

STATE OF MINNESOTA

IN SUPREME COURT

C2-84-2163

ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENT TO THE RULES FOR CONTINUING
LEGAL EDUCATION OF MEMBERS OF THE BAR

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on May 12, 1995 at 9:00 a.m., to consider the petition of the Minnesota State Bar Association to amend Rule 3 of the Minnesota Rules for Continuing Education of Members of the Bar. A copy of the petition containing the proposed amendment 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, 245 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before May 8, 1995 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 aforesaid Clerk together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before May 8, 1995.

Dated: March 7, 1995

BY THE COURT:

OFFICE OF
APPELLATE COURTS

MAR 7 1995

FILED



A.M. Keith
Chief Justice

C2-84-2163

STATE OF MINNESOTA
IN SUPREME COURT

In re:

Amendment of Rules for
Continuing Legal Education
of Members of the Bar

PETITION OF MINNESOTA STATE BAR ASSOCIATION

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner Minnesota State Bar Association ("MSBA") respectfully petitions this Honorable Court to amend the Rules for Continuing Legal Education of Members of the Bar to add additional requirements for training of lawyers in ethics and professional responsibility and diversity training.

In support of this Petition, 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 of the State of Minnesota.
2. This Honorable Court has the exclusive and inherent power and duty to administer justice and to adopt rules of practice and procedure before the courts of this state and to establish the standards for regulating the legal profession. This power has been expressly recognized by the Legislature. See Minn. Stat. § 480.05 (1992).
3. This Court established mandatory continuing legal education for lawyers ("CLE") in 1975, and has continued to require CLE to this date. CLE is required by the Rules of the Supreme Court for Continuing Legal Education of Members of the Bar. The Board of Continuing Legal Education created by those rules has in turn adopted its rules, the Rules for Continuing Legal Education of Members of the Bar and Rules of the Board of Continuing Legal Education.

4. In 1992 and 1993 the Hennepin County Bar Association established a Glass Ceiling Task Force to study and develop recommendations to eliminate gender and racial bias in legal employment. After substantial testimony, study and deliberation, the HCBA Glass Ceiling Task Force issued numerous recommendations. One of the recommendations specifically addressed to bar associations was to petition the Court to institute mandatory continuing legal education programs on diversity. The Glass Ceiling Task Force Report was adopted by the HCBA in May 1993 and by the MSBA in June 1993. In 1993, the Minnesota Supreme Court's Racial Bias Task Force Report also recommended the need for training and education in cultural diversity to eliminate bias within the legal system. The MSBA Diversity Issues Committee recommended diversity training as well. In furtherance of the Minnesota Supreme Court Racial Bias Task Force Report, the HCBA Glass Ceiling Task Force Report, and the Diversity Issues Committee recommendation, the MSBA submits this petition for the Minnesota Supreme Court's consideration.

5. In conjunction with Hennepin County Bar Association, Petitioner MSBA appointed a Task Force in 1993 to study and report on the desirability of amending the Rules of the Supreme Court for Continuing Legal Education of Members of the Bar ("CLE Rules") to include mandatory education on professional responsibility and ethics matters and also professionalism and diversity training. The MSBA/HCBA Joint Task Force on CLE requirements met as a group and by subcommittee on numerous occasions in 1993 and 1994, and issued a report and recommendations to the MSBA. Those recommendations were considered and debated at the MSBA convention held in Duluth, Minnesota, on June 25, 1994. At that time the House of Delegates and General Assembly of the MSBA voted to approve and recommend to the Court this proposed amendment.

6. The MSBA respectfully recommends and requests this Court to amend the Rules of the Supreme Court for Continuing Legal Education of Members of the Bar as follows:

Rule 3. REPORT OF CONTINUING EDUCATION.

Each registered attorney duly admitted to practice in this state desiring active status must make a written report to the board in such

manner and form as the Board shall prescribe. Such report shall be filed with the Board within 60 days after the close of the three-year period within which such attorney is required to complete his or her continuing legal education requirements. Such report shall be accompanied by proof satisfactory to the Board that such attorney has completed a minimum of 45 hours of course work either as a student or a lecturer, in continuing legal education, including a minimum of three hours of continuing ethics and professional responsibility education and a minimum of two hours of diversity training, in courses approved by the Board as suitable and sufficient within the three-year period just completed. To qualify for ethics and professional responsibility credit, a course or component of a course must be at least sixty (60) minutes in length of uninterrupted time, and the course must use written materials.

