

JAN 30 1996

FILED

STATE OF MINNESOTA
IN THE SUPREME COURT
File No. C2-84-2163

In re: Petition of the Minnesota State Bar Association
for Amendment of the
Rules for Continuing Legal Education
of Members of the Bar

INTERIM REPORT OF THE SPECIAL
CONTINUING LEGAL EDUCATION ADVISORY COMMITTEE

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

On September 19, 1994, the Minnesota State Bar Association (MSBA) filed a Petition to amend Rule 3 of the Rules of the Supreme Court and Rules of the Board for Continuing Legal Education of Members of the Bar (Rules) to add specific requirements with respect to ethics and diversity training as part of each Minnesota licensed attorney's continuing legal education (CLE) obligations.

As a result of that Petition, the Court issued an order dated September 15, 1995, stating that effective with the CLE reporting period beginning July 1, 1996 and ending June 30, 1999, each Minnesota attorney shall provide evidence of having attended at least three (3) hours of continuing legal education courses on ethics or professional responsibility and at least two (2) hours of courses in the elimination of bias in the practice of law and in the legal profession.

SPECIAL CONTINUING LEGAL EDUCATION ADVISORY COMMITTEE

The Court also authorized the creation of the Special Continuing Legal Education Advisory Committee (Committee) to study and make recommendations to the Court for changes to the Rules incorporating these requirements. The Court asked Philip L. Bruner, chair of the Minnesota Board of Continuing Legal Education (Board), to appoint the members of the Committee. The following persons agreed to serve and were appointed:

Merritt R. Marquardt, Chair
3M Company
St. Paul

Gail Chang Bohr
Children's Law Center of MN
St. Paul

Leonardo Castro
Chief Public Defender
Mankato

Linda F. Close
Assistant Attorney General
St. Paul

Joanell Dyrstad
Public Member
Red Wing

Gregory A. Gray
Attorney at Law
Cenex Corporation
Inver Grove Hgts

Lee W. Hanson
Halls Byers Hanson Steil &
Weinberger
St. Cloud

Frank V. Harris
Minnesota CLE
St. Paul

Jarvis C. Jones
St. Paul Companies
St. Paul

Camilla Nelson
MN Attorney General's Office
St. Paul

Susan Richard Nelson
Robins Kaplan Miller & Ciresi
Minneapolis

Ronald L. Seeger
Dunlap and Seeger
Rochester

Mark T. Signorelli
Brown, Andrew, Signorelli & Zallar
Duluth

Hon. John E. Simonett
Greene Espel Law Firm
Minneapolis

William J. Wernz
Dorsey & Whitney
Minneapolis

Steven W. Zachary
State of Minnesota
Diversity and Equal Opportunity
St. Paul

The members represent various geographic locations of the state, different law practice settings, as well as provide balance with respect to gender, race and ethnicity. Members include representatives of various bar associations in the state, and continuing legal education providers. The public member is not an attorney.

COMMITTEE MEETINGS AND BACKGROUND

The Committee met on October 19, 1995, November 21, 1995, December 13, 1995, and January 24, 1996. Meetings are planned for March, April and May.

The following background material was provided to the Special Advisory Committee:

- order creating and charging the Special CLE Advisory Committee;

- summary of the Response of the CLE Board to the Petition for CLE Rule amendment filed by the MSBA;
- summary of findings as well as the complete text of the Minnesota Supreme Court's Task Force on Racial Bias, the Minnesota Supreme Court's Gender Fairness Task Force Report and the Hennepin County Bar Association Glass Ceiling Task Force Report;
- Minnesota CLE Rules addressing course approval guidelines and definitions;
- California's CLE Rules & Guidelines relative to implementation of a bias requirement;
- sample CLE course descriptions referencing bias related topics;
- copies of all written comments filed in the Minnesota Supreme Court relative to the MSBA Petition for CLE rule change;
- proposed draft CLE rule changes including proposed draft changes to course approval guidelines.

On November 9 and November 27, 1995, a notice was published in Finance & Commerce informing the public of the new CLE requirement on the elimination of bias, providing notification of the formation of the Special Continuing Legal Education Advisory Committee and inviting interested persons to address the Committee or submit written comments. A press release describing the Court's order was sent in mid-September to the major legal publications in the state. Each of the members of the Special CLE Advisory Committee was invited to refer persons who might be interested in addressing the committee.

As a result of this publicity, eleven (11) persons contacted the Committee and asked for an opportunity to make a presentation. In addition, written comments were received from three (3) persons. Summarized below are the comments of those presenters and correspondents.

SUMMARY OF PRESENTATIONS

Gregory Pulles, an attorney and a member of the Individual Rights Foundation, urged the Committee to recommend rules that would permit the approval of courses expressing viewpoints regarding the extent of bias in the legal profession different from those identified by the Race Bias Task Force Report. Similar thoughts were expressed by William Mohrman, an attorney and a member of the Federalist Society. He cautioned the Committee against drafting rules that would require attorneys to attend courses contrary to the attorneys' political or religious beliefs. He recommended that standards assure a broad range of course content.

Joe Garritano and Bill Keppel, representing the Minnesota Institute of Legal Education, suggested that rules be written to allow bias education to be incorporated into substantive law courses, as opposed to requiring free standing elimination of bias programming.

