

# Supreme Court of Florida

CORRECTED OPINION

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No. 68,708

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THE FLORIDA BAR

RE: AMENDMENT TO RULES REGULATING  
THE FLORIDA BAR (CONTINUING  
LEGAL EDUCATION).

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[March 19, 1987]

OVERTON, J.

We have for consideration The Florida Bar's petition requesting a mandatory continuing legal education requirement in the Integration Rule. We have jurisdiction. Art. V, § 15, Fla. Const.

This petition represents a further step in the educational requirements for Florida's legal profession. In 1984, The Florida Bar's long-range planning committee recommended a mandatory continuing legal education plan to the Board of Governors. In the summer of 1984, a poll, taken at the direction of the Board, indicated that 49.4 percent of The Florida Bar's members looked favorably on some type of continuing legal education requirement, while 48.8 percent were opposed. The remaining 2 percent had no opinion. In September, 1984, the Board, by a 28-to-3 vote, appointed a task force, chaired by Tom Read, Dean of the University of Florida College of Law, to formulate a specific plan for mandatory continuing legal education. The task force submitted its plan to the Board of Governors in May, 1985. The Board approved the plan by a 17-to-16 vote. The plan was subsequently modified

and a motion to rescind the Board of Governors' prior action was defeated 23-to-8. The plan finally approved by the Board of Governors is contained in Appendix A attached to this opinion.

Florida is not one of the first states to implement a mandatory continuing legal education program. The first was Minnesota, which enacted a continuing legal education requirement for its lawyers in 1975. Since that time, twenty states, including the southern states of South Carolina, Georgia, Alabama, Mississippi, and Texas, have approved similar programs.

In 1978, Colorado approved a mandatory CLE program and four years later conducted a membership survey which indicated a 76 percent favorable response to the program. A formal study commission later concluded:

MCLE has a positive effect on lawyer competence even though it cannot be proven by either objective or scientific means. In every MCLE jurisdiction where lawyers' responses have been sought, surveys indicate that they believe that MCLE does improve their competence as well as that of their fellow attorneys. An educational habit seems to have been created by MCLE that encourages lawyers to add to their legal knowledge. This positive feeling about MCLE is echoed by the young lawyers division of the American Bar Association which has proposed that MCLE be adopted in all jurisdictions. MCLE is increasingly being seen as a very positive program which improves lawyer competence.

ACLEA Program Materials, 1984 Annual Meeting p. 157.

The legal profession will not be Florida's first profession or regulated occupation to have a mandatory continuing education requirement. Mandatory continuing education requirements have already been established in Florida for accountants, opticians, optometrists, dentists, dental hygienists, osteopaths, pharmacists, psychologists, veterinarians, medical doctors, physician assistants, nurses, nursing home administrators, podiatrists, chiropractors, funeral home directors, mental health counselors, social workers, and realtors.

The Bar directs our attention to the following comments of Dr. Lewis Phillips, a continuing education expert who believes these types of programs have very positive results:

(1) The professions have experienced increased attendance at meetings, especially when some educational component is included.

(2) More and better educational programs have become available.

(3) There is evidence of increased interest in the profession by professionals, many of whom have been professionally inactive.

(4) Professions have noticed increased respect from other professions, especially from their allied professions.

(5) Professional journals are giving increased attention to educational matters; new texts and learning materials have been developed; and commercial products firms have developed many new related educational materials.

(6) Self-assessment instruments are being developed.

(7) Standards for educational programs are being developed to insure quality programs through accreditation and program approval mechanisms.

(8) More appropriate alternatives to relicensure by continuing education are being sought by some professions.

(9) Members of a profession are forced out of "professional isolation" by the examination of new knowledge, skills, and interaction with colleagues.

Power and Conflict in Continuing Professional Education (M. Stern ed. 1980).

Those who have appeared in opposition to this proposed mandatory CLE program claim that present CLE programs lack substance and are so deficient that in certain instances they constitute a sham. We reject this argument because the quality of our continuing legal education programs, as they now exist, is not an issue in this proceeding. Our responsibility here is to determine whether the proposed mandatory CLE program will benefit the public by improving the competence of the legal profession.

This Court, in establishing an integrated bar, created a representative governing body to assist in supervising Florida's legal profession and to develop programs that benefit

the public and the profession through improving the administration of justice. The Board of Governors, as that representative body, has developed and presented this mandatory CLE program. We recognize that reasonable people may differ with regard to the benefits this program will provide. We feel, however, that there is clearly a reasonable basis for the Board's action and, consequently, it would be inappropriate to reject this program out of hand.

