

# **SUPREME COURT RULE 208**

## **Mandatory Continuing Legal Education**

### **Rule 208.1 Definitions.**

As used in this Rule:

- (A) "Continuing Legal Education Program" or "CLE Program" or "CLE Programming" means a legal education program taught by one or more faculty members that has significant intellectual or practical content designed to increase or maintain the lawyer's professional competence and skills as a lawyer.
- (B) "Credit" or "Credit Hour" means the unit of measurement used for meeting mandatory CLE requirements. For Credits earned through attendance at a CLE Program, a Credit Hour requires fifty minutes of programming. A fraction of a credit may be awarded for shorter programs.
- (C) "Ethics and Professionalism Programming" means CLE programming that addresses standards set by the Virgin Islands Rules of Professional Conduct with which a lawyer must comply to remain authorized to practice law, as well as the tenets of the legal profession by which a lawyer demonstrates civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rules of law, the courts, clients, other lawyers, witnesses, and unrepresented parties.
- (D) "In-House CLE Programming" means programming provided to a select private audience by a private law firm, a corporation, or financial institution, or by a territorial, federal, state, or local governmental agency, for lawyers who are members, clients, or employees of any of those organizations.
- (E) "Interdisciplinary Programming" means programming that crosses academic lines that supports competence in the practice of law.
- (F) "Jurisdiction" or "United States Jurisdiction" means all United States jurisdictions including the fifty states, the District of Columbia, territories, and Indian tribes.
- (G) "MCLE" or "Mandatory Continuing Legal Education" or "Mandatory CLE" means the ongoing training and education that the Virgin Islands requires for lawyers to maintain their license to practice.
- (H) "Mental Health and Substance Use Disorders Programming" means CLE programming that addresses the prevention, detection, and/or treatment of mental health disorders and/or substance use disorders, which can affect a lawyer's ability to perform competent legal services.
- (I) "Moderated Programming" means programming delivered via a format that provides attendees an opportunity to interact in real time with program faculty members or a qualified commentator who are available to offer comments and answer oral or written questions before, during, or after the program. Current delivery methods considered Moderated Programming include, but are not limited to:
  - (1) "In-Person" - a live CLE Program presented in a classroom setting devoted to the program, with attendees in the same room as the faculty members.
  - (2) "Satellite/Groupcast" - a live CLE Program broadcast via technology to remote locations (i.e., a classroom setting or a central viewing or listening location). Attendees participate in the program in a group setting.

- (3) "Teleseminar" - a live CLE program broadcast via telephone to remote locations (i.e., a classroom setting or a central listening location) or to individual attendee telephone lines. Attendees may participate in the program in a group setting or individually.
  - (4) "Video Replay" - a recorded CLE Program presented in a classroom setting devoted to the program, with attendees in the same room as a qualified commentator. Attendees participate in the program in a group setting.
  - (5) "Webcast/Webinar" - a live CLE Program broadcast via the internet to remote locations (i.e. a classroom setting or a central viewing or listening location) or to individual attendees. Attendees may participate in the program in a group setting or individually.
  - (6) "Webcast/Webinar Replay" - a recorded CLE program broadcast via the internet to remote locations (i.e., a classroom setting or a central viewing or listening location) or to individual attendees. A qualified commentator is available to offer comments or answer questions. Attendees may participate in the program in a group setting or individually.
- (I) "Newly-Admitted Lawyer" refers to a person admitted to the practice of law in the Virgin Islands for the first time during the reporting period.
- (K) "Non-Moderated Programming with Interactivity as a Key Component" means programming delivered via a recorded format that provides attendees a significant level of interaction with the program, faculty, or other attendees. Types of qualifying interactivity for non-moderated formats include, but are not limited to, the ability of participants to: submit questions to faculty members or a qualified commentator; participate in discussion groups or bulletin boards related to the program; or use quizzes, tests, or other learning assessment tools. Current delivery methods considered Non-Moderated Programming with Interactivity as Key Component include, but are not limited to:
- (1) "Recorded On Demand Online" - a recorded CLE Program delivered through the internet to an individual attendee's computer or other electronic device with interactivity built into the program recording or delivery method.
  - (2) "Video or Audio File" - a recorded CLE Program delivered through a downloaded electronic file in mp3, mp4, wav, avi, or other formats with interactivity built into the program recording or delivery method.
  - (3) "Video or Audio Tape" - a recorded CLE Program delivered via a hard copy on tape, DVD, DVR, or other formats with interactivity built into the program recording or delivery method.
- (L) "Reporting Group 1" refers to the members of the Virgin Islands Bar subject to mandatory CLE requirements whose last name begins with the letter "A" through "K" and whose reporting period runs from January 1 of an odd-numbered year and concludes on December 31 of the following even-numbered year.
- (M) "Reporting Group 2" refers to the members of the Virgin Islands Bar subject to mandatory CLE requirements whose last name begins with the letter "L" through "Z", and whose reporting period runs from January 1 of an even-numbered year and concludes on December 31 of the following odd-numbered year.
- (N) "Reporting Period" refers to the two-year period beginning on January 1 of the first year and concluding on December 31 of the following year.

