

STATE OF MINNESOTA
IN SUPREME COURT
ADM09-8008



**ORDER PROMULGATING AMENDMENTS TO THE
RULES OF THE MINNESOTA STATE BOARD OF
CONTINUING LEGAL EDUCATION**

The Minnesota State Board of Continuing Legal Education and five licensed Minnesota lawyers filed petitions with the court that proposed amendments to the Rules of Continuing Legal Education to permit Minnesota-licensed lawyers to satisfy all or a portion of their continuing legal education (CLE) requirements through on-demand or archived programming. In an order filed February 28, 2013, the court invited written comments on the proposed amendments and set a public hearing date. In addition to the petitions from the Board and the five licensed lawyers, the court received written comments from nine interested organizations and lawyers, seven of whom spoke at the public hearing on May 29, 2013.

The court has reviewed the petitions and the oral and written comments. Pursuant to the inherent authority of this court to regulate the practice of law,

IT IS HEREBY ORDERED THAT:

1. The petitions are granted in part and denied in part. The attached amendments to the Rules of the Minnesota State Board of Continuing Legal Education shall be, and the same are, prescribed and promulgated to be effective July 1, 2014.

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MEMORANDUM

PER CURIAM.

Continuing legal education (CLE) “improve[s] lawyers’ knowledge of the law,” continues their professional development, and “address[es] the special responsibilities that lawyers as officers of the court have to improve the quality of justice administered by the legal system and the quality of service rendered by the legal profession.” Minn. R. Continuing Legal Educ. 1. Lawyers licensed to practice in Minnesota have been subject to mandatory CLE requirements since 1975. *In Re Rules Relating to Continuing Professional Education*, Order (Minn. filed Apr. 3, 1975). With the amendments promulgated today, Minnesota joins over 45 states and territories that allow lawyers to advance their legal and professional education through participation in current, informative, and high-quality CLE programs, whether presented live or through on-demand programming. *See* Addendum, attached.

Minnesota’s CLE system is a model of success. Lawyer compliance with CLE requirements approximates 95 percent or greater. For the last 5 years, the CLE Board has annually reviewed and approved for CLE credit well over 10,000 courses, thus providing Minnesota-licensed lawyers with access to well-regarded, topical CLE programs that span the breadth of legal practice. Further, the CLE Board and the Minnesota Bar have

remained attuned to evolving standards and developments in the practice of law, leading to well-received rule amendments for course requirements, permissible credits, and program formats. *See Order Promulgating Amendments to the Rules of the Minn. State Bd. of Continuing Legal Educ.*, No. C2-84-2163 (Minn. filed Jan. 31, 2008) (amending Rule 6 to allow CLE credit to be claimed for pro bono legal representation); *Order Promulgating Rules of the Minn. Bd. of Continuing Legal Educ.*, No. C2-84-2163 (Minn. filed Apr. 18, 2000) (amending Rule 2D to include “an office” within the definition of a “classroom setting” and Rule 5A(5) to add “teleconference” and “simultaneous broadcast” to the permissible transmission formats for CLE programs); *In Re Petition of the Minn. State Bar Ass’n for Amendment of Rules for Continuing Legal Educ. of Members of the Bar*, No. C2-84-2163, Order at 2 (Minn. filed Sept. 15, 1995) (amending CLE rules to require “courses on legal ethics and professional responsibility” and “elimination of bias in the legal profession and in the practice of law” in triennial 45-hour CLE requirement). The CLE Board also supports Minnesota-licensed lawyers with a well-administered approval, credit reporting, and status verification system.

Thus, the court promulgates these amendments with confidence that on-demand CLE programming will not lead to adverse consequences for the education and professional development of Minnesota lawyers, for the public served by those lawyers, or for the CLE Board. The court acknowledges that the comments submitted in response to the petitions did not universally embrace on-demand CLE programming. But all comments acknowledged that on-demand CLE programs can be accommodated in Minnesota. The only questions were how many credits to allow for on-demand CLE

programming, and under what circumstances on-demand CLE programs should be approved. Based on the comments submitted, the objectives fostered by mandatory CLE requirements, and the well-functioning state of CLE in Minnesota, the court concludes for the following reasons that a limited number of on-demand CLE credits can be part of the mandatory 45-hour Minnesota CLE requirement.