On a one-time-only basis, in the first three-year reporting period after adoption of the ethics and professional responsibility education requirement, a single three-hour ethics and professional responsibility course shall be required to fulfill the ethics and professional responsibility requirement.

Based upon the foregoing authorities, Petitioner Minnesota State Bar Association respectfully requests this Honorable Court implement the Rules amendments proposed in paragraph 6 above.

Dated: September 19, 1994.

Respectfully submitted,

MINNESOTA STATE BAR ASSOCIATION

By _____

Michael J. Galvin, Jr.
Its President

MASLON EDELMAN BORMAN & BRAND
A Professional Limited Liability Partnership

By _____
David F. Herr (#44441)

3300 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402-4140
(612) 672-8350

ATTORNEYS FOR PETITIONER

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

FILED

PETER A. SWANSON
135 NATHAN LANE NORTH
APARTMENT 104
PLYMOUTH, MINNESOTA 55441

May 8, 1995

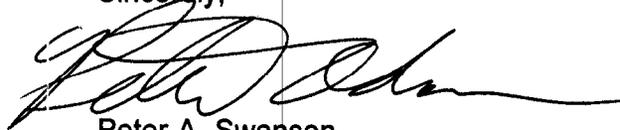
Frederick Grittner
Clerk of the Appellate Court
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Amendment of Rules for Continuing Legal Education
of Members of the Bar
Court File No. C2-84-2163

Dear Mr. Grittner:

Enclosed for filing please find the original and twelve copies of Request for Oral Presentation and Written Statement of Attorney Peter A. Swanson in the above-referenced matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter A. Swanson", written over a horizontal line.

Peter A. Swanson

PAS:jt
Enclosures

C2-84-2163

STATE OF MINNESOTA
IN SUPREME COURT

In re:

Amendment of Rules for
Continuing Legal Education
of Members of the Bar

STATEMENT OF ATTORNEY PETER A. SWANSON

Petitioner Minnesota State Bar Association ("Petitioner") proposes an amendment to the Rules of the Supreme Court for Continuing Legal Education of Members of the Bar to require a minimum of three hours of continuing ethics and professional responsibility education and a minimum of two hours of diversity training within each three-year reporting period. This statement is in opposition to the portion of the amendment that would require two hours of diversity training. The undersigned takes no position on the proposal for continuing ethics and professional responsibility training.

CONDITIONS ON ADMISSION TO THE BAR

In addition to the current continuing legal education requirements, attorneys are subject to rules governing examination and admission to practice, as well as rules governing the conduct in the practice of their profession. Minn. Stat. § 480.05 (1994). Such conditions placed on attorney licenses must comport with applicable law, including the U.S. Constitution. See Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991) (interpretation of rule against pretrial publicity was void for vagueness); Keller v. State

Bar of California, 496 U.S. 1 (1990) (the use of mandatory bar dues to finance certain ideological or political activities violates members' First Amendment right of free speech); Supreme Court of New Hampshire v. Piper, 470 U.S. 274 (1985) (rule limiting bar admission to state residents violated privileges and immunities clause); Konigsberg v. State Bar, 353 U.S. 252 (1957) (right to practice law is a property right within the Equal Protection and Due Process Clauses of the Fourteenth Amendment).

In In re Petition of Frickey, this Court considered a petition to certain questions from the Application for Admission to the Bar of Minnesota. 515 N.W.2d 741 (Minn. 1994). The petitioners alleged that the questions were possibly in violation the Americans with Disabilities Act, the Minnesota Human Rights Act, and the federal and state constitutions, and that the questions should be deleted for public policy reasons. Id. at 741. In granting the petition, the Court stated its belief that "questions relating to conduct can, for the most part, elicit the information necessary for the Board of Law Examiners to enable the Court to protect the public from unfit practitioners[.]" Id. The proposed diversity training requirement, like the challenged questions in Frickey, raise constitutional and public policy questions; the legitimate aims of petitioner can be achieved by concentrating on attorneys' conduct rather than their beliefs.

