



AMENDMENTS TO MANDATORY CONTINUING EDUCATION RULES THE '65' EXEMPTION BECOMES THE '72' EXEMPTION¹

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Under existing (soon to be repealed) Rule 260.5 of the Colorado Rules of Civil Procedure, “[a]ny attorney shall be exempt from the minimum educational requirements set forth in [Rules 260.1 through 260.8] for the years following the year of the attorney’s 65th birthday.” Herrick turned 65 in September 2014 and has not submitted an affidavit since. In fact, the Supreme Court’s website will not even permit Herrick to submit an affidavit.

Supreme Court Approval of New CLE Rules

On January 10, 2018, the Court held a public hearing on a slate of proposed CLE rules, which included deletion of the 65 and over exemption in Rule 260.5 and the repeal of C.R.C.P. Rule 260 (including Rules 206.1 through 260.8) with C.R.C.P. Rule 250 (including Rules 250.1 through 250.10). Rule Change 2018(04) making this amendment was adopted by the Colorado Supreme Court, *en banc*, on March 15, 2018, and the amendments are effective July 1, 2018.²

The initial thought expressed in the drafting sessions and then the hearings was to eliminate any age limit, and not to grandfather those of us who were already exempt. The general sense was that if a lawyer were practicing law, the lawyer should keep up with the law and technology necessary for practice. As the Preamble: *Statement of Purpose* to former (soon to be repealed) Rule 250 now provides:

As society becomes more complex, the delivery of legal services likewise becomes more complex. The public rightly expects that lawyers, in their practice of law, and judges, in the performance of their duties, will continue their [*legal and judicial education*] **professional development** throughout [*the period of their service to society*] **their legal careers**. The purpose of mandatory continuing legal and judicial education requirements is to promote and sustain competence and professionalism **and to ensure that lawyers**

¹ Originally published in the April 2018 newsletter published by the Business Law Section of the Colorado Bar Association. Available at www.bfwlaw.com.

² The new rules are available on the Supreme Court’s website at [https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2018/Rule%20Change%202018\(04\).pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Rule_Changes/2018/Rule%20Change%202018(04).pdf).

and judges remain current on the law, law practice management, and technology in our rapidly changing society.³

Stated in that manner, no age exemption for practicing lawyers or serving judges makes any sense. During the hearing, it was proposed that the rules be amended to require that a certain percentage of the hours be in person – not by tape or video. It was suggested that would promote “socialization.” That provision was not adopted.

New Rules for CLE Requirements and Compliance

The new rules are effective for all lawyers and judges licensed in Colorado on July 1, 2018. While the new rules are worth reading, for most practicing lawyers the key provisions are found in Rule 250.2 – *CLE Requirements* and Rule 250.7 – *Compliance*.

- Rule 250.2(1) continues the requirement that each lawyer and judge must complete 45 credit hours in a three-year period, including at least seven credit hours devoted to ethics. Although not specifically stated, it appears that teaching and writing will still count toward the CLE requirements.
- Rule 250.2(6) provides clearly that where a lawyer exceeds the hours requirement during any three-year period, there will be no roll-over credit authorized. That was not expressly stated in the old rules, but the statement is now clear.
- Rule 250.2(7) discusses exemptions from the CLE requirement. There are two principal exemptions available to Colorado lawyers:
 - o A lawyer who is on inactive status, disability inactive status, or under suspension is excused from the CLE requirements.
 - o Of perhaps greater interest to a large majority of the lawyers is that the exemption age has been raised from 65 to 72: “A registered lawyer or judge will be exempt from the CLE requirements of these rules starting on the registered lawyer’s or judge’s 72nd birthday.” This continues with instructions for those of us who have been exempt since we are older than 65: “For all previously exempt registered lawyers and judges, the compliance period will begin on the effective date of these rules and end on December 31, 2021 (the end of the third full calendar year following the start of the compliance period).” More on this later.

³ *Italicized language is deleted from the preamble to former Rule 260; bold-faced language is new to Rule 250.*

- Rule 250.7(1) describes the compliance obligations, including (in Rule 250.7(2)) each lawyer’s/judge’s reporting requirement and obligation to verify CLE credit hours accumulated during a three-year compliance period “no later than the 31st of January following that compliance period.” Rule 250.7(3) provides that if one “fails to complete the required CLE credit hours by the end of the CLE compliance period, the registered lawyer or judge must” file a plan to make up the deficiency (which must be filed by January 31 following the compliance period) and complete the plan by May 31. Of course, there will be a fee to be paid.
- Rule 250.7(8) provides that a lawyer can be suspended for noncompliance, but the following rules provide certain hearing procedures. Rule 250.7(10) discusses reinstatement of a lawyer suspended for noncompliance “upon a showing that the lawyer’s CLE deficiency has been corrected.”

Pro Bono Publico Remains Important

The new rules also make it clear that *pro bono* services remain important to the Colorado Supreme Court. C.R.P.C. Rule 6.1 states that “[e]very lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least fifty hours of *pro bono publico* legal services per year.” Rule 250.9 now allows attorneys to receive CLE credit for the *pro bono* services they render.

- Rule 250.9(1) provides that a lawyer may earn up to nine CLE credit hours during each three-year compliance period “for providing uncompensated *pro bono* legal representation to indigent or near-indigent persons, or supervising a law student providing such representation.” These will not include any ethics credits.
- In addition, Rule 250.10(1) provides that a lawyer may earn up to nine CLE credit hours during each three-year compliance period (including two hours of ethics) “for successful completion of the one-year CAMP program curriculum (pursuant to C.R.C.P. 255) as either a mentor or as a mentee.” Four hours are available (including one ethics hour) for the six-month CAMP program.

What About That Age Exemption?

Generally the new rules are clear, but what is not clear are the rules for those lawyers and judges who now are 68-71. Take Herrick as an example. He will turn 72 in September 2021. When he turns 72, Rule 250.2(7)(b) provides that he “will be exempt from the CLE requirements of these rules starting on [his] 72nd birthday.” Since Herrick’s first compliance period ends on December 31, 2021, and Herrick becomes exempt in September 2021, is he required to complete any CLE between now and his 72nd birthday? A strict reading of the rules says “no” since he will be exempt before his compliance period expires.

The old Rule 260.5 was clearer – Herrick did not become exempt until the January 1st following his 65th birthday – clearly requiring compliance during that last period. [Former Rule 260.5 read that “[a]ny registered attorney shall be exempt from the minimum educational requirements set forth in these rules *for the years following the year of the attorney’s 65th birthday.*” Had similar language been included in Rule 250.2(7)(b), Herrick clearly would have had to complete the mandatory CLE for the period ending December 31, 2021.

OARC Statement

In the OARC Update for Spring 2018 (received April 24, 2018), the Office of Attorney Regulation Counsel had the following to say about the new rules for Colorado lawyers:

What happens if you turn age 72 before December 31, 2021?
You will become exempt during your first re-entry compliance period, and therefore it is up to you to what extent you wish to enter your CLE activities on your official transcript. Additionally, pursuant to the new rule, even once you become exempt, you will continue to be able to enter your CLE activities on your official transcript. This will allow you to continue to track your CLE, even though not required, for your own use. The Office of Continuing Legal and Judicial Education will be making changes to your CLE record over the next few months and will be ready for the July 1, 2018 effective date, so that you may begin entering your CLE credits online at that time.

Effectively, although Herrick does not have to enter his CLE activities during the first compliance period because he turns 72 (and therefore exempt) during that compliance period, Herrick (and all others similarly situated) are invited to do so. All lawyers may continue to enter their CLE records even after becoming exempt at 72 – a privilege not permitted under the previous procedures.

Conclusion

As noted above, these rules become effective for all lawyers and judges licensed in Colorado on July 1, 2018. Welcome back to the reporting regimen to our older lawyers who thought they were about to be exempt. You only have another seven years to wait.

Post Script

In June 2018, the Supreme Court published a discussion of the new rule interpreting the change in the age limits from 65-72, as follows:

New Rule: Exemption from CLE requirements changing from age 65 to age 72⁴

The Colorado Supreme Court adopted a new Rule Change on March 15, 2018 that affects Mandatory Continuing Legal and Judicial Education. Effective July 1, 2018, the rule on mandatory continuing legal education requirements under C.R.C.P. 260 will be replaced by the new C.R.C.P. 250.

The most notable change is that the age exemption from CLE requirements will change from 65 to 72 for actively licensed lawyers and judges. Please note, this does not affect lawyers who are authorized to practice under the Pro Bono Counsel Certification rule, C.R.C.P. 204.6, who are exempt from mandatory CLE.

How will this work?

If you are currently exempt from mandatory CLE based on your age and are not yet 72 years old, you will again become subject to the requirements and your compliance period begins this year and ends December 31, 2021. For those of you who will be turning 65 this year or in 2019 and have not yet become exempt, your compliance period will automatically be extended to December 31, 2021. Once you turn age 72, you will again become exempt from the CLE requirements.

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Have any questions?

Please feel free to reach out to our office at cleinfo@csc.state.co.us.

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Available at www.coloradosupremecourt.com/Current%20Lawyers/CLENewRule.asp.