First, delivery of CLE programming through alternative technologies is not a new phenomenon. Lawyers long ago integrated digital technology into their day-to-day practice, through e-mail, electronic filing or submission, and electronic sharing and exchange of case information with clients and adversaries. Indeed, given the pace of integration and the depth to which technology has infiltrated the practice of law and court operations, the American Bar Association Commission on Ethics 20/20 recommended, and the ABA House of Delegates adopted, amendments to the Model Rules of Professional Conduct that encourage lawyers to be familiar with the “benefits and risks” of technology. *See* Am. Bar Ass’n Comm’n on Ethics 20/20, Res. 105A (Aug. 2012); *see also* William J. Wernz, *Minnesota Legal Ethics: Updates* (Sept. 4, 2012), <http://minnesotalawyering.com> (stating the amendment “is the most recent of several opinions and authorities stating that a lawyer should have at least basic familiarity with the technology used by a lawyer”). Just as lawyers have expanded their use of digital technologies to meet practice and client needs, CLE providers have adapted education programs to use technologies that provide opportunities for lawyers to refresh, advance, and continue their legal education and professional development. We discern no logic in recommending that lawyers maintain competence in technology, while declining to allow

access to CLE programs delivered through technology.¹ Thus, the amendments promulgated today allow Minnesota-licensed lawyers to claim up to 15 CLE credits for on-demand or “archived CLE programming . . . available to participants at any time.” Minn. R. Continuing Legal Educ. 2R, 6E, 9B (as amended effective July 1, 2014).

Second, just as there is no single manner of legal practice in Minnesota, there is no single CLE programming format that best suits all lawyers. See Robin A. Boyle, *Applying Learning-Styles Theory in the Workplace: How to Maximize Learning-Styles Strengths to Improve Work Performance in Law Practice*, 79 St. John’s L. Rev. 97, 101 (2005) (“We are as diverse in the workplace as we are in the classroom in terms of our learning styles.”). Traditional, live-lecture CLE programs can pose time and geographic constraints for lawyers, particularly those who practice in locations at a considerable distance from major metropolitan areas. In addition, the live-lecture format, while suitable for some learning styles, may not address all learning styles. *Id.* at 105 (“Most adults are not auditory learners.”); see Pete Glowacki, *Accreditation of Technology-Based Continuing Legal Education*, 40 Val. U. L. Rev. 543, 545 (2006) (“[A]ll adults do not learn in the same way.”). In fact, because on-demand programming can address a broad array of subject matter, practice, and educational needs, it supplements, rather than

¹ Other regulated professional disciplines allow their members to satisfy continuing education requirements through on-demand programming. See, e.g., Minn. R. 3100.5100, subp. 3(B)(3) (2011) (allowing continuing education credits to dental professionals for “professional development activities” including certain “forms of self-study”). While the amendments promulgated today retain the prohibition on self-study for CLE credits, see Minn. R. Continuing Legal Educ. 5(A)(5), the ability of other professions to enforce continuing education standards by allowing credits for on-demand programming supports our conclusion that Minnesota’s legal profession can do the same.

supplants, live CLE programming. A live CLE program, for example, in addition to providing current, informative content, offers an important networking component and the intangible benefits of collegial interaction that are missing, or at least diminished, in archived programming. Thus, we conclude that the goals of Minnesota's mandatory CLE requirements are best advanced by providing lawyers with access to a broad range of CLE opportunities. In addition, we acknowledge that for some programs or topics, live programming may be a better vehicle for achieving Minnesota's CLE objectives. For that reason, the amendments promulgated today provide a balance between live and on-demand programming, *see* Minn. R. Continuing Legal Educ. 9B (as amended effective July 1, 2014), that falls well within the range of on-demand programming credits allowed by most jurisdictions. *See* Addendum.

