

Proposal 23-01

Offered by the MCLE Board of the Illinois Supreme Court

Rule 796. Enforcement of MCLE Requirements

The following provisions apply to all two-year reporting periods ending June 30, 2023, and after and all newly-admitted attorney reporting periods ending January 31, 2024, and after. For all two-year reporting periods ending June 30, 2022, and before and newly-admitted attorney reporting periods ending December 31, 2023, and before, the prior version of Rule 796 applies.

(a) Report of Compliance

The MCLE Board maintains a list of MCLE credits earned during an attorney’s reporting period and reported to the MCLE Board. An attorney’s credit list is available to the attorney via a secured login through the MCLE Board’s website.

The MCLE Board determines an attorney’s compliance with the MCLE requirements based on the attorney’s credit list. On the date an attorney’s credit list reflects the attorney’s compliance with the MCLE requirements for a given reporting period, the MCLE Board will automatically enter a report of compliance on behalf of the attorney.

(1) Notice of Requirement to Comply With the MCLE Requirements

The MCLE Board shall send to attorneys as set forth in (i), (ii), and (iii) below a notice of the requirement to comply with the MCLE requirements, request a grace period extension of time to comply with the MCLE requirements or report an exemption (“Initial MCLE Notice”).

(i) Newly-admitted attorney requirement

On or before the first day of the month preceding the end of an attorney’s newly-admitted attorney requirement reporting period, the Director shall mail or email to the attorney, at a mailing or email address maintained by the ARDC, an Initial MCLE Notice.

(ii) Two-year reporting period

On or before May 1 of each two-year reporting period, the Director shall mail or email to the attorney, at a mailing or email address maintained by the ARDC, an Initial MCLE notice.

(iii) The MCLE Board does not need to send an Initial MCLE Notice to the following:

- (A) Attorneys on inactive or retirement status pursuant to Supreme Court Rule 756(a)(5) or (a)(6), respectively, or on inactive status pursuant to the

former Supreme Court Rule 770 or who have previously been placed on voluntarily removed status by the ARDC;

(B) Attorneys on disability inactive status pursuant to Supreme Court Rules 757 or 758;

(C) Attorneys known by the Director to be fully exempt from these Rules pursuant to Rule 791(b);

(D) Attorneys who have already been removed from the master roll of attorneys due to the attorney's failure to comply with the MCLE requirements for two consecutive reporting periods or more;

(E) Attorneys whose compliance has been determined by the MCLE Board based on the credit list;

(F) Attorneys who have reported to the MCLE Board a full exemption under Rule 791(a)(3), (a)(5), or (a)(6) by means of the Board's online reporting system; or

(G) Attorneys who have requested a grace period extension under Rule 796(c).

(2) Every Illinois attorney who is either subject to these Rules or who is sent an MCLE Initial Notice must have one of the following reports on file with the MCLE Board no later than 31 days after the end of their reporting period (the "initial reporting deadline"):

- (i) a report of compliance entered by the MCLE Board indicating that, based on the attorney's credit list, the attorney completed all the required credits for the reporting period by the last day of that reporting period ("initial credit completion deadline"),
- (ii) a request for a grace period extension submitted by the attorney using the Board's online reporting system, or
- (iii) a valid report of a full exemption from MCLE requirements.

Exemptions under Rule 791(a)(1)-(5) that are known to the MCLE Board based on an attorney's registration status with the ARDC are entered by the MCLE Board on the attorney's behalf. Attorneys entitled to an exemption under Rule 791(a)(6) must submit a report of this exemption to the MCLE Board using the Board's online reporting system by the reporting deadline.

It is the responsibility of each attorney on the master roll to notify the ARDC of any change of address or email address. Failure to receive an Initial MCLE Notice shall not constitute an excuse for failure to comply with the MCLE requirements or report of an exemption from those requirements.

