

NO. 45298

STATE OF MINNESOTA  
IN SUPREME COURT

In the Matter of Petition of the )  
Minnesota State Bar Association, )  
a Corporation, for Adoption of )  
Rules Relating to Continuing )  
Professional Education. )

ORDER FOR HEARING

Pursuant to the Petition of the Minnesota State Bar Association, a copy of which is attached hereto,

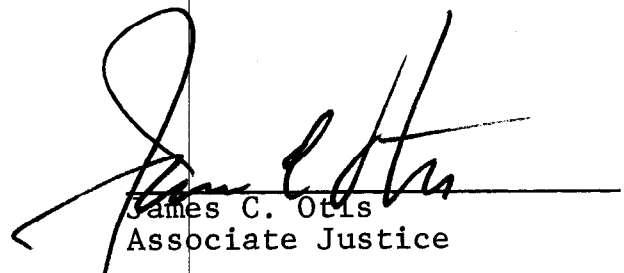
IT IS HEREBY ORDERED, that a hearing on said Petition be had before this Court in the Supreme Court, State Capitol Building, St. Paul, Minnesota, on Friday, October 11, 1974, at 10 o'clock a.m., at which time the Court will hear proponents or opponents of the Petition.

IT IS FURTHER ORDERED, that advance notice of said hearing be given by the publication of this Order in the following: BENCH AND BAR, HENNEPIN COUNTY LAWYER, FINANCE & COMMERCE, LEGAL LEDGER, and in the advance sheets of NORTH WESTERN REPORTER, Second Series.

IT IS FURTHER ORDERED, that members of the bench and bar desiring to be heard shall file briefs or petitions setting forth their positions, and shall also notify the Clerk of the Supreme Court in writing, on or before October 4, 1974, of their desire to be heard on the Petition.

DATED: August 9 1974

BY THE COURT

  
James C. Otis  
Associate Justice

231½

45298

No. 45298

STATE OF MINNESOTA

IN SUPREME COURT

SUPREME COURT  
**FILED**

OCT 4 1974

JOHN McCARTHY  
CLERK

IN RE Petition of Minnesota  
State Bar Association  
for Adoption of Rules  
Regarding Continuing  
Legal Education.

BRIEF OF AMICUS

BOARD OF DIRECTORS OF THE  
CORPORATE COUNSEL ASSOCIATION OF MINNESOTA

on behalf of its Members

Albert B. Perlin  
President, Corporate Counsel Association of Minnesota  
777 Nicollet Mall  
Minneapolis, Minnesota 55402  
Phone: (612) 370-6646

Michel A. LaFond  
Secretary, Corporate Counsel Association of Minnesota  
Dorsey, Marquart, Windhorst West & Halladay  
First National Bank Building  
Minneapolis, Minnesota 55402  
Phone: (612) 333-2151

State of Minnesota

In Supreme Court

IN RE Petition of Minnesota  
State Bar Association  
for Adoption of Rules  
Regarding Continuing  
Legal Education.

STATEMENT OF THE CASE AND ITS FACTS

At its Annual Convention held in Duluth, Minnesota in June, 1974, the Minnesota State Bar Association, pursuant to the majority vote of the members of its Assembly, elected to recommend to the Supreme Court of the State of Minnesota the adoption of rules and procedures providing encouragement to continuing professional competence through required participation by members of the Bar in appropriate courses of continuing legal education, as a prerequisite to continuation of the privilege to practice law in this State. The Court, pursuant to that recommendation, has requested comments from the Bar. This submission is intended to be responsive to, and a part of, that proceeding.

The Corporate Counsel Association is a Minnesota corporation not-for-profit, which is also recognized as a Section of the Minnesota State Bar Association and participates as such in its activities. It presently has more than two hundred members, all of whom are members of the Minnesota Bar licensed to practice in the Courts of this State. It is governed by a Board of Directors of ten (10) members, elected by the members at its Annual Meeting, most recently held in June, 1974. Its By-Laws reserve the government of its affairs to its Board of Directors, and do not provide for direct action by

its members except at or in connection with its Annual Meeting, prescribed to be held in May or June of each calendar year but in any event in advance of the Convention of the Minnesota State Bar Association.

Following a meeting of the members held in Minneapolis, Minnesota, on September 25, 1974, addressed on this subject by Dean Douglas Heidenreich, of William Mitchell College of Law and formerly a member of the State Bar Committee on Continuing Professional Competence, the Board of Directors on behalf of the Corporate Counsel Association of Minnesota ("Petitioner", herein) convened at a meeting of the Board duly called for the purpose among others, and authorized and directed the presentation of this submission to the Court in this matter. It is submitted in the belief that it is consistent with the views of the membership of Petitioner, and of the particular professional functions and interests of that membership.

This submission is respectfully made with the intention that it may be of assistance to the Court in its deliberations and decisions in this Matter, and in the exercise of the professional responsibilities of this segment of the Minnesota Bar.

#### REPRESENTATIONS AND RECOMMENDATIONS

Petitioner hereby affirms the commitment of the constituency of this Section to the principles of continuing professional competence of all lawyers. Accepting for this purpose, without independently deciding upon, the principle that classroom education may be expected to preserve or improve the level of competence of attorneys at law, the particular attention of the Court is respectfully invited to the following con-

siderations, which are believed to be relevant to the type of practice characteristic of the members of the Corporate Counsel Association of Minnesota, but not necessarily exclusively so:

1. Because the nature of the practice of law for multi-state corporations typically involves substantial elements of Federal statutes and regulations and the laws of states other than the State of Minnesota, even for lawyers residing and practicing in that state, it is particularly important that courses in continuing legal education be qualified for accreditation within any minimum hours of study required, even though the subject matter is not limited to or even necessarily involved with the laws or regulations of the State of Minnesota or the rules of the Courts of that State. Accordingly, reputable curricula on subjects such as Federal Securities, Anti-Trust and Patent Law, and on particular categorical fields of state laws and regulations, all without limitation, should certainly be included within the scope of the subject matter eligible for accreditation.

2. Administrative procedures should be established, particularly during the commencement period of any newly adopted mandatory continuing legal education program, through which prompt determination of accreditation for Minnesota Bar purposes can be made. Many useful seminars of national attractiveness to interstate practitioners offer limited participation, on a first-come-first-served basis. Inability promptly to determine whether a given program will be accredited could preclude effective opportunities for participation and may generate disruptive can-

cellations to the disadvantage of the Bar generally.

3. Execution of a suitable representation by a participant of participation in a qualifying continuing legal education program and of the number of credit hours provided thereby should constitute prima facie compliance to the extent of the facts so represented. This should not bar a timely effort toward verification or refutation for good cause of any facts alleged, but any significantly more stringent initial evidentiary requirements to establish compliance would seem inappropriate to the standards of character necessary for admission to the Bar. Creation of standards requiring unseemly verifications by Minnesota practitioners in relation to programs conducted within or outside of this State would not, in our opinion, do credit to our State or its Bar.

4. There should be unqualified freedom of choice between courses offered within the State of Minnesota and those offered elsewhere, without regard to their location or sponsorship, if comparably relevant to the professional competence of the participants and faculty. Procedures should be established which do not impose oppressive requirements for accreditation by out-of-state sponsors of continuing legal education programs, lest worthy curricula may be disqualified for Minnesota lawyers by reason of an unwillingness or lack of sufficient motivation of out of state sponsors to undertake accreditation for Minnesota purposes.

5. Required subjects should not be specified, provided

other suitable and uniform professional criteria are satisfied. We believe it would be counter-productive, for example, to require a specialist in federal or multi-state law to attend classroom presentations on local subjects irrelevant to the fields of law in which he holds himself to be competent, particularly since it is improper for a lawyer to hold himself out to provide services in fields in which is not professionally equipped. Any such result would be contrary to the real interests of the citizens of Minnesota and to the profession in that, for example, attendance at a seminar on "no fault" divorce by a specialist in interstate commerce matters would neither contribute to his continuing competence in the matters in which he holds himself qualified nor of itself qualify him to represent a client in a divorce proceeding.

6. Criteria should be established by which a law firm or corporate legal staff could qualify for accreditation of in-house continuing legal education programs. Corporate legal practice frequently involves intensive sub-specialization in fields peculiarly relevant to the legal affairs of individual large clients such that generalized seminars cannot be expected to provide sufficiently selective opportunities for professional improvement. Proprietary, confidential and even secret material can be involved in the application of particular legal principles to ongoing identifiable client needs. Limitation of accreditation only to courses offered by academic or quasi-academic organizations would, we submit, be counter-productive to constructive competitive improvement of course quality and to truly meaningful improvement of professional competence in the field of law directly relevant

to the practice of many lawyers. Petitioner respectfully and specifically recommends against limitation of accreditation to sponsorship by law schools, continuing legal education agencies affiliated with law schools and other organizations whose principal function is the development and sponsorship of continuing legal education programs.

7. Consideration is respectfully invited to recommendation of voluntary participation in approved programs on professional ethics and the code of professional responsibility of the Minnesota Bar Association and the American Bar Association. It is respectfully submitted that the quality and public appreciation of the profession, as well as the conduct of its practitioners, in our opinion warrants deliberate attention to this subject. Historically, law school courses on this subject, even if well presented, are not fully understood in the context of the pressures and challenges later actually encountered in the practice of law. Petitioner respectfully submits that the Bar of Minnesota could appropriately demonstrate meaningful leadership in the profession by establishing within the context of continuing legal education this reemphasis upon professional responsibility and individual rededication to the principles of responsible professional conduct.

8. Examinations or other attempted devices to confirm the understanding, retention or application of legal principles presented in continuing legal education programs should not be adopted or required for any purpose, at least in the initial years of this pioneering program. Any such evaluatory process



could, it is submitted, be expected to generate warranted reaction against the concept of continuing legal education program; at least until there has been persuasively demonstrated a continuing relevance of academic methodology and measurement to the real requirements of the practice of law. It is further submitted that at this stage of the art it is far from clear that evaluations by professors of law would be accepted by practitioners any more charitably than the standards and views of the practitioners would necessarily be accepted by the educators. We do not believe that "grading" of graduates is in any way essential to the initial improvement of professional competence which is sought by this innovative proposed program.

The foregoing comments are not intended to be all-inclusive and are not presented in any intended order of importance. Petitioner is confident that the Court is mindful of the very significant burden which attends the establishment of professional requirements which may directly affect the quality of a lawyer's work and even the privilege to continue to practice law. It is respectfully submitted that the initial requirements and procedures should be in all cases as flexible and adaptive as circumstances permit, in order both to encourage results commensurate with the costs which will be involved and to encourage a sound foundation on which future refinements and improvements might be engrafted. An overly ambitious initial effort might not only be disruptive to the profession in this State and to individual practitioners but might also prove to be a disincentive to other bar associations to follow the course of leadership within the profession which the Minnesota State Bar Association has elected to pursue.

CAVEAT

Petitioner pledges responsible and participative involvement of the Corporate Counsel Association of Minnesota and its members in the development and implementation of a sound and constructive Continuing Legal Education program if this Court should conclude to adopt either a mandatory or voluntary program for that purpose. Petitioner nevertheless feels obliged to report to the Court the expressions of a significant number of the members of the Corporate Counsel Association and other members of the Minnesota Bar, that the meaning of the concept of continuing legal education as embodied within the proposals of the State Bar Association in this Matter are sufficiently imprecise to seem to allow procedures which could be extremely burdensome and individually very costly and harmful to the members of the Bar and, as a result, to their clientele. Petitioner reiterates confidence that this Court will not permit such consequences to occur and pledge their willingness to assist the Court in every appropriate manner toward the definition and implementation of a workable program which can realistically be expected to achieve continuing and improved professional competence for our profession.

Respectfully Submitted,

CORPORATE COUNSEL ASSOCIATION  
OF MINNESOTA, on behalf of its  
Board of Directors

By 

Albert B. Perlin, President

Attest:



Michel A. LaFond, Secretary

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT  
WASHINGTON, D. C. 20001

GEORGE E. MACKINNON  
UNITED STATES CIRCUIT JUDGE

December 30, 1974

Honorable James C. Otis  
Minnesota Supreme Court  
State Capitol  
St. Paul, Minnesota

Dear Jim,

Herewith a redo of my letter of December 12, 1974.  
You can use it any way you wish.

Sincere regards,

A handwritten signature in cursive script, appearing to read "George", with a long horizontal flourish extending to the right.

George E. MacKinnon

Enclosure

CC: Chief Justice Warren E. Burger  
Lee Loevinger, Esq.

MEMORANDUM

This relates to mandatory annual legal instruction for all lawyers.