- (O) "Self-Study" includes activities that are helpful to a lawyer's continuing education, but do not meet the definition of CLE Programming that qualifies for MCLE Credit. Self-Study includes, but is not limited to:
- (1) "Informal Learning" - acquiring knowledge through interaction with other lawyers, such as discussing the law and legal developments.
  - (2) "Non-Moderated Programming Without Interactivity" - viewing recorded CLE Programs that do not have interactivity built into the program recording or delivery method.
  - (3) "Text" - reading or studying content (periodicals, newsletters, blogs, journals, case books, textbooks, statutes, etc.).
- (P) "Specialized Areas" refers collectively to "Ethics and Professionalism Programming," "Mental Health and Substance Use Disorders Programming," "Technology Programming," and "Virgin Islands Law Programming."
- (Q) "Sponsor" means the producer of the CLE Program responsible for adherence to the standards of program content determined by the MCLE rules and regulations of the Virgin Islands. A Sponsor may be an organization, bar association, CLE provider, law firm, corporate or government legal department, or presenter.
- (R) "Technology Programming" means CLE programming designed for lawyers that provides education on safe and effective ways to use technology in one's law practice, such as to communicate, conduct research, ensure cybersecurity, and manage a law office and legal matters. Such programming assists lawyers in satisfying Rule 211.1.1 of the Virgin Islands Rules of Professional Conduct, requiring that lawyers possess the knowledge and skills necessary for competent representation.
- (S) "Virgin Islands Law Programming" means CLE programming devoted to the study of the law of the United States Virgin Islands, including, but not necessarily limited to, Virgin Islands statutory and common law; the rules of practice and procedure applicable to the Supreme Court of the Virgin Islands and the Superior Court of the Virgin Islands; and other issues of local law. Courses or activities that focus primarily on federal law, general trial skills, or other subjects of general applicability not unique to the Virgin Islands will not qualify as Virgin Islands Law Programming.

## **Rule 208.2 Virgin Islands Bar Association**

The Supreme Court of the Virgin Islands appoints the Virgin Islands Bar Association to oversee the administration of this Rule. The Bar Association shall develop regulations to implement this Rule, which shall become effective upon approval by the Supreme Court, so long as such regulations are not inconsistent with this Rule.

## **Rule 208.3 MCLE Requirements and Exemptions**

### **(A) Requirements**

- (1) All lawyers with an active license to practice law in the Virgin Islands shall be required to earn at least 24 MCLE credit hours during the reporting period. For purposes of this Rule only, a lawyer who is suspended from the practice of law for any reason shall nevertheless be deemed active for purposes the MCLE requirement.

- (2) As part of the required 24 Credit Hours referenced in Rule 208.3(A)(1), lawyers must earn Credit Hours in each of the following Specialized Areas during the reporting period:
  - (a) Ethics and Professionalism Programming (at least four Credit Hours);
  - (b) Mental Health and Substance Use Disorders Programming (at least one Credit Hour);
  - (c) Technology Programming (at least two Credit Hours); and
  - (d) Virgin Islands Law Programming (at least four Credit Hours).
- (3) Only credit hours earned by a lawyer during the reporting period will satisfy the MCLE requirements for that reporting period; *provided, however, that*
  - (a) The Virgin Islands Bar Association may establish regulations allowing the MCLE requirements to be satisfied, in whole or in part, by the carryover of Credit Hours from the immediate prior reporting period; and
  - (b) Newly-admitted attorneys may apply credit hours accumulated from the start of the reporting period, but prior to their admission to the Virgin Islands Bar, towards their obligations for the current reporting period.

(B) Exemptions.

- (1) The following lawyers are automatically fully-exempt from this MCLE requirement:
  - (a) Lawyers with an inactive license to practice law in the Virgin Islands and who have been on inactive status for the entire reporting period.
  - (b) Lawyers from other Jurisdictions who are temporarily admitted to practice law in the Virgin Islands on a *pro hac vice* basis;
  - (c) Individuals only authorized to practice law in the Virgin Islands on a limited basis as licensed foreign legal consultants or legal interns; and
  - (d) Current judicial officers in the courts of the Virgin Islands and any court of a United States Jurisdiction who by virtue of their judicial office are prohibited from engaging in the practice of law, and who have served in such capacity for the entire reporting period;
  - (e) Former or retired judicial officers in the courts of the Virgin Islands and any court of a United States Jurisdiction who were prohibited from engaging in the practice of law while serving as a judicial officer, and who have not returned to the private practice of law after separating from judicial office;
- (2) The following lawyers are automatically partially-exempt from this MCLE requirement:
  - (a) Lawyers who are active members for only a portion of the reporting period, including newly-admitted attorneys. In such cases, credit hours shall be earned at the prorated rate of one credit hour per month (or any portion of a month) that the lawyer claims active status. As part of those prorated credit hours, lawyers must earn credit hours in each of the following Specialized Areas:

- (i) Ethics and Professionalism Programming (at least one credit hour for every six-month period the attorney is continuously on active status during the reporting period);
  - (ii) Mental Health and Substance Abuse Programming (at least one credit hour if the attorney is continuously active for at least eighteen months during the reporting period);
  - (iii) Technology Programming (at least one credit hour if the attorney is continuously active for at least twelve months during the reporting period); and
  - (iv) Virgin Islands Law Programming (at least one credit hour for every six-month period the attorney is continuously on active status during the reporting period).
- (b) Current, former, or retired judicial officers who return to the private practice of law during the reporting period shall earn credit hours at the same prorated rates proscribed in Rule 208.3(B)(2)(a) for each month that the judicial officer engages in the private practice of law.
- (3) The following lawyers may request a discretionary exemption, whether full or partial, from any aspect of the MCLE requirement:
- (a) Lawyers who do not reside in the Virgin Islands and are admitted to the practice of law in another United States Jurisdiction that requires completion of MCLE requirements equal or greater than those proscribed by Rule 208.3(A)(1); *provided, however*, that such a lawyer shall not be exempt from earning credits in any Specialized Areas, including the area of Virgin Islands Law Programming, that are not required by the other United States Jurisdiction, unless the lawyer proves that it is not possible to earn such credits where he resides;
  - (b) Lawyers experiencing medical issues, whether or not transferred to disability inactive status; and
  - (c) Lawyers who can otherwise demonstrate good cause for a full or partial exemption.

Lawyers seeking a discretionary exemption under this Rule 208.3(8)(3) shall first file and prosecute their request with the Virgin Islands Bar Association pursuant to the regulations it has adopted for that purpose, including payment of an appropriate filing fee payable to the Virgin Islands Bar Association. If the Bar Association grants the request, it shall promptly file its decision with the Supreme Court, which may reject or modify the exemption within 30 days. If the Bar Association has denied the request or has failed to issue a ruling within 30 days after all filing requirements have been met, the lawyer may file a petition with the Supreme Court of the Virgin Islands, which shall be accompanied by a \$105.00 filing fee payable to the Clerk of the Supreme Court.

#### **Rule 208.4 MCLE-Qualifying Program Standards.**

To be approved for credit, Continuing Legal Education Programs must meet the following standards:

- (A) The program must have significant intellectual or practical content and be designed for a lawyer audience. Its primary objective must be to increase the attendee's professional competence and skills as a lawyer, and to improve the quality of legal services rendered to the public.
- (B) The program must pertain to a recognized legal subject or other subject matter which integrally relates to the practice of law, professionalism, diversity and inclusion issues, mental health and substance use disorders issues, civility, or the ethical obligations of lawyers. CLE Programs that address any of the following will qualify for MCLE credit, provided the program satisfies the other accreditation requirements outlined herein:
  - (1) Substantive law programming
  - (2) Legal and practice-oriented skills programming
  - (3) Programming in specialized areas (see Rule 208.3(A)(2))
  - (4) Interdisciplinary programming
- (C) The program must be delivered as Moderated Programming, or Non-Moderated Programming with Interactivity as a Key Component. The Sponsor must have a system which allows certification of attendance to be controlled by the Sponsor and which permits the Sponsor to verify the date and time of attendance.
- (D) Thorough, high-quality instructional written materials which appropriately cover the subject matter must be distributed to all attendees in paper or electronic format during or prior to the program.
- (E) Each program shall be presented by a faculty member or members qualified by academic or practical experience to teach the topics covered, whether they are lawyers or have other subject matter expertise.

**Rule 208.5 Accreditation**

- (A) The Virgin Islands Bar Association shall establish regulations that outline the requirements and procedures by which CLE Sponsors can seek approval for an individual CLE Program. The regulations should indicate how the CLE Sponsor will demonstrate that the CLE Program complies with the standards set forth in Rule 208.4, which may require submission of faculty credentials, written materials, and other relevant documents.
- (B) Approved Providers
  - (1) Any Sponsor may apply for approval of individual programs, but if the Virgin Islands Bar Association determines that a Sponsor regularly provides a significant volume of CLE programs that meet the standards of approval and that the Sponsor will maintain and submit the required records, the Bar Association may designate, on its own or upon application from a Sponsor, such a Sponsor as an "approved provider. "
  - (2) The Bar Association may withhold, or place conditions on, the authority of a Sponsor designated as an "approved provider" to offer credit hours to satisfy the requirements of one or more Specialized Areas. For example, the Bar Association may require that a Sponsor seek approval under Rule 208.S(A) with respect to Virgin Islands Law Programming but confer automatic approval with respect to all other CLE Programs.
  - (3) To maintain status as an "approved provider," a Sponsor must permit a representatives of the Virgin Islands Bar Association or the Supreme Court of the Virgin Islands, with advance notice and without costs, to audit any program offered to Virgin Islands

- attorneys to ensure that the Sponsor continues to meet the standards of Rule 208.4 even after being granted "approved provider" status.
- (4) The Bar Association or the Supreme Court may revoke approval if a Sponsor fails to comply with all applicable regulations, requirements, or program standards.
  - (C) Programs offered by law firms, corporate or government legal departments, or other similar entities primarily for the education of their members or clients will be approved for credit provided that the program meets the standards for accreditation outlined in Rule 208.4.
  - (D) The Virgin Islands Bar Association may establish regulations allowing an individual lawyer attendee to self-apply for MCLE Credit for attending a CLE program that the Sponsor did not submit for accreditation in the Virgin Islands. An individual lawyer attendee seeking accreditation of a program shall be held to the same standards as a Sponsor with respect to demonstrating that the CLE program complies with the standards of Rule 208.4.
  - (E) Programs sponsored by the Virgin Islands judiciary and any courts thereof, as well as the Virgin Islands Bar Association, shall be automatically accredited under this Rule without further application, review, or payment of any fee.
  - (F) Reciprocity.
    - (1) Programs duly-approved for CLE credit in another United States jurisdiction shall be presumed to comply with the standards set forth in Rule 208.4 without further application, review, or payment of any fee; *provided, however*, that the United States jurisdiction that has duly-approved the program will also grant reciprocity to programs accredited for CLE credit in the Virgin Islands without further application, review, or payment of any fee.
    - (2) The Virgin Islands Bar Association shall maintain, and periodically update, a list of other United States jurisdictions that qualify for reciprocity under Rule 20S.5(F)(I). However, such list shall be solely for the convenience of its members, and shall not relieve the lawyer of the obligation to ensure that the program qualifies for reciprocal accreditation in the Virgin Islands.
    - (3) The Virgin Islands Bar Association may investigate whether a particular program approved by reciprocity meets the standards set forth in Rule 208.4 if it has reason to believe that such standards may not have been met. The lawyer seeking credit shall fully cooperate with the Bar Association in such an investigation.
  - (G) The Virgin Islands Bar Association may charge appropriate fees, including application fees and late fees, for the approval and accreditation functions set forth in Rule 20S.5(A)-(D).
  - (H) A lawyer or Sponsor that has received an adverse decision from the Bar Association may seek review by filing a petition with the Supreme Court of the Virgin Islands, which shall be accompanied by a \$105.00 filing fee payable to the Clerk of the Supreme Court.