(b) Failure to Report Compliance

(1) Attorneys who fail to have a report of compliance or exemption entered for them by the MCLE Board or fail to report an exemption under Rule 791(a)(6) by the initial reporting deadline, or who request a grace period extension and pay the late fee required

under paragraph (d)(2) by the initial reporting deadline, shall be given 92 additional days from the initial reporting deadline provided in Rule 796(a)(2) to achieve compliance (the “grace period completion deadline”).

(2) The Director shall mail or e-mail a noncompliance notice to each attorney given the additional time pursuant to paragraph (b)(1). The Director shall not send a noncompliance notice to attorneys (i) whom the Director knows, based on the status of the attorneys’ licenses with the ARDC as inactive, retirement, disability inactive, judicial, judicial staff, or military are fully exempt from these Rules; or (ii) who have already been removed from the master roll of attorneys due to the attorney’s failure to comply with the MCLE requirements for two consecutive reporting periods or more.

(3) Attorneys with a Grace Period Extension to Achieve Compliance.

(i) Attorneys with a grace period extension to achieve compliance pursuant to paragraph (b)(1) must have one of the following reports on file with any outstanding applicable late fees as required by paragraph (d)(1) paid no later than the reporting deadlines listed in paragraph (b)(3)(ii) below (“grace period reporting deadlines”):

(A) A report of having complied, entered by the MCLE Board based on the credit list demonstrating that the attorney achieved compliance by the grace period deadline; or

(B) A report of a valid full exemption under Rule 791(a)(6) submitted by the attorney using the Board’s online reporting system.

(ii) Grace period reporting deadlines and fees

(A) For attorneys in two-year reporting periods, the grace period reporting deadline is 30 days after the grace period completion deadline. Attorneys in two-year reporting periods must have on file one of the reports in paragraph (b)(3)(i) and have paid any outstanding late fee required by paragraph (d)(1) below by the grace period reporting deadline.

(B) For attorneys in newly-admitted attorney reporting periods, the grace period reporting deadline is 60 days after the grace period completion deadline. Attorneys in newly-admitted attorney reporting periods must have on file one of the reports in paragraph (b)(3)(i) and have paid any outstanding late fees required by paragraph (d)(1) below by the grace period reporting deadline.

(c) Grace Period

Attorneys given additional time pursuant to paragraph (b) to comply with the requirements of these Rules may use that “grace period” to attain the adequate number of hours for compliance. Credit hours earned during a grace period may be counted toward compliance with the previous reporting period requirement, and hours in excess of the requirement may be used to meet the

current reporting period's requirement. No attorney may receive more than one grace period with respect to the same reporting period, and the grace period shall not be extended if the Director fails to send, or the attorney fails to receive, a notice pursuant to paragraph (b).

(d) Late Fees

(1) Attorneys who are not fully exempt under Rule 791(a)(1), (2), (3), (4), or (5) and who, for whatever reason, fail to have a report of compliance or exemption submitted pursuant to Rule 796(a)(2) within 31 days after the end of their reporting period shall pay a late fee, in an amount set by the MCLE Board fee schedule. The Director shall not assess a late fee to an attorney whom the Director knows, based on the status of the attorney's license with the ARDC as inactive, retirement, disability inactive, judicial, judicial staff, or military are fully exempt from these Rules.

(2) Attorneys who submit a request for the grace period extension to complete their credits within 31 days after their reporting period ends shall pay a late fee with that request, in an amount set by the MCLE Board fee schedule and that is less than the late fee imposed pursuant to paragraph (d)(1).

