Hawaii State Board of Continuing Legal Education

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CONTINUING LEGAL EDUCATION REGULATIONS

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REGULATION 1. Definitions

(A) "Approved" or "Approval" means authorized for credit by the Board.

(B) "Active Member" means any person who is licensed to practice law in the State of Hawaii and who pays "Active Member" dues to the HSBA.

(C) "Board" means the CLE Board of Directors appointed and serving pursuant to these regulations.

(D) "CLE" means Continuing Legal Education.

(E) "Credit" or "Credit Hour" means one 60 minute hour dedicated to actual CLE course or activity engagement excluding rest or meal breaks.

(F) "Directors" mean the members appointed to the CLE Board of Directors.

(G) "Executive Director" means the Executive Director of the HSBA.

(H) "HSBA" means the Hawaii State Bar Association.

(I) "MCPE" means Mandatory Continuing Professional Education as defined in Rule 22.

(J) "Provider" means an individual, group or organization presenting a course or activity.

(K) "Report" or "Reporting" means certifying to the HSBA the number of approved credit hours completed as required by Rule 22.

(L) "RSCH" means Rules of the Supreme Court of Hawaii.

(M) "Rule 22" means Rule 22 of the Rules of the Supreme Court of Hawaii.

(N) "VCLE" means Voluntary Continuing Legal Education as defined in Rule 22.

REGULATION 2. Board of Continuing Legal Education

CLE shall be administered by a CLE Board of Directors as provided herein.

(A) Composition. The Board shall consist of twelve Directors, nine of whom shall be appointed by the HSBA. Of the nine, one shall be a lay person, and eight shall be active members of the bar from solo practices, large and small firms, state, city or county attorneys, and neighbor island practices. Additionally, there shall be three non-voting Directors, one of whom shall be from the Judiciary and appointed by the court, one from the William S. Richardson School of Law and appointed by the Dean of the law school, and the HSBA Executive Director. The HSBA Board of Directors shall designate a Chairperson who shall serve in that position at the pleasure of the HSBA Board. The Board shall designate a secretary.

(B) Term of Office. Of the Directors first appointed, three shall be appointed for an initial term of one year, three for initial terms of two years, and three for initial terms of three years. Upon the expiration of the initial term of each Director, the term of each Director shall be for three years. In the event of a vacancy, appointment of a successor shall be for the unexpired portion

of the term, and shall be filled in the same manner as the original appointment. The non-voting Directors shall be replaced at-will by their respective appointing entities.

(C) Meetings. The time, method and place of meetings shall be at the discretion of the Board. The Board has authority to act when a quorum is present. A quorum consists of five or more Directors.

(D) Compensation. Directors shall serve without compensation, but each Director is entitled to reimbursement by the Board for actual and necessary expenses incurred in the performance of the Director's duties.

(E) Powers and Duties of the Board. The Board shall have general supervisory authority to administer the CLE requirements for active members of the Hawaii State Bar pursuant to Rule 22.

(F) The Board shall:

(1) Grant or deny approval for individual courses and activities;

(2) Grant or deny applications for Accredited Provider status;

(3) Determine the number of credit hours allowed for each approved activity or course;

(4) Determine whether all or portions of individual courses taken or activities engaged in by active members of the bar qualify for approved MCPE or approved VCLE credit;

(5) Have authority to assess reasonable fees for administering these regulations which may be amended, deleted, or supplemented from time to time;

(6) Take any other action deemed necessary to administer these regulations;

(7) Meet at least four times per year; and

(8) Report annually to the HSBA Board of Directors.

(G) Expenses of the Board shall not exceed the annual budget approved by the HSBA Board of Directors.

(H) The Board may delegate its power to the CLE Administrator who shall be an employee of the HSBA. The CLE Administrator shall provide a report on all determinations made subsequent to the preceding Board meeting.

REGULATION 3. Standards for Course or Activity Approval

The Board may approve CLE courses or activities when consistent with these standards:

(A) General CLE Standards:

(1) The course or activity is an organized program of learning with significant intellectual or practical content and deals with matters directly related to the practice of law.

(2) The course or activity's primary purpose is to improve the participant's professional competence as an attorney. Areas of professional competence include substantive legal issues, legal skills or practice, improving the attorney's delivery of legal services to clients, and improving the efficiency of the practicing attorney.

(B) Professionalism Standards. To be approved for MCPE credits, the course or activity shall be devoted to matters involving an attorney's ethical obligations, professional responsibility, bias awareness and prevention, client trust account administration, access to justice, case management, malpractice prevention and law office management.

(C) The course being taught shall be primarily for attorneys on substantive legal subjects or subjects related to the practice of law.

(D) Each course or activity participant is provided with appropriate, legible, substantive course or activity material at or before the time the course or activity is offered unless the absence of such materials is reasonable under the circumstances of the particular course. Material may either be in hardcopy or electronic format, and syllabi or agenda outlining the course or activity must be followed.

(E) Courses or activities are approved for MCPE or VCLE credit if they are classified as CLE approved by:

(1) The HSBA;

(2) The American Bar Association (ABA); or

(3) The Board.

