The Delaware Rules for Continuing Legal Education

Rule 1. Purpose.

The Supreme Court of the State of Delaware has determined it is in the best interest of the public and the administration of justice that members of the Delaware Bench and Bar maintain their international reputation of professionalism and competence through continuing legal education. These Rules establish the expectations of the Court for the process of continuing legal education and establish a Commission to assist in their implementation, interpretation, and enforcement.

Rule 2. Definitions.

(A) "Attorney" means any member of the Bar of the Delaware Supreme Court, excluding judicial officers.

(B) "CLE" means continuing legal education.

(C) "Commission" means the Commission on Continuing Legal Education.

(D) "Compliance Year" means the year in which the Attorney reaches the December 31 deadline for completing CLE credits as provided in Rule 5(A).

(E) "Court" means the Supreme Court of the State of Delaware.

(F) "Ethics" means both legal and judicial ethics. It also means professionalism, which is a broader concept embodying an attitude and a dedication to ethics, civility, skill, businesslike practices, such as competence in the use of technology, and a focus on service, which encompasses obligations to other Attorneys, obligations toward legal institutions, and obligations to the public whose interests Attorneys must serve.

(G) "Executive Director" means the Executive Director of the Commission on Continuing Legal Education.

(H) "Fundamentals" means the series of basic courses in legal practice that newly admitted Attorneys must complete as provided in Rule 4(D).

(I) "In-House Program" means a continuing legal education activity sponsored by a law firm, corporation, governmental agency, or similar entity for the education of its employees or members.

(J) "Judicial Commissioner" means the judicial representative on the Commission under Rule 3(A).

(K) "Judicial Officer" means any member of the Bar of the Delaware Supreme Court appointed to serve as a judge, commissioner, magistrate in chancery, or justice of the peace on a Delaware state court.

(L) "Senior Attorney" means every Attorney who has been a member in good standing of the Bar of the Supreme Court in any state or the District of Columbia for 40 or more years. The Senior Attorney has the burden of verifying such status to the satisfaction of the Commission.

(M) "Transcript" means the record of an Attorney's completed CLE activities maintained by the Commission.

(N) "Uniform Application" means the Uniform Application for the Accreditation of a Continuing Legal Education Activity as approved by the Continuing Legal Education Regulators Association (CLEreg).

Rule 3. Commission on Continuing Legal Education.

(A) *Commission Members:* The Commission on Continuing Legal Education is established and shall consist of 7 members appointed by the Court for a term of 3 years. The terms shall be staggered so that no more than 3 members' terms shall end in the same year. The 7 members of the Commission shall include an Attorney from each county and at least one Judicial Officer. The Commission members shall serve without compensation. Four voting members shall constitute a quorum at any meeting.

(B) *Officers:* The Court shall appoint 1 member of the Commission as Chair and 1 member as Vice Chair. The Executive Director of the Commission shall serve as Secretary.

(C) *Executive Director:* The Executive Director shall be selected and employed by the Court.

(D) *Ex-Officio Members*: The following shall serve as ex-officio members of the Commission but shall have no vote: the Supreme Court Administrator or the Administrator's designee, the Executive Director of the Commission, and the Executive Director and the Director of Continuing Legal Education of the Delaware State Bar Association.

(E) *Powers and Duties:* In addition to administering and interpreting these Rules, the Commission shall be responsible for:

(1) Monitoring the availability of quality continuing legal educational courses and activities to members of the Bench and Bar;

(2) Determining the number of credit hours to be allowed for any continuing legal educational course or activity;

(3) Producing the Court's annual Pre-Admission Conference;

(4) Approving the curriculum for Fundamentals courses offered under these Rules and providing guidance for the creation of these courses;

(5) Providing policy statements regarding courses, activities, credits, and the interpretation of these Rules;

(6) Recommending to the Court an assessment to be paid by Attorneys concurrently with the annual registration required by Supreme Court Rule 69;

(7) Publishing a schedule of fees to be charged to organizations sponsoring continuing legal education programs as a condition of accreditation for attendees to receive Delaware continuing legal education credit; and

(8) Reporting annually to the Court on the activities of the Commission.

Rule 4. Educational Requirements.