PETITIONER DOES NOT DEFINE DIVERSITY TRAINING

Diversity training is a relatively new concept that does not lend itself to clear definition. The term itself gives little guidance as to the precise subject matter, purpose and objectives. Existing resource materials on diversity training do not provide a useful definition.¹ By contrast, professional responsibility has been codified in the Minnesota Rules of Professional Conduct and is the subject of disciplinary proceedings, opinions, treatises, and law school classes. The Rules of the Supreme Court for Admission to the Bar require a passing score on the Multistate Professional Responsibility Examination and include ethics and responsibility as a subject of the Bar Examination.

California lawyers are required to attend continuing legal education "relate[d] to elimination of bias in the legal profession

¹See Louis B. Griggs & Lente-Louise Louw, Valuing Diversity: New Tools for A New Reality 6-7 (1995) ("I believe diversity should be defined in the broadest possible way....[t]o limit the definition of diversity, as even much of the diversity movement itself did a few years ago, to differences of race, gender, and constitutionally protected differences, is to ignore much of the diversity that we each bring."); Harris Sussman, Is Diversity Training Worth Maintaining?, Business and Society Review, Spring 1994, at 48 ("Diversity is not about compliance, it is about vision. Training usually indoctrinates people to fit into the prevailing system. Diversity, on the other hand, changes the norms so that diversity itself becomes the new norm."); Barbara A. Jerich, A Compass for the Journey of Diversity, The Hennepin Lawyer, March-April 1995, at 12 ("However, the concept of diversity has broadened beyond race and gender and has, in fact, included everything from sexual orientation and disability to personality characteristics and thinking style. It is generally accepted that a broad definition is more useful than a narrow definition. However, each organization must agree on a definition, and the strategy that is developed will be greatly influenced by the types of differences recognized as part of an organization's definition of diversity.")

based on any of, but not limited to the following characteristics: sex, color, race, religion, ancestry, national origin, blindness or other physical disability, age and sexual orientation." California MCLE Rules and Regulations § 2.1.3 (1995). Classes on elimination of bias "must focus on problems which attorneys encounter in the legal profession, and not on generic issues of bias in society in general. Education activities on how to handle a bias case do not count for elimination of bias credit." California MCLE Guidelines § 2.1.3 (1993).

The California requirements are of limited value in the instant matter. Although the "elimination of bias" requirement is more detailed than the proposed "diversity training" amendment, individual continuing legal education classes in California do not have to be approved. Instead, prospective continuing legal education providers must seek approval to be permitted to present education activities for credit. California MCLE Rules and Regulations § 9.0. Moreover, California attorneys are not required to list individual courses in their affidavit of compliance. Id. § 12.0. Finally, since California's requirement has only been in place since 1992, only one third of the California attorneys have had to demonstrate compliance within the three-year reporting period.

The Hennepin County Bar Association/Minnesota State Bar Association Joint Task Force on Continuing Legal Education Requirements (the "Committee") was formed to consider CLE proposals, including the diversity training issue. In its Report

and Recommendation, a true and correct copy of which is attached hereto and incorporated herein as Exhibit A, the Committee recommended that "neither professionalism nor diversity training be required as subjects of continuing legal education." The Committee stated that it was reluctant to recommend required classes in subject areas that are difficult to define.

An April 4, 1995 memorandum from the Board of Continuing Legal Education ("CLE Board") to Petitioner, a true and correct copy of which is attached hereto and incorporated herein as Exhibit B, illustrates the difficulty in defining and implementing the proposed amendment. Petitioner's response, a true and correct copy of which is attached hereto and incorporated herein as Exhibit C, declines to provide a specific definition. It is difficult for Petitioner to demonstrate the need for diversity training if it is unable to define what diversity training is.

