

STATE OF MINNESOTA

IN SUPREME COURT

C2-84-2163

**ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE RULES OF THE MINNESOTA
STATE BOARD OF CONTINUING LEGAL EDUCATION**

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 18, 2007 at 2:00 p.m., to consider the petition of the Minnesota State Bar Association to amend the Rules of the Minnesota State Board of Continuing Legal Education. A copy of the 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 12 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 August 22, 2007, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the Clerk of the Appellate Courts together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before August 22, 2007.


Dated: May 21, 2007

BY THE COURT:

OFFICE OF
APPELLATE COURTS

MAY 21 2007

FILED



Russell A. Anderson
Chief Justice

No. C2-84-2163

**STATE OF MINNESOTA
IN SUPREME COURT**

OFFICE OF
APPELLATE COURTS

MAY 7 2007

FILED

In re:

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

PETITION OF MINNESOTA STATE BAR ASSOCIATION

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STATE OF MINNESOTA

IN SUPREME COURT

NO. C9-81-1206

In re:

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

PETITION OF MINNESOTA STATE BAR ASSOCIATION

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

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

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

1. Petitioner MSBA is a not-for-profit corporation of attorneys admitted to practice law before this Court and the lower courts throughout the State of Minnesota.

2. This Court has the exclusive and inherent power and duty to adopt rules governing the examination and admission to practice of attorneys at law and rules governing their conduct in the practice of their profession. This power has been expressly recognized by the Minnesota Legislature. *See* MINN. STAT. § 480.05 (2006). In the exercise of that power, this Court has propounded the Rules of the Minnesota State Board of Continuing Legal Education (“CLE Rules” or “the Rules”).¹

3. The purpose of the CLE Rules is “to require that lawyers continue their legal education and professional development throughout the period of their active practice of law; to establish the minimum requirements for continuing legal education; to improve lawyers’ knowledge of the law; and through continuing legal education courses, to address the special responsibilities that lawyers as officers of the court have to improve the quality of justice administered by the legal system and the quality of service rendered by the legal profession.” CLE Rule 1. One of the special responsibilities of lawyers is to perform pro bono service.

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

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

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

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

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

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

The crisis of unmet need

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

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

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

² Attached in Appendix at 1

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

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

Impact of proposed rule

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

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

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

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

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

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

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

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

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

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

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

³ CLE Rule 5A(5).

⁴ CLE Rule 5A(1).

⁵ CLE Rule 5A(2).

⁶ *Id.*

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

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

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

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

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

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

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

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

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

27. As the issue of measuring pro bono service has long been a difficult one, providing limited credit for pro bono services will assist state entities such as the Legal Services Advisory Committee, the Lawyers Trust Account Board, and the Legal Services Planning Committee in their analysis of how many attorneys are volunteering and what kinds of legal needs are being met through pro bono service. While these statistics will not represent all pro bono activity in the state of Minnesota, they will prove helpful when considered together with data from other sources. Such statistics will also aid pro bono organizations in volunteer recruitment and fundraising activities.

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

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

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

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

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

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

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

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

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

29. The proposed rule has support not only from the MSBA but also from the boards of the Hennepin County Bar Association and the Ramsey County Bar Association, the Legal Services Planning Committee and the Pro Bono Council.

30. The MSBA Legal Assistance to the Disadvantaged (LAD) and Rules of Professional Conduct committees presented a Report recommending these changes to the MSBA Assembly on September 15, 2006. The Assembly approved the Report and Recommendation and resolved to ask that this Honorable Court amend CLE Rule 6 in accordance with those recommendations.

31. Members of the LAD Committee have discussed the proposed changes in Rule 6 with the executive director of the CLE Board.

32. After these discussions, additional amendments to the proposed rule were added including moving a definition section to CLE Rule 2. MSBA President Pat Kelly has approved the changes.

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

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

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

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

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

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

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

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

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

* * *

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

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

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

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

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

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

CONCLUSION

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

Dated: May 4 2007.

Respectfully submitted,

MINNESOTA STATE BAR ASSOCIATION

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Patrick J. Kelly (#189844)
Its President

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THE SUPREME COURT OF MINNESOTA
MINNESOTA JUDICIAL CENTER
25 REV. DR. MARTIN LUTHER KING JR. BLVD.
SAINT PAUL, MINNESOTA 55155

CHAMBERS OF
KATHLEEN A. BLATZ
CHIEF JUSTICE

(651) 296-3380

May 1, 2005

Dear Colleague:

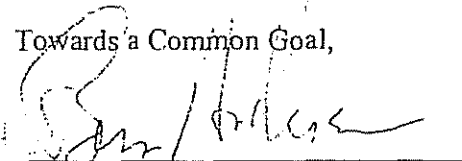
The promise of equal justice under law is the most fundamental tenet of our justice system. Today, the bench and bar face a crisis of unmet need for legal representation for the disadvantaged in Minnesota. The budget reductions to civil legal services in recent years have been severe. A judicial system that aspires to equal justice under law is diminished if it is only available to some.

The Minnesota State Bar Association has responded to this crisis by appealing to private attorneys to help fill the gap. It is appropriate that we address this ongoing effort on Law Day. Accordingly, we urge you to answer the "Call to Honor" of MSBA's Legal Assistance to the Disadvantaged (LAD) Committee. You can do so by stepping forward to take on a pro bono case for someone who will otherwise lack meaningful access to justice.

The 2004 Directory of Pro Bono Opportunities lists legal aid and other organizations where you may volunteer. This and other information on pro bono assistance is available at www.projusticemn.org.


This is a challenge we all face together. We ask you to become a part of the solution and answer the highest calling of our profession by helping to make equal access to justice a reality.

