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FILED

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

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

**REPORT OF THE SPECIAL
CONTINUING LEGAL EDUCATION
ETHICS COMMITTEE OF THE
MINNESOTA STATE BOARD OF
CONTINUING LEGAL EDUCATION**

I. INTRODUCTION

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 for continuing legal education (CLE) in ethics and diversity training for all Minnesota licensed attorneys.

The Court issued an Order dated September 15, 1995, stating that effective with the CLE reporting period beginning July 1, 1996, and ending June 10, 1999, and continuing for all subsequent reporting periods, 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.

II. SPECIAL CONTINUING LEGAL EDUCATION ETHICS COMMITTEE

In order to facilitate the drafting of definitions and course approval guidelines for the subject of ethics CLE, the court directed the Chair of the CLE Board, Philip L. Bruner, to appoint a committee to study the matter, make recommendations to the Board and subsequently to the Court, for rule changes reflecting the new ethics requirement.

Mr. Bruner appointed a Special Ethics Committee, chaired by William Jepsen, with members David White, Joseph Carter, and Diana Gruendler. All members of the Special Ethics Committee are members of the CLE Board.

The Committee was asked to study and made recommendations to the CLE Board for ultimate recommendation to the court, for CLE rule changes specifically addressing definitions and course approval criteria relative to the new ethics requirement.

III. MEETINGS AND PRESENTATIONS

The Committee met on October 25, 1995, December 14, 1995, February 13, 1996, and March 6, 1996. The Committee heard testimony from several CLE providers, including Peter Riley of the Minnesota Trial Lawyers Association, Frank Harris of Minnesota Continuing Legal Education, and Joe Garritano and Bill Keppel of Minnesota Institute of Legal Education. The Committee also received the comments of Marcia Johnson, Director of the State Board of Professional Responsibility.

As part of the Committee's process, it reviewed the rules, as well as the application of the Rules of the CLE Board, the Minnesota Rules of Professional Conduct, CLE course descriptions addressing ethics and professional responsibility topics, and ethics requirements of other states.

IV. ISSUES

The Committee identified and considered the following issues:

- whether, in order to comply with the Court's Order, Minnesota attorneys should complete three hours of separately identified continuing legal education courses in legal ethics and professional responsibility or whether those hours could be incorporated generally into substantive law courses, some portions of which would be accredited as ethics CLE;
- whether the definitions section, as well as Rules 1, 2, 3, 101, 103, 104, and 106 of the Rules of the Supreme Court and of the Board of Continuing Legal Education should be modified as described in the attached **Exhibit A**;
- whether the Course Approval Form and the Attorney Affidavit Form should be modified in the manner set forth in the attached **Exhibits B and C** and incorporated into the appendices of the Rules of the CLE Board.

The recommendations of the Special Ethics Committee were presented to the CLE Board at its regular meeting held on March 14, 1996. Those recommendations were

approved by the Board. This Report is therefore the joint report of the Ethics Committee, as well as that of the Board of Continuing Legal Education.

In addition, the Board continues to study and, by May 30, will recommend additional Rule changes of an administrative nature. Following the completion of this rule review process, the Board anticipates making other recommendations for rule changes on or before May 30, 1996 when it files the Final Report of the Special CLE Advisory Committee.

V. RECOMMENDATIONS

Attached as **Exhibit A** are the proposed rule changes addressing ethics and professional responsibility courses along with the Board's and the Committee's rationale for recommending these changes. Each of the rule changes is annotated in the footnotes. These footnotes are for the purpose of explaining the Committee's deliberations. With the exception of the Appendices, the footnotes are not proposed as changes which either will be incorporated into the rules themselves or published along with the rules.

The Rules of the Board of CLE have one appendix published with the rules which is referenced "Continuing Legal Education Restricted Status". In addition, two reporting forms are published with the rules but are not incorporated by reference.

