

STATE OF MINNESOTA

IN SUPREME COURT

C2-84-2163

**ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE RULES OF THE MINNESOTA
SUPREME COURT AND STATE BOARD FOR
CONTINUING LEGAL EDUCATION OF MEMBERS
OF THE BAR**

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on September 24, 2003 at 2:00 p.m., to consider the petition of the Minnesota State Board of Continuing Legal Education to amend the Rules of the Minnesota Supreme Court and State Board for Continuing Legal Education of Members of The Bar. A copy of the board's petition, which contains the proposed amendments, is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 14 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Boulevard, St. Paul, Minnesota 55155, on or before September 12, 2003, and
2. All persons desiring to make an oral presentation at the hearing shall file 14 copies of the material to be so presented with the Clerk of the Appellate Courts together with 14 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before September 12, 2003.

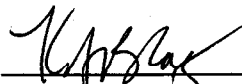
Dated: June 16, 2003

BY THE COURT:

OFFICE OF
APPELLATE COURTS

JUN 16 2003

FILED


Kathleen A. Blatz
Chief Justice

STATE OF MINNESOTA

In Supreme Court

FILE NO. C2-84-2163

**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 this Honorable Court to amend the Rules of the Minnesota Board of Continuing Legal Education of Members of the Bar (“Rules”) to expand the scope of accredited continuing legal education (“CLE”) in order to include courses in personal and professional development.

On January 31, 2002, Ash Grove Group, Inc. (“Ash Grove”) filed a petition for further review with the Minnesota Supreme Court following the Board’s determination to award only 2.75 hours of CLE credit for a 7 hour course sponsored by Ash Grove. The course was entitled “Career Satisfaction, Renewal and Resilience for Lawyers and Judges.” The Board denied additional credit because it determined that the balance of the hours related to “adult developmental theory” and were not “directly related to the practice of law” as required by Rule 5A(2) of the Rules.

In its order of January 23, 2003, this court determined that the Rule 5A(2) requirement that courses must “deal primarily with matter directly related to the practice of law” is “too narrow for universal application.” This court found that courses that address lawyers’ personal development, “including, but not limited to, career satisfaction, renewal, and law and literature,” can enhance lawyers’ “professional development and performance.” This court directed the Board to make rule amendments so that such courses could be accredited as CLE and accepted in fulfillment of a Minnesota lawyer’s mandatory CLE obligation. This court also directed the Board to articulate course definitions, educational goals, approval criteria, and limits on the number of hours for such courses that can be used in any one reporting period to satisfy a lawyer’s CLE requirements.

To determine how best to implement this order, the Board referred the matter to its five member standing Rules Committee. The Rules Committee announced a public hearing and invited interested members of the profession and the public to appear and testify or to submit written recommendations on this topic. On March 10, 2003, a public hearing was held; nine members of the bench or bar representing various legal education and bar-related organizations appeared and testified. The Board also received written comments from nine individuals and organizations.

The testimony and comments fell into several distinct categories. A group of persons who had attended or presented law and literature courses objected to

categorizing law and literature courses with personal development courses because law and literature courses, as presented in the past several years in Minnesota, are directly related to the practice of law. This group cautioned against any rule change that would limit the number of credits a lawyer could obtain for attendance at such courses and objected to requiring special documentation for accreditation of such courses. They spoke of the effectiveness of law and literature courses in teaching legal ethics and elimination of bias in the practice of law.

Another category of commentary came from representatives of a committee of the Minnesota State Bar Association which proposed that personal development or professional development courses should be defined to include courses designed to educate lawyers about the prevention of chemical dependency and mental illness. They urged that the definition of personal development should require that such courses be designed to be relevant to lawyers and not to the general population.

Another group of commentators, including two past chairs of the Board, urged the Board not to adopt amendments to the Rules that would reduce the number of hours of substantive CLE lawyers are required to complete. Finally, Ash Grove submitted a written argument in support of accrediting the career satisfaction and renewal courses that were the subject of the court's January 23, 2003 order.

Following the hearing, the Rules Committee met on numerous occasions to review the number and type of courses that have been accredited as CLE over the past

three years, to study other states' CLE requirements for courses designed to enhance lawyers' "professional development and performance," and to review this court's order in light of the gathered information. The Committee endeavored to draft rule amendments that are consistent with the requirements of this court's January 23, 2003 order, and that reflect the Board's obligations to improve lawyers' knowledge of the law through CLE. The Committee was cognizant of the need to balance these concerns while avoiding any action that would undermine the public's trust and confidence in the bar.

A special meeting of the Board was held on May 8, 2003, to consider the Rules Committee's recommendations and proposed rule amendments. After careful consideration, the Board voted unanimously to adopt the proposed rule amendments and to recommend those amendments for adoption by this court. The Rules incorporating the proposed amendments are attached hereto as Exhibit A.

In support of the Board's Petition to amend the Rules, the Board offers the following:

1. The Board proposes to amend Rule 1, which sets forth the Board's purpose, to state that it is not only the "legal education" of lawyers but also the "professional development" of lawyers that underlies the requirement that lawyers attend continuing education courses throughout their legal careers. As proposed, amended Rule 1 would state:

Rule 1

The purpose of these 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.

2. With regard to a proper term for this new category of CLE, the Board recommends the use of "professional development" rather than "personal development" CLE. While both terms are found in this court's January 23, 2003 order, the term "professional development" more appropriately suggests that the educational goal of such a course must be, in this court's words, to "enhance a lawyer's professional development and performance."
3. The Board proposes a definition of "professional development" that incorporates the "career satisfaction and renewal" language as well as other possible types of education within the new category of professional development. The text of proposed Rule 2P states as follows:

Rule 2P

"Professional Development Course" means a course or session within a course designed to enhance the development and performance of lawyers by addressing issues such as stress management, mental or emotional health, substance abuse, gambling addiction, career satisfaction and renewal, time management, law office management, technology in the law office, mentoring, or staff development. Professional development courses do not include individual or group therapy sessions.

4. The Rule 2P language does not attempt to provide an exhaustive list of topics which would now be included within “professional development.” Rather, it provides an illustrative list of topic areas, some familiar and some new, that could be addressed under professional development.
5. The proposed professional development definition reflects the need to educate members of the legal profession about mental health or chemical dependency issues that can have devastating effects on individual lawyers, on the public and on the legal profession. As currently drafted, the Rules permit accreditation of courses addressing chemical dependency and mental health issues only when those courses are presented in the context of eliminating bias against persons in the legal profession who suffer from such disabilities, as required by Rule 2I and Rule 6. With this amendment, courses which focus upon prevention of chemical dependency and prevention of mental health concerns could also be accredited.
6. The Board’s inclusion of gambling addiction, mentoring, and staff development as possible professional development course topics was inspired by other states’ CLE rules that include these types of courses. The list in the proposed professional development definition serves as an example of the topics that course sponsors could choose to address in designing professional development courses.
7. The Board recommends that Rule 2P include the specific statement that “individual or group therapy sessions” will not be accredited as professional development CLE.

The proposed definition has such breadth with regard to topics that could be addressed in professional development courses that this limitation seemed appropriate.

8. In addressing approval criteria for professional development courses, the Board recommends leaving in place the core definition found in Rule 5A (1) through (5), which has defined CLE in Minnesota for the past 30 plus years¹. The Board proposes to modify this standard no more than is necessary and to do so, recommends amending Rule 5A(2) as follows:

Rule 5A(2)

With the exception of a professional development course as defined in Rule 2P, 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.

With this modification, Rule 5A(2) remains as currently drafted, yet is expanded to cover a broader range of professional development courses which would not previously have been accredited. The introductory phrase makes clear that the “professional development courses” can be a departure from the requirement that other CLE courses must be “*directly* related to the practice of law.” However, all courses approved as CLE must be relevant to the practice of law, even if not directly

¹ Current Rule 5A (1) through (5) sets forth in general terms the standards a course must meet in order to be approved as CLE. The five requirements include: (1) that the course shall have significant intellectual or practical content; (2) that the course shall “deal primarily with matter directly related to the practice of law”; (3) that the course shall be taught by qualified faculty; (4) that written materials, if any, should be of high quality; and (5) that the course will be presented in a suitable classroom or laboratory setting.

related, because under proposed Rule 2P, they must be “designed to enhance the development and performance of lawyers.”

9. Rule 7B, addressing law office management courses, has been in effect for the past 17 years and determines how law office management courses are accredited as CLE. This rule limits the number of law office management hours a lawyer can claim to 6 hours in any reporting period. The law office management rule encourages education of lawyers about office management systems in order to prevent or reduce the likelihood of errors arising from lack of knowledge about such systems. Although the Board has approved a wide range of law office management courses under this rule, the rule has not been interpreted to include such topics as “stress management” or career change. The professional development course definition in proposed Rule 2P permits a broader scope for law office management courses and permits accreditation of courses designed to address issues such as managing the lawyer’s time, determining career choices, or managing the stress of being a lawyer.
10. To recognize the broader permissible scope for courses on law office management, the Board recommends that Rule 7B be retitled as “Professional Development” and that the body of the rule be amended as follows:

Rule 7B

~~Law Office Management.~~ Professional Development. A lawyer may receive credit for attendance at a course on law office management to a maximum of six credits per in a reporting period for attendance at a professional development course or courses. The course must be submitted for review pursuant to Rule 5. ~~Law office management~~ Professional

development 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 professional development ~~law office management~~ courses.

11. With the amended language of Rule 7B, the Board recommends a limit of 6 hours of professional development CLE be permitted to satisfy a lawyer's CLE requirements in any reporting period. Placing a higher maximum hour limit on such courses could have the effect of reducing the number of hours of substantive CLE lawyers are required to attend. The Board determined that neither the legal profession nor the public would be served if the number of hours of substantive CLE were reduced. The Board considered increasing the total number of required CLE hours beyond the 45 hour minimum but determined that such an increase would not be supported by any segment of the bar. The public members of the Board were particularly vocal in opposing any reduction in the number of substantive law CLE requirements lawyers must complete.

12. As with law office management courses, when professional development courses are accredited as ethics or elimination of bias courses, they are not subject to the 6 hour maximum. Because there is no limit on the number of hours that can be reported in ethics and elimination of bias, professional development courses, including law office management courses addressing ethics and bias, also are not subject to limits.

13. Law and literature courses are referenced in this court's January 23, 2003 order as types of courses that would enhance a lawyer's professional development and performance. Under current rules and Board policy, courses approved as law and literature have all been approved as either "ethics" or "elimination of bias." In reviewing the type and number of law and literature courses Minnesota lawyers have claimed in the past 3 years, the Board found that lawyers who claimed ethics or bias law and literature claimed an average of 3.5 hours. No lawyer claimed more than 8 hours of law and literature. Given this history, the Board is not concerned that law and literature courses will be taken in large numbers by attorneys at the expense of attendance at traditional CLE courses.

14. The Board proposes the following definition of law and literature courses:

Rule 2Q

"Law and literature course" means a course otherwise meeting the requirements of Rule 5A and Rule 7E, based upon a literary text and designed to generate discussion, insight and learning about lawyers' professional and ethical responsibilities or about the elimination of bias in the legal profession and in the practice of law.

This definition incorporates into the Rules the Board's policy of accrediting law and literature courses provided that such courses meet the other course accreditation criteria. The standards established over the past 3 years for such courses will be maintained by including specific reference to fulfilling the requirements of Rule 5A as well as the special requirements of proposed Rule 7E.

15. Because law and literature programs are not traditional lecture or skills-based courses, the Board proposes to require that sponsors provide some additional indication that such courses are thoughtfully prepared and carefully facilitated to achieve a structured and challenging intellectual exercise. Proposed Rule 7E provides the following requirements for approval of law and literature courses:

Rule 7E

Law and Literature. A “law and literature course” which otherwise meets the course approval requirements set forth in Rule 5A will be approved for CLE credit if the course application includes the following:

- (1) A narrative describing course learning goals and articulating how the literary discussion topics are 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;
- (2) A list of discussion questions that the faculty uses to guide the discussion; and
- (3) Evidence that program registrants are instructed to read the designated literary work prior to attending the course.

No credit will be granted for the time attorneys spend reading the designated text prior to attending the course.

16. The law and literature course application must be accompanied by a narrative describing course learning goals, a statement addressing how the discussion topics are related to the practice of law, and a list of the discussion questions the course faculty plans to use to elicit discussion. The proposed rule also requires sponsors to provide evidence that the course registrants were instructed to read the designated literary text prior to the course.

The Board respectfully submits these proposed amendments with the expectation that if adopted, they will be an effective means of broadening mandatory legal education programming in Minnesota to include professional development courses. It is anticipated that this broader definition of CLE will encourage sponsors to develop programming in new areas relevant to legal practice and to the problems and concerns that affect lawyers today. These amendments will be effective in enhancing the professional development of lawyers without undermining the high standards for legal education that have served Minnesota's bar since the adoption of the Rules nearly 30 years ago.

Based upon the foregoing, the Board respectfully requests that the court amend the current Rules of the Minnesota Board of Continuing Legal Education and adopt the proposed amended Rules attached hereto.

Dated:

Eileen Wells
Chair
MINNESOTA STATE BOARD OF CONTINUING LEGAL EDUCATION
10 Civic Center Plaza
P.O. Box 3368
Mankato, MN 56002
Attorney No. 11568X

Margaret Fuller Corneille
Director
MINNESOTA STATE BOARD OF CONTINUING LEGAL EDUCATION
380 Jackson St., Suite 201
St. Paul, MN 55101
(612) 297-1857
Attorney No. 179334

STATE OF MINNESOTA

In Supreme Court

FILE NO. C2-84-2163

OFFICE OF
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AUG - 8 2003

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Petition of the Minnesota State Board
Of Continuing Legal Education For
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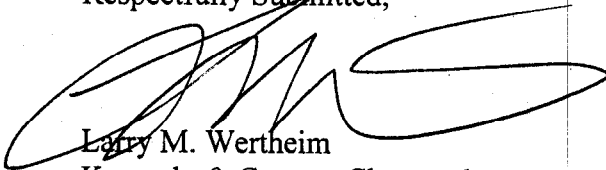
REQUEST TO MAKE AN
ORAL PRESENTATION

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT

I respectfully request permission to make an oral presentation on behalf of the Law and Literature Committee of the Minnesota State Bar Association at the hearing scheduled on September 24, 2003 at 2:00 p.m.

Dated: August 7, 2003

Respectfully Submitted,



Larry M. Wertheim
Kennedy & Graven, Chartered
470 Pillsbury Center
Minneapolis MN 55402
(612) 337-9216

lwertheim@kennedy-graven.com

Co-Chair of the Minnesota State Bar Association Law and Literature Committee

AUG - 8 2003

FILED

STATE OF MINNESOTA

In Supreme Court

FILE NO. C2-84-2163

**Proposed Amendments to the Rules
of the Minnesota Supreme Court
and State Board for Continuing Legal
Education Of Members of the Bar**

**MEMORANDUM OF
MSBA LAW AND
LITERATURE
COMMITTEE**

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT

In its January 23, 2003 order in this matter (the "Original Order"), the Supreme Court ruled that Rule 5A(2) of Rules of the Minnesota Board of Continuing Legal Education (the "Rules"), which provides that accredited courses "shall deal primarily with matter directly related to the practice of law," was "too narrow for universal application." The Court went on to hold that a course such as one on law and literature, as well as personal development courses, "can enhance a lawyer's professional development and performance, and when it does so should be recognized for credit." The Court directed the Minnesota Board of Continuing Legal Education (the "Board") to propose amendments to the Rules to modify the existing Rules regarding law and literature courses, as well as "personal development" courses. In response to the Original Order, the Board held a hearing and has since proposed and petitioned this Court to adopt certain modifications to the Rules dealing with law and literature courses, as well as personal development courses (the "Board's Petition"). The Law and Literature Committee of the Minnesota State Bar Association (the "Committee") submits this

Memorandum in opposition to certain portions of the proposed amendments contained in the Board's Petition.

I. BACKGROUND

The study of law and literature, by which is meant the use of literary texts to examine legal, ethical, and bias issues, has become a well-recognized branch of legal studies.¹ In addition, courses in law and literature are regularly offered in law schools across the country,² including long-time courses at William Mitchell and Hamline law schools. This makes law and literature a substantive discipline of the law, similar to other legal studies disciplines, such as law and economics.

The Committee, which includes both practicing lawyers and current and former members of the bench, is a committee of the Minnesota State Bar Association. As stated on the Bar Association's web site, the purpose of the Committee is "to sponsor programs using literary work to discuss ethical and other issues affecting the legal profession." To that end, the Committee sponsors courses whereby a group of no more than 20-25 lawyers, who have previously been assigned the task of reading two particular short stories, meet under the guidance of trained-facilitators to discuss those stories.

¹ The leading text is that of the legal scholar and 7th Circuit Court of Appeals Judge Richard A. Posner's Law and Literature (1998 ed.). Posner discusses some of the stories that have been used in law and literature courses sponsored by the Committee. There is a large body of secondary literature on the subject, much of which is cited in Posner. Law and literature, as a substantive area of legal study, also is the subject of countless law review articles and of law review journals, such as Cardozo Studies in Law and Literature, specifically dedicated to the subject.

² See Elizabeth Villers Gemmette, "Law and Literature: Joining the Class Action," 29 Valparaiso Law Rev. 665 (1995).