Towards a Common Goal,


Associate Justice G. Barry Anderson


Associate Justice Helen M. Meyer


Associate Justice Paul H. Anderson


Associate Justice Sam Hanson


Associate Justice Russell A. Anderson


Associate Justice Alan C. Page


Chief Justice Kathleen A. Blatz

No. **C2-84-2163**

OFFICE OF
APPELLATE COURTS

**STATE OF MINNESOTA
IN SUPREME COURT**

AUG 21 2007

FILED

In re:

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

**STATEMENT IN SUPPORT OF PETITION OF MINNESOTA STATE BAR
ASSOCIATION**

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

In re:

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

**STATEMENT IN SUPPORT OF PETITION OF MINNESOTA STATE BAR
ASSOCIATION**

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

The undersigned, clinical faculty at the University of Minnesota Law School¹, submit this statement in support of the above referenced petition. The Minnesota State Bar Association (“MSBA”) has petitioned the court for a change in the Continuing Legal Education (“CLE”) rules to allow limited CLE credit for pro bono legal services. It is our understanding that some objections have been raised to the petition on the ground that there is no educational value to engaging in pro bono work. This statement seeks to address that objection.

Clinical legal education and service learning in general are established pedagogical methods. Learning by doing has been an integral part of legal education for more than fifty years. In fact, pro bono legal work was a part of the

¹ For identification purposes only. This statement is presented in our individual capacities and does not necessarily represent the views of the University of Minnesota Law School or the University of Minnesota.

instructional program at the University of Minnesota Law School as far back as 1913, when Dean William Reynolds Vance established a legal clinic with the Minneapolis Legal Aid Society. This program was one of the first in the country in which students participated in the representation of indigent clients as a part of their formal legal education.

Clinical education provides the opportunity to learn by doing and provides the opportunity to develop what the late Donald Schon calls “thought in action.” By participation in clinics, students learn the intricacies of practice, learn the application of legal theory and doctrine and learn to deal with specific professional responsibility problems. Nationally, clinical legal educators are one of the largest segments of the Association of American Law Schools. The success of clinical legal education argues forcefully for the expansion of the Court’s conception of what should appropriately count for CLE credit.

The available pro bono programs in Minnesota are typically connected with more traditional training programs providing instruction in the basic principles of the relevant areas of law. Allowing credits for the pro bono representation itself, recognizes that it is in practice that we deepen our knowledge of particular areas of law, and expand our understanding of the nature of practice itself.

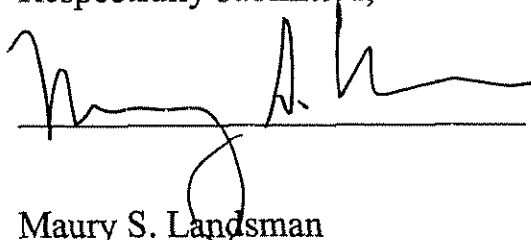
While all practice involves an educational component, pro bono work usually requires a lawyer to learn and apply an area of the law which the lawyer would typically not know or in which the lawyer would typically not practice. For example, many tax practitioners do not take on pro bono cases in which low income clients are involved because of unfamiliarity with concepts that are peculiar to this kind of client, e.g. Earned Income Credit. As another example, many lawyers who do pro bono work in asylum cases are introduced to concepts in a wholly new area of the law. Allowing the proposed rule changes would encourage a broadening of knowledge even within the confines of particular subject matters. Expansion of a lawyer's knowledge and experience is an important goal of CLE as well as professional growth.

Finally, participation in pro bono legal services connects the required ethics and elimination of bias courses with practice in a unique way. Providing pro bono legal services gives attorneys a first hand look at significant problems involving limited representation for underserved populations and insight into the unique issues faced by poor people, and those who are often on the receiving end of individual and systemic bias in the legal system.

We agree that adoption of the petition will encourage pro bono participation by Minnesota lawyers, but we also think that it has significant educational value, and we urge the Court to adopt the expansion of legal education proposed by the MSBA.

August 21, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Maury S. Landsman', is written over a horizontal line. The signature is stylized with a large initial 'M' and a long, sweeping horizontal stroke.

Maury S. Landsman
Beverly Balos
Stephen Simon
Lisa C. Stratton
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STATE OF MINNESOTA

IN SUPREME COURT

C2-84-2163

OFFICE OF
APPELLATE COURTS

AUG 22 2007

FILED

In re:

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

RESPONSE OF THE MINNESOTA BOARD OF CONTINUING LEGAL
EDUCATION TO THE PETITION OF MINNESOTA STATE BAR ASSOCIATION
AND REQUEST TO MAKE AN ORAL PRESENTATION AT THE HEARING ON
SEPTEMBER 18, 2007

Minnesota State Board of Continuing Legal Education
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STATE OF MINNESOTA

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

**RESPONSE OF THE MINNESOTA BOARD OF CONTINUING LEGAL
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TO: THE HONORABLE JUSTICES OF THE MINNESOTA Supreme Court:

The Minnesota State Bar Association (Petitioner) proposes to change Rules 2 and 6 of the Rules of the Minnesota State Board of Continuing Legal Education (Rules) to require the Minnesota State Board of Continuing Legal Education (Board) to award lawyers CLE credit for pro bono representation. Petitioner's proposal would also permit lawyers to earn CLE credit for mentoring a lawyer or supervising a law student who is representing a pro bono client. The proposed rules would grant CLE credit for representation of both individuals and organizations so long as a legal services or pro bono provider verified the individual's or organization's financial eligibility.

The CLE Board has carefully studied Petitioner's proposal and has chosen to take a neutral position on whether or not CLE credit should be awarded for pro bono representation in Minnesota. The CLE Board recognizes that there is a significant unmet need for legal representation of low income individuals, but also

recognizes that awarding CLE credit for pro bono service would be a departure from the existing requirement that Minnesota lawyers keep current with changes in the law and improve their skills by attending CLE courses in a classroom or laboratory setting.

While the Board's position is neutral on adopting a rule to allow CLE credit for pro bono activity, the Board is strongly opposed to the rule language Petitioner proposes. The language is ambiguous, does not define terms, and could be costly to administer. In addition, because the six (6) states which award CLE credit for pro bono participation have not provided clear evidence showing that such rules result in an increase in pro bono representation, the Board suggests that the cost of implementation of the proposed rule be balanced against its likely effectiveness in increasing pro bono representation.

