competence of the attorney and shall comply with the minimum quality standards set forth in subsection (c) (6).

(3) By publishing articles in legal publications that have as their primary goal the enhancement of competence in the legal profession, including, without limitation, substantive and procedural law, ethics, law practice management and professionalism.

(4) By teaching legal seminars and courses, including the participation on panel discussions as a speaker or moderator.

(5) By serving as a full-time faculty member at a law school accredited by the American Bar Association or approved by the state bar examining committee, in which case, such attorney will be credited with meeting the minimum continuing legal education requirements set forth herein.

(6) By serving as a part-time or adjunct faculty member at a law school accredited by the American Bar Association or approved by the state bar examining committee, in which case, such attorney will be credited with meeting the minimum continuing legal education requirements set forth herein at the rate of one hour for each hour of classroom instruction and one hour for each two hours of preparation.

(7) By serving as a judge or coach for a moot court or mock trial course or competition that is part of the curriculum at or sanctioned by a law school accredited by the American Bar Association or approved by the state bar examining committee.

(c) Credit computation:

(1) Credit for any of the above activities shall be based on the actual instruction time, which may include lecture, panel discussion, and question and answer periods. Credit for the activity listed in subsection (b) (7) shall be based upon the actual judging or coaching time, up to four hours for each activity per year. Self-study credit shall be based on the reading time or running time of the selected materials or program.

(2) Credit for attorneys preparing for and presenting legal seminars, courses or programs shall be based on one hour of credit for each two hours of preparation. A maximum of six hours of credit may be credited for preparation of a single program. Credit for presentation shall be on an hour for hour basis. Credit may not be earned more than once for the same course given during a calendar year.

(3) Credit for the writing and publication of articles shall be based on the actual drafting time required. Each article may be counted only one time for credit.

(4) Continuing legal education courses ordered pursuant to Section 2-37 (a) (5) or any court order of discipline shall not count as credit toward an attorney's obligation under this section.

(5) Attorneys may carry forward no more than two credit hours in excess of the current annual continuing legal education requirement to be applied to the following year's continuing legal education requirement.

(6) To be eligible for continuing legal education credit, the course or activity must: (A) have significant intellectual or practical content designed to increase or maintain the attorney's professional competence and skills as a lawyer; (B) constitute an organized program of learning dealing with matters directly related to legal subjects and the legal profession; and (C) be conducted by an individual or group qualified by practical or academic experience.

(d) Attorneys shall retain records to prove compliance with this rule for a period of seven years. Such records shall be made available to the statewide grievance committee or its counsel, the minimum continuing legal education commission, or the disciplinary counsel upon request.

~~(e) Violation of this section shall constitute misconduct. An attorney who fails to comply with the minimum continuing legal education requirement shall be administratively suspended from the practice of law in this state pursuant to Section 2-27B.~~

~~(f) Unless it is determined that the violation of this section was wilful, a noncompliant attorney must be given at least sixty days to comply with this section before he or she is subject to any discipline. A Minimum Continuing Legal Education Commission ("commission") shall be established by the Judicial Branch and shall be composed of four Superior Court judges and four attorneys admitted to practice in this state, all of whom shall be appointed by the chief justice of the Supreme Court or his or her designee and who shall serve without compensation. The charge of the commission will be to provide advice regarding the application and interpretation of this rule and to assist with its implementation including, but not limited to, the development of a list of frequently asked questions and other documents to assist the members of the bar to meet the requirements of this rule.~~

~~(g) A Minimum Continuing Legal Education Commission ("commission") shall be established by the Judicial Branch and shall be composed of four Superior Court judges and four attorneys admitted to practice in this state, all of whom shall be appointed by the chief justice of the Supreme Court or his or her designee and who shall serve without compensation. The charge of the commission will be to provide advice regarding the application and interpretation of this rule and to assist with its implementation including, but not limited to, the development of a list of frequently asked questions and other documents to assist the members of the bar to meet the requirements of this rule.~~

(NEW) Sec. 2-27B. Enforcement of Attorney Registration and Minimum Continuing Legal Education; Administrative Suspension

(a) The statewide grievance committee shall send a notice to each attorney who has not registered pursuant to Section 2-27(d), or who has not completed minimum continuing legal education pursuant to Section 2-27A, that the attorney's license to practice law in this state will be referred to the Superior Court for an administrative suspension of the attorney's license to practice law in this state unless within sixty days from the date of such notice such attorney provides proof to the statewide grievance committee that he or she has registered or completed minimum continuing legal education, or is exempt from minimum continuing legal education. The statewide grievance committee shall submit to the clerk of the Superior Court for the Hartford Judicial District a list of attorneys who did not provide proof of compliance with attorney registration or minimum continuing legal education, or exemption from minimum continuing legal education within sixty days after the date of the notice. Upon order of the court, the attorneys so listed and referred to the clerk shall be deemed administratively suspended from the practice of law in this state until such time as compliance has occurred and proof of same provided to the statewide grievance committee, which suspension shall be effective upon publication of the list in the Connecticut Law Journal. An administrative suspension of an attorney for failure to comply with attorney registration or minimum continuing legal education shall not be considered discipline, but an attorney who is placed on administrative suspension for such failure shall be ineligible to practice law as an attorney admitted to practice in this

state, and shall not be considered in good standing pursuant to Section 2-65 of these rules until such time as proof of compliance is provided to the statewide grievance committee.

(b) An attorney aggrieved by an order placing the attorney on administrative suspension for failing to comply with sections 2-27(d) or 2-27A may make an application to the Superior Court to have the order vacated, by filing the application with the Superior Court for the Hartford Judicial District within thirty days of the date that the order is published, and mailing a copy of the same by certified mail, return receipt requested, to the statewide grievance committee. The application shall set forth the reasons why the application should be granted. The court shall schedule a hearing on the application, which shall be limited to whether good cause exists to vacate the suspension order.

(c) The notice required by this section shall be sent by regular mail to the last address registered by the attorney pursuant to Section 2-26 and Section 2-27 (d) and to any e-mail address on record with the Judicial Branch.

Sec. 2-65. Good Standing of Attorney

An attorney is in good standing in this state if the attorney has been admitted to the bar of this state, has registered with the Statewide Grievance Committee in compliance with Sections 2-27 (d), has complied with Sections 2-27A and 2-70, and is not under suspension, on inactive status, disbarred, or resigned from the bar.