DIVERSITY TRAINING WILL NOT REDUCE DISCRIMINATION

In support of the proposed amendment, Petitioner cites the recommendation of the Hennepin County Bar Association Glass Ceiling Task Force Report (the "Report"). While the Report contains data about the extent of discrimination, it lacks data on the success or failure of diversity training in reducing discrimination. The issue is not whether discrimination is a significant problem, but whether diversity training is a solution.

Assuming that some form of diversity training could possibly eliminate bias against groups of people, it is necessary to

determine which groups are to be included. A broad definition of "diversity" increases the number of attorneys who are themselves a member of a protected class. An attorney who is not interested in learning about other cultures could simply attend diversity training about his or her own culture, thereby reinforcing previous attitudes and stereotypes. In order to change attitudes, the Board of Continuing Legal Education would have to ascertain each attorney's bias and send him or her to the appropriate diversity trainer.

There are examples where diversity training itself has become a form of discrimination.² In Fitzgerald v. Mountain States Telephone and Telegraph Company, the Tenth Circuit Court of Appeals considered the issue of damages in a case of a black male and a white female who were allegedly denied positions as diversity trainers on the basis of race and color. 46 F.3d 1034 (10th Cir. 1995). The court noted that "this developing area of diversity training has, at its motivating core, highly emotional areas of interpersonal relationships with real and potentially volatile strong conflicts...[and] are intended to cause the participants to lay bare the most bitter, bigoted, offensive and often savage interpersonal confrontations and feelings." Id. at 1041.

²As part of the diversity training instituted by the Federal Aviation in Chicago, Douglas Hartman was forced to walk through a "Tailhook-style" gauntlet and face the taunts of his female coworkers. See Megan Garvey, Male FAA Worker Sues, Alleging Female Gauntlet Demeaned Him, Washington Post, September 9, 1994, at A21. Hennepin County diversity training materials were alleged to have had an anti-catholic bias. See Alison Bennett, County Removes Material Referring to Catholicism from Diversity Training, Minneapolis Star Tribune, August 5, 1994, at 1B.

Participants are then enabled, after self and group assessment, to achieve as much harmony and understanding as possible, regardless of race, color or background. Id. at 1041-42. As was the case in Fitzgerald, eliciting strong emotions in mandatory diversity training sessions for the purposes of eliminating bias can easily backfire.

There is no guarantee that diversity training can reduce discrimination. Despite good intentions, diversity training can itself be a form of discrimination. The lack of detail in Petitioner's proposed amendment and subsequent correspondence increases the possibility that diversity training will have the opposite of the desired effect.

CONSTITUTIONAL ISSUES

Without additional details or definition, it is difficult to determine the constitutionality of the proposed amendment. However, the potential exists that the diversity training requirement could be interpreted in a way that violates the First Amendment rights of both the providers and the participants. Specifically, the diversity training amendment might impose ideological conformity, requiring lawyers to take certain positions on political, ideological or religious issues.

Currently, any individual or entity may present a course for continuing legal education credit, provided that it meets the requirements of Rule 101 of the Board of Continuing Legal Education. In a March 20, 1995 memorandum, a true and correct copy

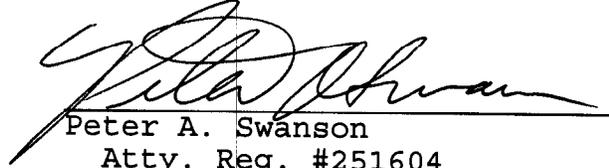
of which is attached hereto as Exhibit D, the CLE Board raised the question of whether all providers should be allowed to present diversity training courses. The CLE Board also questions whether "courses which do not reflect the values articulated in the Race Bias and Gender Bias Reports" should be denied credit. Exhibit B at 2. A regulation that denied a provider access to the forum of CLE accreditation based on that provider's viewpoint would be constitutionally suspect. See Perry Education Association v. Perry Local Educators' Association, 460 U.S. 37 (1983). Therefore, the CLE Board should grant credit to classes that express an opinion against affirmative action, if it also grants credit to similar classes that favor affirmative action. Continuing legal education classes that oppose affirmative action would not appear to fulfill Petitioner's goals.