Should the Court be persuaded that CLE credit should be awarded for providing pro bono representation, the Board concludes that three (3) requirements should be incorporated into the new rule: 1) identifiable educational objectives for any pro bono representation for which CLE credit is awarded; 2) rule language that is straightforward and includes clearly stated definitions that would decrease the likelihood of administrative challenges over rule language; and 3) initial implementation by means of a pilot project that would permit the Board to identify and address administrative concerns prior to final adoption.

The CLE Board's Director, Margaret Fuller Corneille, and the CLE Board's President, Thomas J. Radio, respectfully request to make an oral presentation

before the Court at the September 18, 2007, hearing to address the Court, to further clarify the CLE Board's submission, and to respond to any questions that the Court may have for the CLE Board regarding the proposal.

History

In 1975, Minnesota was the first state to adopt mandatory continuing legal education for lawyers. Today, forty-four (44) states have adopted mandatory continuing legal education as a condition of continued licensure. The 1975 proposal to adopt mandatory CLE was put forth by the Minnesota State Bar Association (MSBA) so that lawyers would stay current with rapidly changing laws and so that lawyers would improve their skills through classroom education. The mandatory CLE proposal was adopted nearly unanimously by the General Assembly, despite objections to the proposal by lawyers who argued that lawyers receive on the job education as they practice law. Since 1975, the Rules have required that CLE courses take place in a suitable classroom or laboratory setting.¹ (Rule 5(A)(5)). Minnesota's CLE Rules have been a model for other states and few changes to the Rules have been made since adoption. In writing the history of the bar of Minnesota, the MSBA stated that "[o]ne of the principal characteristics of mandatory CLE in Minnesota is that it was intended to establish *minimum* requirements for continuing legal education. The minimum number of required *classroom* hours was determined to be 45 every three years."²

(Emphasis added.)

¹ The Rules define "laboratory setting" as "a mock courtroom, law office, negotiation table, or other simulated setting in which demonstrations are given, role-playing is carried out or lawyers' activities are taught by example or participation." (Rule 2(F)).

² *For the Record: 150 Years of Law and Lawyers in Minnesota*, MSBA, June 1999, page 57.

Since adoption of the CLE Rules in 1975, the number of CLE courses available to lawyers (within and outside of Minnesota) and approved by the Board has increased steadily each year. In 1975, fewer than 500 courses were accredited in Minnesota; in 1978, approximately 1,397 courses received credit; in 2006, 8,649 courses received credit. (Id.; 2006 CLE Board Annual Report) Each of these courses contained a classroom component. Implementation of Petitioner's proposal would be a departure from CLE as an observable educational activity that occurs in a classroom or laboratory setting.

Purpose of Continuing Legal Education in Minnesota

Rule 1 of the CLE Rules states that the purpose of the 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. (Italics added.)

Petitioner correctly states that CLE Rule 1 requires that CLE "address the special responsibilities" of lawyers. The Board agrees that pro bono service is one of the "special responsibilities" of a lawyer. However, Rule 1 specifies that the "special responsibilities" are to be addressed through CLE courses. In fact, courses promoting pro bono participation and pro bono opportunities and courses to assist lawyers in obtaining the necessary skills to effectively represent pro bono clients are routinely approved for credit by the Board.

Petitioner states that the proposed rule would "fulfill the educational and professional development purposes of CLE through exposure to and participation

in new areas of law, development of existing skills in pro bono matters, and contact with new cultures and communities...” (Petition, ¶ 7). The language of the proposed rule does not require that lawyers be exposed to new areas of law or new cultures or communities in doing pro bono work. Nothing in the rule suggests that a greater educational experience would be obtained through pro bono practice than through working on a matter for compensation.

Petitioner compares its proposal to the law school clinical model. The difference between the law school clinical model and Petitioner’s proposal is that the law school clinical experience includes trained faculty, educational objectives, assessments of performance, and direct supervision when making court appearances. The proposed rules would give credit for pro bono participation without any of the above educational components.

Similarly, Petitioner states that pro bono work would be “done in the ‘laboratory’ of real life.” (See Petition ¶ 16.) CLE Rule 2(F) defines “laboratory setting” as:

A mock courtroom, law office, negotiation table, or other simulated setting in which demonstrations are given, role-playing is carried out or lawyers’ activities are taught by example or participation.

The “laboratory setting” of Rule 2F contemplates the presence of faculty as well as supervision and instruction. There is no requirement under the proposed rule that pro bono representation be supervised or that guidance be provided.

To the extent that the current rules require a coursework component, the purpose of CLE is not met by Petitioner’s proposal.

Professional Responsibility Aspiration

Petitioner cites to Rule 6.1 of the Minnesota Rules of Professional Conduct (MRPC) which states that “lawyers should aspire to render at least 50 hours of pro bono publico legal services per year” and to Comment 2 of that Rule which includes a broad and inclusive definition of qualifying activities. (Petition, ¶ 4.) The comment states that a full range of activities can meet the professional responsibility to provide pro bono services “including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule-making, and the provision of free training or mentoring to those who represent persons of limited means.” MRPC Rule 6.1 describes aspirational goals for lawyers and was not drafted to be administered by the Lawyers Professional Responsibility Board in the way that the CLE Board administers the CLE Rules.³ MRPC 6.1 defines a standard to which attorneys should aspire. By incorporating the language of MRPC Rule 6.1 into the proposed CLE Rules Petitioner has created an overly broad definition for what types of activities would qualify as pro bono service and could be awarded CLE credit.

The CLE Board currently has a part-time administrator and two full-time staff members who process the CLE affidavits for 25,000 attorneys and review and approve more than 8,000 courses per year. Were the Board to take on the administration of this expansive definition proposed by Petitioner, the Board would either face increased costs that at this time cannot be precisely determined, or would need to grant credit for almost any type of pro bono work

³ The CLE rules are designed to precisely determine whether course approval requests should be granted or denied credit.

claimed. Accrediting such a broad range of activities would be inconsistent with Petitioner's goal of reducing the unmet legal needs of low income individuals.

