

MEMORANDUM

To: Honorable Justices of the Minnesota Supreme Court

From: William C. Kuhlmann, Chair
Minnesota CLE Board of Directors

Date: December 6, 1999

Re: Petition for Amendment of the Rules of the Minnesota Supreme Court
and State Board for Continuing Legal Education of Members of the Bar
Court File No. C2-84-2163

The Minnesota CLE Board of Directors discussed the proposed modifications to the Rule with Margret Corneille at a recent Directors' meeting. In my capacity as Chair of the Minnesota Continuing Legal Education Board, I have had further conversations regarding this matter with William Jepsen, Chair of the State Board. I very much appreciate this opportunity to restate our views concerning the proposed changes and their potential impact on Minnesota CLE.

The primary mission of Minnesota Continuing Legal Education is to provide the highest quality programming in the most accessible fashion at the lowest possible cost to all Minnesota practitioners. This mission has remained unchanged since the implementation of the CLE mandate in 1974.

We understand the Board's desire to reduce the number of unnecessary requests for course accreditation and the Board's need to generate application fees to help fund the accreditation procesó. We also appreciate the Board's desire to maintain a streamlined application procedure which will not increase the administrative burden.

Nevertheless, proposed Rule 4A(7), authorizing the Board to initiate a \$35 application fee and the accompanying waiver language presents several concerns. First, Minnesota CLE is committed to providing the greatest access possible at a reasonable cost to non-metropolitan practitioners and imposing a fee for the accreditation of each video replay throughout the state seems unfair. During the past twelve months, Minnesota CLE presented 404 video replays at 27 locations throughout the state. These video replays account for approximately 90 percent of the programming offered outside of the metropolitan area and accreditation fees would force us to increase tuition prices. This programming effort does not and has never paid for itself. It is a service to the members of the profession who must fulfill their ongoing education requirement yet do not reside within the metropolitan area.

In addition, while the Board handles some 6,000 requests for credit annually, applications from Minnesota CLE add little to the burden of accreditation. Minnesota CLE is the best known course sponsor, with a significant history of providing high quality continuing legal education. Rarely do our courses present any accreditation issues for the staff. In spite of this, Rule 4A(7) would place a significant cost burden on our organization that would need to be covered in some way.

We are also concerned about the prospect for waiver requests. Past discussions have indicated that many organizations which are not primarily engaged in the production and presentation of high quality continuing legal education programming choose to subsidize the development of these programs and offer what is referred to as "free" CLE. Continuing legal education programming is never free, rather the costs may simply be borne by other revenue sources such as bar dues, contributions or grant funding.

The suggestion that these groups, which have chosen not to pass the cost of program development on to those attending, may apply for waivers, exacerbates our problem by causing us to pay an even more disproportionate amount of the accreditation cost on their behalf. The development and presentation of high quality, relevant CLE is never without cost and if one of those costs is to be an accreditation fee, then, in order for the process to be fair, every applicant must pay. Those organizations which use continuing legal education as an inducement to lawyer participation in worthy causes are no more deserving of a waiver than organizations which exist solely to accommodate Minnesota practitioners' needs to fulfill the CLE mandate.

Providers of short programs have also suggested a desire for waiver of the fee. However the length of a program does not relieve the burden or cost of accreditation by the State Board staff. The application must still be received and the information recorded. Any waivers granted on this basis would only cause Minnesota Continuing Legal Education to consider modifying its formats, possibly segmenting day long programs into multiple, hour long "courses". The alternative would be to fund the accreditation costs of other CLE providers.

Several alternatives could provide the opportunity to accomplish the Court's suggested objectives. In trying to reduce the number of blanket applications from sponsors who events are not attended by Minnesota lawyers, perhaps a sponsor who has had a number of courses approved without attendance by any Minnesota lawyers could be required to submit with future applications some evidence of marketing to, or registration by, Minnesota lawyers. Also, the Board could simply ask some of the sponsors not to submit blanket applications if they do not intend to market their programs in Minnesota.

Perhaps the most streamlined possibility, in terms of administration, is sponsor accreditation. This system, long in operation in Wisconsin, provides for a review of sponsors, after which presumptive, though not final, accreditation is granted for all programming presented during a specific period of time. This system minimizes the need for close scrutiny of the majority of programming presented by proven providers. Accreditation review efforts are then focused on new, untested or unfamiliar program proposals which may be deserving of this heightened scrutiny. The Board could charge a standard accreditation fee for accrediting sponsors rather than courses. Our same concerns regarding the equity of waivers would apply to this fee.

Another alternative is to eliminate the fee with regard to replays of programs which have previously been accredited and which are being replayed in whole or in part. This proposal would help to ensure the continued presentation of video programming throughout the state by our organization or any other organization providing this service.