There is really a serious question about such proposal. At present the insurance policies (Health and Life) of those Minnesota lawyers who have taken out such policies are, I believe, dependent for their continued validity upon the insured lawyer being a member in good standing of the Minnesota Bar Association. If his license to practice was taken away because he didn't attend "class" (or couldn't attend), would his insurance lapse? And probably just when he needed it most. This may be an unforeseen consequence. Or would the Bar Association continue to let the lawyer pay fees and remain a member for insurance purposes even though he was disbarred for skipping class? Also could he run for judge or justice?

The idea of lawyers being required to keep abreast of the law is a good one but we all know that the 15-hour class requirement will not accomplish that result and the Draconian penalty for failure to attend class is disproportionate to the "offense."

Is this proposal engendered by poor attendance at some of the "seminars" being promoted "for a fee" by some of those who find some satisfaction (monetary or personal) in participating in such matters? I have examined all of these pronouncements and I confess that some seem less than attractive in subject matter and panel. I would like to attend many for the fellowship at the bar aspects, and some for their content, but I can sympathize with many who would be uninterested in either the subject or the panel because of their practice and their own superior standing at the bar. Why should a real estate lawyer satisfy his 15-hour requirement by attending lectures on the SEC, etc.?

The cost is also a factor to lawyers and to the "faculty" of the "graduate" classes. You are building up a substantial vested interest in some of the participants in the proposed program. Is this being pushed by those who anticipate they may benefit financially from teaching or preparing the curriculum? I shudder to contemplate the cost of preparing, and keeping current, a system of instruction that would be universally beneficial to all lawyers in Minnesota. I also remember how the original modest public relations proposal for pamphlets on certain subjects had the ultimate effect of permanently increasing the bar association dues long after the program was completed.

Of course, the ultimate absurdity of the suggestion is that if the underlying principle were to be applied logically each lawyer should be required to pass the bar examination every three years. We all know how absurd that suggestion is, because while lawyers must necessarily know some existing law, what is really important is for a lawyer to know when he must look up the law and who knows what the law will be tomorrow? Thus, the law shifts and I suspect a lawyer who doesn't attend class in some subject that doesn't affect his practice is just as able to advise his clients as to what the law will be in his field as one who pays his

money for the current class on other subjects.

I note the proviso that "In individual cases, the Board may grant waivers or extensions of the minimum educational or the reporting requirements" and, consider the suggested possibility that certain judges and others might be exempted. My own view is that if it's necessary for the bar it should also be required of judges and others. If there are to be waivers the grounds should be stated, i.e., health, economic, age, etc.

George E. MacKinnon

OFFICE OF THE CLERK

Supreme Court of Minnesota  
St. Paul, Minn.

JOHN MCCARTHY  
CLERK  
WAYNE TSCHIMPERLE  
DEPUTY

March 13, 1975

Mr. Robert Beauregard  
Lieutenant, U. S. Coast Guard  
Office of Chief Counsel  
U. S. Coast Guard  
Washington, D. C.

Dear Lt. Beauregard:

We have a copy of the letter of Mr. Peter Schmitz to you, dated March 11, 1975. Nothing has transpired since the hearing at the end of January. The date for filing materials has long since expired. However, if you wish to file some expression of sentiment, please send 10 copies, and we will distribute them to the court. In view of the fact of the extensive oral hearing and the submission of about 25 sets of documents, it would seem that most of the ground has been covered on the subject.

Yours sincerely,

*John McCarthy*  
John McCarthy, Clerk

cc: Peter Schmitz

LAW OFFICES  
OF  
**SCHMITZ AND JOHNSON**  
111 EAST FOURTH STREET  
NORTHFIELD, MINNESOTA 55057

PETER J. SCHMITZ  
WILLIAM A. JOHNSON  
DANIEL H. MASLEY

P. O. BOX 237

TELEPHONE  
507 - 645-9541  
612 - 336-1831

**March 11, 1975**

Mr. Robert L. Beauregard  
Lieutenant-U. S. Coast Guard  
Office of Chief Counsel  
U. S. Coast Guard (G.L.R.A.-81)  
Washington, D. C. 20590

Dear Lieutenant Beauregard:

As Chairman of the Minnesota Young Lawyers, I have been asked to write to you concerning the proposed rule which would make mandatory that a practicing lawyer attend 45 hours of Continuing Legal Education seminars every three years in order to keep his license of practice in the State of Minnesota.

As I understand it, the rules have not yet been promulgated by the Minnesota Supreme Court.

I understand that you, and I suspect other Minnesota lawyers who are in the military service or in government service out of the State of Minnesota have some concern about the rules.