The limited number of states that have adopted rules to allow CLE credit narrowly define the types of activities that qualify for credit and limit credit to activities that involve direct representation of low income individuals or supervision or mentoring of an attorney providing direct representation. (See Appendix A.)

**Petitioner's Proposed Language is Inconsistent
with the Language and Structure of the Current CLE Rules**

There are currently 13 briefly worded CLE Rules. Rule 2 carefully defines 17 specific terms to assist lawyers and CLE sponsors in interpreting the rule requirements. The spare rule language is intended for easy understanding and efficient administration.

By contrast, Petitioner's proposed language is lengthy and unclear. For example, Petitioner's proposed Rule 2(R) provides definitions of three (3) terms: "pro bono legal services", "eligible pro bono legal services", and "legal services or pro bono provider." The definitions, however, are overlapping and use several of the defined terms in the definition. Other terms, such as "limited means," "qualifying organizations" and "financial eligibility" are not defined and would need to be if the rule were to be administered in a fair and consistent manner. It is unclear from the proposed definitions exactly what activities Petitioner intends to qualify for credit. The term "client" is not clearly defined and could include a broad array of representation of non-profit organizations or governmental entities in addition to direct representation of low income individuals.

Taken in large part from MRPC 6.1 and its commentary, proposed Rule 2(R)(A) defines “pro bono legal services” to include legal services provided without fee or expectation of fee to:

- (1) persons of limited means or
- (2) charitable, religious, civic, community, governmental and educational organizations in matters designed primarily to address the needs of persons of limited means, or
- (3) individuals, groups or organizations seeking to secure or protect the civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate.

Under this definition, CLE credit could be awarded for virtually any type of service provided without charge to a low income person or non-profit organization with a charitable, religious, civic, community, governmental, or educational purpose, including lobbying efforts. This could include organizations not generally considered in need of pro bono representation. By contrast, other states have limited CLE credit to pro bono activities providing direct representation to low income individuals.⁴

Proposed Rule 2(R)(B), defines “*eligible* pro bono legal services” as pro bono legal services to clients of limited means which are provided either through a legal services or pro bono provider⁵ or independently so long as a legal services provider has verified the financial eligibility of the client prior to services

⁴ Or to mentoring an attorney or supervising a law student who is providing pro bono representation.

⁵ Proposed Rule 2(R)(B)(a) states that “legal services or pro bono provider” is defined in Rule 6(D)(6)(C). Proposed Rule 6 does not contain clause 6(D)(6)(C). The proposed definition for “legal services or pro bono provider” appears to be 2(R)(C).

being provided. Client is not defined and when read in association with Rules 2(R)(A) and 2(R)(C) appears to include both individuals and organizations. Because the proposed definitions are ambiguous as to which volunteer activities would qualify for credit under the proposed rules, adoption of the rule could increase the number of inquiries the office receives from attorneys, legal services providers or other not for profit providers, lead to challenges to the Board's interpretation of its rules, and create administrative burdens for the Board.

Similarly, Rule 2(R)(C)⁶ defining "legal services or pro bono provider" is ambiguous. The definition includes broad, non-specific terms such as "persons with limited means" and "qualifying organizations." The rule could allow for credit for virtually any type of volunteer work including work for non-profit organizations (including religious organizations) or governmental agencies typically outside of the traditional legal aid umbrella. It is unclear who would determine whether an organization is a "legal services or pro bono provider."

The proposed rule delegates to the "legal services or pro bono provider" the authority to determine when pro bono legal services to an organization or an individual qualify for CLE. Such delegation is inconsistent with the Board's administration of CLE in Minnesota. Currently, the Rules require that the Board determine whether courses are eligible for CLE credit and retain sole discretion as to granting or denying credit and determining the type of credit to grant. The Board has not in the past delegated its authority for administering any part of its rules to a particular organization or to a type of organization as Rule 6(B)(6)(C) anticipates.

⁶ Rule 2(R)(C) references Rule 6(D)(6)(B), which is not a clause in the proposed new Rule

In addition to direct representation of persons or organizations, Petitioner proposes that attorneys receive CLE credit for mentoring attorneys and for supervising law students who are representing eligible pro bono clients or organizations. The proposed rule does not define "mentoring", "supervising" or "law student"⁷. The proposed Rule does not define the process for determining the number of credit hours for mentors nor does it indicate whether a mentor and mentee can be from the same law firm.⁸

The CLE Board's authority is limited to active, licensed attorneys. It has no authority to direct legal service or pro bono providers to issue attorneys letters of completion as provided by proposed Rule 6(D)(4).

Based upon its experience in administering the current rule set, the Board believes that a Rule that is ambiguous will be interpreted by lawyers and sponsors beyond the intended scope, and lead to costly and burdensome inquiries and challenges from lawyers, legal services providers, and not for profit organizations.

Experiences in Other States

In paragraph 28, the Petition references the six (6) states that award continuing legal education for pro bono participation and briefly summarizes each state's rule. The states that have adopted proposals allowing CLE credit for pro bono participation are Colorado, Delaware, New York, Tennessee, Washington,

⁷ Petitioner may have intended to limit the definition to law students from ABA accredited law schools, but the current definition would be open to broader interpretation.

⁸ Colorado allows attorneys mentoring attorneys 1 credit per completed matters and attorneys mentoring law students 2 credits per completed matter. Colorado Rule 260.8(3)(b)and(c); Wyoming grants a mentor of another attorney in a pro bono case 1 credit per case and states that the mentor cannot be a member of the same firm or in association with the attorney representing the indigent client Wyoming Rule 4(b)(4). Tennessee, Delaware, and New York do not grant credit to mentors.

and Wyoming; the text of the rules for each of these states is attached as Appendix A. Other states, including Arizona, California and Pennsylvania, have considered but chosen not to adopt similar proposals⁹. Although the Board does not take a position on whether Petitioner's proposal would be effective in increasing pro bono participation in Minnesota, the Board has learned from other states which administer similar rules that the rules have not been as effective as anticipated.

Administrators and organizations in some of the states that have adopted the rule indicate that the new rules have not produced the anticipated results. For example, the state of New York reported in 2006 that 7,842 attorneys participated in CLE eligible programs. Only 689 attorneys requested and were issued Letters of Participation.¹⁰ Cynthia Feathers, former director of pro bono affairs for the New York State Bar Association, stated in November 2006 that anecdotal evidence suggested that offering continuing legal education for pro bono activity has not assisted pro bono legal services providers in attracting new participants, but added in August of 2007 that while New York had no reports to quantify what impact its pro bono CLE rule had had on recruiting pro bono activity in the five years since its implementation, many approved pro bono CLE providers favored the rule as a means of conveying the importance of pro bono service. Survey responses received from a limited number of accredited providers in the State of New York stated that they had not noticed an increase in participation since the rule was adopted. Similarly, in January 2007 Sharlene Steele, Access to Justice Liaison of

⁹ In addition, Vermont adopted a similar proposal in 1997 but allowed the two-year pilot project to expire in 1999.

¹⁰ New York has approximately 220,000 attorneys. Minnesota has approximately 25,000.

the Washington State Bar Association, stated that the number of members reporting credits for pro bono had not been as wide spread as they had hoped.

While no state that has adopted such a rule has provided statistical data showing that CLE credits motivate attorneys to perform pro bono work, David Shearon, Executive Director of the Tennessee Commission on CLE and Specialization states that Tennessee has noticed an increase in participation since adoption of their rule in 1998. In 1999, 344 attorneys claimed credit and in 2005, 902 attorneys claimed credit. Because Tennessee did not conduct a baseline study as to the overall level of pro bono participation prior to implementing the rule, it is difficult to determine whether the number of attorneys *participating* in pro bono activities has increased or whether the number of attorneys *reporting* CLE credit has increased. In addition, it is difficult to determine whether the increase in participation is due to receipt of required ethics and professionalism hours.¹¹

The ABA and state bar organizations have promoted pro bono participation through a variety of methods, such as the implementation of Rule 6.1 of the Rules of Professional Conduct, which has been adopted by a number of states, including Minnesota. Statistics from states that do not allow continuing legal education credit for pro bono participation also show significant pro bono participation in recent years.¹²

¹¹ Unlike other states that have adopted CLE for pro bono, Tennessee attorneys receive ethics and professionalism credit for participating in pro bono activities. Tennessee CLE Rule 21, Section 4.07(c).

¹² In a 2005 Pro Bono Survey in Wisconsin, attorneys reported that they had contributed 52,706 hours of free legal services to individuals on limited incomes in the 12 months preceding October 2005. Invitations to participate in the survey were sent to all 16,581 members of the Wisconsin

In June 2007, the MSBA reported that "legal services and pro bono programs participating in [their] survey reported more than 330 new volunteers on their rosters" who provided "well over 26,000 pro bono hours" and "closed more than 13,800 cases" in Minnesota.¹³ The number of new pro bono participants in Minnesota is already similar to the participation levels reported in the states that currently allow CLE credit for pro bono participation. No comprehensive baseline has been established as to the total number of attorneys in Minnesota participating in pro bono activities nor have the total number of hours provided been determined. A baseline study would be helpful in determining the effectiveness of the proposal should it be implemented.

Pennsylvania recently considered adopting a CLE credit for pro bono proposal that would have been implemented through a three-year pilot project and chose not to adopt such a rule. In response to the proposal, the Pennsylvania Bar Institute (PBI) recommended that CLE credit not be granted for pro bono legal work. One of the reasons cited by PBI was that the proposal would open the door for awarding CLE credit for a wide range of laudable activities and the Task Force determined that "[i]f the Court accepts the logic that all laudable volunteer activities by attorneys should be rewarded with CLE credits, the effect could be to substantially abolish the current CLE requirement."¹⁴

bar. A total of 2064 members responded to the survey. Brown, Jeffrey. "Pro Bono Contributions of State Bar Members: The 2005 Pro Bono Survey", dated January 24, 2006, p. 3-4.

¹³ MSBA Report on Pro Bono Legal Service, June 2007

¹⁴ The other reasons cited by PBI are as follows: 1) the proposal was inconsistent with the goals of mandatory CLE which was developed from a perceived need for structured, classroom training; 2) the consensus from states surveyed by the Pennsylvania Bar Task Force found that CLE credit was not a primary motivating factor for attorneys to take on pro bono cases; 3) the proposal created additional administrative burdens on public interest organizations; 4) the proposal may have the unintended consequence of reducing the availability of CLE classroom training; and

Administrative Concerns

Petitioner's proposal could be difficult to administer depending on the scope of the program and the level of oversight required for monitoring attorney compliance of the new rule. Two full-time staff members currently process more than 6,000 lawyer CLE compliance affidavits and more than 8,000 sponsor course approval requests each year. Any significant change in the CLE rules could lead to the need for additional staff. In addition, costs would be involved in modifying the computer information system that the Board uses to record and track attorney attendance and course approvals. The Board respectfully recommends that the Court weigh the anticipated effectiveness of the proposal in increasing pro bono participation in Minnesota against the cost of implementing the proposal.

If the Court adopts the proposal to allow CLE credit for pro bono participation, the Board recommends beginning with a limited pilot project and beginning the program with a limited scope, while gathering information as to cost and administrative feasibility. Given the broad scope of the proposed language and the many unknowns with regard to numbers of participating attorneys as well as numbers of participating organizations, the Board cannot determine with accuracy the likely cost of Petitioner's proposal. A pilot project would allow the Board to collect such data.

The Board also notes that the proposed rule does not address participation by attorneys who practice in other states. A number of the states

5) many non-profit referral services conduct training for their volunteer attorneys that provide continuing legal education credit and provide an incentive for pro bono participation.

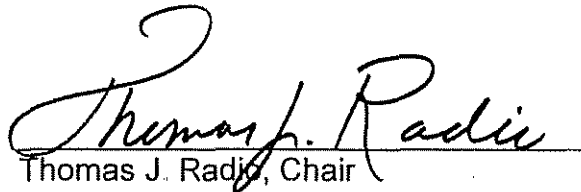
that have adopted rules limit participation to pro bono organizations in their states. Approximately 20% of Minnesota licensed attorneys reside outside of the state of Minnesota.¹⁵ A rule that would exclude out-of-state attorneys or make it difficult for them to participate could lead to challenges. Should legal services organizations and pro bono providers from across the country begin to submit information to the Board in support of credit for pro bono service, additional administrative issues would be likely to follow.

Conclusion

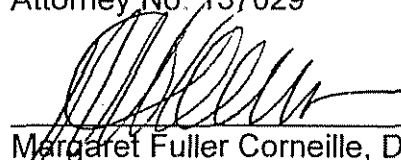
While the Board takes a neutral position on the adoption of a rule that would allow continuing legal education credit for pro bono participation, the Board is cognizant that such a rule would be a departure from the course-based continuing legal education that has constituted CLE in Minnesota since 1975. In addition, the Board strongly opposes Petitioner's language and suggests that if the Court is persuaded to award CLE credit for pro bono representation, the new rule should incorporate the following: 1) rule language requiring that pro bono service be structured to include identifiable educational objectives, 2) rule language that is straightforward with clearly stated definitions, and 3) implementation via a limited pilot project permitting the Board to identify administrative concerns that would become apparent after implementation.

¹⁵ This is a similar percentage to the number of out-of-state attorneys in Washington, which does not allow credit for out-of-state pro bono participation.

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Appendix A

Colorado (effective January 1, 2005)

(<http://www.coloradosupremecourt.com/pdfs/CLE/Rules.pdf>)

Rule 260.8: DIRECT REPRESENTATION AND MENTORING IN PRO BONO CIVIL LEGAL MATTERS

- (1) A lawyer may be awarded a maximum of nine (9) units of general credit during each three-year compliance period for providing uncompensated pro bono legal representation to an indigent or near-indigent client or clients in a civil legal matter, or mentoring another lawyer or a law student providing such representation.
- (2) To be eligible for units of general credit, the civil pro bono legal matter in which a lawyer provides representation must have been assigned to the lawyer by: a court; a bar association or Access to Justice Committee-sponsored program; an organized non-profit entity, such as Colorado Legal Services, Metro Volunteer Lawyers, or Colorado Lawyers Committee whose purpose is or includes the provision of pro bono representation to indigent or near-indigent persons in civil legal matters; or a law school. Prior to assigning the matter, the assigning court, program, entity, or law school shall determine that the client is financially eligible for pro bono legal representation because (a) the client qualifies for participation in programs funded by the Legal Services Corporation, or (b) the client's income and financial resources are slightly above the guidelines utilized by such programs, but the client nevertheless cannot afford counsel.
- (3) Subject to the reporting and review requirements specified herein, (a) a lawyer providing uncompensated, pro bono legal representation shall receive one (1) unit of general credit for every five (5) billable-equivalent hours of representation provided to the indigent client; (b) a lawyer who acts as a mentor to another lawyer as specified in this Rule shall be awarded one (1) unit of general credit per completed matter; and (c) a lawyer who acts as a mentor to a law student shall be awarded two (2) units of general credit per completed matter. A lawyer will not be eligible to receive more than nine (9) units of general credit during any three-year compliance period via any combination of pro bono representation and mentoring.
- (4) A lawyer wishing to receive general credit units under this Rule shall submit to the assigning court, program, or law school a completed Form 8. As to mentoring, the lawyer shall submit Form 8 only once, when the matter is fully completed. As to pro bono representation, if the representation will be concluded during a single three-year compliance period, then the lawyer shall complete and submit Form 8 only once, when the representation is fully completed. If the representation will continue into another three-year compliance period, then the applying lawyer may submit an interim Form 8 seeking such credit as the lawyer may be eligible to receive during the three-year compliance period that is coming to an end. Upon receipt of an interim or final Form 8, the assigning court, program, entity, or law school shall in

turn report to the Board the number of general CLE units that it recommends be awarded to the reporting lawyer under the provisions of this Rule. It shall recommend an award of the full number of units for which the lawyer is eligible under the provisions of this Rule, unless it determines after review that such an award is not appropriate due to the lawyer's lack of diligence or competence, in which case it shall recommend awarding less than the full number of units or no units. An outcome in the matter adverse to the client's objectives or interests shall not result in any presumption that the lawyer's representation or mentoring was not diligent or competent. The Board shall have final authority to issue or decline to issue units of credit to the lawyer providing representation or mentoring, subject to the other provisions of these Rules and Regulations, including without limitation the hearing provisions of Regulation 108.

- (5) A lawyer who acts as a mentor to another lawyer providing representation shall be available to the lawyer providing representation for information and advice on all aspects of the legal matter, but will not be required to file or otherwise enter an appearance on behalf of the indigent client in any court. Mentors shall not be members of the same firm or in association with the lawyer providing representation to the indigent client.
- (6) A lawyer who acts as a mentor to a law student who is eligible to practice law under C.R.S. §§ 12-5-116 to -116.5 shall be assigned to the law student at the time of the assignment of the legal matter with the consent of the mentor, the law student, and the law school. The matter shall be assigned to the law student by a court, a program or entity as described in Rule 260.8(2), or an organized student law office program administered by his or her law school, after such court, program, entity, or student law office determines that the client is eligible for pro bono representation in accordance Rule 260.8(2). The mentor shall be available to the law student for information and advice on all aspects of the matter, and shall directly and actively supervise the law student while allowing the law student to provide representation to the client. The mentor shall file or enter an appearance along with the law student in any legal matter pursued or defended for the client in any court. Mentors may be acting as full-time or adjunct professors at the law student's law school at the same time they serve as mentors, so long as it is not a primary, paid responsibility of that professor to administer the student law office and supervise its law-student participants.

Delaware (Effective July 9, 2004)

(<http://courts.delaware.gov/cle/rules.stm#8>)

Rule 8(D)

(D) Pro Bono Legal Services. An Attorney may receive credit, upon application to the Commission for performing uncompensated legal services for clients unable to afford counsel, provided:

(1) The services are performed pursuant to (i) appointment of the Attorney by a Delaware court, including the United States District Court for the District of Delaware; or, (ii) an assignment of a matter to the Attorney by Delaware Volunteer Legal Services, Inc., Community Legal Aid Society of Delaware, Inc., the Office of the Child Advocate, or Legal Services Corporation of Delaware, Inc.

(2) Credit may be earned at a rate of one hour of CLE credit for every six hours of uncompensated legal services performed.

(3) An Attorney may receive no more than six credit hours pursuant to this Rule 8(D) in any biannual reporting period.

New York (Approved 5/00 by CLE Board, effective as of 1/1/00)
(<http://www.courts.state.ny.us/attorneys/cle/regulationsandguidelines.pdf>)

Regulation 3(D)(11)

11. Pro Bono Legal Services— Credit may be earned for performing eligible pro bono legal services for clients unable to afford counsel pursuant to (i) assignment by a court or (ii) participation in a pro bono CLE program sponsored by an Approved Pro Bono CLE Provider. CLE credit shall not be awarded for pro bono legal services performed outside of New York State.

a. Definitions

- i. **Eligible pro bono legal services** are (1) legal services for which there is no compensation to the attorney performing the legal services or (2) legal services for which the compensation to the attorney performing the legal services is provided by someone other than the recipient of those services, and such compensation would be provided regardless of whether the attorney performed those services. Legal services provided by assigned counsel who receive compensation for those services from any source and/or legal services provided by legal services organization attorneys within the scope of their employment, are not eligible pro bono legal services.
 - ii. A **pro bono CLE program** is a program, activity or case that is sponsored by, and to which attorneys are assigned by an Approved Pro Bono CLE Provider, and in which all recipients of the legal services provided by the program have been screened for financial eligibility.
- b. **Court Assignment**— Pro Bono CLE credit may be earned for the provision of eligible pro bono legal services to clients unable to afford counsel, pursuant to assignment by a court.

c. Approved Pro Bono CLE Providers

- i. **Eligibility**— Eligibility for designation by the CLE Board as an Approved Pro Bono CLE Provider is limited to the following organizations:
 - (1) Legal services organizations, or subsidiaries or subdivisions thereof, that have as their primary purpose the furnishing of legal services to indigent persons and that have filed a statement with the Appellate Division in the Judicial Department in which their principal office is located, pursuant to New York Judiciary Law §496; or
 - (2) Subsidiaries or programs of bar associations that have as their primary purpose the furnishing of legal services to indigent persons.

- ii. **Approval**— An eligible organization seeking to become an Approved Pro Bono CLE Provider must submit to the CLE Board a letter requesting approval. The letter shall include a description of the organization's pro bono CLE programs and the name of a pro bono CLE contact person at the organization. The organization requesting approval as an Approved Pro Bono CLE Provider shall be furnished with written notice of the CLE Board's determination to approve, conditionally approve or deny the request by first class mail at the address reflected on the letter requesting approval. Pro bono CLE programs sponsored by Approved Pro Bono CLE Providers are deemed approved for pro bono CLE credit for a period of three (3) years from the date of the CLE Board's approval of the Pro Bono CLE Provider.
- d. **Calculation of Credit**— Credit for eligible pro bono legal services shall be awarded in the following ratio: one (1) CLE credit hour for every six (6) 50-minute hours (300 minutes) of eligible pro bono legal service. Credit shall be awarded in increments of no less than .5 CLE credit hour. Ethics and professionalism credit is not available for participation in pro bono CLE activities. A maximum of six (6) pro bono CLE credit hours may be earned during any one reporting cycle. 11
- e. **Attorney Obligations**— In order to receive pro bono CLE credit, attorneys shall maintain records of their participation in pro bono CLE activities as follows:
 - i. **Court Assignment** — An attorney who performs eligible pro bono legal services pursuant to assignment by a court shall calculate the CLE credit hours earned pursuant to section 3(D)(11)(d), above. The attorney shall retain for a period of four (4) years the CLE credit hour calculation and a copy of the court order assigning the attorney to the pro bono activity.
 - ii. **Pro Bono CLE Program Assignment** — An attorney who performs eligible pro bono legal services for a pro bono CLE program pursuant to assignment by an Approved Pro Bono CLE Provider shall complete an affirmation describing the services provided, and stating the number of hours of eligible pro bono legal service that the attorney performed. The attorney shall submit the affirmation to the sponsoring Approved Pro Bono CLE Provider. The attorney shall retain for a period of four (4) years the time records of the attorney's participation in eligible pro bono legal services, a copy of the attorney's affirmation and the Letter of Participation issued to the attorney by the Approved Pro Bono CLE Provider as set forth in section 3(D)(11)(f)(i), below.
- f. **Obligations of Approved Pro Bono CLE Providers**
 - i. **Letters of Participation**— Approved Pro Bono CLE Providers shall furnish participating attorneys with a Letter of Participation indicating: (1)

the name of the Approved Pro Bono CLE Provider, (2) the date(s) of assignment, and the location and name, if applicable, of the pro bono CLE program, (3) the name of the attorney participant, (4) the number of hours of eligible pro bono legal service provided by the attorney pursuant to section 3(D)(11)(e)(ii), above and (5) the number of pro bono CLE credit hours earned, calculated pursuant to section 3(D)(11)(d), above.