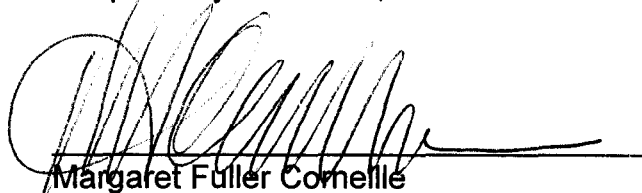
Attached as **Exhibit B** is **Appendix II**, the CLE Course Approval Form, modified in several ways to clarify the ethics requirement. Section V of the course approval form reiterates the Rule 2 general requirement for ethics content in CLE courses. The form requires the course sponsor, or the attorney submitting the course approval form, to select one of three descriptions of the treatment of ethics or professional responsibility in the course. A course either meets the 30-minute ethics minimum, addresses ethics throughout the program, or does not address ethics. In instances where ethics is not addressed, the form calls for a written explanation as to why ethics is not addressed. This is intended to call sponsors' attention to the requirement while at the same time recognizing that there may be exceptions for certain courses which do not include ethics.

Attached as **Exhibit C** is **Appendix III**, the Affidavit of CLE Compliance to be completed by the reporting attorney. The Ethics Committee revised the format of this form to provide columns for each of the three types of credit, with notations for the necessary number of hours of each type.

VI. CONCLUSION

The recommendations of the Special CLE Ethics Committee, having been adopted as the recommendations of the Board of Continuing Legal Education, are the result of careful study and consideration of Minnesota's new requirement for ethics and professional responsibility CLE. These recommendations are made to raise the awareness of attorneys about the importance of ethics in practice and to improve the quality of legal practice in Minnesota, while not unduly burdening the practitioner.

Respectfully submitted,



Margaret Fuller Cornelle

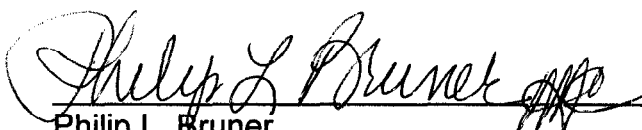
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Dated: April 1, 1996

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**Proposed Changes to the Ethics Related Provisions of the Rules of the State
Board of Continuing Legal Education**

Rule 1 Purpose

It is of primary importance to the members of the Bar and to the public that attorneys continue their legal education throughout the period of their active practice of law. These rules will establish the minimum requirements for continuing legal education¹.

In addition to improving an attorney's knowledge of the law, continuing legal education should address the special responsibilities which lawyers as officers of the court have to improve the quality of justice administered by the legal system and the quality of service rendered by the legal profession.²

Rule 2 State Board of Continuing Legal Education

There is hereby established a State Board of Continuing Legal Education, to be appointed by this Court, consisting of twelve members and a chairperson. Three of the members of the Board other than the chairperson may be persons who are not members of the Bar of this state. Each other member of the Board, with the exception of one who shall be a district Judge, shall be a member of the Bar of this state who practices in Minnesota with his principle office located in this state. Six of the members

¹ These footnotes provide an explanation of the Committee's work. They are not recommended for inclusion as part of the rule changes.

² The Special Ethics Committee (Committee) derived this provision from the Preamble to the Rules of Professional Conduct. It is intended to broaden the definition of CLE to include courses on professional values and to encourage courses dealing with ways attorneys may improve the practice of law and the administration of justice.



of the Board other than the chairperson shall be nominated by the Minnesota State Bar Association in the manner determined by it. Of the members first appointed, four shall be appointed for 1 year, four for 2 years, and four for 3 years, two in each instance from the nominees of the Minnesota State Bar Association and one in each instance being a lay member. Thereafter, appointments shall be for a 3-year term. No member may serve more than two 3-year terms. Each member shall serve until his successor is appointed and qualifies. The chairperson of the Board shall be appointed by this Court for such time as it shall designate and shall serve at the pleasure of this Court. This Court shall also designate a secretary of the Board. The chairperson, the secretary, and other members of the Board shall serve without compensation, but shall be paid their reasonable and necessary expenses incurred in the performance of their duties.

The Board shall have general supervisory authority over the administration of these rules. The Board shall accredit courses and programs which will satisfy the educational requirements of these rules and shall discover and encourage the offering of such courses and programs.

The Board shall at all times be subject to the direction and supervision of this Court in all matters.

Sponsors of Continuing Legal Education courses shall apply for credit in accordance with the rules of the Board promulgated pursuant to Rule 7, below.

In applying for credit, a sponsoring agency or attorney³ shall submit to the Board ~~a description of an application for course approval⁴ (Appendix II, which is incorporated herein) describing~~ the program under consideration, including such details as location, description, list of credentials of speakers, type of presentation, number of course hours for which credit is sought, type of credit for which approval is sought (standard CLE,

³ The Committee sought to clarify within the rules that either attorneys or course sponsors may seek accreditation of courses.

⁴ The Committee reiterates the course approval guidelines by incorporating them into the reporting forms and then incorporating the forms by reference into the rules.

ethics/professional responsibility CLE, elimination of bias CLE)⁵ and such other matters as the Board may require. ~~pursuant to Rule 7. In addition, the sponsoring agency shall submit to the Board a description of the treatment given professional responsibility and ethical considerations involved in the substantive or procedural courses under consideration. If no coverage of these areas is scheduled, the sponsoring agency shall state the reasons therefor.~~ Every accredited CLE course must include general treatment of professional responsibility and ethical considerations or include on the application for course approval an explanation as to why ethics is not included.⁶

If in the opinion of the Board, ~~presentation of problems~~ the treatment of professional responsibility or legal ethics topics within courses accredited as standard continuing legal education are omitted, or is inadequate without satisfactory explanation, the Board may refuse to grant full credit for all hours in attendance⁷,

⁵ The term "standard CLE" is used to identify courses which are accredited neither as "bias" nor as "ethics" but which meet other CLE course approval criteria.

⁶ This provision states that all courses will continue to require a general treatment of professional responsibility and ethical considerations. Committee members believe that it is the intention of the Court to strengthen the ethics requirement by requiring the 3 hours of ethics and not to lessen the general requirement currently contained in Rule 2. The sponsors are required to include with a request for course approval information about how ethics or professional responsibility was treated, or an explanation as to why it was not. This provision is meant to encourage sponsors to continue having program presenters address ethics in all CLE courses, particularly when a course does not have a separately accredited ethics segment.

impose a deduction from credit hours which would otherwise be granted, and in the case of persistent refusal to cover these topics, refuse to grant further credit for courses offered by the sponsor.

If the Board deducts Continuing Legal Education credit, or refuses to grant credit on this basis, it shall so inform the sponsor. (Amended June 29, 1981.)

Rule 3 Report of Continuing Education.

Each registered attorney duly admitted to practice in this state desiring active status must make a written report to the Board in such manner and form as the Board shall prescribe. ~~Such~~ The report shall be filed with the Board within 60 days after the close of the 3 year period within which ~~such~~ the attorney is required to complete ~~his or her~~ the continuing legal education requirements. ~~Such~~ The report shall be accompanied by proof satisfactory to the Board that ~~such~~ the attorney has completed a minimum of 45 hours of course work either as a student or a lecturer in continuing legal education. Effective with the reporting period July 1, 1996 through June 30, 1999, and for all subsequent reporting periods, the attorney's report shall include within the 45 hours, evidence of attendance at a minimum of three hours of courses on continuing ethics and professional responsibility education and evidence of attendance at a minimum

⁷ This language clarifies the fact that the Board's wishes to retain its ability to sanction or deny credit to sponsors who do not address ethics in their courses.

of two hours of courses in the elimination of bias in the legal profession and in the practice of law, approved by the Board as suitable and sufficient and attended by the reporting attorney within the 3 year period just completed.⁸

Definitions

In these rules,

h. "courses in ethics and professional responsibility" means courses or sessions within courses that deal with the Minnesota Rules of Professional Conduct, the ABA Model Rules of Professional Conduct, the rules of professional conduct or professional responsibility of other jurisdictions, or the opinions or case law arising from the application of any of the above-specified rules⁹, including courses or sessions within courses¹⁰ that address in a specific way¹¹

⁸ This change reiterates the Court's order with respect to the number of hours of ethics CLE and bias elimination CLE which are now required and the effective date of the provisions.