There is also concern about diversity training violating the First Amendment rights of the attorneys who are required to participate. Specifically, there is a question whether an attorney must reveal personal information, or affirm a particular ideology during the diversity training in order to receive credit. Requiring attorneys to express a specific belief as a condition of their license to practice law would appear to be compelled speech. See, generally, Keller, 496 U.S. at 1.

CONCLUSION

For the above-stated reasons, the undersigned respectfully requests that Petitioner's amendment be denied.

DATED: 5-8-95



Peter A. Swanson
Atty. Reg. #251604
135 North Nathan Lane #104
Plymouth, MN 55441
(612) 542-1839

EXHIBIT A

*Board of Gov. Materials
April 1954*

**MINNESOTA STATE BAR ASSOCIATION
MSBA/HCBA JOINT TASK FORCE ON CLE REQUIREMENTS
MARCH 31, 1994
REPORT AND RECOMMENDATION**

The MSBA/HCBA Joint Task Force on CLE Requirements had the committee charge:

To address the resolution passed by the Hennepin County Bar Association with respect to continuing legal education and professionalism, reconcile the issues raised in the statement of the HCBA Professional Conduct Committee with respect to ethics education, and address the recommendation of the HCBA Glass Ceiling Task Force on Diversity Training.

The members of the Committee were: William Wernz, Chair, Nancy Berg, James Broberg, Gregory Gray, Susan Hurt, Phyllis Karasov, Kenneth Kirwin, Charles Lundberg, James Nelson, Fred Ojile, Jean Paulson, Stephen Radtke, and Charles Reite. Tim Groshens provided MSBA staff support.

The Committee met on October, 13, 1993, January 13, 1994, February 10, 1994, and March 17, 1994. The Committee divided itself into four subcommittees: Ethics Education (Charles Lundberg, Chair), Professionalism Education (Phyllis Karasov, Chair), Diversity Education (Jim Nelson, Chair), and Research (Chuck Reite, Chair).

The Committee makes three recommendations:

1. The Committee recommends the following amendment to Rule 3, Rules of the Supreme Court for Continuing Legal Education of Members of the Bar:

Rule 3. Report of Continuing Education

Each registered attorney duly admitted to practice in this state desiring active status must make a written report to the Board in such manner and form as the Board shall prescribe. Such report shall be filed with the Board within 60 days after the close of the 3-year period within which such attorney is required to complete his or her continuing legal education requirements. Such report shall be accompanied by proof satisfactory to the Board that such attorney has completed a minimum of 45 hours of course work either as a student or a lecturer, in continuing legal education, including a minimum of three hours of continuing professional responsibility education, in courses approved by the Board as suitable and sufficient within the 3-year period just completed.

2. The Committee recommends that the Rules of the Board of Continuing Legal Education be amended to require that appropriate written materials be required for any course which would qualify in whole or in part for satisfaction of the professional responsibility requirement.

3. The Committee recommends that neither professionalism nor diversity training be required as subjects of continuing legal education. However, the committee explains in its Report below its concern that appropriate attention to the subjects of professionalism and elimination of bias in the legal system be encouraged in continuing legal education programs.

REPORT

Attached and incorporated are reports and recommendations of the Committee's Subcommittees, which explain most of the basis for the Committee's recommendations.

In reaching its conclusions, the Committee or Subcommittees also met or talked with certain other interested groups and individuals, including the CLE Board Director, Margaret Corneille, and the Hennepin County Bar Association Diversity Committee. The Committee was also made aware, at its March 17 meeting, of the recommendation to the Minnesota Supreme Court of the Advisory Committee on Rules of Criminal Procedure that the Court consider a continuing legal education requirement with respect to elimination of gender bias in the court system and legal profession.

The Committee considered, but did not approve, a proposal that to qualify for professional responsibility credit a course or component of a course would have to be of a minimum length. The Committee also declined to approve a proposal that a single three hour course be required to fulfill the requirement.

As the attached reports of the Research Subcommittee indicate, only one state currently has a discrete CLE requirement in professionalism education. No state has a diversity training requirement, although California requires at least one hour every three years of training in "elimination of bias in the legal profession." In addition to taking account of practices in other states, the Committee was reluctant to recommend requirement of subjects which were difficult to define. Some members also believed that one or both of these subjects were not clearly continuing legal education.