- ii. **Participation List**— Approved Pro Bono CLE Providers shall retain for a period of four (4) years a list of participants in each pro bono CLE program along with the number of hours of eligible pro bono legal service claimed and the number of pro bono CLE credit hours earned by each participant.
 - iii. **Year-End Reports**— Approved Pro Bono CLE Providers shall complete and submit to the CLE Board a year-end report at the end of each calendar year during which the organization has been an Approved Pro Bono CLE Provider. The report shall contain information for pro bono CLE programs 12 sponsored during the calendar year, including: (1) the total number of pro bono CLE programs sponsored, (2) the total number of attorneys participating in the pro bono CLE programs, (3) the total number of attorneys to whom Letters of Participation were issued, (4) the total number of pro bono CLE credits issued and (5) the total pro bono CLE hours reported on attorney affirmations.
- g. **Carry-Over Credit for Newly Admitted Attorneys**— Newly admitted attorneys may earn pro bono CLE credit as set forth in this section 3(D)(11), solely for the purpose of carrying over pro bono CLE credit to the following biennial reporting cycle in partial fulfillment of the requirements for experienced attorneys. A maximum of six (6) CLE credit hours, including pro bono CLE credit, may be carried over to the following biennial reporting cycle. Newly admitted attorneys may not apply pro bono CLE credit to their minimum requirements as set forth in §1500.12(a) of the Program Rules and section 2(A) of these Regulations and Guidelines. Newly admitted attorneys shall maintain records of their participation in pro bono CLE activities as set forth in section 3(D)(11)(e), above, and shall retain those records for a period of six (6) years.
- h. **Effective Date**— Pro bono CLE credit pursuant to this section D(11) may be earned only for eligible pro bono legal services performed after January 1, 2000.

Tennessee Implemented 1/99

(http://www.tsc.state.tn.us/OPINIONS/TSC/RULES/TNRulesOfCourt/06supct10_24.htm
#21)

4.07 The Commission may, in its discretion, award:

- (a) Up to one-half of the annual requirement to attorneys for participation as members of governmental commissions, committees, or other governmental bodies, at either the state or national level, involved in formal sessions for review of proposed legislation, rules or regulations.
- (b) Up to the full annual requirement for writing articles concerning substantive law, the practice of law, or the ethical and professional responsibilities of attorneys if the articles are published in approved publications intended primarily for attorneys; credit shall not be awarded to a named author when the actual principal authority was another person acting under the direction or supervision of the named author. In requesting credit under this subsection, the attorney shall provide the Commission with an affidavit stating the facts of authorship.
- (c) Ethics and professionalism credit at the rate of one hour of credit for every eight billable hours of pro bono legal representation provided through court appointment, an organized bar association program or legal services organization, or of pro bono mediation services as required by Tennessee Supreme Court Rule 31 or the Federal Court Mediation Programs established by the United States District courts in Tennessee. [Amended by order filed December 10, 1998.]

Washington

(http://www.courts.wa.gov/court_rules/Word/gaaprregs.doc)

REGULATIONS OF THE WASHINGTON STATE BOARD OF CONTINUING LEGAL EDUCATION 103(g)

(g) **Pro Bono Legal Services:** A member may earn up to six (6) hours of credit annually by certifying that the member has fulfilled the following requirements under the auspices of a qualified legal services provider:

- (1) Each attorney seeking CLE credit will have received at least two (2) hours of education, under the auspices of a qualified legal services provider, which may consist of:
 - (i) not less than two (2) hours of training with live presentation(s); or
 - (ii) not less than two (2) hours viewing or listening individually to video or audio tapes approved by the CLE Board; or
 - (iii) any combination of the foregoing training; or
 - (iv) serving as a mentor to a participating attorney who has completed the foregoing training; and
- (2) Each attorney seeking CLE credit also will have subsequently completed not less than four (4) hours of pro bono work in providing legal advice, representation, or other legal assistance to low-income client(s) through a qualified legal services provider or in serving as a mentor to other participating attorney(s) who are providing such advice, representation, or assistance.

Wyoming - effective July 1, 2003

(http://www.courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=CLE06012007.xml)

- 4(g) A maximum of three hours of accredited continuing legal education credit may be granted to those lawyers who provide representation or mentoring activities as approved by the Wyoming Pro Bono Organization (WYPBO).
- (1) The attorney will receive one hour of continuing legal education credit for every five billable-equivalent hours. In the case of participation in the WYPBO program, the number of hours of credit is not to exceed three per year for civil case representation. Representation is defined as providing legal services to one or more clients in a single or series of related matters.
 - (2) Upon completion of a WYPBO matter, the participating attorney shall receive a letter from the WYPBO director certifying the number of hours of credit earned for the representation. The attorney shall report this activity on the form referenced in Rule 4(h), and attach a copy of the certification letter
 - (3) A WYPBO attorney who acts as a mentor to another attorney for a pro bono case will be awarded one continuing legal education credit per case and shall not be eligible to receive more than three continuing legal education credits for pro bono work in any one calendar year. Mentors will be assigned at the time of referral by indigent client and the mentor. Mentors shall be available to the attorney representing the indigent client for information and advice on all aspects of the case, but the mentor will not be required to file or otherwise enter an appearance on behalf of the indigent client. Mentors may not be members of the same firm or in association with the attorney representing the indigent client.
 - (4) A WYPBO attorney who acts as a mentor for a law student who has successfully completed at least four semesters at an ABA accredited law school on a case will be awarded three continuing legal education credits and shall not be eligible to receive more than three continuing legal education credits for pro bono work in any one calendar year. Mentors will be assigned to law students at the time of referral by the WYPBO coordinator with the consent of the law student, the law school and the mentor. Mentors will be available to the law student for information and advice on all aspects of the case and mentor the law student on the case while supervising. However, the mentor will allow the law student to provide services with the direct supervision of the mentoring attorney. The mentor shall file or otherwise enter an appearance on behalf of the indigent client if an appearance is required in accord with Rule 12, Rules of the Supreme Court of Wyoming Providing for the Organization and Government of the Bar Association and Attorneys at Law of the State of Wyoming.