### **Rule 208.6 Other MCLE-Qualifying Activities**

Upon written application of the lawyer engaged in the activity, MCLE credit may be earned through participation in the following:

- (A) *Teaching* -- A lawyer may earn MCLE credit for being a speaker at an accredited CLE program. In addition, lawyers who are not employed full-time by a law school may earn MCLE credit for teaching a course at an ABA-accredited law school, or teaching a law course at a university, college or community college. The Virgin Islands Bar Association shall create regulations which define the standards, credit calculations, and limitations of credit received for teaching or presenting activities.
- (B) *Writing* -- A lawyer may earn MCLE credit for legal writing which:
- (1) is published or accepted for publication, in print or electronically, in the form of an article, chapter, book, revision or update;
  - (2) is written in whole or in substantial part by the applicant; and
  - (3) contributed substantially to the continuing legal education of the applicant and other lawyers.
- (C) *Board and Committee Service* - During each reporting period, a lawyer may earn MCLE credit for sitting and actively participating on a board or committee of the Virgin Islands Judiciary, a federal court in the Virgin Islands, or the Virgin Islands Bar Association, provided that the lawyer submits a statement describing the board or committee's tasks, the scope of the lawyer's participation, and the number of hours actually expended on attending meetings or working on the assigned tasks. Members of the Virgin Islands Board of Professional Responsibility, the Virgin Islands Board on Unauthorized Practice of Law, the Committee of Bar Examiners and the Commission on Judicial Conduct claiming credit under this Rule shall automatically be awarded credit hours in the area of Ethics and Professionalism Programming, while members of the Advisory Committee on Rules shall automatically be awarded credit hours in the area of Virgin Islands Law Programming. Members of any other board or committee who seek credit in a Specialized Area for their service shall file a statement with the Virgin Islands Bar Association explaining why such credit is warranted.

The Virgin Islands Bar Association shall create regulations which define the standards, credit calculations, and limitations of credit received for the MCLE-Qualifying Activities set forth in Rule 208.6(A)-(C).

### **Rule 208.7 Reporting Procedure; Sanctions.**

- (A) *Burden of Proof.* The burden of proving compliance with this Rule 208, including ascertaining whether or not a particular program or activity qualifies for MCLE credit, shall at all times remain on the lawyer.
- (B) *Reporting Requirement.* All lawyers, other than those who are automatically fully-exempt from the MCLE requirement under Rule 208.3(B)(1) or who have successfully petitioned for a full-exemption pursuant to Rule 208.3(B)(3), shall file with the Virgin Islands Bar Association proof of their compliance with this Rule. Lawyers shall be divided into two reporting groups, so that Reporting Group 1 and Reporting Group 2 file proof of compliance in alternating years. The Virgin Islands Bar Association shall enact regulations governing the procedure for filing such reports.
- (C) *Reporting Deadline.* Lawyers required to file proof of compliance with the Virgin Islands Bar Association must do so no later than one month after the conclusion of their reporting period. A lawyer may petition the Bar Association for an extension of time pursuant to



regulations adopted by the Bar Association for such purpose, which may include assessment of a filing fee. If the Bar Association has denied the petition, the lawyer may file a petition with the Supreme Court of the Virgin Islands, which shall be accompanied by a \$105.00 filing fee payable to the Clerk of the Supreme Court. The filing of a petition for extension of time with either the Bar Association or the Supreme Court shall not toll any other deadlines under this Rule until and unless the petition is granted, in which case the order shall specify to what extent such deadlines have been extended.