I do not know what provisions are being made for Minnesota lawyers living outside the State of Minnesota. However, I suspect that ample provisions to allow them to keep their license are being made.

I am sending copies of this letter to the Executive Secretary of our State Bar Association, Gerald Regnier, whose address is 100 Minnesota Federal Building, Minneapolis, Minnesota 55402, and also to Mr. John McCarthy, Clerk of our Supreme Court, with the request that they forward to you any information they may have on this subject.

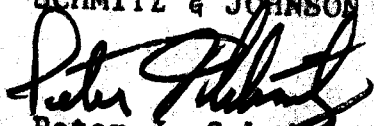
With respect to your inquiry as to whether or not there is still time to be heard, I believe that all of the public hearings have now been held. However, should you have views on the subject, I am sure that you could express them by a letter addressed to the Minnesota Supreme Court who ultimately will make and promulgate the rules on this subject.

March 11  
Page 2

If I can be of any assistance to you, please don't  
hesitate to call me.

Very truly yours,

SCHMITZ & JOHNSON



Peter J. Schmitz

PJS: mh

cc: Gerald Regnier  
John McCarthy



LEE LOEVINGER

815 CONNECTICUT AVENUE  
WASHINGTON, D. C. 20006

Writer's Direct Dial Number  
(202) 331-4530

9 December 1974

Honorable James C. Otis  
Justice  
Minnesota Supreme Court  
State Capitol  
St. Paul, Minnesota 55155

Dear Jim:

I am writing to you as a member of the Minnesota Bar addressing a member of the Minnesota Supreme Court regarding the proposals that have recently been published for a rule which would require all Minnesota lawyers to have 45 hours of formal academic legal instruction every three years in order to remain members of the Bar in good standing.

In principle, this seems to me to be an excellent and progressive proposal. I can send you copies of an address I gave to the graduating class of the University of Minnesota years ago in which I urged that no lawyer could call himself competent who did not continue to learn after graduation. I have suggested that a lawyer must, in effect, completely re-educate himself as to the law every five years. ~~Five years after graduation~~ from law school any lawyer who is still practising according to classroom precepts is unqualified to practice.

On the other hand, it is not at all apparent to me that 45 hours of formal classroom instruction is either necessary or adequate to insure continued competence to practice. I am particularly concerned about persons, like myself, who are members of the Minnesota Bar but resident in a "foreign" jurisdiction, such as the District of Columbia. Since there is no comparable requirement here it might be more than a mere inconvenience for a Minnesota lawyer resident in Washington to qualify under the proposed rule. On the other hand, the requirement may be quite superfluous, and even irrelevant. Let me illustrate.

A member of the Minnesota Bar now resident in Washington is one Warren E. Burger, last reported to me to be Chief Justice of the United States (Not, as sometimes stated, of the U. S. Supreme Court). According to reports I have every reason to believe, Chief Justice Burger spends considerably more than 45 hours per week (not every three years) studying the law in some of its most complex, subtle and difficult ramifications. During the course of a year he

Honorable James C. Otis  
9 December 1974  
Page 2

writes a number of essays (formally called "opinions") in which he demonstrates his knowledge of the current state of the law.

Another member of the Minnesota Bar is Harry A. Blackmun, whom I can testify is an Associate Justice of the U. S. Supreme Court. Justice Blackmun similarly spends as much time in a week studying the law as the proposed rules would require over a three year period. Mr. George E. MacKinnon is a Judge of the United States Court of Appeals for the District of Columbia. Mr. Luther Youngdahl is a Senior Judge of the United States District Court for the District of Columbia. I believe that you and your colleagues can take judicial notice of the amount of time that judges spend studying the law.

Another member of the Minnesota Bar resident in Washington is Walter F. Mondale, Senior Senator from Minnesota. Mr. Donald M. Fraser is now the Congressman from Minneapolis and was formerly a law partner of mine in Minneapolis. Both Senator Mondale and Congressman Fraser are continually engaged in studying the law.

As for myself I have, over the last 10 or 15 years published perhaps as many as 100 articles on subjects relevant to the law. I can cite numerous law review articles that I have personally written and had published in recent years. These, however, are merely things that are done in my limited spare time. I am continuously engaged in studying legal problems and questions and in the course of a year write a number of opinions which are not public and a number of briefs which are matters of public record. Unlike the judges, my field of study and knowledge of the law has become somewhat specialized. Within my own field I am dubious that I would be likely to gain a great deal of knowledge or insight by attending 45 hours of formal classroom lecture or discussion. During recent years I have engaged in lecturing at the graduate school level in local universities, and at meetings such as those of the Practising Law Institute.

I believe that all of those I have mentioned are interested in remaining members of the Minnesota Bar in good standing, as I am. However, I respectfully submit that there should be some method by which we could demonstrate to the satisfaction of the Minnesota Supreme Court, or its delegate, that we have continued to maintain a reasonable degree of competence in the law without the formality of attending 45 hours of classroom lecture every three years.

Numerous methods of achieving this suggest themselves. The submission of published opinions, articles, briefs and other material, accompanied by a statement that the lawyer submitting them is in fact the author would seem to me to be more than the equivalent of the kind of written examination which would normally be required to show attendance and attention at a lecture course. Having given

LEE, LOEVINGER

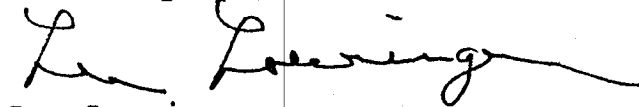
Honorable James C. Otis  
9 December 1974  
Page 3

and marked many examinations on legal subjects at the graduate level I can assure you that the quality of legal learning exhibited in the published opinions and articles of the Minnesota lawyers mentioned above is considerably superior to that which is ever exhibited in satisfying the requirements of a formal academic course.

I respectfully request that you and your colleagues consider these matters and make some appropriate provision for those of us who are proud of our membership in the Minnesota Bar but are forced by circumstance to live outside the state.

On a very personal note may I send you my very warm and best personal regards and ask you also to convey my warm personal regards to my other friends who sit with you on that Court which I shall always remember with affection and regard with the greatest respect.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Lee Loevinger', written in dark ink.

Lee Loevinger

LEE LOEVINGER

815 CONNECTICUT AVENUE

WASHINGTON, D. C. 20006

CL E

Writer's Direct Dial Number  
(202) 331-4530

30 December 1974

Honorable James C. Otis  
Associate Justice  
The Supreme Court of Minnesota  
230 State Capitol  
St. Paul, Minnesota 55155

Dear Jim:

Thank you very much for your kind letter of December 26, 1974 referring to my letter of December 9, 1974 relating to the proposed rules of the Supreme Court for continuing professional education of members of the Bar. You have my full permission to make my prior letter, as well as this one, a part of the record for consideration of the Court with respect to the proposed rules, and I request that you do so.

By way of suggestion, I respectfully submit that it would be appropriate to insert in the 3rd sentence of Rule 3 of the proposed rules following the words "a minimum of 45 hours of course work either as a student or a teacher" the following phrase "or the substantial equivalent thereof".

It seems to me that this will serve all of the purposes sought by the proposed rules and will permit persons like the Chief Justice, Justice Blackmun, Judge MacKinnon and myself to qualify without seeking any special waiver or exemption. Without reference to my own situation, it seems to me that the submission of judicial opinions written by the members of the Minnesota Bar now serving on federal courts in Washington during any 3-year period would certainly be adequate to demonstrate the equivalent of 45 hours of continuing legal education. There may well be other similar situations from time to time. For example, a lawyer who desires to write a text book on a legal subject or who is engaged in serving as the editor of a loose-leaf legal service in some particular field (such as Mr. Von Kalinowski in the field of antitrust) should certainly be able to demonstrate the equivalent of the required continuing legal education.

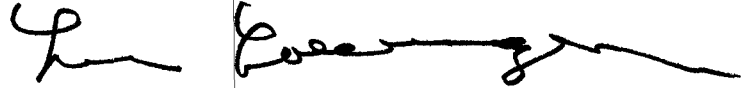
In any event, I not only authorize but request that my letters on this subject to you and to the Minnesota Supreme Court

LEE LOEVINGER

Honorable James C. Otis  
30 December 1974  
Page 2

be made a part of the record and a matter of public record in  
whatever manner you deem appropriate.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lee Loevinger", written in dark ink.

Lee Loevinger

STATE OF MINNESOTA  
IN SUPREME COURT  
No. 45298

In the Matter of Petition  
of the Minnesota State Bar  
Association, a Corporation,  
for Adoption of Rules Relating  
to Continuing Legal Education

COUNTER-PETITION,  
SPECIAL APPEARANCE  
& FORMAL OBJECTIONS

TO THE JUSTICES OF THE MINNESOTA SUPREME COURT:

Comes now your Counter-petitioner, JOHN REMINGTON GRAHAM, and shows  
the Court the following, to wit:

FIRST: That he is learned in the law, among other things, in that he has  
been granted the degrees of Bachelor of Arts in Philosophy and Bachelor  
of Laws by the University of Minnesota; and has been duly admitted to  
practice before the Minnesota Supreme Court, the United States District  
Court for Minnesota, the United States Court of Appeals for the Eighth  
Circuit, and the United States Supreme Court. He makes his appearance  
in this matter as an Attorney and Counselor, of this Court, and in exer-  
cise of his prerogatives as an Officer thereof.

SECOND: That for deliberate and conscientious cause, he is not a member  
of the Minnesota State Bar Association, the Petitioner herein, which is  
a mere private corporation having absolutely no official status in this  
Court.

THIRD: That he makes this appearance to oppose the Petition on file with  
the Court, in behalf of himself, and as a courtesy to his fellow lawyers  
who have not been apprised of this proceeding and stand to be injured in  
their rightful liberties, prerogatives, independence, and property as  
members of the Bar of this State. His objections are as follows, to wit:

A. This proceeding is in the nature of a suit in rem. The only notice  
given was by publication, which is inadequate, and amounts to a depri-  
vation of liberty and property without due process of law. It follows  
that this Court is without jurisdiction to proceed further.

B. The Petition calls for the exercise of regulatory powers not vested  
in the judiciary.

C. The Petition calls for the exercise of legislative power, in the form of both regulation and taxation, by the judiciary.

D. The Petition calls for the promulgation of retroactive regulation amounting to a divestiture of liberty and property without due process of law, and an ex post facto law.

E. The Petition seeks to secure the delegation of vast regulatory power to a committee controlled by the Minnesota State Bar Association, a mere private corporation which is not and cannot be an organ of this Court, or any other branch or department of the government of this State.

F. The Petition is not founded on facts and reason; but rather is based on the well-meaning, but excessive zeal of a few bar association activists.

G. The Petition does not represent a consensus of opinion among members of the Bar of this State.

H. The Petition seeks to accomplish an unwholesome regimentation of the Bar of this State by small bar association power-cliques, to make the professional existence of small firms and lone practitioners more difficult, and to eliminate that independence of thought and deed essential to the legal profession in a free society.

WHEREFORE, your Counter-petitioner prays for relief as follows, to wit:

--For an Order dismissing the Petition forthwith.

--Alternatively, for an Order requiring service of the Petition, substantially in the manner prescribed for a summons and complaint in a suit in rem or quasi in rem, by Rules 4.03 and 4.04 of the Minnesota Rules of Civil Procedure, upon all resident and non-resident members of the Bar of this State; for further Order providing for a suitable mode of Answer or Counter-petition; for further Order providing for a hearing of evidence in support of Objections F, G, and H set forth in Article the Third of this Counter-petition, either by one or more Justices of this Court, or by one or more Commissioners appointed by this Court; and for further Order setting reargument of the merits of the Petition on file herein, after service thereof has been completed, time for Answer or Counter-petition has elapsed, and all evidence has been taken.

-- For such further or alternative relief as may appear to be appropriate.

STATE OF MINNESOTA

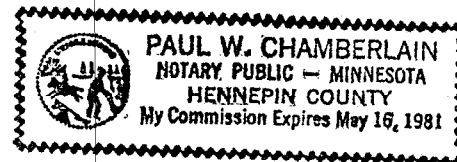
COUNTY OF HENNEPIN

Your Counter-petitioner, on solemn affirmation, deposes and says, that all of the foregoing allegations are true to the best of his knowledge, information, and belief.

John Remington Raham

Sworn and subscribed before me this 3rd day of December,  
1974.

Paul W. Chamberlain





State of Minnesota,

County of Hennepin

ss.

Pamela L. Williams

, being duly sworn, on oath says: that on the 5th day of December, 1974, he served the attached Counter-petition, Special Appearance & Formal Objections & Memorandum of Law upon Gerald Rogner, Executive Secretary of the Minnesota State Bar Association therein named, personally, at 100 Minnesota Federal Building in the City of Minneapolis,

in the County of Hennepin

, State of Minnesota, by handing to and leaving with

true and correct copies thereof.

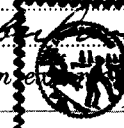
Subscribed and Sworn to Before Me this 6th

day of December, 1974

Notary Public, \_\_\_\_\_ County, Minnesota.

My commission expires

Pamela L. Williams  
 Paul W. Chamberlain



PAUL W. CHAMBERLAIN  
 NOTARY PUBLIC - MINNESOTA  
 HENNEPIN COUNTY  
 My Commission Expires May 16, 1981

November 6, 1974

Mr. John McCarthy, Clerk  
Minnesota Supreme Court  
316 North Robert Street  
St. Paul, Minnesota

Dear Sir:

I have been informed that the Minnesota Bar Association, of which many lawyers including myself are not members, has made a motion to the Court for an Order requiring all members of the Minnesota Bar to take courses of instruction and pay additional fees, as a condition precedent to continuation of their licenses to practice law in this State. I hereby register the following protests:

1st. A license to practice law is a species of property, which can neither be suspended, nor divested, nor abridged in any way without due process of law, according to Article I, Section 7 of the Minnesota Constitution. In context of the motion by the bar association, which does not represent the lawyers of this State, the above-cited constitutional provision requires that all attorneys who may be affected must receive actual service of the motion, as with a summons and complaint in an ordinary civil action, and be given an opportunity to be heard. See, e. g., Mullane v. Central Hanover Bank & Trust Co., 339 U. S. 306 (1950).

2nd. Article III of the Minnesota Constitution provides in effect that the judiciary may not exercise legislative power. Legislative power consists of the enactment of statutes or general, prospective regulations, which prohibit or require certain acts. Judicial power consists of the ascertainment and application of common law, statutes, and constitutional provisions in relation to a particular set of facts brought to the attention of a court by the process of litigation. The judiciary also has correlative or ancilliary power to prescribe rules of procedure, and to admit attorneys to the bar. No court has power to remove a lawyer from practice, except for professional or moral misconduct, and then only after the fact determined only after the requirements of procedural due process have been faithfully observed. See, e. g., Ex Parte Garland, 71 U. S. 333 (1866). The motion of the bar association calls for the exercise of powers, which are legislative in character and not vested in the judicial branch of government.

Mr. John McCarthy  
November 6, 1974  
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3rd. A license fee is an occupations tax. Plainly, the power to tax is legislative, and so it has always been since Magna Carta. Moreover, Article IV, Section 10 of the Minnesota Constitution provides that all taxation shall originate in the House of Representatives. It follows that the bar association motion, insofar as it calls for a tax by court order, is constitutionally unsound.

Assuming for the sake of discussion that compulsory education and taxation of attorneys admitted to the bar has some merit, I am astonished that the state bar association should have made their motion therefor in the chosen manner and place, contrary to the most elementary notions of constitutional law. It is my considered opinion that the order proposed by the bar association would be coram non iudice.

Kindly refer this letter to the Chief Justice, together with my respects, and advise me of the preferred procedure whereby I might make formal objection to the bar association motion.

Thanking you for your attention, I am

Respectfully yours,

*Arthur R. Rummington*

Copy to the Minnesota Bar Association

OFFICE OF THE CLERK  
Supreme Court of Minnesota  
St. Paul, Minn.

JOHN MCCARTHY  
CLERK  
WAYNE TSCHIMPERLE  
DEPUTY

November 20, 1974

Mr. John Remington Graham  
Attorney at Law  
212 W. Franklin Ave.  
Minneapolis, Minnesota 55404

45298

Dear Mr. Graham:

Responding to your letter dated November 6,  
1974:

Although a public hearing has already been held on the Petition of the Minnesota State Bar Association, you may, if you wish, file a written statement of your objections to the adoption of the proposed rule concerning post-admission education, on or before December 6, 1974. Citation of precedents and authoritative sources considered pertinent should be included in your statement. Twelve copies of any statement filed should be made available for distribution to all members of the court.

Yours sincerely,

*John McCarthy*  
John McCarthy, Clerk

JOHN REMINGTON GRAHAM

COUNSELOR AT LAW

212 WEST FRANKLIN AVENUE  
MINNEAPOLIS, MINNESOTA 55404

TELEPHONE 332-8885  
AREA CODE 612

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*John Remington Barram*

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*John McCarthy*  
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