(e) Failure to Comply, Failure to Report, or Failure to Pay Outstanding Fee

(1) The Director shall refer to the ARDC the names of attorneys who were mailed or emailed a notice of noncompliance and who, by their grace period reporting deadlines, failed to have on file with the MCLE Board: (i) a report entered by the MCLE Board that the attorney achieved compliance with the requirements of these Rules by the grace period completion deadline; or (ii) a report of a valid, full exemption from the requirements of these Rules under Rule 791(a)(6) submitted by the attorney using the Board's online reporting system. The Director shall also refer to the ARDC the names of attorneys who, by their grace period reporting deadlines, failed to pay any outstanding MCLE fee. On the same date as the referrals are made by the Director, the ARDC shall remove the names of the referred attorneys from the master roll for MCLE noncompliance.

(2) An attorney removed from the master roll for MCLE noncompliance by the ARDC shall be mailed or e-mailed a notice by the Director informing the attorney of his or her removal. The Director need not send a notice of removal to an attorney who has already been removed from the master roll of attorneys due to the attorney's failure to comply with the MCLE requirements for two consecutive reporting periods or more.

(f) Audits

(1) The Board may conduct a reasonable number of audits, under a plan approved by the Court. At least some of these audits shall be randomly selected, to determine the accuracy of attorneys' compliance or exemption. With respect to audits that are not randomly selected, in choosing subjects for those audits the Board shall give increased consideration to attorneys who assumed inactive or retirement status under Supreme

Court Rule 756(a)(5) or (a)(6), and were thereby fully exempt from these Rules pursuant to Rule 791(b) or (c), and who subsequently resumed active status.

(2) The ARDC may investigate an attorney's compliance with these Rules only upon referral from the Director; the ARDC will not investigate an attorney's compliance with these Rules as part of its other investigations. When the Director refers a matter to the ARDC, the investigation, and any resulting prosecution, shall be conducted in accordance with the rules pertaining to ARDC proceedings.

(g) Audits That Reveal an Inaccurate Report

(1) If an audit conducted pursuant to paragraph (f)(1) reveals that the attorney was not in compliance with or exempt from these Rules for any reporting period for which the attorney had filed a report of compliance or exemption, the Director shall provide the attorney with written notice containing: (i) the results of the audit, specifying each aspect of the Rules with which the attorney did not comply or the reason why the attorney is not exempt; (ii) a summary of the basis of that determination; and (iii) a deadline, which shall be at least 30 days from the date of the notice, for the attorney to file a written response if the attorney objects to any of the contents of the notice.

(2) After considering any response from the attorney, if the Board determines that the attorney filed an inaccurate report, the attorney shall be given 60 days in which to demonstrate full compliance with the applicable MCLE requirements. The attorney also shall pay a late fee in an amount to be set by the Board. The assessment of a late fee is not a disciplinary sanction.

(3) If the results of the audit suggest that the attorney willfully filed a false certification, the Board through its Director shall provide that information to the ARDC.

(h) Reinstatement

An attorney who has been removed from the master roll due to noncompliance with these Rules shall be reinstated by the ARDC for their MCLE removal, upon recommendation of the Board. That reinstatement by the ARDC shall take place on the same date as the recommendation is made by the Board. Such recommendation may be made only after the removed attorney's records with the MCLE Board show full compliance with or valid exemption from the applicable MCLE requirements for each reporting period for which the attorney was removed from the master roll due to MCLE noncompliance. For attorneys who have existing removals from the master roll of attorneys encompassing three MCLE reporting periods or more, the credits and reinstatement fees required to address those existing removals are capped at the credits and reinstatement fees required for the three most recent reporting periods for which the attorney is removed.

To be reinstated, the attorney shall pay a reinstatement fee for each reporting period for which the attorney was removed from the master roll due to MCLE noncompliance with the request, in an amount to be set by the Board. The attorney must also meet any further conditions and pay any additional fees as may be required by Rule 756.

The removed attorney may attain the necessary credit hours during the period of removal to meet the requirements for the years of noncompliance. Excess hours earned during the period of removal, however, may not be counted towards meeting the current or future reporting periods' requirements. The MCLE credits needed to address the existing removals are in addition to the credits that the attorney must earn for the reporting period in which the attorney returns to active status.