(D) *Sanctions for Non-Compliance.*

(1) *Audit.* No earlier than one month and no later than six months following the reporting deadline, the Virgin Islands Bar Association shall conduct a full audit of all lawyers to determine compliance with the Rule.

(2) *Notice of Delinquency.*

(a) *Service.* The Virgin Islands Bar Association shall serve a Notice of Delinquency to each lawyer found to have violated this Rule for the pertinent reporting period. The Notice shall be served electronically on the e-mail addresses provided on the Annual Registration Statement filed in accordance with Supreme Court Rule 203(e) or, if the lawyer does not have an e-mail address, on any home or business address provided on the statement. If a lawyer has failed to file an Annual Registration Statement or cannot be found at the addresses provided, the Bar Association shall serve the notice on the Office of Disciplinary Counsel, which shall make its best efforts to locate and serve the lawyer.

(b) *Contents.* The Notice of Delinquency shall include a statement outlining the reasons the Bar Association has determined that the lawyer has failed to comply with this Rule and directing the lawyer to either file an answer setting forth the reasons why the lawyer believes he or she is in compliance, or to cure the defects within 90 days. The filing of the answer shall not toll the 90-day period for lawyer to cure the defects.

(c) *Failure to Answer.* A lawyer who fails to timely file an answer to the Notice of Delinquency within this 30-day period is deemed to have conceded all the facts set forth in the Notice of Delinquency, and the Bar Association may at any time thereafter file a Notice of Non-Compliance with the Court. A lawyer who failed to timely file an answer may not appeal the Notice of Delinquency to the Supreme Court, and may not challenge the Bar Association's finding of delinquency on any grounds other than a failure to serve the Notice of Delinquency on the lawyer at the e-mail address provided in the lawyer's most recent Annual Registration Statement.

(d) *Consideration of Answer; Appeal to Supreme Court.* After receiving an answer to a Notice of Delinquency, the Bar Association may:

(1) hold that the lawyer had in fact fully complied with all provisions of this Rule 208, in which case it shall vacate the Notice of Delinquency;

- (2) uphold its initial finding of delinquency, in which case it shall promptly file a Notice of Non-Compliance with the Supreme Court; or
  - (3) if the lawyer has shown compelling or mitigating circumstances for the delinquency, permit the attorney to cure the delinquency in full within thirty (30) days, and pay a \$300.00 delinquency fee. If the Bar Association fails to take any action on the answer within fourteen (14) days, it shall be deemed to have upheld its initial finding of delinquency.
- (e) *Notice of Non-Compliance; Suspension.* If the lawyer fails to timely prove his compliance with this Rule or, if permitted to do so under Rule 208.7(d)(3), to timely cure the defects set forth in the Notice of Delinquency, the Virgin Islands Bar Association shall file a Notice of Non-Compliance with the Supreme Court of the Virgin Islands, which shall advise the Court of the nature of lawyer's delinquency, together with any other information necessary to understand the matter. Upon such filing, the Supreme Court shall enter an order automatically suspending the lawyer from the practice of law.
- (f) *Suspension Not to Affect Licensing Obligations.* A suspension under this Rule shall not relieve the attorney of his or her responsibility to pay dues to the Virgin Islands Bar Association, to register and pay the annual assessment fee in accordance with Rule 203( e), or to meet mandatory CLE requirements for future reporting periods.
- (g) *Reinstatement.* A lawyer suspended for violating this Rule may file a petition for reinstatement with the Supreme Court, along with a \$105.00 filing fee payable to the Clerk of the Supreme Court, a \$500.00 reinstatement fee payable to the Virgin Islands Bar Association, and a \$300.00 delinquency fee payable to the Virgin Islands Bar Association. The petition shall be accompanied with sufficient proofs demonstrating that the suspended attorney has earned the credit hours necessary to satisfy the reporting period for which he or she was originally suspended, as well as all subsequent reporting periods that have since concluded.