

No. [C2-84-2163](#)

**STATE OF MINNESOTA
IN SUPREME COURT**

In re:

Proposed Amendments to Rules of the Minnesota
State Board of Continuing Legal Education

PETITION OF MINNESOTA STATE BAR ASSOCIATION

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STATE OF MINNESOTA
IN SUPREME COURT
NO. C9-81-1206

In re:

Proposed Amendments to Rules of the Minnesota
State Board of Continuing Legal Education

PETITION OF MINNESOTA STATE BAR ASSOCIATION

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Minnesota State Bar Association (“MSBA”) respectfully requests that this Court revise Rule 2 (Definitions) and Rule 6 (Special Categories of Credit) of the Rules of the Minnesota State Board of Continuing Legal Education (“CLE Rules”) to include limited continuing legal education credit for pro bono legal services. The proposed amendments would provide an incentive for attorneys to take on pro bono matters, thereby increasing the amount of pro bono service performed in Minnesota, in an effort to address a current crisis of unmet legal needs. Offering CLE credit for pro bono service would not only increase the amount of pro bono services performed by private attorneys, it would also promote the purposes of continuing legal education.

In support of this Petition, the MSBA would show the following:

1. Petitioner MSBA is 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 Court has the exclusive and inherent power and duty to adopt rules governing the examination and admission to practice of attorneys at law and rules governing their conduct in the practice of their profession. This power has been expressly recognized by the Minnesota Legislature. *See* MINN. STAT. § 480.05 (2006). In the exercise of that power, this Court has propounded the Rules of the Minnesota State Board of Continuing Legal Education (“CLE Rules” or “the Rules”).¹
3. The purpose of the CLE Rules is “to require that lawyers continue their legal education and professional development 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.” CLE Rule 1. One of the special responsibilities of lawyers is to perform pro bono service.

¹ RULES OF THE MINNESOTA BOARD OF CONT. LEGAL EDUC. R., *available at* <http://www.mbcle.state.mn.us/MBCLE/pages/rules.asp> (last visited March 14, 2007).

4. Rule 6.1 of the Minnesota Rules of Professional Conduct (MRPC) provides that “[e]very lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year.” The 2005 comments accompanying Rule 6.1 elaborate further, stating that “[e]very lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.” (Comment 1.) According to Comment 2, a full range of activities can be undertaken to meet this professional responsibility, “including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule-making, and the provision of free training or mentoring to those who represent persons of limited means.” Comment 1 also states that the “Minnesota State Bar Association urges all lawyers to provide a minimum of 50 hours of pro bono services annually.”

5. In sum, Rule 6.1 reminds Minnesota attorneys that they have a professional responsibility to meet the significant legal needs of the disadvantaged and urges active volunteerism within the legal community.

6. Currently, the CLE Rules do not provide for CLE credit for pro bono work by attorneys, limiting credit to activities performed as a participant or a presenter

in approved continuing legal education courses presented and attended in a classroom or laboratory setting. CLE Rules 2, 5, 9.

7. MSBA proposes amending the Rules of the CLE Board to provide for a limited number of CLE credits for performance of pro bono legal services, up to a total of six CLE credits (of the 45 required) within a three-year reporting period. The proposed rule recognizes that a pressing need exists for lawyers to provide pro bono legal services in Minnesota. The rule change would fulfill the educational and professional development purposes of CLE through exposure to and participation in new areas of the law, development of existing skills in pro bono matters, and contact with new cultures and communities that will shape the individual lawyer's understanding of access to justice. These experiences also meet the CLE goals of improving the administration of justice and the quality of the profession.

The crisis of unmet need

8. Although Minnesota is recognized as one of the leading states in terms of pro bono activity, many members of the Minnesota community continue to face significant barriers to obtaining legal representation. Simply put, the overwhelming demand for pro bono legal services interferes with many individuals' access to justice.

9. Indeed, on Law Day 2005, this Court issued a letter supporting the MSBA's pro bono initiative entitled "Call to Honor." (Letter from Justices of the Minnesota Supreme Court to legal professionals at 1 (May 1, 2005)("SC Letter")²). The Court stated that the "bench and bar face a crisis of unmet need for legal representation for the disadvantaged in Minnesota." (*Id.*) The Court echoed the MSBA's call for attorneys to fill the gap and encouraged attorneys to "answer the highest calling" of their profession by stepping forward and accepting a pro bono matter for a disadvantaged Minnesotan. (*Id.*)

10. Tens of thousands of Minnesota residents are in need of pro bono services. They are individuals who have "limited means" or are "individuals, groups, or organizations seeking to secure or protect civil rights, civil liberties, or public rights, or charitable, religious, civic, community, governmental, and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate." *See* MRPC 6.1. There were 150,000 households living at or below the poverty level in Minnesota, as of the 2000 census. These households experience approximately 165,000 legal issues a year. *Documenting the Justice Gap in America*, Legal Services Corporation (2005) ("LSC Report") (indicating that the average of legal problems experienced

² Attached in Appendix at 1.

by these households is 1.1 percent per household per year). At least 80 percent of the civil legal needs of low-income Americans go unmet. (*Id.*) In Minnesota, this translates to up to 132,000 legal needs that are not addressed every year. These legal needs include issues in a wide variety of areas that affect family stability and individual rights. Yet, most low-income people must address their critical legal problems without the assistance of either a private attorney (pro bono or paid) or a legal aid lawyer. (LSC Report.)

11. In its Law Day letter, the Minnesota Supreme Court stated that ensuring equal access to justice is “a challenge we all face together.” SC Letter at 1 (App. 1).

Impact of proposed rule

12. The proposed rule providing credit for pro bono legal services squarely meets the stated purposes of CLE: (1) it addresses a lawyer’s special responsibility to improve the quality of justice administered by the legal system; and (2) it enhances a lawyer’s professional development and a lawyer’s knowledge of the law.

13. The proposed rule meets the purpose of “address[ing] the special responsibilities that lawyers as officers of the court have to improve the quality of justice administered by the legal system.” CLE Rule 1. The Legal Services Planning Commission, appointed by the Minnesota Supreme Court, stated in its

2005 “Recommendation on the LSC-Funded Programs” that “[a]ccess to justice is a fundamental need in a democracy.” Access to justice requires access to a lawyer. Pro se clients are often overwhelmed and intimidated by the complexities of the law and court procedures. A pro bono lawyer can help a client navigate and understand a system in which the outcome can profoundly affect the lives of individuals, families, and organizations.

14. Thus, the proposed rule would support lawyers in upholding their responsibility to improve the quality of justice administered by the legal system through the provision of legal representation to those who cannot otherwise afford it.

15. The proposed rule also provides an opportunity for professional development, furthering the goals of CLE. The Rules of Professional Conduct, as stated above, remind attorneys of their obligation to provide pro bono legal services. Pro bono experiences connect volunteer attorneys with new cultures and communities, and also increase their understanding of poverty and its impact on individuals, families, the legal system, and society as a whole.

16. The proposed rule also recognizes the educational aspects of pro bono service including “learning by doing.” Attorneys who perform pro bono service will enhance their classroom education by performing real world, hands-on activity. In law school, students receive credit for both clinical as well as

classroom courses; it is therefore recognized that both approaches are valid methods for learning, and should be encouraged even after attorneys have passed the bar. Thus, the CLE rules themselves recognize that “learning by doing” can be an effective teaching method by stating that a “laboratory setting” may be appropriate for a course.³ Pro bono work is done in the “laboratory” of real life.

17. In addition, the act of teaching or mentoring others engaged in pro bono service, results in exposure to, and participation in, new areas of the law.

Attorneys taking pro bono cases are reminded in the proposed rule that pro bono representation is as important as paid representation, and their professional skill base should be developed accordingly. (Proposed CLE Rule 6(D)(3)).

18. In addition, pro bono work meets many of the general standards listed for course approval. For example, pro bono work meets the standard that CLE courses must “have significant intellectual or practical content”⁴ and deal with “matter directly related to the practice of law.”⁵

19. Aside from the educational benefits presented by this proposal, the new rule will likely increase pro bono participation by lawyers. The data that does exist suggests that the rule will increase the number of attorneys answering the “highest calling” of their profession.⁶

³ CLE Rule 5A(5).

⁴ CLE Rule 5A(1).

⁵ CLE Rule 5A(2).