Although we approve in principle the proposed program, we find we should direct the following modifications before its implementation: (1) a separate mandatory judicial educational requirement should be established in the judicial administration rules for The Florida judiciary, administered by the Florida Court Education Council, rather than through the proposed Integration Rule; (2) the full-time federal judiciary should be exempt; (3) a special provision should be prepared relating to continuing education for full-time government lawyers; and (4) this entire plan should be reviewed by this Court three years from the date the program is implemented.

We request the Bar to appoint a special committee to work with a liaison member of this Court, designated by the Chief Justice, to draft the necessary modification provisions within sixty days. It is this Court's intention that the proposed plan be implemented January 1, 1988.

It is so ordered.

EHRlich, SHAW and BARKETT, JJ., and ADKINS, J. (Ret.), Concur  
McDONALD, C.J., Dissents

## CONTINUING LEGAL EDUCATION REQUIREMENT RULE

6-10.1 Continuing legal education requirement

(a) Preamble. It is of primary importance to the public and to the members of The Florida Bar that attorneys continue their legal education throughout the period of their active practice of law. To accomplish that objective, each active member of The Florida Bar (hereinafter referred to as "member") shall meet certain minimum requirements for continuing legal education.

(b) Effective date. Continuing legal education requirements established by this rule shall become effective on (the date established by the Supreme Court of Florida).

(c) Reporting requirement. Each member shall report compliance with continuing legal education requirements in the manner set forth in the policies adopted for administration of this plan.

(d) Fees. The Board of Governors of The Florida Bar may require a reasonable fee to be paid to The Florida Bar in connection with each member's report concerning compliance with continuing legal education requirements.

(e) Rules. The Board of Certification, Designation and Education of The Florida Bar shall adopt policies necessary to implement continuing legal education requirements subject to the approval of the Board of Governors.

6-10.2 Administration

(a) Board of Certification, Designation and Education. The Board of Certification, Designation and Education shall administer the continuing legal education requirements as herein provided. Any member affected by an adverse decision of the Board of

Certification, Designation and Education may appeal as provided in Rule 6-2.11.

(b) Delegation of authority. The Board of Certification, Designation and Education may delegate to the staff of The Florida Bar any responsibility set forth herein, except that of granting a waiver or exemption from continuing legal education requirements.

(c) Scope of Board of Certification, Designation and Education activities. The Board of Certification, Designation and Education shall cooperate with and answer inquiries from staff pertaining to continuing legal education requirements and make recommendations to the Board of Governors concerning continuing legal education requirements, including but not limited to:

- (1) approved education courses;
- (2) approved alternative education methods;
- (3) number of hours credit to be allowed for various education efforts;
- (4) established educational standards for satisfaction and completion of approved courses;
- (5) additional areas of education and/or practice approved for credit under continuing legal education requirements;
- (6) modification or expansion of continuing legal education requirements;
- (7) adoption of additional standards or regulations pertaining to continuing legal education requirements;
- (8) amount of reporting or delinquency fees; and
- (9) general administration of continuing legal education requirements.

(d) Maintenance of records. The Florida Bar shall maintain a record of each member's compliance or noncompliance with continuing legal education requirements.

### 6-10.3 Minimum continuing legal education standards

(a) Applicability. Every active member shall report concerning compliance with continuing legal education requirements and subject only to the exemptions contained herein, every active member shall comply with the educational requirements of continuing legal education requirements.

(b) Minimum hourly continuing legal education requirements. Each member shall complete a minimum of thirty (30) credit hours of approved continuing legal education activity every three (3) years. Two (2) of the hours must be in the area of legal ethics.

(c) Exemptions.

- (1) Active military service.
- (2) Undue hardship.
- (3) Non-resident members not delivering legal services or advice on matters or issues governed by Florida law.

(d) Accreditation of hours. Accreditation shall be as set forth in the policies adopted pursuant to this rule. If a course is presented or sponsored by or has received credit approval from an organized state bar (whether integrated or voluntary), such course shall be deemed an approved course for purposes of this rule and payment of a course approval fee shall not be required.

### 6-10.4 Reporting requirements.

(a) Reports required. Each member shall file a report showing compliance or noncompliance with continuing legal education requirements. Such report shall be in the form prescribed by the Board of Certification, Designation and Education.

(b) Time for filing. The report shall be filed with The Florida Bar no later than the last day of such member's applicable reporting period as set forth in the rules and regulations.

6-10.5 Noncompliance and sanctions.

(a) Extended time for compliance. If a member fails to complete the minimum required continuing legal education hours by the end of the applicable reporting period, the report of noncompliance shall be accompanied by a specific plan for completing the necessary hours within one hundred twenty (120) days of the reporting date or the member shall establish eligibility for an exemption under Rule 6-10.3(c).