The discussion among the participants in law and literature courses is intended to address both the issues and problems in the story itself (the "inside story") and also the issues and problems that the story presents and reveals for each lawyer (the "outside story"). Through the discussion process, the attending lawyers are encouraged to arrive at their own insights into their profession, which they are also encouraged to share with the other participants.

This technique was developed by Professor Sandy Lotter, formerly of Brandeis University, who has facilitated similar courses for judges in Minnesota for over a dozen years and who has been brought to Minnesota several times by the Committee to train the Committee's facilitators. Starting in 1999, the Committee has sponsored over two dozen Board-accredited law and literature courses, located in both the Metro area and outstate, and most have been offered for ethics or bias credit. Approximately 20 different stories have been used in the Committee's law and literature courses. Recently, accredited law and literature courses have also been sponsored by individual trained facilitators and the Hennepin County Bar Association.

II. THE PROPOSED LAW AND LITERATURE RULES

The Board's Petition contains two proposed rules dealing with law and literature courses (the "Proposed L&L Rules"). First, The Board proposes the following definition of law and literature courses:

Rule 2Q

"Law and literature course" means a course otherwise meeting the requirements of Rule 5A and Rule 7E, based upon a literary text and designed to generate discussion, insight and learning about lawyers'

professional and ethical responsibilities or about the elimination of bias in the legal profession and in the practice of law.

(Board Petition at 10).

Furthermore, Proposed Rule 7E provides the following requirements for approval of law and literature courses:

Rule 7E

Law and Literature. A "law and literature course" which otherwise meets the course approval requirements set forth in Rule 5A will be approved for CLE credit if the course application includes the following:

- (1) A narrative describing course learning goals and articulating how the literary discussion topics are 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;
- (2) A list of discussion questions that the faculty uses to guide the discussion; and
- (3) Evidence that program registrants are instructed to read the designated literary work prior to attending the course.

No credit will be granted for the time attorneys spend reading the designated text prior to attending the course.

(Board Petition at 11).

For the reasons outlined below, the Committee believes that a portion of these proposed rules are both contrary to the Original Order and not justified on the grounds of policy.³

³ The Committee does not challenge the portion of Rule 7E that provides that evidence must be provided that registrants have been instructed to read the designated literary work prior to attending the course and that no credit will be given for the time attorneys spend reading the designated text prior to attending the course.

**III. THE REQUIREMENT OF "DESIGNED TO ENHANCE THE
DEVELOPMENT AND PERFORMANCE OF LAWYERS" SHOULD BE
SUBSTITUTED FOR THE REQUIREMENT OF "DIRECTLY RELATED TO
THE PRACTICE OF LAW" FOR LAW AND LITERATURE COURSES.**

The Board's Petition, as applied to law and literature courses, fails to comply with the direction of the Original Order in that it still requires that law and literature courses deal primarily with matter directly related to the practice of law. As the Supreme Court recognized in the Original Order, the requirement of Rule 5A(2) that courses "deal primarily with matter directly related to the practice of law" is "too narrow for universal application." The Court went on to state that courses, such as law and literature, should be recognized for credit when they "enhance a lawyer's professional development and performance."

Notwithstanding such direction, the Proposed L&L Rules specifically retain the requirement that law and literature courses deal primarily with matter directly related to the practice of law. Thus, both the Proposed Rule 2Q and Proposed Rule 7E require that law and literature courses comply with the requirements of Rule 5A(2), which provides that, except where qualified for ethics or elimination of bias credit, in order to qualify for credit the course shall deal "primarily with matter directly related to the practice of law." In addition, Proposed Rule 7E(1) requires that, except in the case of ethics or elimination of bias courses, materials submitted for approval of a law and literature course must establish that the course is "directly related to the practice of law" or ethics or elimination of bias.

The Proposed L&L Rules contravene the express directive of the Original Order that the Board's Rule 5A(2) that accredited courses "shall deal primarily with matter directly related to the practice of law," was "too narrow for universal application" to such courses as law and literature. Even though law and literature courses have generally been approved as ethics or elimination of bias (Board Petition at 10), the limiting requirement of "directly related to the practice of law" incorporated into the Proposed L&L Rules is inappropriate.⁴

In response to the Original Order, the Board has recognized that the less stringent standard under Proposed Rule 2P of "designed to enhance the development and performance of lawyers" should apply to personal development courses as an exception to the "directly related to the practice of law" requirement of Rule 5A(2). (Board Petition at 7-8). If personal development courses should be exempted from the "directly related to the practice of law" requirement, then more law-oriented law and literature courses should be similarly exempted and should be subject to the same "designed to enhance the development and performance of lawyers" standard.

Therefore, the reference in Proposed Rules 2Q and 7E to the requirement that law and literature courses meet the "directly related to the practice of law" standard should be deleted. In addition, Proposed Rule 2Q should be broadened to also allow law and literature courses that are "designed to enhance the development and performance of lawyers."

⁴ Even under the Proposed L&L Rules, the reference to the requirement of "directly related to the practice of law" incorporated from Rule 5A(2) by Rule 2Q and specifically contained in Proposed Rule 7E(1) makes no sense since Proposed Rule 2Q only permits law and literature courses for ethics or elimination of bias credit.

IV. THE ETHICS AND ELIMINATION OF BIAS STANDARDS SHOULD BE BROADENED FOR LAW AND LITERATURE COURSES.

Although the Board's Petition does not seek to modify the requirements regarding ethics or elimination of bias credits, this Court should consider modifying those requirements as applied to law and literature courses.

The Proposed L&L Rules adopt the restrictions in the current Rules on ethics and elimination of bias courses. Thus, Proposed Rule 2Q requires that law and literature "ethics" courses must relate to "lawyers' professional and ethical responsibilities" (emphasis supplied), rather than ethics in general. See current Rule 5A(2) ("The course shall deal primarily with matter directly related . . . the professional responsibility or ethical obligations of participants . . ."). Similarly, Proposed Rule 2Q requires that law and literature "bias" courses relate to "the elimination of bias **in the legal profession and in the practice of law,**" not in society in general. (emphasis supplied). See current Rule 5A(2) ("The course shall deal primarily with matter directly related . . . the elimination of bias in the legal profession and in the practice of law.") and current Rule 6B(3) (an elimination of bias course cannot focus on "issues of bias in society in general").

These limitations are unnecessarily restrictive for law and literature courses. Many of the stories (the "inside story") that can be successfully used in law and literature ethics or bias courses do not involve lawyers or legal settings, but rather involve broader ethical or bias issues that can be related to professional ethical concerns or bias concerns in the legal professional or the practice of law (the "outside story"). As the Board recognized, there was testimony before the Board as to "the effectiveness of law and

literature courses in teaching legal ethics and elimination of bias in the practice of law.” (Petition at 3).

Literature is perhaps the pre-eminent way of allowing people to step outside the narrow confines of their own life and understand ethical issues or how the human condition might be experienced by others, including racial, religious, and ethnic minorities. Thus, literature allows people to understand the world from a larger ethical perspective or from the perspective of other persons, including minorities who may experience bias. If the point is to educate lawyers about ethics or bias and not merely to tell lawyers what they should know or should believe, law and literature courses should not be required to focus solely on legal ethics or legal bias, but rather should be permitted to deal with general issues of ethics and bias which can then be considered in the legal context.

V. THE PROCEDURAL AND DOCUMENTARY REQUIREMENTS OF THE PROPOSED L&L RULES ARE UNJUSTIFIED.

Even aside from the substantive accreditation criteria applicable to law and literature courses, the Proposed L&L Rules impose inappropriate procedure and documentary criteria on law and literature courses. Specifically, proposed Rule 7E(1) requires that in order to be qualified for credit, the submission for a law and literature course must include a “narrative describing course learning goals and articulating how the literary discussion topics are directly related to” the substantive accreditation criteria. In addition, proposed Rule 7E(2) requires that the application for a law and literature

course include "a list of discussion questions that the faculty uses to guide the discussion."

Proposed Rule 7E's procedural and documentary requirements are beyond anything required for any other sort of accredited course. The requirement of a narrative statement expressly articulating how the course satisfies the substantive accreditation criteria is applicable to no other courses seeking Board accreditation. Similarly, no other courses are required to submit in advance a list of questions that the faculty will use with the participants. This singling out of law and literature courses is particularly noteworthy given the absence of such requirements under the Board's proposed amendments for personal development courses, courses far less law-related than academically-recognized law and literature.

The Board's Petition attempts to justify these unique procedural and documentary requirements on the following grounds:

Because law and literature programs are not traditional lecture or skills-based courses, the Board proposes to require that sponsors provide some additional indication that such courses are thoughtfully prepared and carefully facilitated to achieve a structured and challenging intellectual exercise.

(Board Petition at 11).

First, to the extent that the Proposed L&L Rules are intended to assure that the faculty for such courses are qualified and competent, such concern is belied by the Board's relative abdication of such a responsibility with respect to all other courses. Current Rule 5A(3) only requires that "the course be taught by faculty members qualified by practical or academic experience to teach the specified subject matter." There is no

specific pre-qualification test or particular supervision given by the Board as to the quality or competence of faculty generally. Rather, the Board, in effect, relies on either the sponsoring organization or the ability of prospective participants to weed out unqualified faculty. If that works for all other courses, there is no reason to believe that it should not work for law and literature courses.

In addition, contrary to the Board's assertion, the nature of law and literature courses argues against, not for, the imposition of these unique, additional requirements. Contrary to the typical CLE courses that only require attendees to show up (preferably on time), law and literature courses (and the Board's proposed rules) require that prior to the program, the attendee must read the assigned, sometimes lengthy, stories. Moreover, contrary to the customary practice of most CLE courses which only require attendees to sit quietly while presumably absorbing the information presented by the lecturer, attendees in the small-group law and literature courses are asked to (and usually do) actively contribute to the discussion in the style of the traditional law school Socratic method.

Furthermore, the Board's assertion that law and literature courses should be subject to special scrutiny on the grounds that they are not "traditional lecture or skills-based courses" is dubious since the basic law school education of all lawyers is not to be found in "lecture or skills-based courses," but rather, in courses that resemble the give-and-take of the often theoretically-oriented law and literature discussions. Given the customary (and all-too-frequently tiresome) lecture format of many CLE courses, the Board's concern that, without these special requirements, law and literature courses will

lack the "challenging intellectual exercise" supposedly found in non-law and literature courses is unconvincing.

In addition, the requirements of a narrative justification and a list of discussion questions are ill-conceived to accomplishing the goal of assuring that law and literature courses "achieve a structured and challenging intellectual exercise." The nature of great literature cannot and should not be reduced to "learning goals" or a "moral of the story." The importance and value of serious literature is, in large part, to be found in its ambiguity, multiple-meanings, and resistance to pre-determined themes. Therefore, a predetermined articulation of how the literary text will be interpreted is not helpful and may, in fact, be detrimental to the discussion. Similarly, the requirement of a list of predetermined questions to be used to facilitate the discussion ignores the most valuable aspect of law and literature courses—the free-flow of ideas and questions emanating from the participants, not the facilitator. It also may inhibit valuable discussion to the extent that a facilitator feels (or is) duty-bound to make sure all designated questions are posed.

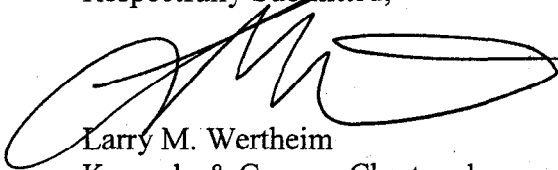
The Board's prophylactic requirements are apparently intended to avoid accreditation of informal literary discussions, such as book clubs and the like. Rather than unnecessarily burdening legitimate law and literature courses, the Board could simply prohibit accreditation for book clubs or viewing (and discussing) a film. The Board's proposed Rule 2P excludes "individual or group therapy sessions" from the definition of "personal development courses" and Rule 2Q could contain a similar express exclusion for book clubs and viewing a film.

VI. CONCLUSION

In summary, the Committee wishes to thank the Board for its efforts to address the issues of accreditation for law and literature courses. However, the Proposed L&L Rules should be modified to (1) substitute the requirement that law and literature courses be "designed to enhance the development and performance of lawyers," rather than be "directly related to the practice of law," (2) permit law and literature ethics and bias courses to focus on general ethics or societal bias, and (3) eliminate the procedural and documentary requirements of Proposed Rule 7E(1) and (2).

Dated: August 7, 2003

Respectfully Submitted,



Larry M. Wertheim
Kennedy & Graven, Chartered
470 Pillsbury Center
Minneapolis MN 55402
(612) 337-9216

lwertheim@kennedy-graven.com

Co-Chair of the Minnesota State Bar Association Law and Literature Committee

**HAMLIN
UNIVERSITY
SCHOOL OF LAW**

September 12, 2003

OFFICE OF
APPELLATE COURTS

Faculty Office

SEP 12 2003

FILED

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, Minnesota 55155

—HAND DELIVERED—

Re: Hearing to Consider Proposed Amendments to the Rules of the Minnesota Supreme Court and State Board for Continuing Legal Education of Members of the Bar—Minnesota Supreme Court Docket C2-84-2163, Scheduled for September 24, 2003

Dear Mr. Grittner:

I am writing to *request an opportunity to appear and make an oral presentation before the Minnesota Supreme Court* at the above-referenced hearing scheduled for September 24, 2003 at 2:00 p.m., in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, in accordance with the Court's order for said hearing, and to file the statement which follows immediately below on this matter.

* * * * *

My name is Howard J. Vogel. I am a member of the Bar of the State of Minnesota, and a member of the full-time tenured faculty of Hamline University School of Law where I am now in my 29th year of teaching.

Among the courses I teach is a seminar in ethics entitled "From Rules to Ethics: Identity and Responsibility in the Professions." The course offers students an opportunity to study the intersection and interaction of the values, rules, and professional identity of lawyers in comparison to others working in the traditional professions of medicine, religious occupations and business. A central question in the course of study is: "What are you claiming about yourself, your values, and your role, when you say to another person that you are a lawyer (doctor, clergy person, business person)?" In addressing this question of identity, the course gives special attention to how professional values, professional rules, and professional identity intersect and interact to shape the way lawyers address ethical decision-making in the practice of law. Of special concern is the study of how loyalty, confidentiality and competence, as well as other values, apply in the midst of the ethical challenges one can expect to encounter in the practice of law. The course fulfills the requirement of the ABA Accreditation Rules for a required course in "Professional Responsibility" in the law school program leading to the *Juris Doctor*

Mr. Frederick Grittner
September 12, 2003
Pg 2

degree. The course has been offered in one form or another for 20 years. I have participated in the design of the course along the way and for the last five years have borne the chief responsibility for teaching this course with the assistance of an adjunct faculty member who is a systematic theologian.

In addition to my teaching responsibilities I am the Director of a special project of the Hamline Law School entitled "Reflecting on Law as Vocation." The project grows out of 25 years of program activity in law, religion and ethics at Hamline Law School, and is funded by a five-year grant from the Lilly Endowment through 2007. The mission of the project is to "provide opportunities for law students and lawyers to explore the meaning and value of their work as a vocation, by drawing on theological and ethical insights, in order to support those who seek to study and practice law with integrity, faith and hope in service of the common good."

I am in full support of the comments that have been offered to the Court by Joan Bibelhausen, Chair of the MSBA Committee on Life and the Law, on behalf of the Committee, of which I am a member. I wish, however, to add two points of emphasis to assist the Court in its review of the proposed amendments. The first addresses the proposed amendments' failure to appreciate the *broadened understanding of the role and responsibility of lawyers* which is the informing spirit of the Court's order of January 23, 2003. The second addresses the proposed amendments' failure to appreciate *the central value of the virtue of integrity in the lawyer's life and practice*.

I offer these two points within the context from which the mandatory CLE movement began almost 30 years ago—the deep involvement of highly placed lawyers in the Watergate scandal. For those that remember that horrific time for lawyers, the names of Haldeman, Ehrlichman, Dean, Colson, and Liddy, among others—lawyers all, and transgressors of the public trust, are a painful reminder of dark days in the history of the our profession as well as of our nation. Before Watergate, voluntary CLE had a long history. It was a time in which lawyers chose to attend courses to keep up to date and enhance their knowledge and skill in the substantive areas of the law in which they practiced. The crescendo of public criticism of the practicing bar that rose with the revelations of the depth of lawyer involvement in Watergate led to a major change in CLE. In this setting mandatory CLE, with some attention to ethics, was developed and implemented in the hope that it might address not only the substance of a lawyer's knowledge and presentational skills, as voluntary CLE had in the past, but would be effective in addressing the content of a lawyer's character as a crucial matter of professional role and responsibility in order to regain public confidence in the profession and to protect the public from a repeat in the future of the egregious conduct associated with Watergate. It is against the backdrop of this history that I offer the comments which follow.

1. *The Treatment of Courses in Professional Development and Performance as a "Exception" for Which Only "6 Credits Per Reporting Period" are Available Fails to Appreciate the Court's Broadened Understanding of the Lawyer's Role and Responsibility Which Underlies the Court's Directive to Propose Amendments to the Rules for Accrediting CLE Course Content*

The Minnesota Supreme Court's order of January 23, 2003, directing the Board for Continuing Education to propose amendments to the rules for CLE is anchored in a broadened understanding of the lawyer's role that goes beyond the important but limited purposes of education in legal doctrine and the presentational skills associated with it to embrace a more complete understanding of competence in the practice of law. In calling for a proposed rule amendment, the Court specified in its order that such proposal is for the purpose of "broadening the standards of course approval to allow approval for CLE credit of courses and course matter related to personal development that will enhance professional development and performance." This directive from the Court is based on its "determin[ation] that the requirement in CLE Board Rule 5A(2) that the courses must 'deal primarily with matter directly related to the practice of law' is *too narrow for universal application*." (emphasis added) In moving toward its order, the Court went on to "recognize[] that course content on personal development, . . . , can enhance a lawyer's *professional development and performance*, and when it does so it should be recognized for [CLE] credit." (emphasis added) These statements by the Court, when taken together, are crucial in understanding the scope of the direction contained in the Court's order to the Board to "submit to . . . this court . . . a proposal for amendment to the Rules of the Minnesota Board of Continuing Legal Education *broadening the standards for course approval* to allow approval for CLE credit of courses and course matter related to personal development that will enhance professional development."

In light of the Court's determination of the unduly "narrow" character of the current rules and its order to include for CLE approval courses in personal development that enhance professional development and performance, the Court has implicitly embraced an understanding of the lawyer's *role* that goes beyond the important, but narrow confines of the technical, rule-based knowledge and skill of the lawyer which is the understanding the Board has brought to its interpretation of Rule 5A(2) in accrediting courses in the past. In doing so, the Court is very clear that personal development is important as an aspect of the full development of the lawyer's ability to discharge the obligation of professional responsibility in the practice of law. Thus, while on-going education in rule-based technical analytical and presentational skills of the lawyer continue to be important, the Court's order makes clear that continuing legal education which is limited to accreditation of such courses is not enough to provide for the continuing professional development and performance of the *complete* lawyer understood in broader terms embraced by the Court in its order.

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While the broader understanding of the role and responsibility of the lawyer embraced by the Court goes beyond the narrow confines of the role and responsibility contained in the current rules, the Court's position is neither new nor novel. The *Model Rules of Professional Conduct, 2003 Edition* promulgated by the American Bar Association explicitly embrace such a broad understanding. This is evident in at least three parts of the *Model Rules*: paragraphs 1 & 7 of the *Preamble*, and paragraph 16 of the section on *Scope*.

In paragraph 1 of the *Preamble* the *Model Rules* itemize aspects of the role of the lawyer which broaden that role far beyond mere representation of clients: "A lawyer, as a member of the legal profession, is a representative of clients, an *officer of the legal system* and a *public citizen having special responsibility for the quality of justice.*" (emphasis added) In paragraph 7 of the *Preamble* the *Model Rules* go on to state that "[m]any of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is *also guided by personal conscience* and approbation of professional peers." [emphasis added]. And in paragraph 16 of the section on *Scope* the *Model Rules* continues and enlarges upon this theme by stating that "The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for *no worthwhile human activity can be completely defined by legal rules.*" [emphasis added]

Neither the language of the Court's order, nor that of the *Model Rules* cited above, can take on meaning outside a broadened understanding of the lawyer's role beyond that of a skilled technician in the analytical and presentational skills associated with knowledge of the rules of law. The fact that CLE education of lawyers necessarily implicates "personal development" to "enhance the professional development and performance" of lawyers, as the Court points out, and that such development must necessarily address the larger personal dimensions of the lawyer's identity such as "moral and ethical considerations beyond those defined by legal rules," and the "personal conscience" of the lawyer, as recognized within the *Model Rules*, means that the broadened role of the lawyer contemplated by the Court is the anchorage around which the four aspects (course definitions; educational goals; approval criteria; credit hours) of the Board's consideration must be based. Each of these four aspects must necessarily serve to provide the needed education of the broadened role of the lawyer which is at the heart of the Court's order.

On two of the afore-mentioned four aspects to be considered by the Board during review of accreditation applications listed in the Court's order (educational goals and approval criteria) the Board's proposal is responsive to the spirit of the Court's broadened understanding of the lawyer role and responsibility. On the matter of a third aspect, course definition, however, it is worrisome that the Board treats professional

Mr. Frederick Grittner

September 12, 2003

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development courses as an "exception" for purposes of accreditation while the Court's order, to the contrary, directs the Board to *include* professional development courses within the definition of those courses which qualify for CLE approval. At best, the proposed amendments are confusing in this regard because they do include professional development courses in amended Rule 5A(2) but in doing so describe such courses as an "exception." This is very confusing in light of the determination by the Court in its order that Rule 5A(2) is "too narrow." When read against this determination the proposed amendment seems to address the "narrowness" of the requirement that courses "must deal primarily with matter directly related to the practice of law" by excepting courses designed to "enhance professional development and performance" from direct relation to the practice of law. In doing so, the proposed amendment of Rule 5A(2) does not broaden what the Court finds narrow, but instead seeks to include what the Court seeks to include as an exception, but in a way that minimizes the importance of the inclusion.

The way in which the proposed amendments minimize the importance of professional development courses becomes more clear in the case of credit hours, the fourth criterion specified in the Court's order. Here the proposed amendments set a limit of 6 credit hours per reporting period (merely 2 hours per calendar year on average). This severe limit clearly undermines the broadened understanding of the lawyer's role and responsibility that is the informing spirit of the Court's order. If the current Rule 5A(2) is "too narrow for universal application," it is hard to understand how an exception from the currently "too narrow" definition standard PLUS the added limitation of 6 hours of available credit on that exception cures the weakness in the current rules identified by the Court.

In placing this severe limitation on courses of professional development, the proposed amendments lend support to a narrow understanding of the lawyer's role and responsibility, limited to no more than the acquisition of knowledge of the law and maintenance of technical presentational skills. This flies in the face of the Court's recognition that knowledge of the rules of law and proficiency in technical presentation skills, while important aspects of continuing legal education, cannot, by themselves, promote the confidence and protection of the public that mandatory CLE sought to secure in its inception in the wake of the deep involvement of lawyers in the Watergate scandal out of which mandatory CLE arose almost 30 years ago.

2. *The Treatment of Courses in Professional Development and Performance as an "Exception" for Which Only "6 Credits Per Reporting Period" are Available Fails to Appreciate the Central Place that "Integrity" Occupies as the Heart of the Competent Lawyer's Practice.*

The experience I have gained in teaching my seminar in ethics as well as my current on-going research into the professional and vocational identity of lawyers, dramatically demonstrates that the most difficult question I can ask law students and long-time practitioners is this: "What are you claiming about yourself when you tell someone else that you are a lawyer?" In the face of this question, both my students and the lawyers to whom I pose this question typically pause for a considerable period of time and their faces grow quite solemn because they recognize immediately, without me having to explain it to them, that in this question they are called upon to think about themselves in their personhood, and the core values they embrace *at the same time* that they think about their work as lawyers. For many, this question reveals the yawning gulf that many experience between their deepest commitments and understandings of themselves as human beings called to service of others (for many the very reason they went to law school) and the actual day to day work that they are about to enter or already have entered as law clerks or long-time practitioners. At this moment the issue of *integrity*, which is so often written about these days in the many books now coming out about the crisis in the legal profession, raises its troubling head.

For many, the response to the professional identity question I ask begins with a confession that there is a massive disconnect between their work and their deepest commitments and understandings of who they are as human beings. In this situation, of fractured personal integrity between personal being and work, it is no wonder that lawyers lose their way in the practice of law. This is manifested in many ways from poor attention to client files to unprofessional malfeasance, chemical dependency and even criminal conduct, as well as many other things in between. Whether we call this situation a crisis of ethics, or of balance, or career satisfaction in the practice of law, such phenomena, alarmingly present in lawyer's lives (lawyers are, on average, twice as depressed as other members of western industrial societies, even though they come to law school no different in this respect than others), reveal a deep wound in the life of the lawyer which can have terrible consequences for clients, courts and the larger public to whom the lawyer is responsible in fulfilling the lawyer's role. It is just here that CLE courses in "personal development" to "enhance the professional development and performance of lawyers," as called for in the Court's order, can begin to help lawyers find the integrity in their life's work that is so often lost. Without such integrity the ability of lawyers to work at a high level of competency is compromised.

In the face of the foregoing critique, I urge the Court to modify the proposed amendments so that the importance of courses in professional development and performance recognized by the Court in its January 23, 2003 order is not undermined by either (a) the confusing implications in the Board's proposal which comes from identification of such courses as an "exception" from "normal" CLE courses, and (b) limiting the available credits for such courses to 6 hours per reporting period. Such

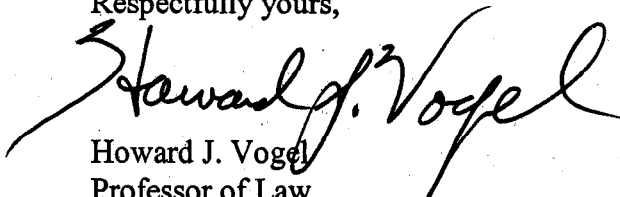
Mr. Frederick Grittner
September 12, 2003
Pg 7

modification is needed for the proposed rules to be fully faithful to the Court's broadened understanding of the lawyer's role and responsibility in our society and to promote the integrity necessary for competent practice.

In urging the Court to make such modifications, it is important to note that I am *not* making an argument for accreditation of every personal development course which comes along. Indeed, on that matter the Court has been very clear. I *am* making an argument for amendments to the rules that are *broad* in terms of content and educational methods, AND *rigorous* in insisting that providers of CLE education meet the burden of proof to show how the particular "personal development" dimensions of a particular CLE course proposal "will enhance the professional development and performance of lawyers" as specified by the Court. Personal development educational programs not clearly tied to the professional development and performance of lawyers is not what is needed. What we *lawyers* (and those we work with and for) do need are CLE programs that include the full range of personal development course content and methods which can and do enhance the professional development and performance of lawyers, given the broad and important role we play in society. Thus, the focus of course design and approval criteria employed in accreditation reviews should be placed on defining the meaning of "personal" development as an important component of "professional" development in a way that serves the broad definition of the lawyer's role and the core character value of integrity in a life lived in the practice of law.

With thanks for the opportunity to submit this statement and to appear at the forthcoming hearing, I remain,

Respectfully yours,



Howard J. Vogel
Professor of Law
Hamline University School of Law
1536 Hewitt Avenue
St. Paul, Minnesota 55104-1284
Telephone: 651-523-2120
FAX: 651-523-2236
e-mail: hvogel@gw.hamline.edu

STATE OF MINNESOTA

In Supreme Court

FILE NO. C2-84-2163

**OFFICE OF
APPELLATE COURTS**

SEP 12 2003

FILED

**In re Proposed Amendments to the
Rules of the Minnesota Board of
Continuing Legal Education**

**REQUEST FOR
ORAL PRESENTATION**

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT

Minnesota Continuing Legal Education, a division of the Minnesota State Bar Association ("MCLE"), respectfully requests permission to make an oral presentation to the Court concerning the proposed amendments to the Rules of the Minnesota Board of Continuing Legal Education (the "Rules"). The presentation will be made by Kent Gernander, of Winona, Minnesota, a member of the MCLE Board of Directors, and Frank Harris, of Minneapolis, Minnesota, the MCLE Executive Director.

MCLE is a division of the Minnesota State Bar Association, a voluntary association whose members include more than 15,000 lawyers and judges. MCLE is the leading provider of continuing legal education for Minnesota lawyers.

MCLE supports the purposes and standards set forth in the Rules, including the requirement that courses deal primarily with the practice of law, the professional responsibility of lawyers, or the elimination of bias. MCLE would oppose any change in the Rules that would dilute this requirement.

MCLE believes that the proposed amendments preserve this essential characteristic of continuing legal education, while permitting accreditation of professional development courses and allowing a limited number of CLE credits for attending such courses.

MCLE therefore supports the Petition of the Minnesota State Board of Continuing Legal Education, and respectfully requests permission to present these views orally and respond to other arguments and questions.

MINNESOTA CONTINUING LEGAL EDUCATION

By Frank V. Harris

Frank V. Harris (#004152X)

Executive Director

Minnesota Continuing Legal Education

40 N. Milton

St. Paul, MN 55104

(651) 227-8266



PROLEGIA

FROM MINNESOTA LAWYERS MUTUAL INS. CO.

September 10, 2003

Mr. Frederick Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

Re: Hearing to Consider Proposed Amendments to the Rules of the
MN Supreme Court and the State Board for Continuing Legal Education
Of Members of the Bar

Dear Mr. Grittner:

Pursuant to the Court's Order regarding the above-described matter, Minnesota Lawyers Mutual (MLM) requests the opportunity to make an oral presentation at the hearing on September 24, 2003 to support the proposed amendment to the CLE Rules to allow professional development credits and to oppose the proposed cap on the number of credit hours available for lawyers who attend these programs.

MLM supports the expansion of CLE credit to professional development because it believes that acquisition of both office management and life management skills are necessary to avoid malpractice. The relationship between poor office management skills and malpractice cannot be seriously debated. Good law office management can avoid malpractice and grievous harm to clients.

Similarly, MLM believes there is a direct relationship between depression, chemical dependency, substance abuse and other life management issues and malpractice. Studies conducted by the Oregon Attorney Assistance Program confirm our experiences and the anecdotal evidence we have gathered in Minnesota: these life issues play a substantial role in many malpractice claims. Importantly, the recent Oregon study shows that lawyers who get the help they need have less malpractice claims than their colleagues.

Lawyers need education to recognize the signs and symptoms of mental illness, chemical dependency, and abuse to recognize them in themselves and their partners and colleagues. Lawyers need to know how to prevent the distress, burnout, or poor financial or career choices that can lead to malpractice.

Preventative education can reduce the cost of liability coverage to lawyers and harm to the public. In addition to the human cost of untreated chemical dependency or abuse and mental illness, the legal profession and the public bear the cost of resulting

phone 800.422.1370 / phone 612.341.4530
fax 800.305.1510 / fax 612.349.6865
www.prolegia.com / info@prolegia.com

2200 Accenture Tower
333 South Seventh Street
Minneapolis, MN 55402

malpractice claims. As the cost of professional liability coverage increases, lawyers need to increase their revenues by increasing their fees or increase their hours, or both. Some lawyers may elect not to purchase professional liability coverage. A lawyer with a history of such claims may not be able to find coverage. In either event, the clients suffer by paying increased fees or suffering harm for which there is no recompense.

MLM does not believe lawyers should be limited in the number of hours of personal and professional development programming for which they can receive credit. The majority of legal malpractice claims arise from administrative errors, rather than the substantive knowledge of the law issues. Attendance at CLE courses in a lawyer's practice area does not necessarily ensure competence, since CLE is only one source of the lawyer's competence to practice. Lawyers need programs such as the proposed personal and professional development courses that teach them skills they did not learn in law school and cannot acquire by staying abreast of developments in their practice areas. Professional development programs should be widely available and fully accredited to provide the same incentive to attend these important courses as the courses in their own practice areas. A lawyer should not have his or her opportunities for education limited by treating professional development courses any differently than other substantive courses.

As a professional liability carrier, MLM has a unique perspective. We come in after the harm has already occurred and use hindsight to assess the quality of the service provided to the client. As the adage says, hindsight is 20:20. Although we are not engaged in the practice of law, it is difficult to comprehend the treatment of professional development as somehow unrelated to the practice of law.

Very truly yours,

A large, stylized handwritten signature in black ink, likely belonging to J. H. Bixler, is written over the typed name and title.

J. H. Bixler
President

Minnesota Lawyers Mutual Ins. Co.
333 South Seventh Street, Suite 2200
Minneapolis, MN 55402
(800) 422-1370

State Of Minnesota

In Supreme Court

OFFICE OF
APPELLATE COURTS

SEP 8 - 2003

FILED

In re: AMENDMENT OF THE RULES
OF THE MINNESOTA BOARD OF
CONTINUING LEGAL EDUCATION

FILE NO. C2-84-2163

**Motion for Leave to Make Oral Presentation by the Ash Grove Group Inc. and
William H. Lindberg**

The Ash Grove Group, Inc. and William H. Lindberg respectfully request leave of the Court to appear and make an oral presentation during the hearing on amendments to the Rules of the Minnesota Board of Continuing Legal Education ("CLE Board"). The hearing will be held September 24, 2003 at 2:00 p.m.

William H. Lindberg is a licensed Minnesota attorney and a member in good standing of the bar of this state. He has many years of experience as a lawyer, legal educator, legal publisher, and career coach for lawyers. He believes that he can add helpful viewpoints in this matter. Mr. Lindberg is also president of the Ash Grove Group, Inc. ("Ash Grove"). Ash Grove is a Minnesota corporation providing lawyer assistance services, including sponsorship of continuing legal education courses.

Ash Grove has a particular interest in the subject of this hearing and believes that it can add an important perspective to this Court's deliberations. Ash Grove previously petitioned this Court to review a course accreditation determination by the CLE Board. (See *In re: Application for CLE Course Accreditation by the Ash Grove Group, Inc.*,

Court File No. C3-02-163). In that matter, Ash Grove sought review of a decision by the CLE Board awarding only 2.75 (out of a possible 7.0) hours of CLE credit for a course entitled: *"Career Satisfaction, Renewal and Resilience for Lawyers and Judges,"* presented in October of 2001. This course was primarily a course in professional development for lawyers and judges. In contrast to the decision of the CLE Board, the Board of Continuing Judicial Education (CJE Board) awarded 7.0 hours of credit.

Viewing the discrepancy between accreditation decisions by the CLE and CJE Boards as significant, in January of 2002, Ash Grove petitioned this Court to review the CLE Board's decision. (See Court File No. C3-02-163). This Court issued an Order on May 13, 2002 directing the CLE Board to re-examine its accreditation determination in light of the decision of the CJE Board. (See Order dated 5/13/02 attached hereto as **exhibit A**). The CLE Board performed a further review and concluded that it was constrained by the existing CLE rules to limit accreditation to the original award of 2.75 hours. The CLE Board contended that the existing CLE rules permitted accreditation only for courses, *"directly related to the practice of law,"* which prevented full accreditation for professional development courses.

In response, Ash Grove moved this Court to dismiss its petition for review and, instead, appoint a task force to re-evaluate the CLE rules with a view towards incorporating a broader definition of an creditable course. (See motion to dismiss petition attached hereto as **exhibit B**). By Order dated January 23, 2002, this Court dismissed Ash Grove's original petition (see **exhibit C** attached hereto) and issued a separate order (see **exhibit D** attached hereto) directing the CLE Board to propose amendments to the CLE Rules, which would broaden the standards to allow CLE credit

for professional development courses for lawyers. This Order effectively opened the existing administrative court file in C2-84-2163.

Given this procedural history, Ash Grove views the proposed amendments to the CLE rules as the logical next step in the process it initiated with its original petition to this Court in Court File No.C3-02-163. Therefore, Ash Grove believes that it has a particular interest in the subject of the hearing. Ash Grove and Mr. Lindberg request leave of Court to allow Mr. Lindberg to speak on their behalf for a total of five minutes.

Dated: September 8, 2003

By: William H. Lindberg
William H. Lindberg (MN Id 0063320)
President
THE ASH GROVE GROUP, INC.
Suite 135
3440 Federal Drive
Eagan, MN 55122

APPENDIX OF ATTACHED EXHIBITS

<u>Exhibit</u>	<u>Identification</u>
Exhibit A	Sup. Ct. Order directing CLE Board to re-examine accreditation dated 5/13/02
Exhibit B	Motion to dismiss petition dated 10/4/02 (without attachments)
Exhibit C	Sup. Ct. Order dismissing petition dated 1/23/02
Exhibit D	Sup. Ct. Order directing CLE Board to propose amendments to CLE rules

MAY 14 2002

STATE OF MINNESOTA
IN SUPREME COURT

FILED

C3-02-163

EXHIBIT A

In Re: Application for CLE Course
Accreditation by the Ash Grove Group, Inc.,

Petitioner,

and

Minnesota State Board of Continuing
Legal Education,

Respondent.

ORDER

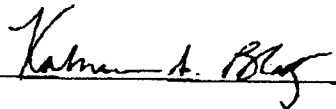
Petitioner Ash Grove Group has filed a petition seeking review of a decision of the Board on Continuing Legal Education (CLE Board) denying continuing legal education credit for the afternoon segment of a seminar petitioner sponsored on October 23, 2001. The Director of the Supreme Court Continuing Education Office approved the afternoon segment for judicial education credit.

IT IS HEREBY ORDERED that the petition for review be, and the same is, stayed. The CLE Board shall reconsider petitioner Ash Grove Group's application for continuing legal education credit for the afternoon segment of the October 23, 2001, seminar in light of the decision of the Director of the Supreme Court Continuing Education Office to approve the afternoon segment for judicial education credit. Petitioner shall, within 14

days of a final decision of the CLE Board, move the court to dismiss the petition or vacate the stay.

Dated: 5/13/02

BY THE COURT:



Kathleen A. Blatz
Chief Justice

CASE NO. C3-02-163

State of Minnesota

In Supreme Court

***In re:* APPLICATION FOR CLE COURSE ACCREDITATION BY THE ASH GROVE
GROUP, INC.,**

Petitioner,

and

MINNESOTA STATE BOARD OF CONTINUING LEGAL EDUCATION,

Respondent.

**Motion to Dismiss the Petition and Request for Appointment of Task
Force to Investigate Amendment of CLE Rules and Appendix**

Katherine L. MacKinnon
ATTORNEY AT LAW
Atty. Reg. No. 170926
3744 Huntington Avenue
St. Louis Park, MN 55416-4918
(952) 915-9215
(952) 915-9217 (fax)
Counsel for Petitioner

Mike Hatch
Attorney General State of Minnesota
Paul R. Kempainen
Assistant Attorney General
Atty. Reg. No. 54987
445 Minnesota Street, Suite 1400
St. Paul, MN 55103-2106
Counsel for Respondent

(1) WHEREAS, on January 31, 2002, Petitioner Ash Grove Group, Inc., ("Ash Grove"), a CLE course sponsor, filed a petition with this Court requesting judicial review of an accreditation decision by Respondent Minnesota State Board of Continuing Legal Education ("CLE Board") in which the latter awarded only 2.75 credit hours (out of a possible 7.0) for Ash Grove's course entitled: "*Career Satisfaction, Renewal and Resilience for Lawyers and Judges*,"¹ when the Supreme Court Judicial Education Office ("CJE Board") accredited the same course for the full 7.0 hours; and

(2) WHEREAS, the CLE Board responded to the petition on February 19, 2002 asking the Court to deny the petition for, among other reasons, lack of subject matter jurisdiction; and

(3) WHEREAS, by Order dated May 13, 2002, this Court stayed the petition and ordered the CLE Board to reconsider its decision in light of the CJE Board's decision and further directed Ash Grove to move this Court to dismiss the petition or to vacate the stay within fourteen days of a final decision by the CLE Board; and

(4) WHEREAS, in compliance with this Court's order, the CLE Board held a hearing to reconsider its decision on June 20, 2002 and issued its final determination on September 20, 2002 a copy of which is in the attached Appendix; and

(5) WHEREAS, the CLE Board decided that where it was subject to a governing standard requiring courses to be "directly related to the practice of law" while the CJE Board had no similar governing definition, a decision by the CJE Board was not determinative to a ruling by the CLE Board; and

¹ The course was held on October 23, 2001.

(6) WHEREAS, although not conceded by Ash Grove, the CLE Board concluded that its original decision to award only 2.75 credit hours to Ash Grove would stand because the content of the remaining 4.75 hours of Ash Grove's course was not based in substantive law; and

(7) WHEREAS, the CLE Board also recognized that there may be substantial benefit to Minnesota lawyers in having continuing legal educational experiences, such as that offered by Ash Grove, designed to educate lawyers in personal and professional development skills to avoid the devastating effects that career dissatisfaction, mental illness and chemical abuse can have on the individual lawyer as well as the clients that the lawyer serves; and

(8) WHEREAS, the CLE Board also acknowledged that the current definition of a creditable course does not accommodate well to courses that are not exclusively substantive law in content; and

(9) WHEREAS, in light of these considerations, the CLE Board invited this Court to consider amending the CLE rules: (1) to create a definition of personal development courses; (2) to provide guidance to course sponsors presenting such courses; (3) to define specific learning goals for such courses; and (4) to set limits on the number of hours such courses might comprise of the total CLE hours required by each lawyer; and

(10) WHEREAS, Ash Grove is very pleased that the CLE Board recognizes that there is value in expanding the scope of accreditation for CLE courses, particularly in light of emerging information regarding the likelihood that lawyers who are experiencing personal difficulties brought on by the challenges of this profession might engage in

malpractice or unethical conduct and because inter-disciplinary learning is vitally important to meeting this challenges; and

(11) WHEREAS, the need for such a task fore to explore the scope of accreditation is tellingly demonstrated by the affidavit of Nancy Zalusky Berg and the statement of Professor Howard Vogel (both of which were part of the record evaluated by the CLE Board in this case and are attached in the accompanying Appendix); and

(12) WHEREAS, the uncertainty that the scope of the rules represents is demonstrated by the fact that Ash Grove is again attempting to persuade the CLE Board to accredit its course for this year and has garnered course co-sponsorship from several firms and organizations that see value in personal and professional skills training for lawyers as demonstrated in the course application letter attached in the Appendix; and

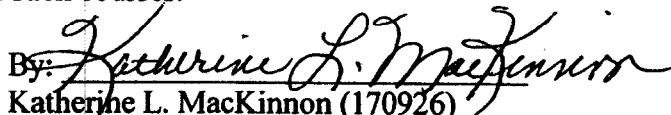
(13) WHEREAS, the important tasks of setting standards for CLE courses is better resolved in a rule-making, rather than an adjudicatory forum;

NOW, THEREFORE, Ash Grove asks this Court to issue an Order as follows:

(1) Dismissing the instant petition; and

(2) Appointing a task force of persons interested in this subject to research expanding the scope of CLE accreditation to include personal and professional development courses; set course definitions for such courses; set credit limits for such courses; and define specific learning goals for such courses.

Dated: 10/4/02

By: 
Katherine L. MacKinnon (170926)
ATTORNEY AT LAW
3744 Huntington Avenue
St. Louis Park, MN 55416-4918
(952) 915-9215
(952) 915-9217 (fax)
Counsel for Petitioner Ash Grove

STATE OF MINNESOTA

IN SUPREME COURT

C3-02-163

OFFICE OF
APPELLATE COURTS

JAN 23 2003

FILED

In re: Application for CLE
Course Accreditation by the
Ash Grove Group, Inc.,

EXHIBIT C

Petitioner,

vs.

Minnesota State Board of
Continuing Legal Education,

Respondent.

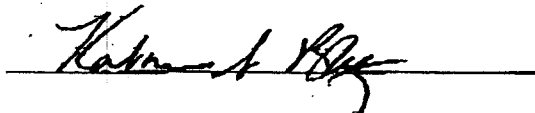
ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the motion of Ash Grove Group, Inc., to dismiss its petition for review of the Minnesota State Board of Continuing Legal Education's decision to approve only 2.75 hours of continuing legal education credit for Ash Grove's course entitled "Career Satisfaction, Renewal and Resilience for Lawyers and Judges" be, and the same is, granted and the petition is hereby dismissed.

Dated: January 23, 2003

BY THE COURT:



Kathleen A. Blatz
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

C2-84-2163

OFFICE OF
APPELLATE COURTS

JAN 23 2003

FILED

EXHIBIT D

In re Amendment of the Rules
of the Minnesota Board of
Continuing Legal Education.

ORDER

In August 2001, Ash Grove Group, Inc., (Ash Grove) applied to the Minnesota State Board of Continuing Legal Education (Board) for accreditation of seven hours of Continuing Legal Education (CLE) credit for a course to be sponsored by Ash Grove entitled "Career Satisfaction, Renewal and Resilience for Lawyers and Judges." The Board approved the course for only 2.75 hours of CLE credit, denying credit for the remaining 4.25 hours of the course because they related to "adult developmental theory" that was not "directly related to the practice of law." On January 31, 2002, Ash Grove served and filed a petition for further review of the Board's decision in this court. After the Board responded in opposition, the court issued an order on May 13, 2002, staying consideration of Ash Grove's petition and directing the Board to reconsider its decision in light of the decision of the Supreme Court Continuing Judicial Education Office to accredit the entire program for continuing judicial education credit.

After receiving oral comments from several interested individuals at its meeting of June 20, 2002, the Board issued its Determination upon Remand on September 20, 2002.

In that determination, the Board affirmed its earlier decision to approve Ash Grove's career satisfaction course for no more than 2.75 hours. The Board distinguished the broader role of judges from that of lawyers and the broader role of continuing judicial education from continuing legal education for lawyers. In particular, the Board explained that in approving CLE courses it is bound by the express standard in Rule 5A(2) of the Rules of the Minnesota Board of Continuing Legal Education that to be approved for credit a 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." (Emphasis added.)

Subsequently, Ash Grove filed a motion to dismiss its petition for review of the Board's decision limiting accreditation, and the petition has been dismissed by separate order. Ash Grove also requested that the court appoint a task force to investigate amendment of the CLE rules to allow accreditation for courses that include personal and professional development. The Board has filed a response in opposition to that request.

The court has determined that the requirement in CLE Board Rule 5A(2) that courses must "deal primarily with matter directly related to the practice of law" is too narrow for universal application. The court recognizes that course content on personal development, including, but not limited to, career satisfaction, renewal, and law and literature, can enhance a lawyer's professional development and performance, and when it does so it should be recognized for credit. However, expansion of the scope of course matter eligible for accreditation requires articulation of course definitions, educational

goals, and approval criteria, as well as an appropriate limit on the number of hours of personal development course credit that can be used to satisfy CLE requirements.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the Board of Continuing Legal Education is directed to submit to this court, not later than June 1, 2003, a proposal for amendment to the Rules of the Minnesota Board of Continuing Legal Education broadening the standards for course approval to allow approval for CLE credit of courses and course matter related to personal development that will enhance professional development. The board shall include in its recommendations course definitions, educational goals, and course approval criteria for personal development course matter and a recommendation of the maximum number of hours of personal development credit that may be used to satisfy a lawyer's CLE requirements in any reporting period.

Dated: January 23, 2003

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Kathleen A. Blatz", is written over a horizontal line.

Kathleen A. Blatz
Chief Justice

DENNIS M. COYNE

SEP 11 2003

Attorney At Law

FILED

Phone: (612) 375-0155

Fax: (612) 395-5236

E-mail: dcoyne@denniscoyne.com

September 11, 2003

Mr. Frederick Grittner
Clerk of the Appellate Courts
309 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Boulevard
St. Paul, MN 55155

Re: Hearing to Consider Proposed Amendments to the
Rules of the Minnesota Supreme Court and State Board
For Continuing Legal Education of Members of the Bar

Dear Mr. Grittner:

I am writing to request the opportunity to appear at the September 24, 2003 hearing to consider proposed amendments to the rules of the Minnesota Supreme Court and State Board of Continuing Legal Education of Members of the Bar.

For three years, Bill Lindberg of the Ash Grove Group and I have planned and presented the one-day seminars entitled: "Career Satisfaction, Renewal and Resilience for Lawyers and Judges." I have appeared before the Minnesota State Board of CLE Rules Committee to support the accreditation of this course, and other courses, that focus on professional development, including the topics of career satisfaction, resilience and renewal among lawyers and judges.

I welcome and support the inclusion of "professional development" courses among those courses to be accredited as CLE and accepted in fulfillment of a Minnesota lawyer's mandatory CLE obligation. I oppose, however, the mandatory cap of six credits in a reporting period for attendance at a professional development course or courses.

For several years, I have been a member of the Minnesota State Bar Association Life and Law Committee. I am familiar with the Committee's opposition to the proposed six-hour cap and agree with the Committee in its reasoning. I oppose the six-hour cap for two additional reasons.

1. Subject to the six-hour cap, judges and lawyers attending the same program will be treated differently with respect to satisfying mandatory reporting requirements.

The 2001 "Career Satisfaction, Renewal and Resilience for Lawyers and Judges" seminar earned 7.0 hours of CJE credit, but only 2.75 hours of CLE credit. The disparity between judges and lawyers persisted in 2002, when the seminar received 7.0 hours of CJE credit, but only 1.0 hour of CLE credit. This disparity between lawyers and judges would persist under the proposed CLE

rule, since the proposed six-hour cap would limit the number of hours earned by lawyers in fulfillment of their mandatory reporting requirements, while judges attending the same course would not be subject to a comparable cap with respect to meeting their mandatory reporting requirements.

The 2003 "Career Satisfaction, Renewal and Resilience for Lawyers and Judges" program can serve as an example of how the proposed cap would create a disparity in the treatment of lawyers and judges. The 2003 program is pending approval for 7.0 hours of both CLE and CJE credit. While judges would not be subject to a cap and could earn the full 7.0 hours of CJE credit for attendance at the 2003 program, lawyers attending the same course could earn only 6.0 hours of CLE credit.

- Why should a judge attending an accredited program on professional development be treated differently with respect to meeting mandatory reporting obligations, than a lawyer attending the same program?

Furthermore, if a judge attends more than one professional development course in a reporting period, all hours earned in attendance at accredited courses can be applied. In contrast, lawyers attending another accredited course in the same reporting period would earn no credit toward mandatory CLE reporting obligations.

- Why should a judge attending more than one accredited program on professional development be treated differently with respect to meeting mandatory reporting obligations, than a lawyer attending more than one accredited program in the same reporting period?

2. Subject to the six-hour cap, lawyers of modest means will be effectively precluded from attending more than six hours of professional development course work in a reporting period.

Lawyers of modest means, including lawyers in public service, need to apply limited funds to pay for accredited courses that can satisfy mandatory reporting requirements. In contrast, affluent attorneys can afford to attend courses that do not satisfy mandatory reporting requirements. Yet, lawyers of modest means are often as much in need of professional development course work as those lawyers who are affluent. Thus, the proposed six-hour cap would have a disproportionate impact on lawyers of modest means, discouraging them from attending accredited courses that they would otherwise attend.

Frederick Grittner
Clerk of the Appellate Courts
September 11, 2003
Page 3

In conclusion, I urge the Court to strike the proposed six-hour cap in the proposed CLE rule. The cap would perpetuate a disparity in the treatment of lawyers and judges attending professional development courses, and would discriminate against lawyers of modest means.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis Coyne", with a stylized flourish at the end.

Dennis M. Coyne

MSBA



OFFICE OF
APPELLATE COURTS

SEP 12 2003

FILED

September 10, 2003

Minnesota
State Bar
Association

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Blvd.
St. Paul, MN 55155

600 Nicollet Mall
Suite 380
Minneapolis, MN 55402-1039

www.mnbar.org

Telephone
612-333-1183
National
1-800-882-MSBA
Fax
612-333-4927

President
James L. Baillie
Minneapolis

President-Elect
David L. Stowman
Detroit Lakes

Treasurer
Susan M. Holden
Minneapolis

Secretary
Patrick J. Kelly
St. Paul

Executive Committee
At-Large Members
Lorie Gildea
Minneapolis
Dan O'Connell
St. Paul
Kenneth R. White
Mankato

New Lawyers Section Chair
Joan M. Schulkers
Minneapolis

Tim Groshens
Executive Director

RE: Hearing to Consider Proposed Amendments to the Rules of the Minnesota Supreme Court and State Board for Continuing Legal Education of Members of the Bar

Dear Mr. Grittner:

On behalf of the Minnesota State Bar Association Life and the Law Committee, I am writing to request the opportunity to appear at the hearing to consider proposed amendments to the rules of the Minnesota Supreme Court and State Board of Continuing Legal Education of Members of the Bar on September 24, 2003. The Committee which has as its purpose "to stimulate discussion and provide resources to the legal community regarding career satisfaction, mental and chemical health, balance and other quality of life issues that impact on the profession," is very interested in the proposed CLE rule regarding personal and professional development.

The MSBA Life and the Law Committee wholeheartedly agrees with the Court's order of January 21, 2003 which recognized that "course content on personal development can enhance a lawyer's professional development and performance." The Committee believes that such content clearly falls within Rule 1, Purpose, of the Rules of the Minnesota Board on Continuing Legal Education:

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.
(Emphasis added)

In March of 2003 the Committee appeared before the Minnesota State Board of CLE Rules Committee to provide comments on the proposed new rule regarding personal/professional development. While it has always been our belief that

courses which provide for improvement in "the quality of service rendered by the legal profession." that might be classified as professional development courses do fall within the requirement that courses be "directly related to the practice of law," we are pleased to support the definitions and propositions regarding professional development proposed by the Minnesota State Board of CLE in its Petition for Rule Amendment.

However, we would like to take this opportunity to address the inclusion of professional development within the former law office management category and the accompanying limitation of 6 hours for all of these courses. Lawyer's responsibilities certainly include advocacy, negotiation, technical advice and other specific skills. Lawyer's roles extend to counselors, teachers, moral advisors, problem solvers and adjudicators because of the place they hold in society. The expectations of their clients, society and the courts extend beyond serving as an effective technician. That is why law is a profession governed by a code of ethics. That is why ethical training must go beyond just the rules in that code. And that is why it is appropriate for lawyers to explore the issues that are envisioned in the proposed rule on professional development in a context that does not place what we believe are unreasonable limitations. We encourage the court to consider several concerns when deciding on inclusion of professional development in the law office management category and the proposed 6 hour cap.

1. The proposed 6-hour limit is inconsistent with the Supreme Court's recognition that both law office management and professional development courses have value to lawyers and to the public. By adding professional development to the already existing law office management category and maintaining the current 6-hour limitation, the importance of both programs is diluted and devalued. Law office management was established, in part, to assist lawyers who had encountered problems in competently engaging in the practice of law. The fact that a lawyer may also need courses now called professional development has not changed the fact that these same lawyers may also need courses in practical management. Many CLE programs are full-day courses, so the proposed rule would require a lawyer to choose between these two general categories which have both been deemed important to the Court.

2. There is no rational basis to separate out courses which an individual lawyer believes will best enable him or her to practice competently and effectively. Lawyers are now trusted to take the courses which they feel are most appropriate. The lawyer who feels the need or desire to take all of their required credits in the areas of elimination of bias, ethics, or law and literature, may do so with no limitation. The lawyer him or herself is the best judge of what is required, in any given reporting period, to practice effectively and competently. While the perspective of the public members of the State Board of CLE regarding substantive CLE requirements is appreciated and valuable, this should not be determinative with respect to a lawyer's choice regarding his or her own competence.

3. There is no requirement, guarantee or even suggestion that an attorney take courses in the substantive area(s) in which he or she actually practices or plans to practice. The lawyer who feels the need to take nearly all of their required course work in family law, employee benefits or any other substantive area may do so. Yet, there is significant anecdotal evidence that lawyers take courses outside of their personal practice areas because of convenience or other reasons. This is also a context in which lawyers are trusted to do what they think is best for their own professional competence.

4. There is no evidence that a maximum number of credits in professional development is needed to ensure the competence of lawyers and the protection of the public. In comparison with law and literature courses we would note that the CLE Board stated in its petition that no lawyer had applied for more than 8 hours of credit for law and literature. The Board then concluded, "[g]iven this history, the Board is not concerned that law and literature courses will be taken in large numbers by attorneys at the expense of attendance at traditional CLE courses." Given no history, why is it then appropriate to place a 6-hour limitation on professional development in combination with law office management courses? By placing such a limitation, the Board suggests that either 1) professional development courses, and by inclusion in the new proposed definition law office management courses, are of limited value in comparison to all other courses or 2) that professional development courses, as proposed, are alone among all CLE offerings in that they are susceptible, in some way, to misuse by the lawyers who would choose to take these courses rather than others. In either case, there is a clear implication to lawyers as well as to CLE providers that personal development courses are of limited value yet no evidence is offered for this implication.

5. Limiting credits in a particular category is a disservice to a significant percentage of members of the bar who do not practice law in a traditional setting yet choose to maintain their licenses and complete CLE requirements. These attorneys also represent the profession and by choosing to be licensed, continue to bear responsibilities to the justice system and to the public. These include lawyers in government, including the courts, business, non-profit organizations, academic settings, bar associations and others. While some CLE providers choose to present programming aimed entirely or primarily at lawyers in traditional practice, their choice to serve a portion of licensed attorneys is not determinative of what is appropriate for all licensed attorneys. It may well be that professional development courses are the most suitable substantive courses to ensure competence of that sizeable population of nontraditional attorneys.

6. The problems of chemical and mental health in the profession are well known to the Court, and have resulted in the establishment of a Lawyers' Assistance Program (LAP) and other Court initiatives. Mental illness, at a crisis point, is a disability and thus CLE credit has been sought and typically awarded for instruction and discussion under Elimination of Bias rules. Chemical dependency education has often been offered in the context of the rules that are

violated and the malpractice that is committed when crisis is reached and thus ethics credit is sought and awarded. A lawyer is not limited in taking courses around these issues if a crisis has occurred. If a lawyer genuinely needs education to help prevent the crises that are awarded bias or ethics credit, why should he or she be limited in taking professional development and management courses which can help prevent these crises? This applies not only to the lawyer who needs help but to the lawyer who wants to know how to help before his or her colleague reaches the crisis stage. The educational mandate which is included in the establishment of the LAP requires education that can lead to prevention. The requirement in the proposed rule's definition that professional development is "designed to enhance the development and performance of lawyers," should assure that approved courses will deal with matters relevant to our work as lawyers. Further protection is provided by the exclusion of therapy from allowable professional education.

In conclusion, the MSBA Life and the Law Committee welcomes the new definition of professional development courses and encourages the Court to adopt it. However, we oppose its inclusion in the 6-hour limitation for law office management courses. We strongly urge the Court to consider the purpose of the addition of this course category in rendering its decision on the final rule.

Sincerely yours,

Joan Bibelhausen

Joan M. Bibelhausen, Chair
Minnesota State Bar Association
Life and the Law Committee

Betty Shaw
2649 Huntington Ave South
St. Louis Park, MN 55416

September 10, 2003

Mr. Frederick Grittner
Clerk of the Appellate Courts
305 Minnesota Judicial Center
25 Rev. Martin Luther King Blvd.
St. Paul, MN 55155

RE: Hearing to Consider Proposed Amendments to the Rules of the Minnesota Supreme Court and State Board for Continuing Legal Education of Members of the Bar

Dear Mr. Grittner,

I am writing to request that the proposed new CLE rules not include professional development courses in the law office management category. A competent attorney needs not only legal knowledge and skills (content and law office management courses) but also character (hence ethics and bias courses) and fitness (professional development courses).

In every aspect of my legal career I have seen and personally experienced the need for CLE courses in professional growth and development. As a woman entering practice in my late thirties, I immediately confronted the issue of balance in my life. I had four girls ages 7 to 14 when I started to work in the litigation department of a large, prestigious Minneapolis firm. I was soon overwhelmed by the dual commitments of work and family, felt totally isolated and ashamed that I, who had previously never met anything she couldn't handle, was now unable to sort out on my own how to "have it all." A CLE course on professional development was exactly what I needed but could not find back in the early 1980s.

After deciding that big firm litigation was not a good fit for me and my lifestyle, I spent almost two years in my own solo consulting practice. I had never run a business and there were no CLE resources on law office management to help me get started. I soon discovered that solo practice was not right for me either. During this period of my life I needed CLE courses in both law office management and in professional development.

Neither were available at that time. With the support of faith, family and friends, I made it through this difficult period. I was very lucky.

In 1985 I was fortunate enough to find a position which fit both my skills and my lifestyle. I have worked for the Office of Lawyers Professional Responsibility for 18 years. In that position I have seen many, many attorneys who have, at some point in their careers, needed CLE courses in both professional development and law office management during a single reporting period. I see this as an increasing concern. More and more attorneys with less than three years of practice are facing disciplinary investigations. Many of them are solo by default, that is, they did not plan to have a solo practice but have not been able to find any other position. They are in need of law office management classes and professional development classes to help them establish viable practices under stressful conditions. I see other attorneys in high stress positions who may need help in finding a new career direction. For some that new direction may be solo practice. The inclusion of professional development in the law office management category with a 6 hour cap would prevent them from getting the combination of classes they needed at a critical time in their career.

I applaud the Court's recognition of professional development as appropriate courses for Continuing Legal Education. I believe that such courses are directly related to the practice of law and are vitally necessary for a significant number of attorneys at some point in their career.

Very truly yours,

A handwritten signature in cursive script that reads "Betty Shaw". The signature is written in dark ink and is positioned above the printed name.

Betty Shaw

OFFICE OF
APPELLATE COURTS

SEP 12 2003

FILED

MINNESOTA
LAWYERS CONCERNED FOR
LAWYERS

**STATEMENT
To**

THE MINNESOTA SUPREME
COURT

SEPTEMBER 12, 2003

September 4, 2003

The Honorable Justices of the Minnesota Supreme Court
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Boulevard
St. Paul, MN 55155

Re: Proposed Amendments to the Rules of the Minnesota Supreme Court
and State Board for Continuing Legal Education of Members of the Bar

Dear Chief Justice Blatz and Justices Page, Anderson, Gilbert, Anderson,
Meyer, and Hanson:

On behalf of Lawyers Concerned for Lawyers (LCL), I respectfully request the opportunity to appear, along with a lawyer member of our board, at the September 24 hearing to present LCL's position and to respond to the Court's questions, if any.

LCL is a nonprofit organization that has provided confidential services to lawyers, judges, law students and their families with chemical dependency for 26 years, and most recently to those with mental health problems. To carry out its mission and its responsibilities as provider of Minnesota's Lawyers Assistance Program (LAP), LCL must educate the legal profession on the impact of chemical abuse and dependency and mental illness on the profession, the legal system, and the public. In order to effectively support prevention and early intervention it must also educate the public about the precursors of these conditions and strategies for minimizing or eliminating their development.

LCL traditionally performed public education by presenting to bar associations and other groups throughout the state. Within the last several years, LCL has presented and participated in continuing legal education programs that have received credit as ethics and professional responsibility or elimination of bias courses. Our expanded and accredited programming is being presented to an increasing number of attorneys statewide and has been very favorably received. As the Board of Continuing Legal Education Petition recognizes, the new rule does not affect the elimination of bias and

ethics credits which are granted for programs addressing the disabilities of chemical dependency and mental illness and the impact of chemical abuse, dependency, and mental illness on the disciplinary and wider court system.

Under the current CLE rules, LCL programming can address chemical dependency, abuse, and mental illness once it strikes its victims and becomes disabling. LCL is able to educate lawyers on these medical and psychological conditions as a disability or disciplinary issue and discuss their impact on the lawyers, judges, clients, and members of the public who are its victims and their impact on the disciplinary and justice system. Unfortunately, once an individual is disabled by a chemical or mental problem, it presents an additional barrier to accurate self-assessment.

The current CLE rules do not allow LCL to educate lawyers on how to prevent or reduce the risk of chemical abuse and dependency, mental illness, mental disorders, or other addictions. Ironically, although LCL staff and Board members attend the annual four-day education program sponsored by the ABA Commission on Lawyer Assistance programs to hear the ABA President speak on quality of life and the future of the profession and learn about scientific developments in chemical dependency and current LAPs' efforts to help lawyers, we can neither receive CLE credit nor present accredited programming on these topics in our home state, as other LAPs can.¹

LCL accordingly supports the proposed rule change that recognizes this important professional development programming for lawyers by granting CLE credits. Recognition that the content of "professional development courses" is deserving of credit enables lawyers to identify developing and existing personal problems in themselves and others that directly and substantially affect their practice of law and their clients' welfare.

Professional development programming is not merely desirable; it can save lives. Suicide is one of the leading causes of death among lawyers, and depression is the number one cause of suicide². The link between high

¹ See the ABA's Uniform Certificate of Attendance and the Minnesota CLE Board's rejection of all credit for the seminar (ATTACHMENT 1). Based on anecdotal evidence from attendees, other states have approved credit for the conference. (Ohio: 2.5 substance abuse, 2.0 ethics, 11.0 general; Kentucky: 9.0 general, 2.5 ethics; Tennessee: 13.0 ethics/professionalism, 2 dual hours; Oregon: full credit for general courses, up to 18 per three year period in personal management topics; Nevada: 12.5).

² Johns Hopkins Medical School study done in 1990 as reported in GPSolo p. 20 (ABA General Practice, Solo & Small Firm Section, July/August 2001).

levels of stress in the legal profession and depression has been well established³. Lawyers are more than twice as likely to suffer from depression (More than 40% of lawyers compared to 20% of the general population) and alcohol abuse and dependence (15-18% of lawyers compared to 7-10% of the general population).⁴ Up to 60 percent of individuals who suffer from chemical dependency have an underlying mental illness.⁵ Education, prevention and early intervention are the keys to saving lives, families, and law practices along with supporting the quality of the practice of law.

Professional development programming that addresses prevention also protects the public. A lawyer's mental and chemical health is part of his or her competence. In Minnesota and across the country nearly half of lawyer discipline cases involve alcohol abuse or dependence.⁶ While the numbers of disciplinary cases in which lawyers report chemical abuse or dependency have begun to decline, the number of lawyers in the disciplinary process who suffer from mental illness is rising.⁷ Combined estimates of those having either chemical health and/or mental health problems indicate up to 80% of discipline cases may be the result of these disorders.⁸ Nearly 60 percent of lawyers entering the lawyer assistance program in Oregon had

³ Connie J.A. Beck, et al., *Lawyer Distress; Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 Jour. of L. & Health, 49-50 (1995-96); G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 Int'l J.L. & Psychol. 233, 233-46 (1990).

⁴ G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 Int'l J.L. & Psychol. 233, 233-46 (1990); Lynne Pregonzer, *Substance Abuse Within the Legal Profession: A symptom of a Greater Malaise*, 7 Notre Dame J. of Law, Ethics & Pub. Policy 305, 306 (1993); W.W. Eaton, et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. Occup. Med. 1079 (1990)(reporting on 1990 John Hopkins University study that found that, of 28 professions, attorneys are most likely to suffer from depression, at a rate 3.6 times the average for the adult population).

⁵ "Co-existing Problems of Mental Health and Substance Misuse (Dual Diagnosis): A Review of Relevant Literature." Crome, Ilana Ed. 2001. It is reported that substance abuse co-occurs in 32 percent of individuals with depressive disorders, 27 percent of those with major depression and 56 percent of those with bipolar disorder in the National Institute of Mental Health Fact Sheet "Co-Occurrence of Depression with Medical, Psychiatric, and Substance Abuse Disorders," <http://www.nimh.nih.gov/publicat/abuse.cfm>

⁶ Amy Lindgren, *Counting the Costs: Substance Abuse in the Legal Profession*, 47 Bench & B of Minnesota 3, p. 22 (Mar 1990); I. Zarov and B. Fishleder, *New Study Shows Recovery Saves Dollars*, 5 Highlights of the ABA Commission on Lawyer Assistance Program 2, 1-2 (Spring 2002).

⁷ Comments of Former Director of Office of Lawyers Professional Responsibility Edward Cleary to MSBA Depression Task Force (1999).

⁸ "New Study Shows Recovery Saves Dollars," Zarov, Ira and Fishleder, Barbara S. 5 Highlights of the ABA Commission on Lawyer Assistance Programs 2, p. 2 (Spring 2002).

malpractice claims pending.⁹ A recent study by the State of Oregon found that lawyers who received treatment had below average discipline and malpractice rates, whereas pre-treatment rates were four times higher than average.¹⁰

If the credit for professional development is approved, LCL anticipates being able to expand education in the following areas, among others: alcohol and other drug abuse, gambling and other addictions, chronic stress and other triggers for mental and physical illnesses, mental illness and its treatment, preventing burnout, suicide prevention, balancing the practice of law and life, and career transitions. LCL believes this education will effect early identification and prevention, and thereby reduce suffering, improve the profession, and protect the public.

While the proposed rule seeks to remove obstacles to educating lawyers on these important issues, LCL is concerned that the proposed 6 credit hour maximum creates a new barrier. Although the rule appears to expand a lawyer's opportunity to acquire knowledge and skills to identify and address problems that interfere with competency, the cap actually reduces the lawyer's ability to choose law office management courses and other courses which may also be needed by the lawyer. For example, if a lawyer took the career resilience course that was the impetus to the rule change, he or she could not apply towards his or her CLE requirement any other accredited course in professional development during the remainder of the three year reporting period.

The credit hour maximum implies that programs that benefit the lawyer as a professional are not legitimate legal education, which ignores the connection between professional development and competency. The resulting stigma may well discourage the lawyers who most need professional development courses from taking them.

The proposed credit maximum demeans lawyers by its implicit assumption that they are not willing or able to exercise their professional judgment to choose the educational topics and number of sessions that will most benefit them in their practice at this point in time. At the same time, the current

⁹ G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, supra at 244; I. Zarov and B. Fishleder, *New Study Shows Recovery Saves Dollars*, 5 Highlights of the ABA Commission on Lawyer Assistance Program 2, 1-2 (Spring 2002).

¹⁰ Id.

rules allow a business lawyer to determine in a particular reporting period that she will satisfy all of her CLE requirements by taking ethics and elimination of bias courses and perhaps a program in family law because it sounds interesting, while taking none in her practice area. The lawyer has the discretion to determine what programs she does not need in order to be competent, e.g. additional business law programs. The lawyer should be given the same discretion to determine what professional development programs she does need in order to be competent¹¹.

The proposed credit maximum reflects a step backward in addressing the problems we face as a profession. At the time LCL began its work more than 25 years ago, Minnesota lawyers could proudly say that Minnesota was on the cutting edge of addressing chemical dependency in the profession. LCL was the first program of its kind and served as the model as lawyer assistance programs were established in every state. Although Minnesota lagged behind as other states established funded LAP programs, this Court officially recognized and took steps to address chemical dependency and mental illness by establishing a funded LAP. This Court now can support continued progress and improve the legal profession to benefit lawyers and their clients. For Minnesota CLE Rules to arbitrarily limit this critical programming, while other states require *minimums*¹², would cause harm to attorneys and their clients, be regressive in its assumptions about the profession, and create a negative image of the state's legal administration and LAP in the context of the national movement to humanize and advance the practice and practitioners of the law.

The proposed credit maximum stands to negatively impact those who are most in need of the programming. Ironically, the lawyers least able to devote time or money to unaccredited programs may be most in need of the programming. In theory, lawyers are free to attend programs regardless of whether they receive CLE credit. The reality is that many will be unable to do so for the very reasons they are in distress. For example, the lawyer whose daily life is a conflict between billing hours and keeping his family

¹¹ This would give lawyers the same choices judges have to use personal and professional development programming to satisfy their CJE requirements.

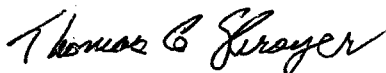
¹² The following states have minimum credit requirements for substance abuse; none impose a maximum: Arizona: 3 hr/yr minimum in ethics, professionalism, substance abuse or adr; California: 1 hr/3 yr minimum substance abuse; New Hampshire: 2 hr/yr minimum for legal ethics or substance abuse; Ohio: 2 hr/2 yr ethics of which .5 must be substance abuse; Pennsylvania: 1 hr/yr minimum ethics, professionalism or substance abuse; West Virginia: 3 hr/2 yr ethics, office management, or substance abuse. (Source: ABA Summary of MCLE State Requirements 2003, ATTACHMENT 2.)

together does not have the time to attend non-credited programs. The lawyer who is barely keeping her head above water and needs both law office management and stress management skills does not have the time or the money to take non-credited programs. The lawyer whose employer allows time off and payment only for programs that receive CLE credit is effectively barred from additional education. Lawyers must have the full support of the legal profession and institutional incentives to participate in professional development programs that equip them to effectively manage current conditions which profoundly impact their practices, instead of "substantive" programs which they do not currently need.

As the statistics above show, chemical dependency, chemical abuse, and mental illness affect a large number of members of the profession. These lawyers serve the public in a vast array of positions at all levels of our system of justice. Giving lawyers the tools to take control of their professional lives and to recognize developing problems in themselves and their peers can save lives, protect clients, and improve the profession.

For these reasons, LCL respectfully urges the Court to approve the proposed amendment of the CLE rules allowing lawyers to receive credit for professional development programs that will enable them to be healthy, effective, and competent members of the profession, and, of equal importance, to reject the proposed cap on the number of hours which can be used in this category to satisfy CLE requirements.

With all respect and appreciation,



Thomas G. Shroyer Ph.D.

Executive Director

Minnesota Lawyers Concerned for Lawyers

Attachment 1

AMERICAN BAR ASSOCIATION

UNIFORM CERTIFICATE OF ATTENDANCE

Required sponsor documentation has been forwarded to and credit requested from MCLE states with general requirements for all attorneys. Within 30 days of this activity (or annually if required), the attorney must file this Certificate with his/her MCLE state agency if licensed in AR, CO, FL, GA, ID, IN, KS, KY, LA, ME, MS, NM, NV, ND, OH, PA, RI, TN, UT, VA, WV, or WY. Do not file this Certificate with your MCLE state agency if licensed in AZ, CA, DE, MN, MO, MT, NC, NH, NY, OK, OR, VT or WA. Filing of Certificates is optional in all remaining states with MCLE requirements. Attorneys should keep the original or a copy of this Certificate for your files. The ABA pays applicable fees in states where the sponsor is required to do so as well as in states where a late fee may become applicable. Please be aware that each state has its own rules and regulations indicating what qualifies for 'CLE' and 'Ethics' credits. Therefore, certain programs may not receive credit in some states. You may wish to check with your state for confirmation of a program's approval.

Sponsor: Commission on Lawyer Assistance Programs (CoLAP)

Activity Title: 15th National Workshop for Lawyer Assistance Programs

Date: October 2-4, 2002

Location: Portland, ME

State Activity Number: _____

(For those states designating program numbers.)

Program Date	Start Time	End Time	# of Mins	Ethics ?	Non-Ethics			Session Title
					Law Prac. Mgmt ?	Sub-stance Abuse ?	General ?	
10/2/02	10:15am	12:15 pm	120	N	N	Y	N	Depression and Other Mental Health Problems Facing Professionals
10/2/02	1:30 pm	3:30 pm	120	N	N	Y	N	Update on Addiction Research
10/2/02	3:45 pm	5:15 pm	90	N	N	Y	N	Continuation of Addiction Research
10/3/02	8:00 am	9:30 am	90	N	Y	N	N	Transforming Practices: The Future of the Profession
10/3/02	9:45 am	11:15 am	90	N	N	Y	N	Outreach to Law Schools: Faculty and Students
10/3/02	11:15 am	12:15 pm	60	N	N	Y	N	Women's Issues
10/3/02	1:00 pm	1:30 pm	30	N	N	N	Y	Future of ABA and Quality Life for Bar Members
10/3/02	1:30 pm	2:30 pm	60	N	N	N	Y	Career Options After Discipline
10/3/02	1:30 pm	2:30 pm	60	N	N	Y	N	Early Recover Stats
10/3/02	1:30 pm	2:30 pm	60	N	N	N	Y	Clearing Away Stress: The Inside Job
10/3/02	1:30 pm	2:30 pm	60	Y	N	N	N	Retirement Planning
10/3/02	3:00 pm	4:00 pm	60	Y	N	N	N	Dealing with Ethical Atrophy

10/3/02	3:00 pm	4:00 pm	60	N	Y	N	N	LAP Directors' Management Manual
10/3/02	3:00 pm	4:00 pm	60	N	Y	N	N	Grief and Loss
10/3/02	3:00 pm	4:00 pm	60	N	N	Y	N	Educating Judges to Recognize Signs of Chemical Dependency, Gambling and Depression
10/4/02	8:00 am	10:00 am	120	N	N	Y	N	Issues of Ethnicity and Race and Treatment: How to Effectively Outreach to Minorities
10/4/02	10:15 am	11:45 am	90	N	N	Y	N	Gambling Addictions: Treating the Disease

We have **requested**
a total of:

15.50 CLE credit hours based on a 60-minute hour

18.60 CLE credit hours based on a 50-minute hour

of this total

2.00 Ethics credit hours based on a 60-minute hour

2.40 Ethics credit hours based on a 50-minute hour

2.50 Law Practice Management credit hours based on a 60-minute hour

3.00 Law Practice Management credit hours based on a 50-minute hour

13.50 Substance Abuse credit hours based on a 60-minute hour

16.20 Substance Abuse credit hours based on a 50-minute hour

Note: Depending on your state's rules, Welcome/Opening Remarks may or may not be approved for CLE credit.

◆ **Do not return this certificate to the ABA.** ◆

TO BE COMPLETED BY ATTORNEY:

PLEASE NOTE: To calculate the number of credits you are eligible to claim, add up the total number of minutes of programming actually attended (use the above table or requested totals for reference), then divide the total number of minutes attended by 60 (for 60 minute states – see How to get the most ... sheet) or by 50 (for 50 minute states – see How to get the most...)

[NOT INTENDED FOR USE BY NEW YORK LICENSED ATTORNEYS]

By signing below, I certify that I attended the activity described above and am entitled to claim CLE credit hours including _____ ethics credit hours.

Attorney Name (Print)

Signature

Membership, Registration or Supreme Court Number

Date

State where credits are to be registered _____

(Complete a Certificate for each state to which you are required to report.)

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Richard A. Nelson
Virginia Portmann
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Marshall H. Tanick
Judith A. Wein



Galler Plaza, Suite 201
380 Jackson Street
Saint Paul, MN 55101
Tel: (651) 297-7100
Fax: (651) 296-5866
Net: info@mbcle.state.mn.

TTY Users
1-800-627-3529
Ask For 296-4541

Margaret Fuller Cornelle, E
Director

Cleone Brazil
Administrator

THE SUPREME COURT OF MINNESOTA BOARD OF CONTINUING LEGAL EDUCATION

ABA-COMMISSION ON LAWYER ASSISTANCE PROGRAM
514 N. FAIRBANKS COURT
CHICAGO, IL 60611

NOVEMBER 4, 2002

ATTENTION: EVELYN MOORE-JONES

**RE: Event Code 69997: 15th Workshop for LAP: Depression and Other Mental Health
Problems Facing Professionals
Portland, ME - October 2, 2002**

We have reviewed the materials that you recently submitted for the program entitled "15th Workshop for LAP: Depression and Other Mental Health Problems Facing Professionals" (Portland, ME - October 2, 2002 to October 4, 2002). We have determined its eligibility for CLE credit as follows:

Credit Category	Hrs. Approved	Rejection Reasons
Entire program	0	Non-legal content

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Thomas J. Radio
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David A. Schultz
Marshall H. Tanick
Judith A. Wain



Gamer Plaza, Suite 21
380 Jackson Street
Saint Paul, MN 5510
Tel: (651) 297-7100
Fax: (651) 296-5866
Net: info@mbcle.state.mn

TTY Users
1-800-627-3529
Ask For 298-4541

Margaret Fuller Corneille
Director

Cleone Brazil
Administrator

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NOVEMBER 4, 2002

ATTENTION: EVELYN MOORE-JONES

**RE: Event Code 70633: 15th Workshop for LAP: LAP Directors' Management Manual
Portland, ME - October 3, 2002**

We have reviewed the materials that you recently submitted for the program entitled "15th Workshop for LAP: LAP Directors' Management Manual" (Portland, ME - October 3, 2002). We have determined its eligibility for CLE credit as follows:

Credit Category	Hrs. Approved	Rejection Reasons
Entire program	0	Non-legal content

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Marshall H. Tanick
Judith A. Wain



Gartner Plaza, Suite 20
380 Jackson Street
Saint Paul, MN 55101
Tel: (651) 297-7100
Fax: (651) 298-5866
Net: info@mbcle.state.mn

TTY Users
1-800-627-3529
Ask For 298-4541

Margaret Fuller Corneille,
Director

Cleone Brazil
Administrator

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NOVEMBER 4, 2002

ATTENTION: EVELYN MOORE-JONES

**RE: Event Code 70630: 15th Workshop for LAP: Clearing Away the Stress
Portland, ME – October 3, 2002**

We have reviewed the materials that you recently submitted for the program entitled "15th Workshop for LAP: Clearing Away the Stress" (Portland, ME – October 3, 2002). We have determined its eligibility for CLE credit as follows:

Credit Category	Hrs. Approved	Rejection Reasons
Entire program	0	Non-legal content

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Thomas J. Radio
Hon. James D. Rogers
David A. Schultz
Marshall H. Tanick
Judith A. Wain



Galtier Plaza, Suite 20
380 Jackson Street
Saint Paul, MN 55101
Tel: (651) 297-7100
Fax: (651) 296-5866
Net: info@mbcle.state.mn

TTY Users
1-800-627-3529
Ask For 296-4541

Margaret Fuller Corneille,
Director

Cleone Brazil
Administrator

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NOVEMBER 4, 2002

ATTENTION: EVELYN MOORE-JONES

**RE: Event Code 70629: 15th Workshop for LAP: Early Recovery Stats
Portland, ME - October 3, 2002**

We have reviewed the materials that you recently submitted for the program entitled "15th Workshop for LAP: Early Recovery Stats" (Portland, ME - October 3, 2002). We have determined its eligibility for CLE credit as follows:

Credit Category	Hrs. Approved	Rejection Reasons
Entire program	0	Non-legal content

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Richard A. Nelson
Virginia Portmann
Thomas J. Radio
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David A. Schultz
Marshall H. Tanick
Judith A. Wain



Galtier Plaza, Suite 201
380 Jackson Street
Saint Paul, MN 55101
Tel: (651) 297-7100
Fax: (651) 296-5866
Net: info@mbcle.state.mn

TTY Users
1-800-627-3529
Ask For 296-4541

Margaret Fuller Comeille, Esq.
Director

Cleone Brazil
Administrator

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514 N. FAIRBANKS COURT
CHICAGO, IL 60611

NOVEMBER 4, 2002

ATTENTION: EVELYN MOORE-JONES

**RE: Event Code 70628: 15th Workshop for LAP: Career Options After Discipline
Portland, ME – October 3, 2002**

We have reviewed the materials that you recently submitted for the program entitled "15th Workshop for LAP: Career Options After Discipline" (Portland, ME – October 3, 2002). We have determined its eligibility for CLE credit as follows:

Credit Category	Hrs. Approved	Rejection Reasons
Entire program	0	Non-legal content

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Richard A. Nelson
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Marshall H. Tanick
Judith A. Wain



Galtier Plaza, Suite 20
380 Jackson Street
Saint Paul, MN 55101
Tel: (651) 297-7100
Fax: (651) 296-5866
Net: info@mbcle.state.mn

TTY Users
1-800-627-3529
Ask For 296-4541

Margaret Fuller Corneille,
Director

Cleone Brazil
Administrator

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NOVEMBER 4, 2002

ATTENTION: EVELYN MOORE-JONES

**RE: Event Code 70627: 15th Workshop for LAP: Future of ABA and Quality of Life for Bar Members
Portland, ME – October 3, 2002**

We have reviewed the materials that you recently submitted for the program entitled "15th Workshop for LAP: Future of ABA and Quality of Life for Bar Members" (Portland, ME – October 3, 2002). We have determined its eligibility for CLE credit as follows:

	Credit Category	Hrs. Approved	Rejection Reasons
Entire program		0	Non-legal content

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Virginia Portmann
Thomas J. Radio
Hon. James D. Rogers
David A. Schultz
Marshall H. Tanick
Judith A. Wain



Galtier Plaza, Suite 201
380 Jackson Street
Saint Paul, MN 55101
Tel: (651) 297-7100
Fax: (651) 296-5866
Net: info@mbcle.state.mn

TTY Users
1-800-627-3529
Ask For 296-4541

Margaret Fuller Corneille, E
Director

Cleone Brazil
Administrator

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NOVEMBER 4, 2002

ATTENTION: EVELYN MOORE-JONES

**RE: Event Code 70625: 15th Workshop for LAP: Outreach to Law Schools
Portland, ME - October 3, 2002**

We have reviewed the materials that you recently submitted for the program entitled "15th Workshop for LAP: Outreach to Law Schools" (Portland, ME - October 3, 2002). We have determined its eligibility for CLE credit as follows:

Credit Category	Hrs. Approved	Rejection Reasons
Entire program	0	Non-legal content

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Richard A. Nelson
Virginia Portmann
Thomas J. Radio
Hon. James D. Rogers
David A. Schultz
Marshall H. Tanick
Judith A. Wain



Gallier Plaza, Suite 2
380 Jackson Street
Saint Paul, MN 55101
Tel: (651) 297-7100
Fax: (651) 296-5861
Net: info@mbcle.state.n

TTY Users
1-800-627-3529
Ask For 296-4541

Margaret Fuller Corneille
Director

Cleone Brazil
Administrator

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514 N. FAIRBANKS COURT
CHICAGO, IL 60611

NOVEMBER 4, 2002

ATTENTION: EVELYN MOORE-JONES

**RE: Event Code 70624: 15th Workshop for LAP: Transforming Practices
Portland, ME – October 3, 2002**

We have reviewed the materials that you recently submitted for the program entitled "15th Workshop for LAP: Transforming Practices" (Portland, ME – October 3, 2002). We have determined its eligibility for CLE credit as follows:

Credit Category	Hrs. Approved	Rejection Reasons
Entire program	0	Non-legal content

Minnesota Board of Continuing Legal Education

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Attachment 2

Summary of MCLE State Requirements

State	Requirements
ALABAMA	12 hrs. per calendar year. Reporting date: December 31.
ARIZONA	15 hrs. per calendar year including 3 hrs. ethics/professional responsibility, professionalism, substance abuse, or ADR. Reporting date: September 15.
ARKANSAS	12 hrs. per year including 1 hour of legal ethics. Reporting date: June 30.
CALIFORNIA	25 hrs. over 3-year period including 4 hrs. legal ethics; 1 hr. substance abuse and 1 hr. elimination of bias in the profession. Reporting date: January 31.
COLORADO	45 hrs. over 3-year period including 7 hrs. legal ethics, professionalism. Reporting date: anytime within 3 year period.
DELAWARE	24 hrs. over 2-year period including 4 hrs. Enhanced Ethics, Fundamentals of Law 3-day series for new admittees (within 4 yrs of admission). Reporting date: December 31.
FLORIDA	30 hrs. over 3-year period including 5 hrs. legal ethics, professionalism, substance abuse, or mental illness awareness; basic skill course for newly admitted attorneys. Reporting date: assigned month every 3 years.
GEORGIA	12 hrs. per year including 1 hr. legal ethics, professionalism, basic skills within 1st 2 yrs., ADR 3 hrs. one time only. Reporting date: January 31.
IDAHO	30 hrs. over 3-year period including 2 hrs. legal ethics, basic skills course for new admittees. Reporting date: every 3rd year after admission.
INDIANA	36 hrs. over 3 calendar year period with 6 hr. minimum per year including 3 hrs. legal ethics. Reporting date: December 31.
IOWA	18 hrs. per calendar year including 2 hrs. legal ethics every 2 years. Reporting date: March 1.
KANSAS	12 hrs. per year including 2 hrs. legal ethics. Reporting date: 30 days after program.
KENTUCKY	12.50 hrs. per year including 2 hrs. legal ethics, new lawyer skills training within 12 mos. of admission. Reporting date: June 30.
LOUISIANA	18 hrs. per year including 1 hr. legal ethics, professionalism-1 hr./year. Reporting date: January 31.
MAINE	11 hrs. per year including 1 hr. ethics or professional responsibility. Reporting date annually in connection with the filing of the registration statement required by Rule 6(a).
MINNESOTA	45 hrs. over 3-year period, 3 hrs. legal ethics, 2 hrs. elimination of bias required, maximum of 6 hrs. law office management. Reporting date: August 30.
MISSISSIPPI	12 hrs. per year including 1 hr. legal ethics, professional responsibility, or malpractice prevention each year. Reporting date: July 31.
MISSOURI	18 hours per year including 3 hrs. ethics every 3 years, new admittees 3 hrs. professionalism, legal/judicial ethics within 12 mos. Reporting date: July 31.
MONTANA	15 hrs. per year. Reporting date: March 1.
NEVADA	12 hrs. per year of which 2 must be in ethics. Reporting date: March 1.
NEW HAMPSHIRE	12 hrs. per year/at least 6 from out of the office live programs, including 2 hrs. legal ethics/professionalism, or substance abuse. Reporting date: August 1.
NEW MEXICO	15 hrs. per year including 1 hr. ethics. Reporting date: Prior to March 1 annually.
NEW YORK	24 hrs. over 2 year period. 4 hrs. of ethics/professionalism; 8 hrs. of practical skills; and 7 hrs. of LPM and areas of general professional practice. Reporting period: every 2 years from the time admitted to the Bar.
NORTH CAROLINA	12 hrs. per year including 2 hrs. ethics, 9 of the 12 hrs. in practical skills during first 3 yrs. of admission, and 1 hr. substance abuse or debilitating mental conditions every 3 yrs. Reporting date: February 28.
NORTH DAKOTA	45 hrs. over 3-year period, 3 hrs. ethics every 3 yrs. Reporting date: June 30.
OHIO	24 hrs. every 2 years including 2 hrs. ethics and including 30 mins. instruction on substance abuse. Reporting date: every 2 yrs on January 31.
OKLAHOMA	12 hrs. per year including 1 hr. ethics. Reporting date: February 15.
OREGON	45 hrs. over 3-year period including 6 hrs. ethics, 1 of those 6 hrs. on child abuse reporting, 3 of the general hours must be in courses pertaining to the role of lawyers concerning racial and ethnic issues, gender fairness, disability issues, and access to justice. New admittees-15 hrs. of which 10 must be in practical skills and 2 hrs. in ethics. Reporting date: December 31 every 3 years.
PENNSYLVANIA	12 hrs. per year for all 3 compliance groups. 1 hr. ethics, professionalism, or substance abuse and a minimum of 11 hrs. of substantive law, practice and procedure. CLE credits for ethics, professionalism, or substance abuse may be applied to any substantive law, practice and procedure requirement, no more than two times the current annual CLE requirement may be carried forward into the two succeeding years. Reporting date: 30 days after program.
RHODE ISLAND	10 hrs. per year including 2 hrs. ethics. Reporting date: July 1 June 30 annually.
SOUTH CAROLINA	14 hrs. per year including 2 hrs. ethics/professional responsibility each reporting period. Reporting date: January 15.
TENNESSEE	15 hrs. per year. Including 3 hrs. ethics/professionalism. Reporting date: March 1.
TEXAS	15 hrs. per year including 3 hrs. legal ethics. 1 hr. of the 3 hrs. of legal ethics may be completed through self-study. 5 hrs. of the total 15 hrs. may be completed through self-study. Reporting date: last day of birth month each year.
UTAH	27 hrs. every 2-years including 3 hrs. ethics each reporting period. Reporting date: end of second year compliance period.
VERMONT	20 hrs. over 2-yrs. including 2 hrs. ethics each reporting period. Reporting date: July 15.
VIRGINIA	12 hrs. per year including 2 hrs. ethics each reporting period. CLE Completion deadline: October 31. Reporting date: December 15.
WASHINGTON	45 hrs. over 3 yrs. including 6 hrs. ethics, professional responsibility, professionalism, anti-bias and diversity. At least 30 credits must be earned by attendance at live CLEs, and up to 15 may be earned by self-study. Reporting date: January 31.
WEST VIRGINIA	24 hrs. over 2-yrs. including 3 hrs. legal ethics, office management, substance abuse, or elimination of bias in the profession per cycle. Reporting date: June 30 every 2 yrs.
WISCONSIN	30 hrs. over 2-yrs. including 3 hrs. ethics and professional responsibility. Reporting date: December 31st every other year.
WYOMING	15 hrs. per year including 1 hr. ethics. Reporting date: January 30.

STATE OF MINNESOTA

IN SUPREME COURT

C2-84-2163

OFFICE OF
APPELLATE COURTS

SEP 12 2003

FILED

In re: Proposed Amendments to
the Rules of the Minnesota
Supreme Court and State Board
for Continuing Legal Education
of Members of the Bar

**Comments and Suggestions of
the Minnesota State Bar
Association Practice
Management & Marketing
Section**

Request to Make Oral Presentation

In accordance with the Court's Order for Hearing, the Minnesota State Bar Association Practice Management & Marketing Section requests the opportunity to appear at the hearing concerning the Proposed Amendments to the Rules to supplement these Comments and Suggestions and respond to questions about them.

I. Comments and Suggestions Overview

The Section welcomes this Court's initiative to bring about a more holistic concept of subjects appropriate for continuing legal education accreditation. Accordingly, the Section welcomes accreditation for "professional development and performance" courses in their own right.

The Section believes that such courses, along with all other elective continuing legal education courses, including specifically those pertaining to law practice management, should receive "standard" credits.

The Petition of the Minnesota State Board of Continuing Legal Education for a rules change proposes instead to create a new category of "professional development and performance" courses. Courses in this new, expanded category would include "law office management" courses. Under existing rules, lawyers may only count up to a maximum of six hours per reporting period for courses characterized as "law office management." No other courses offered to Minnesota lawyers are subject to such a cap.

The proposed rules change would expand the range of courses thrown into the new category, even though they are dissimilar, for the purpose of making them all subject to a six hours per reporting period cap.

The effect would be to further diminish Minnesota lawyers' opportunities to take the full range of continuing education courses they need to be able to cost-effectively deliver legal services to clients.

Lawyers need more, not less, education about law practice management topics. Currently, such topics appear to be disfavored with respect to CLE credits. That is not true in any other state.

We sincerely hope that it is not controversial to say that, just as lawyers need to know the law, lawyers need to know how to manage their legal work and their law practice to serve clients competently and cost-effectively.

Eleven years ago, in 1992, the authoritative MacCrate Commission, appointed by then Minnesota Supreme Court Justice Rosalie Wahl, recognized organization and management of legal work as one of ten fundamental skills every lawyer must possess before assuming responsibility for client matters.

Follow up surveys of Minnesota lawyers in the late 1990s revealed that neither law schools nor continuing legal education courses are providing Minnesota lawyers the law practice management education they believe they need. Instead, lawyers mostly fend for themselves or learn from other lawyers when it comes to practice management.

Many malpractice and ethical lapses arise from law practice management failings. We believe restricting lawyers from receiving credits in this vital area harms both lawyers and clients. The Rules reasonably repose trust in lawyers to make wise decisions about every type of continuing legal education course except one type – “law office management” courses – even though they may be needed much more than legal refreshers and may have far greater impact by improving a lawyer’s practices across the board.

To remedy this problem, we urge the Court to reject the proposed Rule amendment insofar as it proposes to alter the “law office management” category to address the Court’s interest in expanding the scope of courses eligible for continuing legal education credit and instead abolish “law office management” as a special, restricted category entirely.

It is time to confirm that law practice management courses are indeed an integral part of the overall tapestry of continuing legal education lawyers should be free to take for credit.

Accordingly, we suggest that there should be two basic categories of continuing legal education courses: “required” courses (currently, ethics and elimination of bias) and “elective” courses (all others).

As in law school, lawyers should be free to choose their elective courses according to their own individualized educational and practice needs.

We respectfully suggest that implementing this suggestion will strengthen continuing legal education in Minnesota and recognize the profession’s best thinking about skills needed to effectively deliver legal services to clients.

The days when lawyers did not need to know how to manage are gone, if they ever existed. CLE Rules that restrict educational opportunities about law practice management topics should likewise recede into the past.

II. About the MSBA Practice Management & Marketing Section

The Minnesota State Bar Association Practice Management & Marketing Section came into being in 2002 as a result of the merger of the former MSBA Law Practice Management Committee with the former MSBA Marketing and Client Service Section. Section bylaws identify the reason why a distinct section for practice management and marketing exists:

“The purpose of the Practice Management & Marketing Section shall be to inquire into the ways and means of ethical and effective law practice management, law practice marketing and promotion, and to explore how changes in the legal profession, society and technology may affect law practice management and marketing now and in the future. The Section's primary concern shall be the assurance of appropriate and effective practice management and practice development techniques within the bounds set by ethical constraints and the education of Section members and others about law practice management and marketing. The Section shall operate as a clearinghouse for all matters and information relative to law practice management and marketing for the MSBA, and as a source of information to the bar.”

III. Lawyers Are Expected to Represent Clients Competently, Diligently, and at Reasonable Cost. Doing So Requires Practice Management Knowledge and Skills.

In its submission for the State's 2004-05 Biennial Budget, this Court identified the following as one of its goals:

"To regulate the admission to and practice of law in Minnesota so that each citizen seeking legal counsel is assured of **competent representation**."
(Emphasis supplied.)

<http://www.budget.state.mn.us/budget/operating/200405/prelim/193113.pdf> (December 2, 2002).

This same principle is codified into Rule 1.1 of the Minnesota Rules of Professional Conduct:

“A lawyer shall provide **competent representation** to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” (Emphasis supplied.)

The Comment to Rule 1.1 recognizes that lawyer competence and lawyer education are related:

Competent handling of a particular matter includes... use of **methods and procedures meeting the standards of competent practitioners**. ... To maintain the requisite knowledge and skill, **a lawyer should engage in continuing study and education**. (Emphasis supplied.)

Id.

Rule 1.3 of the Minnesota Rules of Professional Conduct addresses a lawyer's responsibility to be diligent:

"A lawyer shall act with reasonable diligence and promptness in representing a client."

And Rule 1.5 (a) provides the framework for compensating lawyers in private practice:

"A lawyer's fee shall be **reasonable**. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the **time and labor** required, ...

(3) the **fee customarily charged** in the locality for similar legal services[.]"
(Emphasis supplied.)

A lawyer's fee is therefore connected to the quality and efficiency of the law firm's systems and procedures for delivering legal services.

Rule 5 of the Minnesota Rules of Professional Conduct imposes managerial responsibility upon lawyers who are partners and lawyers who supervise others.

This Court's recently adopted Professionalism Aspirations recognize that lawyers are not oracles who opine about the law but workers who provide skilled services to clients, usually for a price:

A lawyer owes allegiance, learning, **skill, and industry** to a client. ... We will endeavor to achieve our clients' legitimate objectives in our office practice work and in litigation **as expeditiously and economically as possible**.

Professionalism Aspirations, II.B. Proper Conduct on Behalf of Clients,
<http://www.courts.state.mn.us/lprb/profasp.html> (adopted January 11, 2001). (Emphasis supplied.)

Meeting the expectations of these Rules and Aspirations requires lawyers to understand the fundamentals of how legal services can be delivered.

Increasingly, teams of lawyers and assistants, aided by other service providers, technologies, and tools, deliver legal services. Sole practitioners and small firms are not immune to these trends. In fact, they need and use law practice management techniques suited to their practices just as much as or more than attorneys in larger firms do. The situation is likewise in government and corporate law offices, in legal aid offices, and indeed in the courts themselves.

Management is an integral, inseparable part of modern law practice, regardless of setting. That makes Minnesota's current restriction on "law office management" credits an anomaly.

Indeed, in our research, we could not find any other mandatory continuing education state that has such a restriction.

Many of those states take the opposite approach, requiring some or a minimum number of law practice management courses, or making it one permissible way to satisfy credit requirements (along with ethics, professionalism, anti-bias, and/or substance abuse or mental illness training). *See generally* ABA Center for Continuing Legal Education, Summary of MCLE State Requirements, <http://www.abanet.org/cle/mcleview.html> (summarizing 40 states' requirements).

IV. The Current Rule 7B Already Unreasonably Restricts Law Practice Management Educational Opportunities for Minnesota Lawyers.

The Rules of the Minnesota Board of Continuing Legal Education do not limit the purpose of continuing legal education to "substantive" legal topics.

If they did cover only "substantive" law, they would omit much that is vital to know about how to actually practice law.

Rule 1 articulates a broad, eminently practical, client-focused purpose for continuing legal education:

The purpose of these Rules is ... 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 service rendered by the legal profession.**

Rules of the Minnesota Board of Continuing Legal Education, Rule 1, http://www.mbcle.state.mn.us/clerules_7_0.htm. (Emphasis supplied.)

Quality of service is dependent in part on effective law practice management.

"The primary requirement [for course approval] is that the course relate primarily to the practice of law or the lawyer's professional responsibility. ... If the subject matter covered is designed to make the participant a better lawyer -- that is, **better able to represent clients** -- the course is likely to be approved." Heidenreich, Douglas R. (then Director, State Board Continuing Legal Education), Questions and Answers Concerning Mandatory Continuing Legal Education Rules, THE BENCH AND BAR OF MINNESOTA, October 1975 at 11, 12. (Emphasis supplied.)

"CLE focuses on imparting current knowledge and **skills** needed by lawyers already engaged in practice." Harris, Frank V., Mandatory CLE: Uncommon Excess or Common Sense?, THE BENCH AND BAR OF MINNESOTA, April 1987 19, 21. (Emphasis supplied.) One such essential skill, as explored in greater depth in a subsequent section, is the ability to manage one's law practice.

Nonetheless, and despite the breadth of Rule 1, the Rules, as currently in effect, contain an anomalous limitation for any "course on law office management." Lawyers may receive credit only for a maximum of six credits per reporting period for any course characterized as "law office management." Rules of the Minnesota Board of Continuing Legal Education, Rule 7B "Law Office Management."
http://www.mbcle.state.mn.us/clerules_7_0.htm

But nowhere do the Rules define "law office management" or where its boundaries may lie. Exactly what may be included or excluded is uncertain. Moreover, the boundary between this category and courses approved for general credit is nowhere articulated in the Rules. No comment provides any rationale for why "law office management" is such a disfavored subject, warranting strict limitation lest lawyers learn too much about it.

The climate may be said to tend to deter providers from offering "law office management" courses and lawyers from taking them.

Indeed, an examination of courses approved for continuing legal education credit from July 1, 2002 to June 30, 2003 revealed that 11,165 total hours of CLE credit was delivered within Minnesota borders, and only 165 hours of that was designated "law office management," far and away the smallest percentage of any category. Fewer providers offered credit in this category than in any other.

We believe even the existing rule unnaturally restricts the size of the "market" for such courses.

No other subject is so constrained. While a lawyer would not do so for obvious reasons, under the Rules, that lawyer might well take 40 hours of accounting (a course accredited for standard credits several times in the last year) without restriction. Alternatively, the lawyer might take 45 hours of legal research (even if others actually perform research for the lawyer), 45 hours about litigation discovery (even if the lawyer never handles any discovery and has no intention to do so), etc.

Because lawyers have limited budgets and actually need to know more all the time, these examples are extremely unlikely to be found in fact (just as has been reported with respect to law and literature courses).

But in every case save one – “law office management” – the Rules reasonably repose trust in lawyers to make wise decisions about their own selection of elective courses.

In the case of “law office management,” the Rules distrust lawyers and thereby impede learning about the important bundle of skills contained in that category, no matter the quality of the instructor, the nature of the course, or the importance clients might place on their lawyer’s having the knowledge or skills in question.

Right now, if a lawyer starting out in practice needs to know more about law practice management (a term we suggest in preference to the more archaic, limited concept of “law office management”) and has to carefully spend his or her continuing legal education-budgeted dollars for that purpose, that young lawyer could earn a maximum of six CLE credits in “law office management” in his or her first three years of practice, six more over the next three years, and six more in the next three years. That is a total of just eighteen credit hours – approximately three days of training – over the entire first nine years of his or her legal career.

Certainly there could be courses in the law office administration field that are not sufficiently related to the practice of law as such as to warrant not accrediting them as CLE. But any course that deals with subjects affecting clients, work performed for clients, overall competence and effectiveness of the lawyer and the lawyer’s service team, the ability to complete legal work in a diligent and efficient manner, and the ability to provide services at reasonable cost to the client, should receive credits as sufficiently related to the practice of law to make it worthwhile for lawyers to learn about.

V. The Proposed Amendments Would Further Diminish Law Practice Management Educational Opportunities for Minnesota Lawyers.

Let us restate that we welcome the addition of approval of courses the Court has sought to bring within the realm of the recognized, accredited universe of CLE offerings.

We object only to the method by which the proposed Amendments would accomplish that.

Proposed Rule 2P creates a new definition:

“Professional Development Course” means a course or session within any course designed to enhance the development and performance of lawyers by addressing issues such as stress management, mental or emotional health, substance abuse, gambling addiction, career satisfaction and renewal, time management, law office management, technology in the law office, mentoring, or staff development.

Professional development courses do not include individual or group therapy sessions."

Petition for Rule Amendment at 8.

This definition throws some strange bedfellows together, apparently for the sole purpose of making them subject to the same six-hour cap currently applied to "law office management."

Courses about gambling addiction and technology in the law office, for example, have absolutely no points of commonality. Yet they uncomfortably are to be lumped under the miscellaneous umbrella label: "Professional Development Course."

Since courses about legal developments, procedural rules, and many other subjects could just as well have also been called "professional development courses," the new category confuses more than it clarifies. We submit it is more of a result-oriented definition than a logical one.

The Petition says nothing about the wisdom of treating "law office management," a current, if disfavored, category recognized as a basis for credits for the last seventeen years, in a new and even more restrictive fashion.

Yet, in effect this is what would happen under the proposed technique for recognizing the new types of courses for approval.

But why should the Rules force any lawyer to choose whether to have to take a course on law practice management or career satisfaction? One deals with systems and procedures. The other deals with personal intangibles, values, and lifestyles. Both may be needed, and both may be needed more so than updates on fields of law. (These days there are virtually limitless ways to keep current in legal developments, but far fewer ways to learn about other aspects of how to practice law.)

We suggest instead that the simple addition of the words "and professional development" to Rule 1 should be sufficient to accommodate the type of courses which the court wishes to add to the mix of CLE programming in Minnesota.

A comment could be added, describing the sorts of subjects that may typically be accredited. Nothing, however, should categorically preclude the offering of new and innovative courses by legitimate providers that may be valuable for lawyers in practice, designed to make them better lawyers, or help them evolve their practice to keep pace with a broader world that is changing far faster than lawyers are changing the way they practice.

We do endorse paragraph Nine of the Petition, which states that accreditation of law office management courses "encourages education of lawyers about office management

systems in order to prevent or reduce the likelihood of errors arising from lack of knowledge about such systems."

We agree. That is why we submit these Comments and Suggestions.

We can see no clear boundary between "substantive CLE" and "law practice management" CLE. Entire graduate schools and programs are devoted solely to the subject of management in general. There is abundant substance in management. Management, like law practice itself, is an eminently practical art.

It is not sufficient to say that courses about law practice management may be packaged to qualify in certain instances for ethics or elimination of bias credits.

Any subject matter might be so packaged, but we do not believe the spirit of the Rules contemplates the necessity of doing so, even if significant ethical rules are also present. No other subject matter has to fit through the eye of the ethics or elimination of bias needle to avoid limitation on the number of credits awarded to it.

The Petition states at page 11 that:

"It is anticipated that the broader definition of CLE will encourage sponsors develop programming in new areas relevant to legal practice and to the problems and concerns that affect lawyers today."

While this is undoubtedly true for the new course subject matter that will now be recognized as eligible for continuing legal education, we are aware of no evidence or basis for belief that the proposed amendments will encourage sponsors to develop more law practice management programming than already offered.

VI. The Seminal MacCrate Report Demonstrates that Law Practice Management Skills Are Fundamental to Good Lawyering.

The MacCrate Report documents fundamental skills and values of lawyering. The MacCrate Report is formally known as Legal Education and Professional Development -- An Educational Continuum, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap, published by the American Bar Association Section of Legal Education and Admissions to the Bar (1992).

Justice Rosalie Wahl appointed the initial members of the Commission in 1989 and served on the Task Force following her term as chairperson of the Section. MacCrate Report at xi. The MacCrate Report Conference was held in Minneapolis in the fall of 1993, ten years ago. Attendees included "judges, practicing attorneys, bar examiners, law clinic professors, legal writing instructors, and law librarians." Sanderson, Rosalie M., AALL Newsletter, December 1993, pp. 188-189.

The Task Force Chair, Robert MacCrate, was a former American Bar Association President. The Report itself focused across the continuum of law school, law practice, and continuing legal education.

The Report explored the largely uncharted waters: "Surprisingly ... there has been no in-depth study of the full range of skills and values that are necessary in order for a lawyer to assume the professional responsibility of handling a legal matter." MacCrate Report at 7.

The Task Force did just that, assembling its research and insights into a comprehensive "Statement of Fundamental Lawyering Skills and Professional Values." According to the Task Force, these are the skills and values lawyers should acquire "before assuming ultimate responsibility for a client." *Id.* at 125. The Statement is concerned with what it takes to practice law competently and professionally." *Id.*

The Task Force expressly hoped to influence continuing legal education programs through its work and findings:

"The Statement of Skills and Values can serve as a guide to commercial and non-profit organizations for continuing legal education -- as well as to local, state, and national bar associations -- in developing appropriate programs. It also can serve as a reference source for state bars, state supreme courts, and other entities responsible for overseeing the bar, and assessing the need for mandatory continuing legal education and evaluating the adequacy of existing programs of continuing legal education."

Id. at 129.

The Report sets out ten major skills, among them Problem Solving, Legal Analysis and Reasoning, Legal Research, Factual Investigation, Communication, Counseling, Negotiation, Organization and Management of Legal Work, and Recognizing and Resolving Ethical Dilemmas.

The Report identifies several specific aspects of Organization and Management of Legal Work as fundamental, including:

- formulating goals and principles for effective practice management,
- developing systems and procedures to ensure that time, effort, and resources are allocated efficiently,
- developing systems and procedures to ensure that work is performed and completed at the appropriate time,
- developing systems and procedures for effectively working with other people, and

- developing systems and procedures for efficiently administering a law office.

See id. at 199-202.

The Commentary explains the importance of these practice management skills to effective law practice itself:

“As studies have recognized, efficient organization and management of legal work is an essential precondition for competent practice. *See, e.g.*, AMERICAN BAR ASSOCIATION, FINAL REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON PROFESSIONAL COMPETENCE 17-18 22, 31 (1983); AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION, A PRACTICAL GUIDE TO ACHIEVING EXCELLENCE IN THE PRACTICE OF LAW: STANDARDS, METHODS, AND THE SELF-EVALUATION 241 (1992) (“[a]ll too often, a lawyer’s incompetence can be traced to poor management skills and practices”). Lawyering ability and experience are of little avail if a lawyer misses a deadline or fails to detect a conflict of interest as a result of inadequate office procedures.

This Statement’s formulation of the skill focuses on central aspects of practice management -- efficient allocation of time, compliance with deadlines, and effective collaboration with others -- which are applicable regardless of whether a lawyer is a solo practitioner, a partner or associate in a firm, or a lawyer in public service practice. The Statement also calls for some understanding of systems for administering a law office because even though new lawyers will rarely serve in the role of administrator, a certain degree of familiarity with such procedures is useful for effective functioning within a law office.

As with other skills analyzed in this Statement, this section’s analysis of practice management rests upon a certain vision of professional values. It assumes a lawyer who is committed not only to competent representation but also to pro bono work; improving the profession; and professional self-development.”

Id. at 202-203.

The MacCrate Report concludes with various recommendations for implementation, including this one concerning mandatory continuing legal education:

“The Task Force recommends that all states, including those that have yet to adopt an MCLE requirement, give serious consideration to imposing upon all attorneys subject to their jurisdiction a requirement for periodic instruction in fundamental lawyering skills and professional values.”

Id. at 312.

While our Section does not propose making law practice management education mandatory for Minnesota lawyers, the Section does respectfully note that Minnesota’s

active restriction on law practice management education stands in stark contrast to the regime envisioned by the authors of the MacCrate Report, included among them a former Justice of this Court.

The wisdom of the MacCrate Report was unavailable to Minnesota CLE rulemakers when the restriction on "law office management" credits was added in the late 1980's.

But it is available today. No apparent reason suggests itself to us why this Court would find it advantageous to depart from its teachings or why clients of Minnesota law firms, if given a voice in the matter, would want it to do so.

To us, Minnesota's current approach to "law office management" appears out of alignment with the profession's best effort to date to define the range of skills lawyers need to be competent lawyers capable of serving clients effectively. The proposed Rule amendments simply make the issue come to the surface.

VII. Minnesota Lawyers Believe Law Practice Management Skills Are Important. They Are Not Learning Them in Law School, and They Are Not Learning Them Through Continuing Legal Education.

A few years after the publication of the MacCrate Report, Professor John Sonsteng of William Mitchell College of Law surveyed Minnesota lawyers about the skills the MacCrate Report had identified as important for lawyers to possess. See Sonsteng, John, Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction, 26 WILLIAM MITCHELL LAW REVIEW 327-484 (2000).

Uniquely, in Minnesota, we have not only the wisdom of the MacCrate Report itself but also 1997 – 1999 survey responses from Minnesota lawyers about what they think they need to know to practice law, whether law school prepares them for law practice, and other sources they turn to for skills important to their law practices.

According to Professor Sonsteng:

In the areas to which [law schools] address their attention, graduates perceive themselves to be well prepared and perceive the law school curriculum to be a significant source of training. These skill areas are: (1) ability in legal analysis and legal reasoning; and (2) written communication. In the other legal practice skill areas and in all of the management skill areas, law school training does not provide a significant source of training. In these areas experience seems to be the main source of training without the former apprenticeship system's actual requirement that attorneys learn at the knee of an experienced attorney. The training is left up to the individual lawyer, for better or worse.

Sonsteng at 329-330.

In response to Professor Sonsteng's survey, eighty-five percent (85%) of participating Minnesota lawyers said organization and management of legal work is important.

Only twenty and one-half percent (20.5%) of them said law school prepared them to have that skill. *Id.* at 337.

Across the board, Minnesota attorneys validated the MacCrate Report's fundamental lawyering skills as important:

All of the lawyering skill areas defined by MacCrate were perceived by attorneys as important to their practice of the law[.]

Id. at 340.

Professor Sonsteng's survey also asked Minnesota lawyers about the source or sources through which they acquired various law practice skills.

Fewer than five percent of Minnesota lawyer respondents cited continuing legal education courses as the source of their skill in the area of organization and management of legal work. *Id.* at 367. So there is work to be done.

Professor Sonsteng's Conclusion serves as a cogent reminder that there is much more to knowing how to practice law than the substantive subjects students learn in law school:

The results of the survey indicate that, although attorneys perceive themselves to be better prepared today than they were in the past, there are many skills attorneys perceived to be important for which they did not feel well-prepared after graduating from law school. The predominant source of training for most of the skills is the attorney's own experience, observing other lawyers, law-related work while in law school and advice from other lawyers. These sources of training are strikingly similar to the apprenticeship system that the three-year law school system was intended to replace. This survey confirmed a dissatisfaction that prompted the MacCrate Report. Law schools do not do an adequate job in training lawyers in the majority of legal practice and management skills that lawyers believe are important to their practice of law. Law schools are doing a disservice to clients and the lawyers who represent them by failing to train graduates adequately in these legal practice and management skills.

The Bar has long recognized that legal training should occur throughout a lawyer's career, but our results suggest that lawyers do not receive the directed on-going training they need to practice and manage effectively. ... The skills that are not being taught are the skills that are necessary to make an office run effectively. The skills would reduce stress and increase efficiency and productivity.

Id. at 447.

VIII. In Conclusion, the Section Favors Two Classes of Credits: Required Courses and Electives. Artificial Constraints on Selecting Electives Should Be Abolished.

For all of the foregoing reasons, the Section respectfully suggests that the Court authorize credit for newer forms of continuing legal education but reject the proposed Rule amendment insofar as it proposes to lump them in with "law office management" courses.

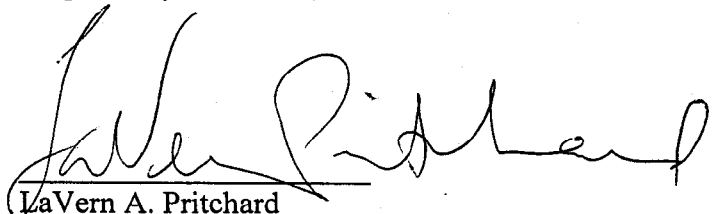
More importantly, we believe that the time has come to abolish "law office management" as a special, restricted category and integrate law practice management courses into the mainstream of continuing legal education.

We suggest there should be two categories of continuing legal education courses:

1. "required" courses (currently, ethics and elimination of bias), and
2. "elective" courses (all other courses).

Lawyers should be free to choose their elective courses according to their own individualized educational and practice needs.

Respectfully submitted,



LaVern A. Pritchard
Tel: 612-332-0102
#88444

Dated: September 12, 2003



Michael Vitt
Tel: 612-722-3449
#147234

Co-Chairs,
Minnesota State Bar
Practice Management and Marketing
Section
600 Nicollet Mall, Suite 380
Minneapolis, Minnesota 55402

DENNIS M. COYNE

Attorney At Law

Foshay Tower
Suite 1000
821 Marquette Avenue South
Minneapolis, MN 55402

Phone: (612) 375-0155
Fax: (612) 395-5236
E-mail: dcoyne@denniscoyne.com

October 17, 2003

Mr. Frederick Grittner
Clerk of the Appellate Courts
309 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Boulevard
St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

OCT 20 2003

FILED

Re: Pending Amendments to the Rules of the
Minnesota Supreme Court and State Board For
Continuing Legal Education of Members of the Bar

Dear Mr. Grittner:

I am writing to address an issue with respect to the proposed amendments to the rules of the Minnesota Supreme Court and State Board of Continuing Legal Education of Members of the Bar. The Court heard arguments on this matter on Wednesday afternoon, September 24, 2003.

2003 Career Satisfaction Program

The fourth annual career satisfaction seminar will be held on Friday, October 24, 2003. An application was submitted to the CLE Board for approval of 7.0 hours of CLE credit for the program, including 1.0 hour of ethics credit. The application for CLE credit is pending approval by the CLE Board, until such time as the Minnesota Supreme Court adopts revised rules. The CLE Board staff has advised that the amended rules will only be applied to the extent that it is clear that the revised rules are intended to be applied to courses pending CLE Board approval. In other words, the 2003 career satisfaction program will only receive an hour, or so, of CLE credit, unless the amended rules clearly state that they are to be applied to pending applications.

2002 Career Satisfaction Program

Last year, the CLE Board granted only 1.0 hour of CLE credit for the 2002 career satisfaction seminar. An appeal was taken from that decision. As with the 2003 program, the 2002 program is pending approval of CLE accreditation, while the Minnesota Supreme Court considers the adoption of revised rules.

Frederick Grittner
Clerk of the Appellate Courts
October 17, 2003
Page 2

This letter is written to urge the Minnesota Supreme Court to include a provision that the revised CLE rules apply to all pending applications for CLE credit. In the alternative, the court is urged to make provision for the revised rules to be applied retroactively to all personal development courses. Such a provision would then allow full credit for the 2000 career satisfaction program that received only 0.75 hour of CLE credit, as well as full credit for the 2001 program that received only 2.75 CLE credit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dennis M. Coyne", with a stylized flourish at the end.

Dennis M. Coyne