The Committee concluded that the Board should allow appropriate programs dealing with professionalism and elimination of bias to qualify as professional responsibility education. In attempting to define "professionalism" for these purposes, the Committee believed that some subjects should not qualify for

professional responsibility CLE credit, such as stress management, broadly defined diversity training and personal improvement topics. On the other hand, discussion of professional civility, elimination of bias in the legal system, responsiveness to clients and ways of improving the quality of professional work product are all topics that the Committee believes could and should properly be considered as education in professional responsibility.

The Committee also encourages means other than required continued legal education for addressing bias in the legal system and the important concerns of diversity. The Diversity Subcommittee report gives examples of alternate ways of encouraging education in these subjects. The Committee emphasizes that its conclusion not to recommend *requirement* of mandatory diversity and professionalism training does not imply any view that these are not important topics, whose consideration should be encouraged among lawyers.

HENNEPIN COUNTY BAR ASSOCIATION / MINNESOTA STATE BAR ASSOCIATION
JOINT TASK FORCE ON CLE REQUIREMENTS
REPORT OF THE SUBCOMMITTEE ON DIVERSITY

BACKGROUND

This subcommittee was formed to consider the suggestion of the Glass Ceiling Task Force of the Hennepin County Bar Association that the Minnesota Supreme Court require that all attorneys licensed in the state receive at least two hours of "diversity training" in each CLE reporting period. The committee consisted of Nancy Berg, Gregory Grey, Jim Nelson, and Jean Paulson.

The subcommittee's charge was to come up with a working definition of "diversity", or the proposed subject matter of the educational effort, and then to consider and make recommendations as to whether education with respect thereto is an appropriate subject of mandatory continuing legal education.

The subcommittee met several times in person and by conference call to discuss these issues. In addition, discussions were held with the Hennepin County Bar Association Diversity Committee and with representatives of the CLE compliance division of the California Board of Continuing Legal Education and of Continuing Education of the Bar, the continuing legal education arm of the State Bar of California.

DEFINITION OF SUBJECT MATTER

With respect to a working definition for the subject matter, the subcommittee recognized that this is a concept that has very different meanings to different people. It can be used narrowly to define only gender diversity, to include gender and racial diversity, or broadly to define any number of things limited only by the imagination (e.g. disability, sexual orientation, religion, national origin). The focus of the subcommittee's discussion was primarily on gender and racial diversity, but recognizes that no definition need necessarily be so restricted.

One problem easily identified by the committee is that the very word "diversity" or phrase "diversity training" seems to have some political or emotional connotations that varies in content and intensity among different people. It was the subcommittee's consensus that the word--although not necessarily some of the concepts embodied in it--should probably be avoided altogether.

THE CALIFORNIA RULE

The subcommittee by way of addressing both prongs of the issue (i.e., defining the subject matter and assessing its suitability for CLE) attempted to get information regarding the California rule and experience. California is the only state we know of which has a continuing education requirement in an area related to "diversity." The California formulation is that of the 36 hours of continuing education a member of the bar must complete in every 36 month period, at least one shall

relate to elimination of bias in the legal profession based on any of, but not limited to the following characteristics: sex, color, race, religion, ancestry, national origin, blindness or other physical disability, age, and sexual orientation.

(It should be noted that this one hour requirement is in addition to the requirement that eight hours of the 36 be devoted to legal ethics and/or law practice management, with at least four of the eight hours being in ethics.)

We discussed the California experience with both their CLE board and one CLE provider. There is very little to learn by way of the California experience at this time, because of the newness of the bias requirement. No group of reporting lawyers (lawyers report in 3-year increments in much the same fashion as Minnesota lawyers) has yet had to fulfill the elimination of bias requirement. The first group required to do so reports their compliance as of January 31, 1995. The California CLE board does not approve individual courses, it only approves providers; as a result, the people we spoke to at the CLE board were only vaguely aware of what was happening in the marketplace as concerned the fulfillment of the elimination of bias course requirement.

The contact at the Continuing Education of the Bar, Mr. John Mola was more informative, since they were engaged in presenting programs and in planning for additional programs as the time for reporting comes near for the first group of lawyers.