Frank Harris, Executive Director of Minnesota CLE, agreed with the recommendation that the rules permit bias education to arise out of substantive law courses. Expressing concerns about how out-of-state attorneys will fulfill the bias requirement, he suggested permitting attorneys who reside out of state to view videos of approved elimination of bias courses in order to fulfill this requirement. He prefers rules allowing providers broad latitude in the planning and presentation of courses to meet this requirement.

Myrna Myrofsky of the Professional Development Group, a diversity training organization, raised concerns about the quality of bias elimination courses. She suggested that the Board might wish to consider how to assure the quality of programs. Checking references of providers prior to approving an elimination of bias course was suggested.

Associate Dean Edwin Butterfoss of the Hamline University School of Law recommended the adoption of a broad definition of bias, permitting the approval of any course designed to help attorneys become aware of bias in society in general. He expressed opposition to the approval of courses on a "how to handle a bias case", stating that such a practice will encourage attorneys to choose substantive law courses on discrimination rather than selecting courses that more directly address the issues of elimination of bias in the legal profession.

Barbara Jerich, a private diversity trainer, presented a model for diversity training focused upon the interplay of workplace systems, attorney to attorney relationships, and attorney to client relationships. She recommended that bias courses should last at least two hours.

Jane Schoenicke, Executive Director of the Hennepin County Bar Association, recommended separating the substantive law and bias elimination requirement, prohibiting the accreditation of courses on how to handle a bias case from those that address the elimination of bias in the legal profession. She recommended that Rules articulate specific categories of protected classes. She also suggested that the articulation of learning objectives would aid providers in planning courses to fulfill this requirement. She did not recommend that these learning objectives be incorporated into the Board Rules.

Ms. Schoenicke suggested that the Board should be capable of denying credit for courses that do not further the objectives of the Court's stated elimination of bias requirement. She also thought that courses should not be permitted to qualify as both ethics and elimination of bias, even though certain cross over is inevitable in courses that deal with the non-discrimination requirements of the Rules of Professional Responsibility. She agreed that out-of-state practitioners

should be permitted to find alternate ways to fulfill the elimination of bias requirement.

Eric Janus, professor of law at the William Mitchell College of Law, described the format of the "Justice in a Diverse Society" program presented to law students at William Mitchell. He observed that this program became more successful when a variety of points of view were included in the curriculum. He said his program's presenters are chosen specifically to represent different point of views on bias and the elimination of bias. He recommended that program providers be required to articulate in writing the connection they establish between course content and the Board's stated learning objectives for elimination of bias education. He said that bias courses should be a minimum of two (2) hours in length but said that any other restrictions on providers in planning and presenting such courses would be counterproductive.

In addition to those who made presentations to the committee, written comments were received from several attorneys who questioned how the requirement would be administered, particularly with respect to out of state attorneys. Peter Swanson, also of the Individual Rights Foundation, wrote to recommend that elimination of bias courses be "directly related to the practice of law". He also recommended that substantive courses on how to represent a client on either side of a discrimination case should be approved as "bias CLE". He strongly urged that the Board be prepared to approve courses taught from the perspective of all political and religious viewpoints.

ISSUES BEING DELIBERATED BY THE COMMITTEE

With the assistance of the presenters, the Committee has identified several issues for resolution. Those issues are summarized as follows:

- Should the CLE Rules articulate all categories (in addition to race and gender) of persons subject to bias, should this be left undefined, or should a less specific definition be developed?
- In drafting a definition for "courses in the elimination of bias", should such a definition exclude courses dealing with handling a case involving illegal bias?
- Law office management courses are limited to a six (6) hour maximum under Rule 104 of the Rules of the Board of Continuing Legal Education. Should elimination of bias education that occurs within the context of law office management courses also be subject to the six (6) hour maximum?
- CLE programs are accredited in segments as small as fifteen (15) minutes. Should CLE programs which contain segments dedicated to elimination of

bias be permitted to be accredited in segments lasting fewer than 120 minutes, the minimum required time for elimination of bias education?

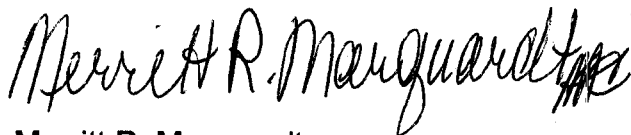
- Under what circumstances should courses be accredited as either elimination of bias or ethics, or both?
- What provisions should be made for Minnesota's 5,000 out-of-state practitioners who may encounter difficulties in complying with bias CLE requirements?

CONCLUSION

Having identified the issues to be resolved through proposed Rule revisions, the Committee is making steady progress towards reaching consensus on Rule language. It is the objective of the committee to balance concerns of the Bar regarding an elimination of bias requirement as part of CLE while at the same time assuring that the Court's order will be properly implemented.

The Committee has scheduled three additional meetings prior to filing its Final Report in the Court on May 30, 1996. During those meetings members will have the opportunity to receive additional presentations from interested parties as well as to engaging in further open discussion of all issues relating to the Court's implementation of this important CLE objective.

Respectfully submitted,



Merritt R. Marquardt
Chair
Special CLE Advisory Committee

Dated: