

STATE OF MINNESOTA

In Supreme Court

FILE NO. C2-84-2163

**OFFICE OF
APPELLATE COURTS**

SEP 14 1999

FILED

**Petition of the Minnesota State Board
of Continuing Legal Education For
Amendment of the Rules of the
Minnesota Supreme Court and State
Board for Continuing Legal Education
of Members of the Bar**

**PETITION FOR
RULE AMENDMENT**

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner, the Minnesota State Board of Continuing Legal Education ("Board"), respectfully petitions the Court to amend the Rules of the Supreme Court and Rules of the Minnesota Board of Continuing Legal Education of Members of the Bar in order to consolidate, edit, renumber, reorganize and rename the rules into a single set of rules; to incorporate certain changes and amendments to the rules, and to clarify attorney obligations with respect to continuing legal education. In support of its Petition, the Board asserts the following:

1. The Supreme Court has the exclusive and inherent power to regulate the practice of law.
2. The present rules governing the continuing education of the bar are contained in two sets of rules: the Rules of the Minnesota Supreme Court (Rules 1 through 7) and the Rules of the Minnesota Board for Continuing Legal Education of Members of the Bar (Definitions, Rules 101 to 113, and Appendices I, II, and III). The two sets of rules

contain numerous duplicative provisions regarding educational requirements and procedures.

3. After lengthy review and committee deliberations over the past nine months, the Board has agreed upon and recommends for adoption the attached "Minnesota Rules for Continuing Legal Education of Members of the Bar" (MRCLE). These changes reflect the Board's intention to combine both sets of rules into one body of rules; to provide an index that facilitates access to these rules; to eliminate redundancies; and make the language of the rules internally consistent.

4. The primary substantive changes that are contained in these amendments are the following:

- **Rule 2D.** The definition of the term "classroom setting" is modified to state that a classroom setting may include an "office." This change permits an attorney to use his or her office to participate in a live-transmission CLE program, provided that the attorney is devoting exclusive use of the office to the educational event during the period of time in which the program is being presented. This change will permit attorneys to receive credit for attending courses being transmitted via satellite or telephone. Such courses are being offered in markedly increased numbers in recent years. Despite the physical separation between lecturer and attendees, the collegial experience remains intact because the attorney to hears the live presentation while it is taking place and can participate in the question and answer period following the presentation. Under the prior rules, such courses were not able to be approved because they did

not meet the “classroom setting” definition. With the inclusion of the word “office” in the definition of “classroom setting,” a much broader range of CLE accredited teleconferences and satellite courses is accessible to Minnesota attorneys. Self-study, including on-line courses, remain outside of the scope of educational activities for which credit is given, because such courses do not involve live attendance and participation.

- **Rule 2K and L.** The terms “restricted status” and “involuntary restricted status” which were referenced in current rule 3, Rule 112, and Appendix I, are now defined.
- **Rule 3A and C.** Current rule 2 provides for the appointment of a secretary by the Court. Such appointment has not taken place in recent years. In the proposed amendment, the secretary position is eliminated and replaced with a vice-chair position that serves in the chair’s absence and assures the accuracy of meeting minutes. The creation of the vice chair position permits the Board chair to designate one of the Board members to preside in the absence of the chair.
- **Rule 3G.** Rule 3G states that the Board will make reasonable modifications in order to accommodate persons with disabilities. Current rules do not give the Board explicit authority to modify its policies and procedures to accommodate

persons with disabilities. Such a provision is needed to comply with the requirements of state and federal disability laws.

- **Rule 4A(7).** Rule 4A(7) authorizes the Board to charge a \$35 fee for reviewing a CLE course application and making an accreditation determination. A course sponsor may seek waiver of this fee under Rule 3D(1). A similar waiver provision is found in current rule 110. In a study of course approval data accumulated over a three-year period, the Board determined that it had accredited approximately 6,000 courses per year, nearly one-half of which were never attended by Minnesota licensed attorneys. The Board considered various means of imposing a fee on course sponsors for the time and effort devoted to the review of courses and concluded that a course review fee was the most equitable, so long as the fee could be waived in cases of hardship or for compelling reasons.

The Board expects that it will receive requests for waiver of the fee and anticipates that it will review each waiver request, as is its practice under the current rules. It is not anticipated that such review will place an undue burden on the Board or staff.

- **Rule 5A(5).** This Rule has been revised in a small but significant manner. The words “teleconference” and “simultaneous broadcast” have been added to the types of electronic media through which continuing legal education courses may be presented. When read with the revised definition of “classroom setting” (permitting CLE to take place in an office exclusively devoted to the educational

activity), attorneys will be able to participate in teleconferences and simultaneous broadcasts on a statewide and national basis. To receive credit, the presentation must be live and must include a mechanism through which the attorney can participate in the question and answer period. These requirements maintain the elements of live participation and exclusive focus, while permitting attorneys to receive CLE credit for classes that are taking place in a remote location. The Board believes that this revision will be of particular benefit to attorneys outside the Minneapolis-St. Paul metropolitan area and will encourage the reception of nationally broadcast programs throughout the state. It will also enable disabled attorneys who are unable to attend conventional classroom programs, to have full participation in continuing legal education programs.

- **Rule 5B.** The current rules contain an extensive list of requirements for approval of in-house courses. Proposed Rule 5B places in-house course approval requirements into a separate rule. The standards for approval of in-house courses are unchanged with the exception that any attorney who has been retained to teach an in-house course may qualify as a recognized CLE sponsor so long as he or she regularly engages in such activity. This change is incorporated into the definitions of in-house course in Rule 2M and the definition of "established continuing legal education sponsor" in Rule 2N. An attorney who is regularly hired to present CLE programs to other attorneys is a recognized CLE provider. A recognized CLE sponsor is no longer limited to

organizations or other entities which periodically present legal education or as part of their regular business.

- **Rule 9.** Rule 9 reflects the changes in the way the Board receives and reviews affidavits. The rule is also modified to streamline the language and to clarify attorneys' obligations.
- **Rule 10.** Rule 10 gives the Director explicit authority to make the initial decision with respect to waivers and extensions. This reflects the Director's management of the day-to-day operations between the Board's quarterly meetings. At the same time, the Director's decisions are subject to Board review through a streamlined review process. Any attorney or sponsor who is aggrieved by any decision of the Director may request and receive a hearing before the Board.
- **Rule 11.** Rule 11 clarifies and redefines the hearing process. Prior rule provisions were less specific about some aspects of the hearing process, and in other respects were more detailed. The section was adapted from the hearing provisions of the Rules of the Board of Law Examiners.

Rule 11F provides for specific review by the Court. This change is not expected to lead to an increase in the number of matters that will come before the Court.

- **Rule 12.** The restricted status provisions in Rule 12 are derived from the current rules, as well as from current Appendix I which has been published along with the rules for the past 15 years. The amendments to Rule 12 provide that a lawyer on restricted status may not represent any other person, including relatives. The current Rule 3 permits the “restricted status” lawyer to represent a number of other relatives.¹ The Board concluded that these exceptions should be eliminated because an attorney who is not current with CLE should not be representing anyone, with the exception of himself or herself. No compelling reason could be found to allow attorneys who are not current with the continuing professional education to continue to represent family members. The Board concluded that the better approach is to require that attorneys not current in continuing legal education refrain from representing others, including family members.

Rule 12B sets out in greater detail the process by which an attorney transfers from restricted status to active status. The provisions with respect to automatic and discretionary transfer requirements are streamlined. The discretionary transfer criteria are incorporated into the transfer decisions made by both the Board and the Director. The Director’s decisions on transfers must be reported to the Board, permitting oversight on all terms and conditions of transfer.

¹ Spouse, son, daughter, father, mother, brother, sister, father-in-law, mother-in-law, brother-in-law, and sister-in-law.

Rule 12B(4) provides for specific sanctions for failure to abide by the terms of a transfer agreement, resulting in the revocation of the transfer.

- **Rule 13.** Rule 13 is a new provision. Under the current rules, there is no provision that addresses restoring attorneys on retired status to active status. The return of retired attorneys to active practice is not uncommon. This provision allows for an orderly process by which to accomplish such a transfer.

Based upon the foregoing, the Board respectfully requests that the Court revoke the current Rules of the Minnesota Supreme Court and Rules of the Minnesota Board for Continuing Legal Education of Members of the Bar and adopt the proposed amended Rules attached hereto.

Dated: *Sept 14, 1999*



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**Rules of the Minnesota
Board of
Continuing Legal Education**

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RULES OF THE MINNESOTA BOARD OF CONTINUING LEGAL EDUCATION¹

Rule 1. Purpose

The purpose of these Rules is to require that lawyers continue their legal education throughout the period of their active practice of law; to establish the minimum requirements for continuing legal education; to improve lawyers' knowledge of the law; and through continuing legal education courses, to address the special responsibilities that 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.

Rule 2. Definitions

In these Rules,

- A. "Approved Course" means a course approved by the Board.
- B. "Board" means the State Board of Continuing Legal Education.
- C. "Chairperson" means the chairperson of the Board.
- D. "Classroom setting" means a room, including an office, suitably appointed with chairs, writing surfaces, lecterns and other normal accouterments of a teaching room, that is exclusively devoted to the educational activity being presented².
- E. "Director" means the Director of the Board.
- F. "Laboratory Setting" means a mock courtroom, law office, negotiation table, or other simulated setting in which demonstrations are given, role-playing is carried out or lawyers' activities are taught by example or participation.

¹ These Rules are re-written and renumbered in their entirety. The language of these Rules is derived in large part from the current rules. Substantive changes and additions are highlighted and described in the footnotes. The footnotes are not intended to be adopted by the Court or published with the rules.

² This change permits a lawyer (or a group of lawyers) to utilize the law office as a classroom for CLE purposes. The change contemplates accrediting courses received by satellite transmission, as well as teleconferences in the lawyer's office. Credit will be given so long as the office is devoted exclusively to the educational event and the live moderator provisions of Rule 5 are met.

- G.** “Participant” means a lawyer licensed in Minnesota attending an approved course and actively engaged in the subject matter being presented³.
- H.** “Course in ethics and professional responsibility” means a course or session within a course that deals 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 and case law arising from the application of any of the above-specified rules, including a course or session within a course that addresses in a specific way concepts such as professionalism, civility and ethical conduct in the practice of law and in the legal profession.
- I.** “Course in the elimination of bias in the legal profession and in the practice of law” means a course directly related to the practice of law that is designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.
- J.** “Court” means the Supreme Court of the State of Minnesota.
- K.** “Restricted Status” means the status of a lawyer licensed in Minnesota who has voluntarily chosen not to comply with the educational and reporting requirements of these rules. See Rule 12 for additional provisions.⁴
- L.** “Involuntary Restricted Status” means the status of a lawyer licensed in Minnesota who is not in compliance with the educational and reporting requirements of these Rules and who has been involuntarily placed in that status by order of the Court. See Rule 12 for additional provisions.⁵
- M.** An “in-house course” is one sponsored by a single private law firm, a single corporation or financial institution, or by a single federal, state or local governmental agency for lawyers who are members or employees of any of the above organizations.⁶
- N.** For the purposes of Rule 6(B), an “established continuing legal education course sponsor” is a person or entity regularly retained by firms or organizations for the purpose of presenting continuing legal education programs, who is completely

³ The Board seeks to address the need for attorneys to be physically and intellectually present at CLE courses—particularly, in light of new electronic options for attendance.

⁴ This definition was derived from current Rule 3, paragraph 2.

⁵ Derived from Appendix 1 of existing rules.

⁶ Derived from current Rule 101(k).

independent of the firm or organization for whose members the continuing legal education course is presented.⁷

O. “Fee” means a check or money order made payable to the Minnesota State Board of Continuing Legal Education.

Rule 3. State Board of Continuing Legal Education

A. Membership of the Board. This Court shall appoint twelve members and a chairperson. The membership of the CLE Board shall consist of:

- 3 members of the public;
- 1 member who is a district court judge;
- 6 lawyer members who are nominated by the Minnesota State Bar Association; and
- 3 lawyer members appointed by the Court.

B. Terms of Members. Appointments shall be for staggered 3-year terms, with no member serving more than two 3-year terms, and each member serving until a successor is appointed and qualifies.

C. Officers of the Board.

(1) Chair. The chair 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.

(2) Vice Chair. A vice chair shall be designated by the Chair and shall maintain the minutes of meetings of the Board.⁸

D. Authority of the Board.⁹ Subject to the general direction of the Court in all matters, the Board shall have supervisory authority over the administration of these Rules, shall accredit courses and programs which satisfy the educational requirements of these Rules, and shall have authority with respect to the following:

(1) Waivers and Extensions.¹⁰ Waivers of strict compliance with these Rules or extensions of time deadlines provided in these Rules may be made in cases of hardship or other compelling reasons.

⁷ Derived from current Rule 101(k)(5).

⁸ The Court appoints the chair and the chair appoints a vice chair. The position of secretary is eliminated.

⁹ This rule is derived from current Rule 2.

¹⁰ This derives from current Rule 110—“Waivers and Extensions” and is unchanged.

(2) Supplemental Policies.¹¹ The Board may make and adopt policies not inconsistent with these Rules governing the conduct of business and performance of its duties.

E. Board Procedures.¹² Robert's Rules of Order shall govern the conduct of Board meetings where practicable.

F. Confidentiality.¹³ Unless otherwise directed by this Court, the files, records, and proceedings of the Board, as they may relate to or arise out of any failure of an active attorney to satisfy the continuing legal education requirements shall be deemed confidential and shall not be disclosed except in furtherance of its duties, or upon request of the attorney affected, or as they may be introduced in evidence or otherwise produced in proceedings in accordance with these Rules.

G. Persons with Disabilities. It is the policy of the Board to administer these Rules in a manner consistent with state and federal laws prohibiting discrimination against persons with disabilities and to make reasonable modifications in any policies, practices, and procedures that might otherwise deny equal access to individuals with disabilities.¹⁴

H. Payment of Expenses.¹⁵ The chairperson, the vice-chair and other members of the Board shall serve without compensation, but shall be paid reasonable and necessary expenses certified to have been incurred in the performance of their duties.¹⁶

Rule 4. Applying for Credit¹⁷

A. Course Approval and Fee Information. In applying for credit,¹⁸ a sponsoring agency or attorney shall submit to the Board an application for course approval (Appendix I, which is incorporated herein) to include the following:

¹¹ Current Rule 7, "Supplemental Rules."

¹² Current Rule 111, "Board Procedures."

¹³ Current Rule 5, "Confidentiality."

¹⁴ This new provision addresses the Board's obligation to administer the program in a manner that does not discriminate against persons with disabilities. It is designed to cover all constituents of the office—course presenters, as well as attorneys.

¹⁵ Current Rule 6, "Payment of Expenses" and portions of Rule 2 relating to compensation for Board members.

¹⁶ Current Rule 2, paragraph 1.

¹⁷ This revision combines Court Rule 2 and Board Rules No. 101 and No. 104.

¹⁸ This is the current Rule 2, paragraph 5.

- (1) Title of the program under consideration;
- (2) Location of the program;
- (3) Names and credentials of the speakers, including those of persons designated to act as moderators for video-tape or satellite programs;
- (4) Type of presentation;
- (5) Agenda or course schedule showing beginning and ending times of each session;
- (6) Identification of type of credit for which approval is sought (standard CLE, ethics/professional responsibility CLE, elimination of bias CLE) for each segment of the course. No segment of any course shall be accredited in more than one category of credit.
- (7) A fee in the amount of \$35. This fee may be subject to waiver under the provisions of Rule 3D(1).¹⁹
- (8) Such other information as the Board may from time to time require.

B. Professional Responsibility or Ethics: General Treatment.²⁰ Every CLE course approval form must include:

- (1) A description of the general treatment of professional responsibility and ethical considerations; or
- (2) An explanation as to why professional responsibilities and ethical ethics is not included.

C. Sanctions for Failure to Include Ethics.²¹ If in the opinion of the Board, the general treatment of professional responsibility or legal ethics topics within courses accredited as standard continuing legal education is inadequate without satisfactory explanation, the Board may refuse to grant full credit for all hours in attendance, 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.

¹⁹ A fee will be charged to course sponsors for reviewing each course submitted for accreditation. The waiver provision recognizes that exceptions will be made with these fees. Waiver requests will be reviewed individually for sponsors whose circumstances make it difficult to pay the charge.

²⁰ Current Rule 2, paragraph 5.

²¹ Current Rule 2, paragraph 6.

D. Notice of Credit. The Board shall inform the sponsor or applicant of the number and type of credit hours granted or denied.²²

Rule 5 Standards for Course Approval

A. General Standards. A course must meet the following standards before approval is granted.

- (1) The course shall have significant intellectual or practical content.²³
- (2) The course shall deal primarily with matter directly related to the practice of law or to the professional responsibility or ethical obligations of participants or to the elimination of bias in the legal profession and in the practice of law.²⁴
- (3) The course shall be taught by faculty members qualified by practical or academic experience to teach the specified subject matter. Legal subjects should be taught by lawyers.²⁵
- (4) Any written materials should be thorough, high quality, readable, carefully prepared, and distributed to all participants at or before the time the course is offered.²⁶
- (5) The course shall be presented and attended in a suitable classroom or laboratory setting. Video-tape, motion picture, simultaneous broadcast, teleconference, or audio-tape presentations may be used provided that a faculty person is in attendance at all presentations, either in person or through live transmission, allowing all seminar participants to hear and participate in the question and answer session. Subject to the exception of paragraph (11) below, no program will be approved which involves solely TV or videotape viewing in the home or office, correspondence work or self-study, including on-line self-study.²⁷
- (6) Credit will not normally be given for speeches at luncheons or banquets.²⁸

²² Current Rule 2, paragraph 7.

²³ Current Rule 101 (a).

²⁴ Current Rule 101(b).

²⁵ Current Rule 101(c).

²⁶ Current Rule 101(d).

²⁷ Current Rule 101(e). By this amendment, video-taped presentations, simultaneous broadcasts, teleconferences, and audio-tapes may be approved so long as a faculty person is present either live or by live electronic transmission. On-line programs considered to be equivalent to self-study are not approved.

²⁸ Current Rule 101(f).

- (7) A list of all participants shall be maintained by the sponsoring agency and transmitted to the Board upon request,²⁹ following the presentation of the course.
- (8) Credit shall be awarded on the basis of one hour for each 60 minutes actually spent in attendance at an approved course.³⁰
- (9) A lawyer shall not receive credit for any course attended before being admitted to practice law in Minnesota, but one so admitted may receive credit of one hour for each 60 minutes actually spent in attendance, for attending for credit or as an auditor a regular course offered by a law school approved by the American Bar Association.³¹
- (10) Notwithstanding the provisions of paragraph (9) above, a person who takes approved courses or teaches in an approved course after sitting for the Minnesota Bar Examination, but before admission to practice, may claim credit for the courses taken or the teaching done, if he or she passes that bar examination.³²
- (11) Lawyers residing or working outside of the State of Minnesota during the CLE reporting period who, because of non-residence are unable in good faith to attend courses accredited as “elimination of bias” as defined in these rules, may receive up to 2 hours of credit in fulfillment of the elimination of bias requirement by viewing a videotaped course or courses that otherwise meet the requirements of these rules. If a lawyer views a videotaped elimination of bias course not previously approved for credit under these rules, the lawyer may seek approval by completing and submitting the Course Approval Form in Appendix II.

B. Standards for Course Approval for In-House Courses³³

- (1) An in-house course as defined in Rule 2 (M) will be approved if:
 - (a) The requirements of Board Rule 5 (A) and other applicable Board rules are met;

²⁹ Current Rule 101(g) requires sponsors to keep attendance lists and to submit them to the Board. The transmission of those lists is unnecessary unless there is a question regarding attendance. The change requires the sponsor to transmit the list only upon request.

³⁰ Current Rule 101(h).

³¹ Current Rule 101(i).

³² Current Rule 101(j).

³³ The provision addressing in-house courses is derived from current Rule 101(k) (1 through 5). Also, “In-house course” is now found in the amended definition section, Rule 2.

- (b) 25% of the hours of approved instruction are taught by instructors having no continuing relationship or employment with the sponsoring firm, department, financial institution or agency; and
 - (c) Notice of the course is given to enough outside lawyers so that the audience can potentially be composed of at least 25% participants who are not lawyers working in or for the sponsoring firm, department, institution or agency.
 - (d) Approval is sought prior to its presentation.
- (2) An in-house course, as defined in Rule 2, that is presented and controlled by an established continuing legal education course sponsor as defined in Rule 2N, may be approved for credit, notwithstanding the fact that the course does not comply with requirements of Rule 5B(1) (b) and (c) above.
- (3) An in-house course as defined in Rule 2M shall not be approved for credit if it is presented primarily for clients or clients' counsel.³⁴

Rule 6 Special Categories of Credit.

- A. Ethics Courses³⁵.** 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 length and must be separately identified as ethics or professional responsibility on the course agenda and on the Course Approval Form Appendix I.
- B. Elimination of Bias Courses.³⁶** Courses or sessions within courses accredited as elimination of bias:
- (1) Must be at least sixty (60) minutes in length;
 - (2) Must be identified on the Course Approval Form as fulfilling the elimination of bias requirement and be accompanied by a narrative required by Appendix I of these Rules;
 - (3) Must focus on issues in the legal profession and in the practice of law and not upon issues of bias in society in general; and

³⁴ Current Rule 101(k)5, final sentence.

³⁵ Current Rule 104(d).

³⁶ Current Rule 104(e)(1 through 4).

- (4) Must not include courses on the substantive law of illegal discrimination unless such courses meet one or more of the Goals for the Elimination of Bias as set forth in the Course Approval Form at Appendix I.

Rule 7 Other Credit

- A. Teaching Credit.**³⁷ Credit for teaching in an approved course shall be awarded to presenting faculty on the basis of one credit for each 60 minutes spent by the faculty preparing the presentation and materials for the course. No credit shall be awarded for teaching directed primarily to persons preparing for admission to practice law. A lawyer seeking credit for teaching and preparation for teaching shall submit all information called for on the Affidavit of CLE Compliance at Appendix II.³⁸
- B. Law Office Management.**³⁹ A lawyer may receive credit for attendance at a course on law office management to a maximum of six credits per reporting period. The course must be submitted for review pursuant to Rule 5. Law office management courses that specifically address elimination of bias in the law office or in the practice of law may be accredited instead as elimination of bias CLE and when so designated are not subject to the 6-hour maximum on law office management courses.
- C. Courses at Universities.**⁴⁰ Courses which are part of a regular curriculum at a college or university, other than a law school, may be approved for a maximum of 15 hours per course when the lawyer requesting approval submits evidence supporting the conclusion that the course meets the Rule 5A(1) through (5) criteria and that it is directly related to the requesting lawyer's practice of law.
- D. Retroactive Credit.**⁴¹ A lawyer, or a course sponsor, may seek retroactive approval of courses by submitting the necessary information on the Course Approval form.

Rule 8 Announcement of Approval⁴²

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:

³⁷ Current Rule 104(a).

³⁸ Current Rule 105 (titled Submission of Information-Teaching Preparation) is incorporated into Rule 7A.

³⁹ Current Rule 104(b).

⁴⁰ Current Rule 104(c).

⁴¹ Current Rule 107.

⁴² Current Rule 103.

- standard continuing legal education;
- ethics or professional responsibility continuing legal education; or
- elimination of bias continuing legal education.”

Rule 9 Affidavit of Continuing Education

A. Contents of Affidavit. To maintain active status, a lawyer must submit a written affidavit to the Board on the affidavit form published as Appendix II and incorporated herein, setting forth all information called for and showing that the lawyer has completed a minimum of 45 hours of course work either as a participant or a presenter in approved continuing legal education courses,⁴³ including:

- (1) no fewer than three (3) hours of courses on ethics and professional responsibility education, and
- (2) no fewer than two (2) hours of courses in the elimination of bias in the legal profession and in the practice of law.

B. Timely Affidavit.⁴⁴ The affidavit is timely if filed not later than 60 days after the close of the 3-year period specified by the Office of Attorney Registration as the lawyer’s continuing legal education reporting period.

C. Late Affidavit Fee. The lawyer who submits an Affidavit of CLE Compliance after the 60-day filing period, but before issuance of a Notice of Noncompliance, shall submit along with the late affidavit a late filing fee in the amount of \$50.00. This fee is payable notwithstanding the Board’s grant of an extension of time to file. Additional late fees will not be charged for late affidavits filed within a single reporting period.⁴⁵

D. Notice of Noncompliance Fee. The lawyer who submits an affidavit after the issuance of a Notice of Noncompliance, but prior to the issuance of a Court order placing the lawyer on involuntary restricted status, shall submit along with the affidavit a fee in the amount of \$100.

⁴³ This is taken from current Rule 3, paragraph 1, 4th sentence.

⁴⁴ Current Rule 106(a).

⁴⁵ This additional language clarifies the Board’s intention of collecting a fee for late filing but not requiring payment with each affidavit if multiple affidavits are filed.

Rule 10. Director's Determinations and Board Review

A. Director's Determinations⁴⁶. The Director shall have the following authority and responsibility:

- (1) To respond in writing to written requests for approval of courses giving reasons for the determination;
- (2) To grant credit to lawyers for attending or teaching in approved courses;
- (3) To grant or deny requests for transfer, waiver, extension of time deadlines or interpretation of these Rules; and
- (4) To inform the Board about determinations made since the Board's last meeting, together with observations and comments relating to matters under the Board's jurisdiction.

B. Board Review.⁴⁷ A lawyer or sponsoring agency affected by an adverse determination of the Director may request Board review of the determination, and may present information to the Board in writing and in person. The Board may take such action as it deems appropriate and shall advise the lawyer or sponsoring agency of its determination.

Rule 11. Notice of Noncompliance⁴⁸

A. Notice Required. The Director shall send a notice of non-compliance to any lawyer who:

- (1) Fails to meet the requirements of these Rules; and
- (2) Fails to request and obtain an extension of time in which to file a report as required by these Rules.

B. Service of Notice. The notice shall be sent by regular mail to the lawyer's last known address.⁴⁹

⁴⁶ Current Rule 108 (a).

⁴⁷ Current Rule 108(b).

⁴⁸ Current Rule 109.

⁴⁹ The proposed amended Rule no longer requires certified mail when sending the notice of non-compliance. Certified mail is costly and frequently not as effective as regular mail when the lawyer has moved.

C. Contents of Notice. The notice shall state the nature of the noncompliance, and shall inform the lawyer of the right to request a hearing within 30 days of the mailing of the notice, the right to be represented by counsel, and the right to present witnesses and evidence.⁵⁰

D. Effect of Notice.⁵¹ If no hearing is requested, the Director's determination of non-compliance shall become final and shall be reported to the Supreme Court with the recommendation that the lawyer be placed on CLE involuntary restricted status.⁵²

E. Board Hearing.⁵³ If a hearing is requested, the following will apply:

(1) The Board may employ special counsel;

(2) The Chairperson shall preside at the hearing, which may be held before the entire Board or a committee there appointed by the Chairperson, and shall make necessary rulings; and

(3) The hearing shall be recorded and a transcript shall be provided to the lawyer at a reasonable cost.

F. Determination.⁵⁴ Following the hearing, the Board shall issue a written decision. If the lawyer is determined to be in noncompliance with these Rules, the Board may recommend to the Supreme Court that the lawyer's license be placed on CLE involuntary restricted status or take such action as is appropriate.⁵⁵

F. Petition for Review. A lawyer who is adversely affected by the decision of the Board may appeal to the Court by filing a petition for review with the Clerk of Appellate Courts within 20 days of receipt by the lawyer of the decision together with proof of service of the petition on the Director of the Board. The petition shall state briefly the facts that form the basis for the complaint, and the lawyer's reasons for believing the Court should review the decision. Within 20 days of service of the petition, the Board shall serve and file a response to the petition and a copy of the

⁵⁰ This section is taken from current Rule 109(c) and is shortened.

⁵¹ This is a new provision that describes the current practice.

⁵² Involuntary restricted status differs from restricted status in that the attorney is no longer considered to be in good standing.

⁵³ Current Rule 109(c).

⁵⁴ Current Rule 109(d).

⁵⁵ The proposed amended Rule describes the sanction most likely to result from a finding of non-compliance – the lawyer's license is transferred to restricted status.

final decision of the Board. Thereupon, the Court shall give such direction, hold such hearings and make such order as it may in its discretion deem appropriate.⁵⁶

Rule 12 Restricted Status.⁵⁷

A. Election of Restricted Status; Restrictions Imposed. A lawyer duly admitted to practice in this state may elect CLE restricted status as defined in Rule 2(K) by sending written notice of such election to the Director. A lawyer on restricted CLE status shall not be required to satisfy the educational and reporting requirements provided by these rules and shall be subject to the following provisions and restrictions:

- (1) A lawyer on restricted status may not engage in the practice of law or represent any person or entity in any legal matter or proceedings within the State of Minnesota other than himself or herself.⁵⁸
- (2) The name of a lawyer on restricted status may not appear on law firm letterhead without a qualification that the lawyer's Minnesota license is restricted. A law firm name may continue to include the lawyer's name if the name was included prior to the lawyer's placement on restricted status. A restricted lawyer may not be listed "of counsel" or otherwise be represented to clients or others as being able to undertake legal business.⁵⁹
- (3) A restricted lawyer may not have a financial interest in a law firm that is a professional corporation.
- (4) A referee or judicial officer of any court of record of the State of Minnesota or lawyer employed and serving as attorney or legal counsel for any employer, including any governmental unit of the State of Minnesota, is not eligible to apply for restricted status.
- (5) A restricted lawyer shall be issued a wallet license that is marked "CLER" ("continuing legal education restricted") in place of the reporting category.

B. Transfer from Restricted Status to Active Status.

⁵⁶ This section is new and is modeled after the Rules of the Board of Law Examiners. This provision describes the appeal process should an attorney or sponsor seek review of the Board's final decision.

⁵⁷ This rule is derived from the provisions of current Rule 3, paragraphs 2 and 3. Appendix 1 of the current rules also addresses restricted status.

⁵⁸ The provisions permitting restricted status attorneys to represent family members has been removed.

⁵⁹ This provision is derived from current Appendix I, paragraph 3.

(1) Notice to Director and Fee. Unless otherwise ordered by this Court, a lawyer on restricted CLE status who desires to resume active CLE status shall notify the Director in writing of the lawyer's intention to resume active CLE status, and submit a transfer fee of \$125.

(2) Transfer Requirements. A lawyer on restricted CLE status who submits a notice and fee for transfer to active CLE status shall be transferred upon the Director's determination that the lawyer has fulfilled the requirements of (a) or (b) below:

(a) Automatic transfer requirements. The lawyer has completed the number of CLE hours that the lawyer would have had to complete to meet reporting requirements and to be current on a proportional basis had the lawyer not been on restricted status, or

(b) Discretionary transfer requirements. The lawyer has completed such lesser requirements as the Director determines are adequate provided that the number of hours completed total no fewer than 45 hours during the three years immediately preceding transfer, the Director will specify no more than 90 hours. Determinations will be made subject to the criteria set forth in paragraph (c) below.

(c) Discretionary transfer criteria.

The Director may transfer a lawyer to active status when the lawyer has fulfilled appropriate CLE conditions precedent or agreed to fulfill appropriate CLE conditions subsequent as determined by the Director.⁶⁰ In making discretionary transfer decisions, the Director will take the following into consideration:

- i. The number of CLE hours the lawyer has taken in the past;
- ii. The lawyer's other educational activity, and its nature;
- iii. The lawyer's practice of law in another jurisdiction;
- iv. The lawyer's law-related work other than the practice of law, and its nature;

⁶⁰ The current Rule 112 C "temporary transfer requirements" is deleted. The temporary transfer possibility continues in the proposed amended Rule through reference to "agreed to conditions subsequent;" failure to abide by conditions subsequent is addressed in Section 12B(4) below.

- v. Whether the lawyer acted reasonably in not anticipating the need to take the appropriate number of CLE hours before being transferred from active status; and
- vi. Whether the lawyer has demonstrated circumstances of hardship or other compelling reasons that show that the lawyer should be transferred to active status temporarily before completing the appropriate number of CLE hours.

(3) Report to the Board. The Director shall report to the Board at its next meeting the terms and conditions upon which transfers to active status were made.⁶¹

(4) Failure to Abide by Transfer Conditions. The lawyer who fails to comply with the conditions of transfer shall be restored to restricted status upon notice from the Director sent by regular mail to the lawyer's last known address.

(5) Appeal to Board. Upon written request from the lawyer, the Board shall review the Director's determination of transfer requirements and notify the lawyer in writing regarding the outcome of that review.

Rule 13. Transfer from Retired Status to Active Status.⁶²

A lawyer on retired status who seeks to transfer to active status is subject to the provisions of Rule 12 and shall notify the Office of Attorney Registration of his/her intention to transfer to active status.

⁶¹ This provision assures Board oversight of all discretionary transfers.

⁶² The current rules are silent as to transfers from retired to active status.

Appendix I

MN STATE BOARD OF CONTINUING LEGAL EDUCATION, 25 CONSTITUTION AVENUE, SUITE 110, ST. PAUL, MN 55155

COURSE APPROVAL FORM

Instructions: Please type. Leave no blanks. **Incomplete forms will be returned to you.** In completing this form, please refer to the Rules of the Board of Continuing Legal Education published in the Rules of Court volume of the Minnesota Statutes.

A lawyer or sponsoring agency adversely affected by the determination of the Director may request review by the Board.*

I. SPONSOR INFORMATION

Name _____

Street Address _____ City _____ State _____ Zip Code _____

Contact Person _____ Telephone (area code) _____

Submitted by: Name _____

____course sponsor ____course participant (check one)

Expected Audience or Marketing Target: _____

A list of Minnesota participants must be maintained by the sponsor and made available to the Board upon request.

II. COURSE DATA

Title _____

Date _____ Location _____

Check those which apply:

____live lecture ____in house program (see Rule 5B) ____demonstration, role play, mock trial
____study tour ____video-tape/film (must have live moderator) ____live satellite broadcast (must have live moderator)

III. FACULTY DATA: Indicate where in the brochure this information is found or attach separate sheet.

IV. SESSION SCHEDULE AND AGENDA: Provide a detailed agenda or information on an attached sheet showing a complete breakdown of the program, marking the segments for which credit is requested. For each segment, indicate the beginning and ending times, the faculty, and sufficient detail about the content of the segment in order to make an accreditation decision under Board Rules. **Course segments can be accredited as standard CLE, or ethics CLE or elimination of bias CLE. Indicate for each segment the type of CLE credit for which you are applying.** Attach a copy of the promotional brochure, if any, and describe the materials to be distributed to participants (a copy may be submitted in lieu of a description).

V. ETHICS AND PROFESSIONAL RESPONSIBILITY CONTENT: Ethics or professional responsibility *must* be a component of every approved standard CLE course in Minnesota or an explanation must be provided as to why ethics is not covered. In addition, courses may also be accredited as “Ethics CLE” or “Elimination of Bias CLE”. See Rules 6A and 6B of the Rules of the Minnesota Board of CLE. **In order to qualify for ethics CLE credit, an ethics course or segment of a course must be at least 30 minutes in length.**

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.

VI. ELIMINATION OF BIAS EDUCATION: Please check here to indicate whether you are requesting Elimination of Bias credit for this program:

- Elimination of Bias credit is sought. See attached narrative.
- No credit for Elimination of Bias is sought.

Minnesota CLE Rule 6B describes course requirements for CLE on the “elimination of bias in the legal profession and in the practice of law.” In order to be afforded “**elimination of bias**” credit, **such courses or segments of courses must be at least 60 minutes in length.** If elimination of bias credit is sought for some portion of this course, please do the following:

1. Review the “elimination of bias” goals listed below;
2. Mark the segment or segments on the agenda which the sponsor believes fulfill these requirements;
3. Attach a brief written narrative describing how the course segment or segments meet one or more of the “Learning Goals for Minnesota Elimination of Bias Courses” listed below.