Third, the quality of any CLE program, whether presented live or on-demand, depends on a number of variables, such as the topic, the presenter, and the control the provider exercises over the program. None of these variables suggests that live programming is of an inherently better quality or conversely, that on-demand programming is of an inherently lower quality. For that reason, the amendment in Rule 5 to the general course standards imposes a "high-quality" standard on all CLE programs in Minnesota. This amendment simply makes explicit the expectation that has always governed CLE programming in Minnesota. At the same time, we encourage Minnesota lawyers to "become informed consumers of CLE offerings" because not all course offerings "provide better educational experiences and greater possibilities for increased professional competency." Barbara A. Bichelmeyer, *Best Practices in Adult Education*

and E-Learning: Leverage Points for Quality and Impact of CLE, 40 Val. U. L. Rev. 509, 519 (2006). Whether attending a live lecture, viewing a webcast of a previously recorded program, or participating in an on-demand course, the objectives remain the same: to improve legal knowledge, advance professional development, and improve the quality of justice and the legal services provided.

Finally, while the CLE Board and Minnesota lawyers have experience with non-live CLE programs, we recognize that the amendments promulgated today will lead to changes in course approval, the programming options available to licensed Minnesota lawyers, and the administration of Minnesota's CLE requirements. Some of these changes may be more easily implemented than others. We therefore direct the Board to monitor the developments that follow implementation of these amendments and to provide interim and final reports to the court, along with any recommendations for additional rule amendments that the Board concludes would be beneficial in light of the amendments promulgated today.

**ADDENDUM: ON-DEMAND CLE CREDITS BY JURISDICTION
ADM09-8008**

STATE/TERRITORY	CLE CREDITS PER REPORTING PERIOD	ON-DEMAND CREDIT OR FORMAT LIMITS
Alabama	12 credits per year	6 credits per year for on-demand programs
Alaska	12 credits per year	No credit or program format limits
Arizona	15 credits per year	5 credits per year for self-study programs
Arkansas	12 credits per year	No on-demand credits permitted
California	25 credits every 3 years	12.5 credits every 3 years for self-study programs
Colorado	45 credits every 3 years	No credit or program format limits
Connecticut	No mandatory CLE	No mandatory CLE
Delaware	24 credits every 2 years	12 credits every 2 years for on-demand programs
District of Columbia	No mandatory CLE	No mandatory CLE
Florida	30 credits every 3 years	No credit or program format limits
Georgia	12 credits per year	6 credits per year for on-demand programs
Guam	10 credits per year	No credit or program format limits
Hawaii	3 credits per year	No credit or program format limits
Idaho	30 credits every 3 year	15 credits every 3 years for self-study programs
Illinois	30 credits every 2 years	No credit or program format limits
Indiana	36 credits every 3 years	6 credits every 3 years for on-demand programs
Iowa	15 credits per year	6 credits per year for interactive on-demand programs
Kansas	12 credits per year	5 credits per year for interactive on-demand programs
Kentucky	12.5 credits per year	6 credits per year for interactive on-demand programs

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STATE/TERRITORY	CLE CREDITS PER REPORTING PERIOD	ON-DEMAND CREDIT OR FORMAT LIMITS
Louisiana	12.5 credits per year	4 credits per year for interactive on-demand programs
Maine	11 credits per year	5.5 credits per year for on-demand programs
Maryland	No mandatory CLE	No mandatory CLE
Massachusetts	No mandatory CLE	No mandatory CLE
Michigan	No mandatory CLE	No mandatory CLE
Minnesota	45 credits every 3 years	15 credits every 3 years for interactive on-demand programs (eff. July 1, 2014)
Mississippi	12 credits per year	6 credits per year for on-demand programs
Missouri	15 credits per year	6 credits per year for on-demand programs
Montana	15 credits per year	5 credits per year for on-demand programs
Nebraska	10 credits per year	5 credits per year for on-demand programs
Nevada	12 credits per year	No credit or program format limits
New Hampshire	12 credits per year	6 credits per year for interactive on-demand programs
New Jersey	24 credits every 2 years	12 credits every 2 years for on-demand programs
New Mexico	12 credits per year	4 credits per year for on-demand programs
New York	24 credits every 2 years	No credit or program format limits (for experienced attorneys)
North Carolina	12 credits per year	4 credits per year for on-demand programs
North Dakota	45 credits every 3 years	15 credits every 3 years for on-demand programs
Northern Mariana Island	20 credits every 2 years	No credit or program format limits
Ohio	24 credits every 2 years	6 credits every 2 years for self-study programs

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STATE/TERRITORY	CLE CREDITS PER REPORTING PERIOD	ON-DEMAND CREDIT OR FORMAT LIMITS
Oklahoma	12 credits per year.	6 credits per year for on-demand programs
Oregon	45 credits every 3 years.	No credit or program format limits
Pennsylvania	12 credits per year	4 credits per year for interactive on-demand programs
Puerto Rico	24 credits every 2 years	8 credits every 2 years for on-demand programs
Rhode Island	10 credits per year	3 credits per year for interactive on-demand programs
South Carolina	14 credits per year	6 credits per year for interactive on-demand programs
South Dakota	No mandatory CLE	No mandatory CLE
Tennessee	15 credits per year	8 credits per year for interactive on-demand programs
Texas	15 credits per year	No credit or program format limits
Utah	24 credits every 2 years	12 credits every 2 years for on-demand programs
Vermont	20 credits every 2 years	10 credits every 2 years for on-demand programs
Virginia	12 credits per year	8 credits per year for on-demand programs
Virgin Islands (U.S.)	12 credits per year	No credit or program format limits
Washington	45 credits every 3 years	22.5 credits every 3 years for pre-recorded programs
West Virginia	24 credits every 2 years	12 credits every 2 years for recorded programs
Wisconsin	30 credits every 2 years	10 credits every 2 years for recorded programs
Wyoming	15 credits per year	5 credits per year for self-study programs

**AMENDMENTS TO THE RULES OF THE MINNESOTA STATE BOARD
OF CONTINUING LEGAL EDUCATION**

In the following amendments, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

- 1. Purpose**
- 2. Definitions**
- 3. State Board of Continuing Legal Education**
 - A. Membership of the Board
 - B. Terms of Members
 - C. Officers of the Board
 - D. Authority of the Board
 - E. Board Procedures
 - F. Confidentiality
 - G. Persons with Disabilities
 - H. Payment of Expenses
- 4. Applying for Credit**
 - A. Course Approval and Fee Information
 - B. Professional Responsibility or Ethics: General Treatment
 - C. Sanctions for Failure to Include Ethics
 - D. Law and Literature
 - E. Notice of Credit
- 5. Standards for Course Approval**
 - A. General Standards
 - B. Standards for Course Approval for In-House Courses
- 6. Special Categories of Credit**
 - A. Ethics and Professional Responsibility
 - B. Elimination of Bias in the Legal Profession and in the Practice of Law
 - C. Law Office Management
 - D. Pro Bono Legal Representation
 - E. On-Demand Courses
- 7. Other Credit**
 - A. Teaching Credit
 - B. Courses at Universities
 - C. Retroactive Credit

- 8. Announcement of Approval**
- 9. Affidavit of CLE Compliance**
 - A. Contents of Affidavit
 - B. Special Categories of Credit
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 - F. Active Duty Military Service
- 10. Director's Determinations and Board Review**
 - A. Director's Determinations
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- 11. Notice of Noncompliance**
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- 12. Restricted and Involuntary Restricted Status**
 - A. Election of Restricted Status
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 - C. Transfer from Restricted Status to Active Status
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- 13. Retired Status**
 - A. Transfer from Active Status to Retired Status
 - B. Transfer from Retired Status to Active Status
- 14. Emeritus Status**
 - A. Qualification
 - B. Limitation of Practice
 - C. Contents of Emeritus Affidavit Appendix IV
 - D. Transfer to Emeritus Status
 - E. Expiration of Emeritus Status
 - F. Renewal of Emeritus Status

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Rule 2. Definitions

In these Rules,

* * *

P. “Law and literature course” means a course ~~that otherwise meets~~ meeting the requirements of Rules 4D and 5A, based upon a literary text and designed to generate discussion, insight, and learning about topics such as the practice of law, the history and philosophy of law, rhetoric, lawyers’ professional or ethical responsibilities, professional development, and the elimination of bias in the legal profession and in the practice of law.

* * *

R. “On-Demand course” means archived CLE programming that meets all the requirements of Rule 5A and is available to participants at any time.