(A) *Attorneys Generally:* Each Attorney shall complete a minimum of 24 approved CLE credit hours during each two-year period. At least 12 of those credits must be earned by attending, in person, live CLE-approved courses at which lawyers from other organizations are also in attendance or by engaging in other in-person activities that warrant such credit in the Commission's discretion. In addition, during the two-year period, at least 4 of the 24 approved CLE credit hours shall consist of approved Ethics credits. If an Attorney has earned excess CLE credit hours, up to 20 such hours may be carried forward and applied to the requirement for the next two-year period. Ethics credits may not be carried forward as Ethics credits, but may be carried forward as general CLE credits.

(B) *Judicial Officers:* Judicial Officers shall comply with the educational requirements of Rule 4(A) or 4(C), as applicable based on years admitted to the Bar.

(1) Compliance with these requirements shall be considered as the maintenance of professional competence in accordance with Rule 2.2 of the Delaware Judges' Code of Judicial Conduct.

(2) If, in the sole judgment of the Judicial Commissioner, any Judicial Officer fails satisfactorily to comply with these Rules in any respect, the Judicial Commissioner shall take such action as the Judicial Commissioner deems appropriate to induce compliance. If compliance satisfactory to the Judicial Commissioner is not obtained, the Judicial Commissioner shall refer the matter to the Chief Justice for appropriate action to induce compliance.

(C) *Senior Attorneys:* Senior Attorneys shall complete a minimum of 12 approved CLE credit hours during each two-year period. At least 6 of those credits must be earned by attending, in person, live CLE-approved courses at which lawyers from other organizations are also in attendance or by engaging in other in-person activities that warrant such credit in the Commission's discretion. In addition, during the two-year period, at least 2 of the 12 approved CLE credit hours shall consist of approved Ethics credits. If a Senior Attorney has earned excess CLE credit hours, up to 10 such hours may be carried forward and applied to the requirement for the next two-year period. Ethics credits may not be carried forward as Ethics credits, but may be carried forward as general CLE credits.

(D) *Newly Admitted Attorneys:* The CLE requirement for a newly admitted Attorney shall begin on January 1st of the year after the Attorney's admission to the Delaware Bar. By the end of the newly admitted Attorney's second Compliance Year, the newly admitted Attorney must attend all of the following Fundamentals courses: (1) Fundamentals of Lawyer-Client Relations; (2) Fundamentals of Family Law; (3) Fundamentals of Real Estate; (4) Fundamentals of Civil Litigation; (5) Fundamentals of Will Drafting and Estate Administration; (6) Fundamentals of Law Practice Management and Technology; and (7) Fundamentals of Criminal Law and Procedure. Only Fundamentals courses offered by the Delaware State Bar Association shall be eligible for approval for this requirement. Attendance at these courses shall be credited toward the Attorney's minimum continuing legal education obligation and is governed by the requirements outlined in Rule 4(A).

(E) *Resuming Active Practice:* The CLE requirement for an Attorney resuming active practice, whether from retirement or disciplinary sanction or otherwise, shall be prorated based on the date of the Attorney's reinstatement. Regardless of the year in which an Attorney is reinstated to active status, the Attorney's Compliance Year shall be determined in accordance with Rule 5(A). An Attorney who is reinstated to active status and who has not completed the Fundamentals requirements for newly admitted Attorneys must do so by the end of the first Compliance Year following the Attorney's reinstatement to active status. Any Attorney who is reinstated to active status after being inactive for more than 10 years shall complete the Fundamentals of Lawyer-Client Relations course by the end of the first Compliance Year following the reinstatement, regardless of whether the Attorney previously completed the Fundamentals of Lawyer-Client Relations course.

(F) *Exemptions:* The following Attorneys and Judicial Officers shall be exempt from these Rules:

(1) Any Attorney or Judicial Officer who has been granted a certificate of retirement under Supreme Court Rule 69(f);

(2) Any Attorney holding an elected public office of this State or the United States and who certifies to the Commission by affidavit that the Attorney is not engaged in the practice of law, and whose application for exemption has been approved by the Commission;

(3) Any Attorney or Judicial Officer who becomes an inactive member of the Bar under Supreme Court Rule 69(d)(i); and

(4) Members of the federal judiciary.

(G) *Comity:* An Attorney whose principal place of practice is located in another jurisdiction, who is licensed to practice law in another state or the District of Columbia with mandatory CLE requirements, and who is in compliance with the CLE requirements of that jurisdiction shall be deemed in compliance with these Rules. Such Attorney shall certify compliance with this Rule on the Attorney's annual registration statement filed under Supreme Court Rule 69(b)(i).Rule 5. Compliance.

(A) *When Credits Shall Be Completed:* Attorneys admitted to the Delaware Bar in even-numbered years shall complete the required CLE credits by December 31 of even-numbered years; Attorneys admitted to the Delaware Bar in odd-numbered years shall complete the required CLE credits by December 31 of odd-numbered years. Each Attorney shall certify compliance with these Rules on the Attorney's annual registration statement filed under Supreme Court Rule 69(b)(i). The Commission may, in its discretion, extend the deadline for an Attorney to complete the required credits or to certify compliance if the Attorney

demonstrates that exceptional circumstances prevented the Attorney from completing the required credits or certifying compliance by the applicable deadline.

(B) *Notice of Noncompliance and Delinquency Fee:* On or about January 15th, the Commission shall send a Notice of Noncompliance to each Attorney who did not complete the required CLE credits by the end of the preceding Compliance Year. Each such Attorney shall be assessed a $150 delinquency fee.

(C) *Curing Noncompliance*. An Attorney who did not complete the required CLE credits by the end of the Attorney's Compliance Year may cure such noncompliance by completing the missing credits, submitting proof of completion to the Commission, and paying the $150 delinquency fee on or before the March 1st following the end of the Attorney's Compliance Year.

(D) *Delinquency Fees; Administrative Suspension*: Failure to cure the noncompliance by March 1 as provided in Rule 5(C) will result in an additional $150 delinquency fee. Failure to cure the noncompliance and pay all delinquency fees by April 1 will result in an additional $200 delinquency fee. If by April 15 the noncompliance has not been cured, the Attorney is deemed administratively suspended from the practice of law, and the Clerk of the Court shall issue a notice of administrative suspension by certified mail to the Attorney's last known address of record and distribute such notice to the courts in accordance with the Court's procedures relating to administrative suspensions. An Attorney who has been administratively suspended under this Rule may seek retroactive reinstatement as a member of the Bar by completing the missing credits, submitting proof of completion to the Commission, and paying all delinquency fees by the July 1st following the end of the Attorney's Compliance Year. An Attorney who fails to seek reinstatement by that deadline shall be required to petition for reinstatement under Rule 22.1 of the Delaware Lawyers' Rules of Disciplinary Procedure.

(E) *Audits of Transcripts and Disciplinary Investigation for False Submissions:* If the Executive Director has reason to believe that an Attorney has submitted false information to the Commission, the Executive Director shall bring such information promptly to the attention of the Commission, which may result in a CLE audit. If, following a CLE audit, the Commission has reason to believe that an Attorney has submitted false information to the Commission, it shall forward the Attorney's name to Disciplinary Counsel for investigation and shall notify the Attorney that it has done so.

Rule 6. Attendance Records.

(A) *Obligation of the Provider:* The provider of a CLE program shall create and maintain, for at least 3 years, records of attendance at the program.

(1) Within 30 days after the date on which the program ends, the provider shall submit to the Commission a list of attendees for each activity, except that for any program occurring after December 15 the list must be submitted on or before the following January 10th. This list shall include:

(a) the course identification number as assigned by the Commission;

(b) the full name of each attendee;

(c) the Delaware Supreme Court identification number of each attendee, as available; and

(d) the number of credit hours to which each attendee is entitled, based upon the total number of credit hours approved by the Commission. This number should indicate how many of the credit hours were in Ethics.

These records shall be submitted to the Commission by electronic transmission in a format approved by the Commission. The Commission may require verified statements as to the accuracy of the reports it receives. To ensure accuracy, providers shall have a representative present at the program to properly record attendance on a sign-in sheet.

