

Proposed Rules 1.15 and 1.16 of the Rules of the Supreme Court of the State of Hawai‘i

The Supreme Court of Hawai‘i seeks public comment regarding proposed new Rules 1.15 and 1.16 of the Rules of the Supreme Court of the State of Hawai‘i. The proposals would add (1) mandatory and voluntary continuing professional education requirements and (2) noncompliance rules to the Rules of the Supreme Court of the State of Hawai‘i. The proposed rules are attached hereto, along with Justice Duffy’s cover letter and attachment. Please post the proposed rules, cover letter and attachment together.

Comments about the proposed rule should be submitted, in writing, **no later than Tuesday, February 17, 2009**, to the Judiciary Public Affairs Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the [online form](#) on the Judiciary’s website at www.courts.state.hi.us. If adopted, the proposed amendment will be effective July 1, 2009.

Attachment

**PROPOSED AMENDMENT TO
RULES OF THE SUPREME COURT OF THE STATE OF HAWAII**
(New material is underlined)

**1.15. Mandatory Continuing Professional Education and
Voluntary Continuing Legal Education.**

(a) Mandatory Continuing Professional Education. In order to promote the highest level of competence and professionalism in members of the Hawai'i State Bar Association (HSBA), every active member of the HSBA must complete at least 3 credit hours per year of approved Mandatory Continuing Professional Education (MCPE). Qualifying educational topics may include the Hawai'i Rules of Professional Conduct, Revised Code of Judicial Conduct, legal ethics, law office management, case and client management, malpractice insurance and prevention programs, and professionalism.

(b) Voluntary Continuing Legal Education. In addition to MCPE, all active members of the HSBA are encouraged to complete up to 9 or more credit hours per year of Voluntary Continuing Legal Education (VCLE).

(c) Carry Forward of Credit Hours. An active HSBA member may carry forward from the previous reporting period a maximum of 3 MCPE credit hours and 9 VCLE credit hours. To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.

(d) Mandatory Reporting. By December 31 of each year, each active HSBA member must certify in a manner prescribed by the HSBA whether the member has completed the required minimum of 3 credit hours of approved MCPE during the preceding year or carried forward the minimum credit hours from the prior year as provided in subsection (c) of this rule. The member must also certify whether the member has completed 9 credit hours or more of VCLE during the preceding year or carried forward VCLE credit hours from the prior year as provided in subsection (c). If the member has completed fewer than 9 credit hours of VCLE, the member must also estimate and report the estimated number of VCLE credit hours completed. A member must maintain records of approved MCPE credit hours and of VCLE credit hours for the 2 most recent reporting periods, and these records shall be subject to audit.

(e) Time Extensions. A member may file a written request for an extension of time for compliance with this rule prior to the end of the reporting period. A request for extension shall be reviewed and determined by the HSBA.

(f) Course and Activities. The MCPE standard of this rule may be met by attending approved courses or completing any other activity approved for credit hours under these rules. If the approved course or activity or any portion of it relates to professional education as described in (a) of this rule, the member may claim MCPE credit hour(s) for the

**PROPOSED AMENDMENT TO
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(New material is underlined)

course or activity or for the professional education related portion of it. The following activities may be considered for credit hours when they meet the conditions set forth in this rule:

(1) preparing for and teaching approved professional courses; credit will be granted for up to 2 hours of preparation time for every 1 hour of time spent teaching;

(2) studying approved audio or video tapes or other technology-delivered courses;

(3) attending Bar Section or Inn of Court meeting with approved substantive programs;

(4) attending approved in-house courses;

(5) attending approved continuing judicial education courses;

(6) attending meetings of professional legal associations with approved substantive programs.

(h) Approval of Courses or Activities. Courses and activities sponsored by the HSBA are deemed approved. HSBA shall approve or disapprove all educational courses and activities for credit and shall approve or disapprove applications by an entity or association for accreditation as a course or activity provider. Accreditation shall constitute prior approval of MCPE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the HSBA. The HSBA will establish by rule the procedures, minimum standards, and any fees for accreditation of providers, in-house courses, and publication of legal texts or journal articles, and for revocation of accreditation when necessary.

(i) Effective Date; Reporting Period. This rule will be effective January 1, 200 . The reporting period will be the calendar year, from January 1st to December 31st, and the first reporting period will commence on January 1, 200 .

**1.16 Noncompliance with Mandatory Continuing
Professional Education Requirements or
Noncompliance with Requirement to Report MCPE and
VCLE; Suspension.**

(a) Notice of Noncompliance. Within 60 days after the deadline for filing the certification described in Rule 1.15(d), HSBA shall send a certified notice of noncompliance to each active member whose certification shows that the MCPE requirement has not been met, or who has failed to file the completed certification information. Within 30 days of the mailing of such notice of noncompliance, the member shall remedy the noncompliance, demonstrate that the notice of noncompliance was

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(New material is underlined)

issued erroneously, or submit an affidavit of compliance, if the member asserts that the information on the certification form contained an error.

(b) Suspension for Noncompliance with Mandatory Continuing Professional Education Requirement or Noncompliance with Requirement to Report MCPE and VCLE.

(1) Any active member who has not complied with the MCPE requirement in Rule 1.15 or with the mandatory reporting of the MCPE and VCLE requirement in Rule 1.15, and who has not remedied the noncompliance as provided in subsection (a) of this rule, shall be automatically administratively suspended for noncompliance with Rule 1.15.

(2) An active member suspended under this subsection shall not be reinstated until (a) the member has complied with the MCPE requirement and the MCPE and VCLE reporting requirement; (b) the member has paid a reinstatement fee in an amount set by the HSBA; and (c) the member has paid any dues accrued during the period of suspension.

COMMENT:

Continuing professional and legal education contributes to lawyer competence and benefits the public and the legal profession by assuring that attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices. Voluntary continuing legal education is valuable to lawyers and attendance at courses is encouraged. These new rules are expected to result in a substantial increase in course attendance and participation in activities that earn MCPE and VCLE credit, with resulting enhancement of lawyer services to clients.



Supreme Court — THE JUDICIARY • STATE OF HAWAII

417 SOUTH KING STREET • ALI'IOLANI HALE • HONOLULU, HAWAII 96813-2912 • TELEPHONE (808) 539-4715 • FAX 539-4703

James E. Duffy, Jr.
ASSOCIATE JUSTICE

October 15, 2008

- ✓ The Honorable Ronald T. Y. Moon
- The Honorable Steven H. Levinson
- The Honorable Paula A. Nakayama
- The Honorable Simeon R. Acoba
- Supreme Court of Hawai'i
- 417 South King Street
- Honolulu, Hawai'i 96813

Dear Members of the Hawai'i Supreme Court:

On behalf of the Hawai'i Supreme Court Commission on Professionalism, I am forwarding the Professionalism Commission's recommendation that the Rules of the Supreme Court of the State of Hawai'i be amended to include the following rules:

1. a rule entitled "Mandatory Continuing Professional Education and Voluntary Continuing Legal Education," and
2. a rule entitled "Noncompliance with Mandatory Continuing Professional Education Requirements or Noncompliance with Requirement to Report MCPE and VCLE; Suspension."

Copies of the recommended rules are enclosed, together with a copy of an e-mail cover letter received from Calvin Young (co-chair of the Professionalism Commission's Committee re Mandatory Legal Education) on October 7, 2008.

The recommended rules were discussed, voted upon (by secret ballot), and passed (by a 10-5 margin) in the Professionalism Commission's meeting on October 10, 2008.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink that reads "James E. Duffy, Jr.".

JAMES E. DUFFY, JR.
Associate Justice

JED:jtm
Enclosure



"Calvin Young"
<calvin.young@hawad
vocate.com>

10/07/2008 10:53 AM

To: <James.E.Duffy@courts.state.hi.us>
cc: "Daniel Foley" <daniel.r.foley@courts.state.hi.us>
Subject: Commission on Professionalism/ Draft of proposed rules

Justice James Duffy,

On behalf of the Hawaii Supreme Court's Commission on Professionalism's Committee re Mandatory Continuing Legal Education, we are pleased to forward to you the following.

Attached are proposed rules re Mandatory Continuing Professional Education and Voluntary Continuing Legal Education. Also attached is a brief commentary on the proposed rules from our committee.

<<mcpe.PDF>>

We believe this draft is suitable for distribution to the entire Commission in advance of this coming Friday's meeting for review and consideration.

Our fellow committee members, Susan Arnett, Michael Nauyokas, Grace Kido, Lyn Flanigan, David Hall, Judy Pavey, Cori Lau, Hisae Ishii-Chang, Peter Lenhart and Jill Ramsfield, worked long and hard and we commend their effort. We note that our committee did not reach this juncture without some difference of opinion and we expect that additional discussion will take place on Friday.

Should you have any questions in advance of our meeting, please feel free to contact one of us.

Aloha,

Calvin Young

Judge Daniel Foley  mcpe.PDF

IN THE SUPREME COURT OF THE STATE OF HAWAII
In the matter of the amendment of the
Rules of the Supreme Court of the State of Hawaii

IT IS HEREBY ORDERED that Rule 1.15 and 1.16 are added to the Rules of the Supreme Court of the State of Hawaii, effective _____, as follows:

Rule 1.15. Mandatory Continuing Professional Education and Voluntary Continuing Legal Education.