⁹ The definition of courses in ethics and professional responsibility attempts to list the most common sources of the law of ethics and professional responsibility, both in Minnesota and in other jurisdictions. Because nearly 25% of Minnesota licensed attorneys practice outside of the jurisdiction, courses addressing the professional responsibility rules and case law of other jurisdictions, as well as the ABA Model Rules, will be accredited as ethics CLE.

¹⁰ It has been the practice of the CLE Board to approve or disapprove segments of courses. This is done using the information contained on the course agenda, written program materials, and other information submitted to the Board by the sponsor. In

concepts such as professionalism, civility¹² and ethical conduct in the practice of law and in the legal profession.¹³

Rule 101 Standards for Course Approval and Credit for Attendance

- b. The course shall deal primarily with matter directly related to:
1. the practice of law or to the professional responsibility or ethical obligations of the participants
 2. or to the elimination of bias in the legal profession and in the practice of law.¹⁴

defining "courses in ethics and professional responsibility" to mean "sessions within courses", it is hoped that sponsors are encouraged to include accredited ethics segments within substantive law courses. Committee members agreed that ethical considerations are often best taught within a substantive law context.

¹¹ The inclusion of the phrase "in a specific way" is intended to limit approval as "ethics" to those courses or segments of courses in which sponsors are able to identify some specific ethics program content, as opposed to courses in which sponsors are able to identify only non-specific discussions of ethical practice.

¹² The Committee includes the terms "professionalism" and "civility" as a component of the definition but thought that these terms do not need to be defined because the concepts underlying the terms continue to evolve.

¹³ The phrase "ethical conduct in the practice of law and the legal profession" is intended as a broad statement permitting the accreditation of segments of courses which include a specific discussion of ethics, so long as such discussion deals with the practice of law, as opposed to a discussion about ethics in society in general.

¹⁴ This phrase is added to Rule 101(b) in order to clarify that all courses accredited as continuing legal education, whether dealing with traditional legal education topics, ethics topics, or elimination of bias topics, must meet the "directly related" criteria.

Rule 103 Announcement of Approval.

Any person may announce, as to a course that has been given approval that: "This course has been approved by the Minnesota Board of Continuing Legal Education for _____ hours in the following category or categories of credit:

- a. standard continuing legal education.
- b. ethics or professional responsibility continuing legal education or
- c. elimination of bias continuing legal education.¹⁵

Rule 104 Other Credit

- b. **Law Office Management.** A lawyer may receive credit for attendance at a course on law office management ~~on the basis of one credit per 60 minutes actually spent in attendance at the course,~~¹⁶ to a maximum of six credits per reporting period. The course must be submitted for review on the course approval form called for in Rule 102 and found in Appendix II.¹⁷ Law office management courses or segments within law office management courses that

¹⁵ This Rule is modified to reflect the fact that there are now three categories of CLE--standard, bias, and ethics--and that announcements should state within which of the three categories a course is accredited.

¹⁶ All Minnesota-accredited courses are based upon a 60-minute hour. The Committee finds this language unnecessary and recommends its deletion.

¹⁷ The Committee recommends that the course approval form be labeled "Appendix II" and incorporated by reference into the rules.

address professional responsibility or ethics, may be approved as ethics CLE and when so approved are not subject to the 6-hour maximum otherwise applicable to law office management courses.¹⁸

e. **Ethics courses.** In order to be approved as ethics or professional responsibility under these Rules, courses or sessions within courses must be at least 30 minutes in length¹⁹ and must be separately identified as ethics or professional responsibility on the course agenda and on the course approval form.²⁰

¹⁸ Although at one time law office management courses were not accredited as CLE, the rules have for many years permitted the accreditation of such courses, while limiting the maximum number of hours an attorney can obtain in law office management to six per reporting period. The Committee finds that important issues of ethics and professional responsibility are likely to arise in the context of an accredited law office management course. Such courses, the Committee concludes, should also be approved as ethics courses. Under this circumstance, an ethics course should not be subject to the six-hour maximum otherwise applicable to law office management courses. In order to simplify the staff review of courses, sponsors (or attorneys who seek credit for a course) must specify on the course approval form that ethics credit is applied for.