~~R.S.~~ “Participant” means a lawyer licensed in Minnesota attending an approved course and actively engaged in the subject matter being presented.

~~S.T.~~ “Pro bono client” means an individual, who is not a corporation or other organizational entity, and who has been referred to the lawyer by an approved legal services provider or by a state or federal court program.

~~T.U.~~ “Pro bono legal representation” means providing legal representation to a pro bono client without compensation, expectation of compensation, or other direct or indirect pecuniary gain.

~~U.V.~~ “Professional development course” means a course or session within a course designed to enhance the development and performance of lawyers by addressing issues such as career satisfaction and renewal, stress management, mental or emotional health, substance abuse, and gambling addiction. Professional development courses do not include individual or group therapy sessions.

~~V.W.~~ “Restricted status” means the status of a lawyer licensed in Minnesota who has voluntarily chosen not to comply with the educational and reporting requirements of these Rules. See Rule 12 for additional provisions.

~~W.X.~~ “Submit” means to communicate information to the Board office in writing or electronic submission:

- (1) through the Board's Online Attorney and Sponsor Integrated System (OASIS);
- (2) by regular U.S. Mail; or
- (3) by delivery.

* * *

Rule 4. Applying for Credit.

A. Course Approval and Fee Information. No segment of any course shall be approved in more than one credit category. In applying for course approval, a sponsoring agency or lawyer shall submit to the Board an application for course approval (see Appendix I) and include the following:

* * *

(8) Fee in the amount of \$35. This fee may be subject to waiver under the provisions of Rule 3D(1). A fee is not required when submitting an application for either of the following types of courses meeting Rule 4 and Rule 5 requirements:

(a) A previously approved course that has been recorded and is replayed ~~at a later date~~ in its entirety with a live moderator present during the scheduled question and answer period of the program; or

(b) A live course 60 minutes or less in duration.

* * *

Rule 5. Standards for Course Approval.

A. General Standards. A course must meet the following standards before approval is granted.

(1) The course shall have current, significant intellectual or practical content, and shall be presented in a high-quality manner permitting participants to hear all of the audio and see all of the video portions of the program, including presentations, audience questions, responses to questions, embedded videos, and other program materials.

* * *

(5) The course shall be presented and attended in a suitable classroom or laboratory setting. A ~~C~~ courses presented via video recording, simultaneous broadcast, teleconference, or audiotape, or available on-demand or by podcast, may be approved

provided that it complies with Rule 6E and a faculty member or moderator is accessible to all participants in attendance at all presentations, either in person or via electronic means through live transmission, allowing all participants to hear have access to and participate in the question and answer session. ~~Subject to the exception of paragraph (11) below, No course will be approved which involves solely television or video viewing in the home or office, or correspondence work or self-study, including online self-study.~~

* * *

~~(11) Lawyers residing or working outside of the State of Minnesota during the CLE reporting period who, because of nonresidence are unable in good faith to attend courses approved as “elimination of bias” as defined in these Rules, may receive up to 2 hours of credit in fulfillment of the elimination of bias requirement by viewing a video or webcast of a course or courses that otherwise meet the requirements of these Rules. If a lawyer is a participant in an elimination of bias course not previously approved for credit under these Rules, the lawyer may seek approval by completing and submitting an application for course approval as described in Rule 4A.~~

* * *

Rule 6. Special Categories of Credit

A. Ethics and Professional Responsibility. To be approved for ethics credit, the courses or sessions within the courses approved must meet the following requirements as courses in ethics or professional responsibility:

- ~~(1) Must Be~~ at least 30 minutes in length; and
- ~~(2) Must be~~ separately identified as ethics or professional responsibility on the course agenda and on the Course Approval Form at Appendix I.

B. Elimination of Bias in the Legal Profession and in the Practice of Law. To be approved for elimination of bias credit, the courses or sessions within such courses must meet the following requirements approved as courses in the elimination of bias in the legal profession and in the practice of law:

- ~~(1) Must be~~ at least 60 minutes in length;
- ~~(2) Must be~~ identified on the application as fulfilling the elimination of bias requirement and be accompanied by a narrative describing how the course or ~~segment~~ssions of the course meet one or more of the learning goals as described in the Course Approval Form at Appendix I;

(3) ~~Must f~~Focus on issues in the legal profession and in the practice of law and not issues of bias in society in general; and

(4) ~~Must n~~Not include courses on the substantive law of illegal discrimination unless such courses meet one or more of the learning goals for elimination of bias courses set forth in the Course Approval Form at Appendix I.

* * *

D. Pro Bono Legal Representation. A lawyer may claim 1 hour of standard CLE credit for every 6 hours of pro bono legal representation as defined by Rule 2FU that the lawyer provides to a pro bono client as defined by Rule 2ST in a legal matter that has been referred to the lawyer by an approved legal services provider as defined by Rule 2B or by a state court or federal court program. No more than 6 hours of credit may be claimed per reporting period by a lawyer for pro bono legal representation. In order to receive CLE credit the lawyer must submit an Affidavit of Pro Bono Representation to the Board (see Appendix II).

E. On-Demand Courses. A lawyer may claim up to 15 hours of credit within the 45 hour CLE period for on-demand courses as defined in Rule 2R, subject to the following provisions:

(1) The course meets all other requirements of Rules 2, 5, & 6;

(2) The course sponsor agrees to have one or more faculty members accessible to all participants via electronic or other means through the 24 month period during which the program is approved for Minnesota CLE credit;

(3) The course sponsor or course applicant completes and submits to the Board an Application for Course Approval; and

(4) The approval for an on-demand course is valid for 24 months after the date of approval by the Board office.

Rule 7. Other Credit

A. Teaching Credit. Credit for teaching in an approved, live (not previously recorded) course shall be awarded to presenting faculty on the basis of one credit for each 60 minutes spent by the faculty preparing the presentation and materials for the course and teaching the course. No credit shall be awarded for teaching directed primarily to persons preparing for admission to practice law. A lawyer seeking credit for teaching and

preparation for teaching shall submit to the Board all information called for on the Affidavit of CLE Compliance at Appendix III.

* * *

Rule 9. Affidavit of CLE Compliance

A. Contents of Affidavit. To maintain active status, a lawyer shall report ~~attendance or~~ participation in no fewer than 45 credit hours of approved continuing legal education courses within a single reporting period that are in compliance with the provisions of Rule 9B. A lawyer may report the credits through the Board's Online Attorney and Sponsor Integrated System (OASIS) or by Affidavit of CLE Compliance (Appendix III). Effective July 1, 2010, the Affidavit of CLE Compliance (Appendix III) must be accompanied by a \$10 processing fee. There is no processing fee for submission through OASIS.

B. Special Categories of Credit. Lawyers must report:

- (1) no fewer than 3 hours of approved courses in ethics or professional responsibility;
- (2) no fewer than 2 hours of approved courses in the elimination of bias in the legal profession and in the practice of law;
- (3) no more than 6 hours of approved courses in law office management; ~~and~~
- (4) no more than 6 hours of credit for pro bono legal representation provided pursuant to Rule 6D and reported by Appendix II; and-
- (5) no more than 15 hours of credit for on-demand courses.

* * *

Rule 10. Director's Determinations and Board Review

A. Director's Determinations. The Director has the following authority and responsibility:

- (1) To respond in writing to written requests for course approval, giving reasons for the determination;
- (2) To grant credit to lawyers for ~~attending~~ participating in or teaching approved courses;

(3) To grant or deny requests for transfer, waiver, extension of time deadlines or interpretation of these Rules; and

(4) To inform the Board about determinations made since the Board's last meeting, together with observations and comments relating to matters under the Board's jurisdiction.

* * *

Rule 12. Restricted and Involuntary Restricted Status

A. Election of Restricted Status. A lawyer duly admitted to practice in this state may elect restricted status as defined in Rule 2~~V~~W by sending written notice of such election to the Director, except that a referee or judicial officer of any court of record of the State of Minnesota or lawyer employed and serving as attorney or legal counsel for any employer, including any governmental unit of the State of Minnesota, is not eligible to apply for restricted status. A lawyer on restricted status shall not be required to satisfy the educational and reporting requirements of these Rules.