⁶ *Id.*

20. Data indicate that CLE credit for pro bono acts as an incentive for lawyers to provide pro bono services. In March 2006, Central Minnesota Legal Services (CMLS) conducted a large-scale study of its private bar partners. The study examined the reasons why attorneys volunteer. According to the study, “[f]rom an all-inclusive list of varied supports likely to encourage increased contributions to pro bono activity, CLE credit was selected 57% of the time.”

21. The State Bar of Wisconsin completed a Pro Bono Survey of its members in 2005. Of the 2,064 members who returned the survey, 805 responded that receiving CLE credit for pro bono would increase their pro bono participation. This response was second only to free malpractice insurance. According to the Wisconsin report, “[o]f the lawyers who selected CLE credit for pro bono service, 63% were in private practice and 66% were in offices with five or fewer attorneys.”

22. Although CLE rules providing for pro bono credit in the states that have enacted them have not been in place long enough to generate statistically meaningful data, Tennessee appears to have had impressive results. According to research conducted by the Minnesota State Bar Association and the Philadelphia Bar Association Report of Task Force on CLE and Pro Bono Service (published May 5, 2006), between 1998, when the Tennessee rule was implemented, and 2004, when the most recent report was available, the number of participants grew

from 60 to 836. In 2004, the 836 volunteers reported 10,358.56 hours. It is not clear how many of these participants were new to pro bono services but the growth is significant nonetheless and the amount of hours volunteered cannot be ignored.

23. The offer of credits would not only draw attorneys “in the door” of pro bono, it is also likely that attorneys who participate will likely provide more than the 36 hours of pro bono service over three years that would be needed to gain the maximum of six CLE credits. Their efforts would further the goal of MRPC 6.1 to address the continuing unmet need for legal services assistance for low-income persons in Minnesota. While there may be other ways to engage attorneys in pro bono, providing CLE credit for pro bono legal services will be one more important tool in encouraging lawyers to fulfill their professional responsibilities and address the urgent need to “provide legal services to those unable to pay.” MRPC 6.1.

24. Awarding CLE credit for pro bono service is also a way of acknowledging the pro bono attorney’s critical contribution to the community and the legal system. The proposal does not create a “quid pro quo” for all pro bono service; it limits the number of CLE credits to six in recognition of a lawyer’s need to fulfill other CLE standards during the three-year reporting period. Some have argued that even receiving a small number of credits undermines the purpose of pro bono, which should be performed as a selfless act. While pro bono can be, and most often is, a selfless act, it is also true that attorneys perform pro bono for other reasons as well,

including the opportunity to learn new skills, to expand their resume, to attract potential clients, to improve public image, and to network in the community. The amount of total credits that can be received through this proposal is actually a very small return compared to the attorney's potential commitment of up to 36 hours of pro bono service during the three-year reporting period.

25. The positive aspects of adopting this proposal are clear. The potential that clients in need will benefit through yet another incentive for attorneys to volunteer their time outweighs any downside to this discussion.

26. The proposal would not diminish the importance of CLE, or undermine its pedagogical purpose. The proposal limits the amount of credits available for pro bono participation in recognition of the necessity of having attorneys attend classes in order to remain current in their practice specialties and learn about new areas of the law. Because attorneys have the responsibility to obtain proper training before taking a pro bono case, the rule will likely boost attendance at traditional CLE programs. It will also increase use of the many free or low-cost CLEs that Minnesota's legal services and pro bono providers provide for their volunteers because the providers have a fundamental interest in ensuring their volunteers are capable of serving their constituents. The rule will also encourage mentorship in order for attorneys to teach one another or engage a law student in the process, providing opportunities for sharing of information.

27. As the issue of measuring pro bono service has long been a difficult one, providing limited credit for pro bono services will assist state entities such as the Legal Services Advisory Committee, the Lawyers Trust Account Board, and the Legal Services Planning Committee in their analysis of how many attorneys are volunteering and what kinds of legal needs are being met through pro bono service.

While these statistics will not represent all pro bono activity in the state of Minnesota, they will prove helpful when considered together with data from other sources. Such statistics will also aid pro bono organizations in volunteer recruitment and fundraising activities.

28. Currently six states with mandatory CLE requirements offer credit for pro bono. Below are brief summaries of each state's rule:

Colorado (effective January 1, 2005) Attorneys are required to obtain 45 CLE credits every three (3) years. They can receive one (1) hour of CLE credit for every five (5) hours of pro bono service up to a maximum of nine (9) CLE credits per three-year reporting period. The rule includes credit for attorneys mentoring law students and other attorneys. The rule outlines qualifying legal services programs. A judge on the state's appellate court actively promoted the rule and facilitated its adoption. The Colorado Access to Justice Commission and other entities including at least two law schools expressed support for the rule.

Delaware (effective July 9, 2004) Attorneys are required to take 24 CLE hours every two (2) years. They receive one (1) hour of CLE credit for every six (6) hours of pro bono service for a maximum of six (6) hours per reporting period. Qualifying services are pursuant to a client appointment or through an approved legal services program.

New York (effective January 1, 2000) Attorneys are required to take 24 CLE hours every two (2) years (except those admitted after October 1, 1997

who must fulfill 32 credits in first 2 (two) years). They receive one (1) hour of CLE credit for every six (6) hours of pro bono service for a maximum of six (6) hours per reporting period. The Chief Judges of the Court of Appeals, the highest court in New York, originated the idea and the Administrative Board of the Courts proposed the amendment to the rules. The rule allows for client assignment from CLE-accredited programs which include a wide variety of organizations including the Brooklyn Bar Association Volunteer Lawyers Project, The Legal Aid Society, Asian American Legal Defense and Education Fund, New York Lawyers for the Public Interest, some county bar associations and many others. Approved programs have as their primary purpose the furnishing of legal services to indigent persons and file a statement with the Appellate Division in the Judicial Department in which their principal office is located or are subsidiaries or programs of bar associations that have as their primary purpose the furnishing of legal services to indigent persons. An approval process for participating programs is outlined in the rules. Participating providers have to provide attorneys with letters of participation, maintain records of participating attorneys for a period of four years, and submit year-end reports to the CLE boards about participants and activities.

Tennessee (effective January 1999) Attorneys are required to take 15 CLE hours per year over a period of three years. They receive one (1) hour of credit for eight (8) billable hours of pro bono service. The Commission on Continuing Legal Education and Specialization originated and proposed the amendment to the rules. Eligible services include client appointments, bar programs and legal services organizations, and state and federal mediation services.

Washington (effective August 2000) Attorneys are required to take 45 credits over a period of three (3) years to fulfill the mandatory CLE obligation. Attorneys can receive six (6) hours of CLE credit (broken down as two (2) hours of education and four (4) hours of client representation) for pro bono service. The originator was the Washington State Bar Association (WSBA) Pro Bono and Legal Aid Committee and the WSBA Board of Governors approved the proposal, encouraging the CLE board to make the amendment to the rules. The rule covers service to low-income clients through qualified legal services providers and subsequent direct representation, either as provider or mentor. Training may consist of not less than two (2) hours of training with live presentations or not less than two (2) hours viewing or listening individually to video or audiotapes approved by

the CLE board. Each attorney seeking CLE credit also will have subsequently completed not less than four (4) hours of pro bono work in providing direct representation to a low income client through a qualified legal services provider or in serving as a mentor to other participating attorneys who are providing such direct representation.

Wyoming (effective July 1, 2003) Attorneys are required to take 15 credits per year to fulfill the mandatory CLE obligation. They receive one (1) hour of credit for five (5) hours of billable time for a maximum of three (3) hours of CLE credit for pro bono service per year. Covers direct representation or mentoring activities as approved by the Wyoming Pro Bono Organization. Mentoring can include another attorney or a law student who has successfully completed at least four (4) semesters at an ABA accredited law school.

29. The proposed rule has support not only from the MSBA but also from the boards of the Hennepin County Bar Association and the Ramsey County Bar Association, the Legal Services Planning Committee and the Pro Bono Council.
30. The MSBA Legal Assistance to the Disadvantaged (LAD) and Rules of Professional Conduct committees presented a Report recommending these changes to the MSBA Assembly on September 15, 2006. The Assembly approved the Report and Recommendation and resolved to ask that this Honorable Court amend CLE Rule 6 in accordance with those recommendations.
31. Members of the LAD Committee have discussed the proposed changes in Rule 6 with the executive director of the CLE Board.
32. After these discussions, additional amendments to the proposed rule were added including moving a definition section to CLE Rule 2. MSBA President Pat Kelly has approved the changes.

33. To allow time to educate lawyers about the new requirements, the MSBA requests that any Order amending CLE Rules 2 and 6 provide an effective date for the amendments not earlier than six months after the date of the order.

34. Accordingly, the MSBA requests that this Court adopt new CLE Rule 2 and Rule 6 as set forth below (no red-line is provided because the proposed sections are entirely new).

New Rule 2(R) of the Rules of the State Board of Continuing Legal Education

2(R): For purposes of Rule 6(D) of these Rules,

(A) "Pro bono legal services" means legal services provided without fee or without expectation of fee to (1) persons of limited means or (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means, or (3) individuals, groups or organizations seeking to secure or protect the civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate.

(B) "Eligible pro bono legal services" for the purposes of Rule 6(D) includes:

- (a) Providing legal services for a client with limited means through a legal services or pro bono provider, as defined in Rule 6(D)(6)(C) for which there is no compensation or expectation of compensation to the attorney performing the legal services; or
- (b) Mentoring an attorney who provides legal services for a client with limited means through a legal services or pro bono provider, for which there is no compensation or expectation of compensation to the attorney performing the legal services; or
- (c) Supervising a law student who provides legal services for a client with limited means available through a legal services or pro bono provider, for which there is no compensation or expectation of compensation to the attorney or law student; or
- (d) Providing legal services for a client with limited means independently of a legal services or pro bono provider so long as the individual attorney who provides the services has verified the financial eligibility of the pro bono client at the beginning of the representation through a legal services or pro bono provider.

(C) For purposes of Rule 6(D)(6)(B), "legal services or pro bono provider" includes only the following organizations:

- a. organizations which have as their primary purpose the furnishing of legal services to persons with limited means or qualifying organizations;
- b. organizations serving persons of limited means or qualifying organizations that are housed within community service agencies and/or nonprofit organizations;
- c. subsidiaries or programs of bar associations that have as their primary purpose the furnishing of legal services to persons with limited means or qualifying organizations;
- d. Legal service or pro bono programs serving persons with limited means conducted within law firms under the supervision of a "pro bono coordinator" or designated lawyer;
- e. organizations assisting persons with limited means who are unable to afford counsel and otherwise meet the eligibility criteria enumerated above.

* * *

New Rule 6(D) of the Rules of the State Board of Continuing Legal Education

Rule 6(D)(1) CLE Credit for Pro Bono Services: Up to 6 credits of CLE credits in each reporting period may be earned according to this Rule for performing eligible pro bono legal services as defined below.

Rule 6(D)(2)Credits: A maximum of 6 hours of credit during any one reporting period may be granted to those lawyers who perform eligible pro bono legal services within that reporting period. The attorney shall receive one (1) hour of continuing education credit for every six (6) hours of eligible pro bono legal service. Credit shall be awarded in increments of no less than .5 CLE credit hour. Ethics and Elimination of Bias credit are not available for participation in pro bono CLE activities.

6(D)(3) Reporting Obligations for Attorneys: An attorney wishing to receive CLE credit for providing eligible pro bono legal services shall provide an affidavit certifying the number of hours of eligible pro bono legal services he or she has provided during the reporting period at the time when the attorney reports to receive CLE credits. At the option of the reporting attorney, the attorney may request from the legal services or pro bono provider, upon completion of the pro bono activity, a letter of completion certifying the number of hours of credit earned for the pro bono matter. Any such request by an attorney must include a written summary of his or her activity, including copies of relevant court orders, to the legal services or pro bono provider.

6(D)(4) Reporting Obligations for Legal Service Providers: Upon request of attorneys providing pro bono legal services through a legal services or pro bono program, the legal services or pro bono provider shall furnish a letter of completion to the attorney indicating (1) the

name of the legal services or pro bono provider; (2) the date(s) of the attorney's assignment; (3) the name(s) of any attorney(s) or law student(s) mentored/supervised by the attorney in the course of the representation; and (4) the number of hours of eligible pro bono legal services provided by the attorney. Legal services and pro bono providers shall retain for a period of six (6) years a list of participants along with the number of hours of eligible pro bono legal service claimed and the number of pro bono CLE credit hours earned by each participant.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court amend the Minnesota Rules of Professional Conduct by adopting proposed Rules 2 and 6.

Dated: May___ 2007.

Respectfully submitted,

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