



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

EILEEN D. MILLETT
COUNSEL

MEMORANDUM

To: All Interested Persons

From: Eileen D. Millett

Re: Request for Public Comment on Proposal to Amend the Mandatory Continuing Legal Education (CLE) Rules to Include a New Category of Credit – Cybersecurity, Privacy, and Data Protection

Date: December 15, 2021

=====

The Continuing Legal Education Board of the Unified Court System is seeking public comment on a proposed amendment to the mandatory continuing legal education (CLE) rules (22 NYCRR §1500) that would require newly admitted and experienced attorneys to complete one CLE credit in a new category - Cybersecurity, Privacy, and Data Protection (“cybersecurity”) (Ex. A – Proposed rule change). This cybersecurity category is divided into two sections: ethics and general. Ethics topics would include ethical obligations and professional responsibilities relating to the protection of electronic data and communication. General topics would include technological aspects of protecting client and law office electronic data and communication, and applicable laws relating to cybersecurity, privacy, and data protection. This credit would be included within, and would not add to, the current credit requirement in the attorney’s biennial reporting cycle. (*See* 22 NYCRR §1500.12[a] and 22 NYCRR §1500.22[a]).

Communication and data are being delivered more often by electronic means, and threats to that information are becoming more sophisticated and frequent. This training would cover, among other topics: cyber threats, cyber attacks, data breaches, the importance of securing and protecting electronic data and communication, appropriate cybersecurity and privacy policies and protocols, and compliance with professional and ethical obligations to protect confidential client and law firm data. Although some states have a general technology CLE requirement, it is believed that New York would be the first state to have a cybersecurity CLE requirement.

The newly admitted attorney requirement would remain at 32 credits but would include at least one credit in cybersecurity ethics that would replace one credit in ethics and professionalism. Newly admitted attorneys may earn up to one additional credit in cybersecurity

ethics that can be applied to their ethics and professionalism requirement. The experienced attorney requirement would remain at 24 credits but would include at least one credit in either cybersecurity ethics or cybersecurity general. Experienced attorneys may apply up to three cybersecurity ethics credits towards their ethics and professionalism requirement. (Ex. A)

=====

Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: Eileen D. Millett, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York, 10004. Comments must be received no later than February 15, 2022.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

Exhibit A

Subpart B. Mandatory Continuing Legal Education for Newly Admitted Attorneys

§1500.12 Minimum Requirements

- (a) **Credit Hours.** Each newly admitted attorney shall complete a minimum of 32 credit hours of accredited transitional education within the first two (2) years of the date of admission to the Bar. Sixteen (16) accredited hours shall be completed in each of the first two (2) years of admission to the Bar, ~~as follows:~~

- ~~—Three (3) hours of ethics and professionalism;~~
- ~~—Six (6) hours of skills; and~~
- ~~—Seven (7) hours of law practice management and areas of professional practice.~~

In each year, a newly admitted attorney must complete: seven (7) hours of law practice management, areas of professional practice, and/or cybersecurity, privacy and data protection general; six (6) hours of skills; three (3) hours of ethics and professionalism; and, in either the first or second year of admission to the Bar, each newly admitted attorney must complete one (1) hour of cybersecurity, privacy and data protection ethics that does not add to the sixteen (16) total credits for the year but replaces one (1) hour of ethics and professionalism that year.

In either the first or second year of admission to the Bar, a newly admitted attorney may earn up to one (1) additional hour of cybersecurity, privacy and data protection ethics that can be applied to the ethics and professionalism requirement in that year.

Ethics and professionalism, skills, law practice management, ~~and~~ areas of professional practice, and cybersecurity, privacy and data protection are defined in §1500.2.* ~~The ethics and professionalism and skills components may be intertwined with other courses.~~

- (b) **Carry-Over Credit.** Except as provided in section 1500.13(b)(2), a newly admitted attorney who accumulates more than the 16 hours of credit required in the first year of admission to the Bar may carry over to the second year of admission to the Bar a maximum of eight (8) credits. Six (6) credits in excess of the 16-hour requirement in the second year of admission to the Bar may be carried over to the following biennial reporting cycle to fulfill the requirements of Subpart C. Credit in Eethics and professionalism and cybersecurity, privacy and data protection ethics ~~credit~~ may not be carried over.

Subpart C. Mandatory Continuing Legal Education for Attorneys Other Than Newly Admitted Attorneys

§1500.22 Minimum Requirements

- (a) **Credit Hours.** Each attorney shall complete a minimum of 24 credit hours of accredited continuing legal education each biennial reporting cycle in ethics and professionalism, skills, law practice management, areas of professional practice, ~~or~~ diversity, inclusion and elimination of bias, or cybersecurity, privacy and data protection, at least four (4) credit hours of which shall be in ethics and professionalism, ~~and~~ at least one (1) credit hour of which shall be in diversity, inclusion and elimination of bias, and at least one (1) credit hour of which shall be in cybersecurity, privacy and data protection (ethics and/or general).

Attorneys may apply up to three (3) hours of cybersecurity, privacy and data protection ethics to the four-credit ethics and professionalism requirement.

Ethics and professionalism, skills, law practice management, areas of professional practice, ~~and~~ diversity, inclusion and elimination of bias, and cybersecurity, privacy and data protection are defined in §1500.2.* ~~The ethics and professionalism and diversity, inclusion and elimination of bias components may be intertwined with other courses.~~

* Section 1500.2 will be revised to include a definition of cybersecurity, privacy and data protection (ethics and general).