¹⁹ The Committee recommends that a minimum 30-minute time period be required in order for a course or session to qualify as "ethics" CLE. The Board's practice is to approve segments of CLE courses as brief as 15 minutes. The 30-minute length of time was agreed upon after concluding that a 15-minute session on ethics was insufficient for a serious discussion. The Committee believes that a 30-minute minimum will encourage sponsors to include an ethics segment in a substantive law program without impinging upon the sponsor's ability to control the planning of the substantive program.

²⁰ Committee members discussed at length the question of whether to require a minimum length of time for separate sessions identified as ethics or whether to allow the general integration of an ethics discussion in a substantive law course. The Committee recommends that an identified program segment designated as "ethics" is needed in order to distinguish this new requirement from the general ethics requirement previously included in Rule 2.

Rule 106 Reporting of Attendance at Approved Courses.

a. Every lawyer shall submit within 60 days after the close of the period during which his or her educational requirements must be completed an affidavit setting forth all information called for on the Affidavit of CLE Compliance, attached hereto as Appendix III and incorporated herein.²¹

²¹ This change specifically incorporates the format of the Attorney Affidavit into the rule, thereby requiring attorneys to list CLE hours by the type of credit they have completed.

addition, courses may also be accredited as "ethics CLE" or "elimination of bias CLE". See Rules 2, 3 and Rule 104 of the Rules of the Supreme Court and of the CLE Board. **Ethics course segments must be at least 30 minutes in length** in order to be afforded "ethics and professional responsibility" credit.

Check below the treatment of **ethics or professional responsibility** content in the program.

_____ A portion of the program 30 minutes or more in length addresses ethics or professional responsibility and is marked as "Ethics" on the attached program agenda.

_____ Ethics or professional responsibility concerns are addressed throughout the program but no distinct segment is 30 minutes or more in length.

_____ No portion of the program addressed ethics or professional responsibility. Attached is an explanation of why ethics or professional responsibility content is not present in this program.

[RESERVED FOR ADDITIONAL INFORMATION REGARDING ELIMINATION OF BIAS COURSES]

*Sponsors are asked to inform attendees that determination of the number of hours and the categories of CLE credit are made by the office of the Board of Continuing Legal Education. Until credit is granted, sponsors should advertise credit as "applied for."

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MINNESOTA STATE BOARD OF CONTINUING LEGAL EDUCATION

Minnesota Judicial Center, 25 Constitution Ave, Suite 110, St. Paul, Minnesota 55155

AFFIDAVIT OF CLE COMPLIANCE

License Number: _____ Name _____

CLE Category: _____ Mailing Address _____

Period Covered: _____

Date of this Report: _____

I swear that the information below is an accurate and complete record of my attendance.

Attorney Signature _____

ATTENDANCE INFORMATION

SPONSORING AGENCY	COURSE TITLE	COURSE DATES	HOURS OF STANDARD CLE*	HOURS OF ETHICS	HOURS OF ELIMINATION OF BIAS
a.					
b.					
c.					
d.					
e.					

(USE ADDITIONAL SHEETS IF NECESSARY)

HOURS OF PREPARATION AND TEACHING INFORMATION

SPONSORING AGENCY	COURSE TITLE	COURSE DATES	HOURS OF STANDARD CLE	HOURS OF ETHICS*	HOURS OF ELIMINATION OF BIAS
a.					
b.					

* At least 3 hours of CLE in Ethics and at least 2 hours of CLE in the Elimination of Bias are required every 3 years. Hours for all categories of credit (the above as well as standard CLE) must total 45 hours in the 3 year reporting period. Courses accredited as law office management must not exceed 6 hours per 3 year period. Please retain a copy for your records.

EXHIBIT