(2) In addition to the records submitted to the Commission, the provider shall furnish a certificate of attendance to each attendee. This certificate shall include:

(a) the name, address, and telephone number of the sponsoring organization;

(b) the course identification number as assigned by the Commission;

(c) the complete title of the course attended;

(d) the date(s), city, and state of the course attended;

(e) the total number of credit hours approved by the Commission for the particular course;

(f) the total number of credit hours attended by the Attorney, including a statement of the number of these hours that were in Ethics; and

(g) the name and signature of the provider's authorized representative.

The certificate of attendance should be given to the attendee before the attendee leaves the seminar site. If this is not possible, the certificate of attendance shall be sent to the attendee as soon as possible after the seminar.

(B) *Obligation of the Attorney:* The Attorney should keep copies of all attendance certificates, course outlines, agendas, cancelled checks, receipts, travel vouchers, and the like, to verify attendance, for 3 years after the end of the Compliance Year to which an activity was credited. The Commission may periodically request an Attorney to produce independent verification of attendance.

Rule 7. Credit Hours and Accreditation Standards.

(A) *Credit Hours:* CLE credit hours shall be computed by the following formula: Total minutes /60 = total credit hours. Credit hours shall be rounded to the nearest 1/10th of an hour. Unless otherwise provided in these Rules, only legal education shall be included in computing the total hours of actual instruction. Programs may be split into accredited and non-accredited hours. Non-instructional portions of programs, such as breaks and introductory remarks, shall not be included in the credit computation. Business meetings or portions of programs devoted to the business of the presenting group do not qualify for credit.

(B) *Accreditation Standards:* The Commission shall approve continuing legal education activities consistent with the following standards:

(1) The activity shall have significant intellectual or practical content and the primary objective shall be to increase the participant's professional competence as a lawyer or a judge;

(2) The activity shall constitute an organized program of learning dealing with matters directly related to the practice of law, the exercise of judicial responsibility, professional responsibility, law office management, use of technology, or the ethical obligations of lawyers or judges;

(3) Credit may be given for continuing legal education activities where (i) in person or televised live instruction is used or (ii) mechanically or electronically recorded or reproduced material is used in an organized program;

(4) Continuing legal education materials are to be offered, and activities conducted, by an individual or group qualified by practical or academic experience in a setting physically suitable to the educational activity of the program;

(5) Thorough, high quality, and carefully prepared written materials should be made available to all who attend the course. It is recognized that written materials are not suitable or readily available for some types of subjects; the absence of written materials should, however, be the exception and not the rule.

(C) *Activities for Which CLE Credit Will Not Be Approved:* The Commission will not approve:

(1) Courses designed to review or refresh recent law school graduates or other Attorneys in preparation for any bar examination;

(2) Activities for which the Attorney has already received credit in another form, including attendance. For example, an Attorney who prepared materials and received credit for presenting a seminar may not also receive credit for the publication of those materials, or for attendance during the time spent speaking at the seminar. However, the Attorney may receive credit for attending portions of the seminar which the Attorney did not teach, and the Attorney may receive credit notwithstanding that the Attorney also seeks or receives CLE credit for the activity from another jurisdiction.

(D) *Disabilities and Special Circumstances:* An Attorney who has a disability or some other special circumstance, which makes attendance at continuing legal education activities inordinately difficult for a substantial period of time, may file a request with the Commission for a permanent substitute program in

lieu of attendance, or a temporary substitute program in lieu of attendance during the period of the disability or special circumstance. The Attorney shall state in writing to the Commission the reasons for the request and a proposal for a continuing legal education plan tailored to the Attorney's circumstances. The Commission shall promptly review the request, seek such additional information as appropriate, and approve or disapprove such plans on an individual basis.

Rule 8. Accreditation of Sponsors and Programs.

(A) *Accredited Sponsors:* The Commission may designate qualified organizations or persons (other than law firms, legal departments of corporations, or government agencies) as Accredited Sponsors. While in good standing, any CLE program organized and conducted by the Accredited Sponsor shall be an accredited course, provided the program and the Accredited Sponsor comply with these Rules. The Board shall assess an annual fee for the privilege of being an "Accredited Sponsor." Any person or organization seeking to become an Accredited Sponsor shall apply by filing with the Commission an application in a form provided by the Commission and paying the fee set by the Commission. To maintain Accredited Sponsor status, an application together with the applicable filing fee shall be filed annually. Filing fees may be waived when the approved CLE activities are free of charge to all attendees or are presented under the supervision of the Delaware State judiciary. The Commission may reevaluate the status of an Accredited Sponsor and revoke the accreditation for any reason the Commission deems appropriate.