(F) The number of approved MCPE or approved VCLE credits that may be earned from ABA courses shall be the same number of credits the course is advertised as approved for by the ABA.

(G) Courses or activities for which credit will be denied include but are not limited to matters relating primarily to personal self-improvement courses, activities designed primarily to sell services, equipment or software programs, courses that are designed to enhance revenue, marketing courses or repeat courses for which the active member has already obtained CLE credit.

(H) In order to receive CLE credit for an approved course, an attorney must be present for the first 60 minutes of a course. After the first 60 minutes, an attorney may receive credit for the time the attorney is actually present at the course rounded down to the nearest quarter hour. If an attorney is late to the start of a course, the attorney may enter the course but shall not receive CLE credit for the course.

REGULATION 4. Credit for Approved Courses in Alternate Formats

(A) Credit may be claimed for viewing or listening to approved courses presented in an alternate format. Alternate formats may include but are not limited to videotape, audiotape, DVD, remote place viewing, online computer presentations, teleconferencing, computer self-study or

other formats hereafter developed. The standards set forth in Regulation 3 and procedures set forth in Regulation 10 shall apply.

(B) An active member who completes an alternate format CLE course or activity that has been approved for credit may claim the same number of credits the course is advertised as approved for by the provider.

(C) An alternate format course, activity or material may only be used once for credit. Updated versions may be approved for credit.

(D) Alternate format courses, activities or materials shall be presumed outdated two years after being compiled, recorded or published unless otherwise determined by the Board.

(E) If a complete alternate format course is divided into parts, all parts must be viewed or listened to within the same calendar year in order to earn credit for that course.

REGULATION 5. Credit for Teaching Approved Courses

(A) Credit may be given for teaching and preparing written material for approved courses. The standards set forth in Regulation 3 and procedures set forth in Regulation 10 shall apply.

(B) No more than two hours of preparation time for each one hour of teaching time may be reported. For example, up to three credits may be reported for teaching a one hour course. Credit for courses that are substantially updated from previous presentations may be approved on a similar basis.

(C) Full time teachers and lawyers whose primary employment is teaching law school courses may not earn credit for the preparation or teaching of law school courses.

(D) Panel speakers shall receive teaching credit for the entire time the panel is presenting.

REGULATION 6. In-house Programs or Courses

(A) The Board may approve in-house courses or activities offered by law firms, corporate legal departments, government legal sections, neighbor island bars, HSBA sections or similar entities primarily for the education of their employees or active members. The standards set forth in Regulation 3, procedures set forth in Regulation 10 and Provider Requirements set forth in Regulation 11 shall apply.

(B) Meetings held primarily for advancing a particular client's interest, including case review and evaluation, shall not be considered a course or activity that may be approved for MCPE or VCLE credit.

(C) The course or activity may be audited free of charge by a neutral member of the Board or the Board's designee.

REGULATION 7. Credit for Attending Live In-Person Out-of-State Courses or Activities

(A) An active member who attends and completes a live in-person out-of-state CLE course or activity that has been approved for credit by a jurisdiction listed on the HSBA list of approved

jurisdictions may claim the CLE credits from the course or activity without seeking prior Board approval for the course or activity.

(B) For a live in-person course in a jurisdiction not listed on the HSBA list of approved jurisdictions, the active member or a Provider on behalf of active members must seek prior Board approval for the course pursuant to Regulation 10.

(C) The Board shall approve or disapprove the course or activity pursuant to the standards set forth in Regulation 3.

REGULATION 8. RECORDKEEPING

(A) Each active member is responsible for keeping an organized record of the approved MCPE and VCLE credit hours they complete each year.

(B) Active members participating in approved CLE courses or activities should obtain a certificate of attendance from the course or activity provider at the completion of the course.

(C) Active members should retain the certificate of attendance as well as sufficient documentation from the course or activity to establish that the course or activity was approved for MCPE or VCLE credit, or that the provisions of Regulation 7 apply.

(D) Records should be retained by members for two calendar years.

(E) Certificates of attendance should not be sent to the Board unless requested by the Board to do so.

(F) Active members must certify on their annual attorney registration statement the number of MCPE and VCLE credit hours they completed for the calendar year (see RSCH 17(d)).

REGULATION 9. Compliance Audits of Active Member

(A) The Board or its designee shall select a designated number of active members to randomly audit for compliance each year. Each active member selected for audit shall furnish to the Board all records supporting their affidavit within 15 days of being notified of the audit.

(B) If the auditor determines that the audited active member is in noncompliance with Rule 22, the auditor shall notify the noncompliant active member by certified mail of the auditor's determination.

(C) If, as a result of an audit, the auditor disallows all or some of the credit hours claimed and the remaining credit hours are less than the required three approved MCPE credit hours, the active member shall be deemed to be in noncompliance with Rule 22.

(D) Within 60 days from the date the certified notice of noncompliance was mailed, evidence may be submitted to the Board that the required approved MCPE credit hours were subsequently completed, or that the notice of noncompliance was issued erroneously.

(E) Active members who fail to prove that they have subsequently completed the required approved MCPE credit hours during those 60 days and that all fees have been paid, or that the notice of noncompliance was issued erroneously shall be automatically and immediately suspended.

(F) If an active member disagrees with the Board's findings of noncompliance, the active member may petition the Hawaii Supreme Court for review of the Board's determination that the active member failed to prove compliance with Rule 22, or that a notice of noncompliance was issued erroneously.

(G) The petition shall not stay the effective date of the active member's suspension.

(H) An active member may be reinstated upon sufficient proof that the active member has:

(1) Completed the required three credit hours of approved MCPE for the audited year;

(2) Paid a reinstatement fee as determined by the HSBA Board of Directors; and

(3) Paid any other required fees and dues.

REGULATION 10. Procedure for Individual Course or Activity Approval

(A) Providers seeking MCPE or VCLE approval for a course or activity, or active members seeking approval for a course or activity for which the provider has not already obtained approval shall submit the following to the Board:

(1) A completed Application for Approval of Continuing Legal Education form including the required attachments;

(2) The application fee pursuant to the attached fee schedule; and

(3) Any other information requested by the Board.

(B) Provider applications and proper fees must be received by the Board at least 30 days prior to the date on which the course or activity is scheduled. An application that is not complete or timely submitted to the Board may be rejected, or at the Board's discretion accepted for review subject to a late fee pursuant to the attached fee schedule.

(C) Attorney applications and proper fees must be received by the Board no later than 30 days after the completion of the course for which the attorney is seeking approval. An application which is not complete or timely submitted to the Board may be rejected, or at the Board's discretion accepted for review subject to a late fee pursuant to the attached fee schedule.

(D) After review of the complete application, the Board may:

(1) Approve all or a part of the course or activity for MCPE or VCLE credit;

(2) Disapprove the course for MCPE or VCLE credit; or

(3) Request more information from the applicant.

(E) Within 30 days of receiving the complete application, the Board shall inform the applicant in writing, fax or electronic mail of the Board's determination. If the course is approved, the Board shall indicate the number of credit hours for which the course is approved.

(F) If a course or activity is approved, the provider may state on promotional materials that the course or activity has been approved in Hawaii for the number of MCPE or VCLE credit hours determined by the Board.

(G) Any applicant whose course or activity is disapproved for MCPE or VCLE credit may submit a written request to the Board for reconsideration within 15 days of receipt of the notice of disapproval. The request for reconsideration shall state the specific reason the applicant believes the course or activity meets the standards set forth in Regulation 3, and include any additional supporting information. The Board shall consider the matter at its next regular meeting and decide the matter by majority vote. The Board's decision is final. If the Board's decision is to uphold the course or activity's disapproval, the Board shall refund the applicant's application fee less 1/3 of the fee up to $150.00.

REGULATION 11. Provider Requirements

Providers shall:

(A) Monitor participant attendance throughout the course or activity and keep an attendance record for the course or activity for a minimum of 2 years. The attendance record shall be provided to the Board upon request at no cost to the Board.

(B) Issue evaluation forms and certificates of attendance to participants at the conclusion of the course or activity; provided that government providers may issue certificates of attendance to participants upon request by a participant. The provider shall forward a copy of all course evaluations completed by active members of the Hawaii State Bar to the Board upon request at no cost to the Board.

(C) Permit any member of the Board or its designee to attend a course or activity at no cost or without preregistration for the purpose of compliance auditing.

(D) Submit written, electronic or presentation materials to the Board upon its request free of charge.

(E) Submit an application and application fee pursuant to the attached fee schedule for each course for which approval is being sought.

(F) Within 30 days of the completion date for each course or activity the provider shall send the attendance roster and corresponding attendee fee to the Board. If the roster and attendee fee are not timely received by the Board, a late fee shall be assessed in addition to the attendee fee.

REGULATION 12. Accredited Providers

(A) At its discretion, the Board may grant Accredited Provider status to a provider.

(B) Accreditation shall constitute prior approval of CLE courses for MCPE or VCLE credit offered by the Accredited Provider in the calendar year for which Accredited Provider status is granted.

(C) The Accredited Provider shall comply with the course standards set forth in Regulation 3 and the Provider requirements set forth in Regulation 11 with the exception of Regulation 11(E).

(D) An Accredited Provider may state on promotional materials that the course or activity has been approved for MCPE or VCLE credit in Hawaii based on each 60 minute segment dedicated to a MCPE or VCLE subject matter.

(E) An Accredited Provider shall provide notice to the Board when its courses are publicly noticed, but not later than two weeks prior to a course being offered.

(F) To be considered for Accredited Provider status, a provider shall have:

(1) Sponsored at least three separate courses or activities in the year immediately preceding its application that would have satisfied the course standards set forth in Regulation 3;

(2) Submitted an application and application fee pursuant to the attached fee schedule; and

(3) Submitted any additional information requested by the Board.

(G) An Accredited Provider may apply for renewal of accredited status each year by submitting an application and fee.

(H) If an application for Accredited Provider status is disapproved, the Board shall refund the applicant's application fee less $150.00.