A third alternative would be to cap the total dollar amount of fees paid by a sponsor during any one year. A cap of \$5000 would still generate substantial revenue from the main sponsors here in Minnesota. An additional advantage to this plan is that major seminar providers such as Minnesota CLE would expedite the process by paying the total amount at one time, thus minimizing the administrative cost of handling multiple smaller application fees.

Any of these alternatives would provide a more equitable solution and could reduce the administrative cost of dealing with thousands of small application fee payments and hundreds of waiver requests from organizations for programming which may be short, or without registration fees, or is being offered in return for some form of service.

In conclusion, we understand the need for revenue and the desire to maintain a streamlined administrative procedure. However, we believe any modification to the existing Rule should apply equally to all who request course accreditation.

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

OFFICE OF
APPELLATE COURTS

In re:

DEC 8 - 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

**POSITION STATEMENT AND SUPPLEMENTAL PETITION OF
MINNESOTA CLE, A DIVISION OF THE MINNESOTA STATE BAR
ASSOCIATION**

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Minnesota Continuing Legal Education ("Minnesota CLE") respectfully submits this pleading to petition this Honorable 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 incorporate certain changes to the Rules and to clarify seminar sponsor obligations with respect to continuing legal education. In support of its petition, Minnesota CLE would show the following:

1. Petitioner Minnesota CLE is a division of the Minnesota State Bar Association ("MSBA"), a not-for-profit corporation of attorneys admitted to practice law before this Court and the lower courts throughout the State of Minnesota.
2. This Honorable Court has the exclusive and inherent power to regulate the practice of law.
3. Petitioner Minnesota CLE is responsible for the MSBA's operation of a statewide, centralized, comprehensive curriculum of continuing education for lawyers.

Minnesota CLE has for decades been committed to identifying and meeting the educational needs of Minnesota lawyers and, in light of mandatory continuing educational requirements, has specifically recognized the obligation to make Minnesota CLE programs accessible to all members of the bar.

4. To this end, Minnesota CLE established a permanent conference facility in Hennepin County and a network consisting of 27 video replay sites in communities throughout Minnesota.

5. Petitioner Minnesota CLE during its past fiscal year presented a total of 404 video replays of seminars at these 27 sites throughout Minnesota. These video replays accounted for approximately 90 percent of all programs offered outside the Twin City metropolitan area.

6. Minnesota CLE is committed to providing the greatest access possible at the most reasonable cost to non-metropolitan practitioners. This commitment to the entire legal community clearly sets Minnesota CLE apart from other more commercial sponsors entering the continuing legal education field with programs offered only in urban areas and restricted to the most popular topics. The imposition of a fee for the accreditation of each video replay throughout the state would limit Petitioner's ability to maintain current program levels.

7. Petitioner supports the State Board for Continuing Legal Education of Members of the Bar's petition for rule amendment in all respects except for one, as set forth in the following paragraphs of this Petition.

8. Minnesota CLE believes that proposed Rule 4A(7) ought to be amended to provide that the \$35 fee be collected only once for each seminar and should not be applied to video replays of seminars for which accreditation has previously been granted.

9. These video replays are complete re-presentations of already accredited seminars with only minor editing and do not present any new accreditation issues. Application of the Board's proposed Rule 4A(7) would place a significant cost burden on Petitioner and will necessarily result in fewer course offerings for non-metropolitan practitioners. The proposed accreditation fee represents a significant increase in the cost per registrant due to the small number of attendees at any one replay.

10. Minnesota CLE has drafted an amended Rule 4A(7) of the Rules of the Minnesota Supreme Court and State Board for Continuing Legal Education of Members of the Bar that would implement the relief requested in this petition and that Rule is set forth as follows:

RULE 4A(7). COURSE APPROVAL AND FEE INFORMATION

(7). A fee in the amount of \$35 for initial seminar applications. No fee is required for applications for addition replays of previously accredited seminars where the seminar is to be replayed in its entirety and where all other accreditation requirements are met. This fee may be subject to waiver under the provisions of Rule 3d(1).

11. Minnesota CLE respectfully submits that the proposed amendment to Rule 4A(7) will constitute a significant advance in the administration of continuing legal education and will serve the courts, lawyers and continuing legal educators well.

Accordingly, Petitioner Minnesota CLE respectfully requests this Honorable Court to amend the Petition For Rule Amendment of the State Board for Continuing Legal Education of Members of the Bar by adopting a new Rule 4A(7) as set forth in paragraph 10 above.

Dated: December 6, 1999

Respectfully submitted,

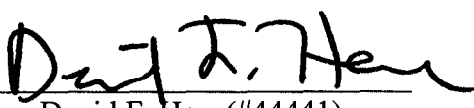
MINNESOTA CONTINUING LEGAL EDUCATION, A
DIVISION OF THE MINNESOTA STATE BAR
ASSOCIATION

By 

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