(a) Mandatory Continuing Professional Education. In order to promote the highest level of competence and professionalism in members of the Hawaii State Bar Association (HSBA), every active member of the HSBA must complete at least three credit hours per year of approved Mandatory Continuing Professional Education (MCPE). Qualifying educational topics may include the Hawaii Rules of Professional Conduct, Revised Code of Judicial Conduct, legal ethics, law office management, case and client management, malpractice insurance and prevention programs, and professionalism.

(b) Voluntary Continuing Legal Education. In addition to MCPE, all active members of the HSBA are encouraged to complete up to nine or more credit hours per year of Voluntary Continuing Legal Education (VCLE).

(c) *Carry forward of Credit Hours.* An active HSBA member may carry forward from the previous reporting period a maximum of 3 MCPE credit hours and 9 VCLE credit hours. To be carried forward, the credit hours must have been earned during the calendar year immediately preceding the current reporting period.

(d) *Mandatory Reporting.* By December 31 of each year, each active HSBA member must certify in a manner prescribed by the HSBA whether the member has completed the required minimum of three credit hours of approved MCPE during the preceding year or carried forward the minimum credit hours from the prior year as provided in subsection (c) of this rule. The member must also certify whether the member has completed nine credit hours or more of VCLE during the preceding year or carried forward VCLE credit hours from the prior year as provided in subsection (c). If the member has completed fewer than nine credit hours of VCLE, the member must also estimate and report the estimated number of VCLE credit hours completed. A member must maintain records of approved MCPE credit hours and of VCLE credit hours for the two most recent reporting periods, and these records shall be subject to audit.

(e) *Time Extensions.* A member may file a written request for an extension of time for compliance with this rule prior to the end of the reporting period. A request for extension shall be reviewed and determined by the HSBA.

(f) *Course and Activities.* The MCPE standard of this rule may be met by attending approved courses or completing any other activity approved for credit hours under these rules. If the approved course or activity or any portion of it relates to professional education as described in (a) of this rule, the member may claim MCPE credit hour(s) for the course or activity or for the professional education related portion of it. The following activities may be considered for credit hours when they meet the conditions set forth in this rule:

(1) preparing for and teaching approved professional courses; credit will be granted for up to two hours of preparation time for every one hour of time spent teaching;

(2) studying approved audio or video tapes or other technology-delivered courses;

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(6) attending meetings of professional legal associations with approved substantive programs.

(h) Approval of Courses or Activities. Courses and activities sponsored by the HSBA are deemed approved. HSBA shall approve or disapprove all educational courses and activities for credit and shall approve or disapprove applications by an entity or association for accreditation as a course or activity provider. Accreditation shall constitute prior approval of MCPE courses offered by the provider, subject to amendment, suspension, or revocation of such accreditation by the HSBA. The HSBA will establish by rule the procedures, minimum standards, and any fees for accreditation of providers, in-house courses, and publication of legal texts or journal articles, and for revocation of accreditation when necessary.

(i) Effective Date; Reporting Period. This rule will be effective January 1, 200_. The reporting period will be the calendar year, from January 1st to December 31st, and the first reporting period will commence on January 1, 200_.

Rule 1.16. Noncompliance with Mandatory Continuing Professional Education Requirements or Noncompliance with Requirement to Report MCPE and VCLE; Suspension.

(a) Notice of Noncompliance. Within 60 days after the deadline for filing the certification described in Rule 1.15(d), HSBA shall send a certified notice of noncompliance to each active member whose certification shows that the MCPE requirement has not been met, or who has failed to file the completed certification information. Within 30 days of the mailing of such notice of noncompliance, the member shall remedy the noncompliance, demonstrate that the notice of noncompliance was issued erroneously, or submit an affidavit of compliance, if the member asserts that the information on the certification form contained an error.

(b) Suspension for Noncompliance with Mandatory Continuing Professional Education Requirement or Noncompliance with Requirement to Report MCPE and VCLE.

(1) Any active member who has not complied with the MCPE requirement in Rule 1.15 or with the mandatory reporting of the MCPE and VCLE requirement in Rule 1.15, and who has not

remedied the noncompliance as provided in subsection (a) of this rule, shall be automatically administratively suspended for noncompliance with Rule 1.15.

(2) An active member suspended under this subsection shall not be reinstated until (a) the member has complied with the MCPE requirement and the MCPE and VCLE reporting requirement; (b) the member has paid a reinstatement fee in an amount set by the HSBA; and (c) the member has paid any dues accrued during the period of suspension.

DATED: _____

EFFECTIVE DATE: _____

/s/ _____
Chief Justice

/s/ _____
Justice

/s/ _____
Justice

/s/ _____
Justice

/s/ _____
Justice

Commentary - Continuing professional and legal education contributes to lawyer competence and benefits the public and the legal profession by assuring that attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices. Voluntary continuing legal education is valuable to lawyers and attendance at courses is encouraged. These new rules are expected to result in a substantial increase in course attendance and participation in activities that earn MCPE and VCLE credit, with resulting enhancement of lawyer services to clients.