(B) *Accreditation of Individual Courses:* The Commission may, on its own initiative or upon application by any Attorney or the provider of any program, approve credit for all or a portion of a course that otherwise complies with these Rules. Application for accreditation of an individual program made by a program provider shall be on the Uniform Application and submitted with the applicable fee. Application for accreditation of an individual program made by an Attorney shall be submitted through the Delaware Supreme Court Lawyer Management System or as otherwise directed by the Commission. Applications may be submitted before or after presentation of the program; however, if application for approval is submitted by an Attorney before attendance, the Attorney shall submit a certificate of attendance within 30 days after the date on which the program ends or, if the program occurs after December 15 of the Attorney's Compliance Year, on or before the following January 10th. Applications submitted by a provider after the program start date will be subject to late fees as set by the Commission. No application may be submitted more than 2 years after the program start date.

(C) *Accreditation for Non-Law Courses:* The Commission may approve credit for non-law courses necessary or appropriate to an Attorney's legal practice upon the Attorney's application.

(D) *Accreditation for Recorded or Electronically Broadcasted Courses:* The Commission may approve credit for recorded or electronically broadcasted courses that otherwise comply with these Rules, provided the sponsor demonstrates objective means to verify the Attorney has in fact completed the program (i.e., the Attorney's assertion of completion is necessary for credit, but not sufficient). Applications shall be made on the Uniform Application with the applicable fee. If the presentation is recorded from a previously presented course, the original course must have taken place no more than two years before the date of the presentation for which credit is being sought.

(E) *Accreditation of In-House Programs:* The Commission may approve credit for In-House Programs that otherwise comply with these Rules.*Fees:* A schedule of fees approved by the Commission may be found on the Commission's website https://courts.delaware.gov/cle.

Rule 9. Accreditation of Activities.

(A) *Scholarly Writing:* The Commission may approve credit for scholarly writing and publication. Applications shall be submitted through the Delaware Supreme Court Lawyer Management System or as otherwise directed by the Commission. The Commission may request additional information from any applicant.

(1) Only uncompensated scholarly writing qualifies for credit. Payment to the author's firm or organization constitutes payment to the author. Reimbursement of out-of-pocket expenses is not considered compensation. An author who donates all compensation for a scholarly writing to the Delaware Bar Foundation may receive credit.

(2) Credit hours may be allocated to writing and publication in the year in which the work is accepted for publication or the year in which publication actually occurs, at the election of the author.

(3) If the work is not published, the author may, in the Commission's discretion, receive credit for the preparation of the unpublished material.

(4) The Commission will determine the number of credit hours to be allocated to the writing and publication of the work and will notify the applicant promptly on making its determination. As a general guideline: articles in general circulation newspapers and periodicals will not receive credit; a brief published piece worthy of credit in the Commission's judgment receives 2.5 credit hours; substantive articles appearing in professional newspapers and periodicals such as the Delaware Lawyer that evidence research and analysis receive five credit hours; and law review articles, books, or chapters of published works are eligible for more credit, in the Commission's discretion.

(B) *Instruction in or Participation in the Presentation of Accredited Courses:* The Commission may approve credit for teaching in an approved CLE program, law school, college, or university. Applications shall be submitted through the Delaware Supreme Court Lawyer Management System or as otherwise directed by the Commission. The Commission may request additional information from any applicant.

(1) If a number of applicants seek credit for the same course, one application may be submitted on behalf of all. In the absence of an agreement between co-presenters, available credit shall be divided equally among them. Course moderators who participate in the program but do not otherwise teach in the program shall receive credit for 1.5x the time of attendance of the portion of the program moderated.

(2) Only uncompensated teaching qualifies for credit. Compensation to the presenter's firm or organization constitutes compensation to the presenter. Reimbursement of out-of-pocket expenses is not considered payment for teaching. A presenter who donates compensation for teaching to the Delaware Bar Foundation may receive teaching credit.

(3) Presentations accompanied by thorough, high quality, readable, and carefully prepared written materials approved by the Commission will be awarded CLE credit, provided the applicant certifies that the applicant did the research and prepared the written materials for the presentation. For repeat presentations, applicants will be awarded one-half of the credit hours received for the initial presentation.

(C) *Supreme Court Appointments:*

(1) An Attorney or Judicial Officer appointed by the Court to a board, commission, committee, task force, or other qualifying entity may earn up to 12 CLE credit hours per two-year compliance period. Such credits shall not carry forward to another two-year compliance period. Such Attorney or Judicial Officer may earn one CLE credit hour for attending a meeting of the qualifying entity, including a meeting of any subcommittee, working group, or other subgroup that the qualifying entity formed to advance its work. In addition, such Attorney or Judicial Officer may earn credit for time spent performing substantive work on behalf of the qualifying entity outside of meetings, provided that in no event shall the total credits awarded for Court-appointed service exceed 12 CLE credit hours per two-year compliance period. A person seeking credit under this rule must report the qualifying activities to the Commission using the Commission's online submission process no later than December 31st of the Attorney's Compliance Year.

(2) An Attorney who serves as a Member or Associate Member of the Board of Bar Examiners will receive 12 CLE credit hours (including 2 Ethics credits) for each year of service.

(3) The Commission may approve credit for other Court appointments, including but not limited to service as presenting counsel in any proceeding before the Court on the Judiciary, as Special Disciplinary Counsel, or as a receiver for a law practice.

(D) *Pro Bono Legal Services*:

(1) The Commission may approve credit for entirely uncompensated pro bono legal services, provided that the services are performed (i) pursuant to appointment of the Attorney by a Delaware court, including the United States District Court for the District of Delaware; (ii) pursuant to an assignment of a matter to the Attorney by Delaware Volunteer Legal Services, Inc., Community Legal Aid Society

of Delaware, Inc., the Office of the Child Advocate, or Legal Services Corporation of Delaware, Inc.; or (iii) at outreach events such as a law school's "Wills for Heroes" days.

(2) Credit may be earned at a rate of one CLE credit hour for every two hours of legal services performed. Credit is limited to 20 credit hours per two-year compliance period and shall not satisfy the Ethics requirement.

Rule 10. Confidentiality.

Unless directed otherwise by the Supreme Court, the files, records, and proceedings of the Commission, as they relate to or arise out of any failure of any Attorney to satisfy the requirements of these Rules, shall be deemed confidential and shall not be disclosed, except in furtherance of the duties of the Commission or upon the request of the Attorney affected or as they may be introduced in evidence or otherwise produced in proceedings under these Rules or related disciplinary proceedings.

Rule 11. Review.

(A) *Petitions to the Commission:* Any Attorney, provider, or other person aggrieved by any decision or action of the Commission may petition the Commission for relief within 30 days from the date of mailing of the notice of the action of the Commission. The petition may be accompanied by supporting evidence or documentation including affidavits and may include a request for a hearing. If a hearing is requested, the Commission may conduct a hearing at which the aggrieved party may present evidence and argument in support of the petition.

(B) *Petitions to the Supreme Court:* If the Commission denies such petition as a whole or in part, and if such action affects the substantial rights of the person claimed to be aggrieved, the person may petition the Supreme Court for relief by serving 2 copies thereof upon the Executive Director of the Commission and by filing 6 copies with the Clerk of the Supreme Court, such service and filing to be accomplished within 30 days of the action of the Commission. No petition shall be accepted unless the provisions of this paragraph have been timely fulfilled.

(C) *Supreme Court Review:* The Supreme Court may summarily refuse a petition which does not affect the substantial rights of the person claimed to be aggrieved. Appeals from the Commission's action to the Supreme Court shall be briefed, argued, and determined from the record of the matter before the Commission and not by means of a hearing de novo. Findings by the Commission relating to disputed issues of fact and credibility will not be reversed by the Supreme Court so long as they are supported by substantial evidence.