Any specific plan shall be deemed approved by the Board of Certification, Designation and Education unless within thirty (30) days after receipt of the report, the Board of Certification, Designation and Education notifies the member that the plan has not been approved.

Completion of a specific plan shall be reported by the member to the Board of Certification, Designation and Education no later than fifteen (15) days following the expiration of the applicable time for the plan. Failure of the member to complete the plan within the specified time or to report within the time set forth for reporting such completion shall invoke the sanctions set forth below.

(b) Notice of noncompliance. If a member fails to comply with these rules in any respect the Board of Certification, Designation and Education shall promptly send a notice of noncompliance to such member. The notice shall specify the nature of the noncompliance and state that if a specific plan is not submitted or if a hearing to establish an exemption or show reasonable cause for noncompliance is not requested, the member's name shall be filed with the Supreme Court of Florida. The Florida Bar shall recommend that all members



on such list be treated in the same manner as members delinquent in the payment of dues. Nothing contained in this section shall be construed to extend the periods of time for completing a specific plan as set forth in section (a) above.

(c) Hearing on notice of noncompliance. If a hearing is requested, such hearing shall be governed by Section 6.11 of the policies adopted pursuant to this rule. The party requesting the hearing may be represented by counsel. Witnesses shall be sworn, and, if requested by the affected member a complete electronic record or transcript of the proceedings and testimony shall be made, at the expense of the affected member.

If it is determined that compliance has been accomplished, the matter shall be dismissed and the Board of Certification, Designation and Education's records shall reflect such compliance.

(d) Procedures upon noncompliance after hearing. If it is determined after hearing that compliance has not been accomplished, the Board of Certification, Designation and Education shall:

- (1) If reasonable cause for noncompliance has been determined, allow the member requesting a hearing fifteen (15) days to file a specific plan for correcting the noncompliance. Such specific plan shall require compliance within one hundred twenty (120) days following the filing of the specific plan. Unless the Board of Certification, Designation and Education rejects the specific plan within thirty (30) days after its filing, the specific plan shall be deemed accepted. Evidence of completion of the plan shall be reported to the Board of Certification, Designation and Education not later than fifteen (15) days following the expiration of the time period for such specific plan. If the member fails to file an acceptable specific plan or fails to complete the plan within the time provided or fails to file evidence of completion of the plan

within the time provided, the Board of Certification, Designation and Education shall proceed as though there was no reasonable cause for noncompliance.

(2) Upon a finding by the Board of Certification, Designation and Education of no reasonable cause for noncompliance, file a record of the matter, including a copy of the findings and determination and recommendation of the Board of Certification, Designation and Education with the Supreme Court of Florida. Notice of the findings of the Board of Certification, Designation and Education shall be served on the affected member of the Bar.

(3) Upon filing of a notice of confirmation of noncompliance or of the record of a Board of Certification, Designation and Education hearing determining noncompliance, the Supreme Court of Florida shall enter an order as it deems appropriate, which may include suspension.

(e) Appeal to the Board of Governors. A decision of the Board of Certification, Designation and Education may be appealed to the Board of Governors of The Florida Bar. Appeals to the Board of Governors shall be governed by the policies promulgated under these rules.

(f) Appeal to the Supreme Court of Florida. A decision of the Board of Governors may be appealed by the affected member to the Supreme Court of Florida. Appeals to the Court shall be governed by the policies promulgated under these rules.

(g) Exhaustion of remedies. A member must exhaust each of the remedies provided under these rules in the order enumerated before proceeding to the next remedy.

(h) Tolling time for compliance. An appeal shall toll the time a member has for showing compliance with continuing legal education requirements.

6-10.6 Reinstatement. Any member suspended from the practice of law for failure to meet continuing legal education requirements may be reinstated by the Court upon a showing that the noncompliance has been corrected and upon payment to the Board of Certification, Designation and Education of a uniform reinstatement fee, as established by the Board of Governors.

6-10.7 Confidentiality. Unless directed otherwise by the Supreme Court of Florida, the files, records and proceedings of the Board of Certification, Designation and Education, as they relate to or arise out of any failure of a member to satisfy the continuing legal education requirements, shall be deemed confidential and shall not be disclosed, except in the furtherance of the duties of the Board of Certification, Designation and Education or upon request of the member, in writing, or as they may be introduced in the evidence or otherwise produced in proceedings under these rules.

Nothing herein shall be construed to prohibit The Florida Bar from advising that a member has been suspended from the active practice of law for failure to meet continuing legal education requirements.

6-10.8 Disciplinary Action. The Board of Certification, Designation and Education may refer misrepresentation of a material fact concerning compliance with or exemption from continuing legal education requirements for disciplinary proceedings under the Rules of Professional Conduct or Rules of Discipline.