Please note that courses or segments of courses may address ethics and elimination of bias topics. A sponsor may seek credit in one category or the other, but will not be accredited in both categories simultaneously. The Board will determine in which category credit will be granted, based upon the course description and the sponsor’s narrative.

LEARNING GOALS FOR MINNESOTA ELIMINATION OF BIAS COURSES

Courses approved as “elimination of bias” must be at least **60 continuous minutes in duration**, must be directly related to the practice of law, must meet all other requirements of Rule 5 of the Rules of the CLE Board and must be designed to meet one or more of the following goals:

1. to educate attorneys about the elimination of bias or prejudice in the legal profession, in the practice of law, and/or in the administration of justice;
2. to educate attorneys regarding barriers to hiring, retention, promotion, professional development and full participation of lawyers of color, women, and those persons referenced in the “elimination of bias” definition (i.) of the Rules of the CLE Board, both in the public and private sector of the legal profession and in the practice of law;
3. to educate attorneys about the problems identified in the Supreme Court’s Race Bias and Gender Fairness Task Force Reports, as well as in other studies, reports or treatises which describe bias and prejudice in the legal profession, in the practice of law, and/or in the administration of justice.

*Until credit is granted by the Minnesota Board of Continuing Legal Education, sponsors are asked to advertise credit as “applied for.”

Appendix II
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.					

Please retain a copy of this form for your records.

(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.					

COMPLIANCE INSTRUCTIONS

*Please indicate teaching and preparation time separately.

**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 a 3-year reporting period. Courses accredited as law office management must not exceed 6 hours per 3-year period. Course segments will not be accredited as both ethics and elimination of bias.

REQUIREMENTS: The Minnesota Supreme Court requires that each attorney holding an active license to complete 40 general credits, 3 ethics credits, and 2 elimination of bias credits every three years. A reporting category, which appears on the face of the wallet license, is assigned to each attorney.

CLE 1 reports attendance from July 1, 1997 to June 30, 2000;
CLE 2 reports attendance from July 1, 1998 to June 30, 2001;
CLE 3 reports attendance from July 1, 1999 to June 30, 2002.

The credits must be taken prior to June 30 in the reporting year. There is no carry-over of credits from one reporting period to the next.

DEADLINES: Courses must be taken prior to June 30 of the reporting year. An attorney then has 60 days from that date to file an affidavit of attendance with the Board. Affidavits received after the filing deadline are subject to a \$50.00 late filing fee.

SANCTIONS: Failure to comply with the CLE reporting requirement will result in the issuance of a Notice of Noncompliance. Affidavits received after the issuance of a Notice of Noncompliance must be accompanied by a \$100.00 late filing fee. Continued noncompliance will result in the attorney being placed on involuntary restricted status by court order.

RECORDKEEPING: It is the responsibility of the attorney to maintain records of courses taken and to file promptly with the Board. Third-party attestations from course sponsors are not acceptable. The Board has no information on an attorney's attendance until the affidavit of the attorney is filed.

The Board office maintains course files by sponsor. A course cannot be identified unless the sponsor is correctly and completely listed.

ELIGIBLE COURSES: An attorney will not receive credit for attending a course until the course has been approved under Minnesota rules. Courses approved by other CLE states are not necessarily acceptable in Minnesota. In addition to the criteria listed in Board Rule 5 for course approval, eligible courses should comply with Rule 4 requiring ethical content. The Course Approval Form guides the sponsor or attorney in providing the information necessary for review.

RESTRICTED STATUS: An attorney may be excused from the CLE requirement by electing voluntary restricted status under Rule 12.

INFORMATION: Information on the credits allowed for a course should be obtained from the course sponsor. Other information and additional forms may be obtained upon request from the office of the Board of Continuing Legal Education.

INSTRUCTIONS FOR CLAIMING CREDIT FOR TEACHING

Rule 7(A). Teaching Credit

Teaching Credit. Credit for teaching in an approved course shall be awarded to presenting faculty on the basis of one credit for each 60 minutes spent by the faculty preparing the presentation and materials for the course. No credit shall be awarded for teaching directed primarily to persons preparing for admission to practice law. A lawyer seeking credit for teaching and preparation for teaching shall submit all information called for on the Affidavit of CLE Compliance at Appendix II.

An attorney who makes a one-hour presentation and spends five hours in preparing is entitled to claim a total of six hours. If he/she also sits as a member of the audience for some portion of the course being presented by other speakers, he/she can claim credit for attending that part of the course. Course information should be reported on the form in the appropriate sections.

Credit for teaching/preparation is only available when the lawyer actually **teaches** in an approved course. A lawyer who prepares materials which are distributed at the course but who does not appear on the platform as a speaker can claim no credit for his/her scholarly efforts, just as he/she could claim no credit for writing a law review article.

A lawyer who is in charge of a course normally spends administrative time persuading speakers to participate, encouraging them to complete their written materials and conferring with speakers about the allocation of responsibility for subject areas. Time so spent **cannot** be included in teaching/preparation time.