CEB intends to offer both live programs and taped products. It is important to note that the California rules on continuing legal education allows half of the 36 hour requirement to be fulfilled with self-study.

CEB together with the state bar Ethnic Minority Relations Committee sponsored in program-now on tape--called "The Many Faces of Bias". A copy of this tape was provided by Mr. Mola to this subcommittee. (If anyone is interested in viewing it, it is currently in the possession of Jim Nelson, 334-8457). In this program six panelists (all members of ethnic minorities) spoke of their experiences of bias in the courtroom law offices, and administrative proceedings.

Next fall, CEB is contemplating working with various ethnic and other specialized bar groups (e.g., California Women Lawyers, California black lawyers) to create a 3 hour program on bias. This will again consist at least in part of people telling stories of their own experiences.

CEB is also working with an educator and video producer by the name of Abby Ginzberg, who has produced video tapes on various related subjects. Mr. Mola provided this subcommittee with a copy of a tape entitled "A Firm Commitment", produced by Ms. Ginzberg and sponsored by the Bar Association of San Francisco, which deals with minority recruitment and hiring in law firms. These video tapes consist of dramatized vignettes of "real-life" situations which minorities face in the law firm environment and they come with discussion leader books, to assist in post-viewing discussions by participants of the issues raised in the tapes. The primary target for these tapes appears to be law firms for in-house programs (again these would presumably come under "self-study" under California rules; current Minnesota regulations are somewhat restrictive on what in-house programs qualify for CLE credit). (This is one of the video tapes which the Glass Ceiling Task Force recommended be publicized by the HCBA).

CEB is exploring the use of these tapes at live CLE presentations which would be followed up by group discussions; these tapes and live discussions would then be combined on a tape for "self-study" use.

Mr. Mola indicated that most of the participants in the "Many Faces of Bias" tape were themselves minority group members, and the reaction of this group was strongly favorable. Mr. Mola reported, however, that the mandatory nature of the program was not well received among the lawyer population at large, a point which was discussed on the tape by the speakers. The speakers were not unanimous as to whether or not mandatory CLE on bias was a good idea. Some felt it was because if it wasn't mandatory, the people who need it wouldn't come. Others felt that the people who needed it probably wouldn't change their attitudes anyway. One speaker spoke skeptically of a lawyer flipping an audio tape of the program into the tape deck of his/her Mercedes Benz and fulfilling the bias requirement while driving off to his/her suburban home, never having to come into contact with the people who were experiencing bias problems.

MANDATORY CONTINUING LEGAL EDUCATION-- THE SUBCOMMITTEE'S CONCLUSIONS AND RECOMMENDATION

If it were not already evident to members of the subcommittee, the tapes the subcommittee viewed makes it clear that there are real problems related to intolerance or misunderstanding of cultural differences among lawyers as within society in general. The promotion of greater understanding and sensitivity regarding these differences is important to the legal profession and to society as a whole. There are a vast range of issues within the legal sphere, by way of example only:

1. How the court system and other public bodies and agencies treat lawyers and their clients;
2. How lawyers treat persons they come into contact with, either in their offices or in the courts or other public bodies and agencies;
3. How lawyers deal with each other and with their employees.

Can true progress be made by mandatory CLE on this subject? Obviously there is a group of interested persons in California which believes to, hence their rule. Equally obviously, there are many skeptics.

The issues raised need to be addressed and kept in the forefront by the bar associations across this state, because they are of vital importance. But the subcommittee is of the view that at the present time, a mandatory CLE program is not the answer to the problems. It is the sense of the subcommittee that we should wait and watch the California experience for a year or two to gauge the success of the program, even while we recognize that any measure of success will necessarily be a somewhat subjective one no matter whenever the observation is made.

In the meantime we believe other steps can be taken to promote an awareness within the bar of the serious issues raised by the Glass Ceiling Task Force and the Task Force on Bias in the Courts:

1. If the CLE rule is to be changed to require ethics and/or professionalism, the rule should allow a lawyer to fulfill this requirement in part by courses in elimination of bias.

2. Minnesota CLE and other Minnesota providers should be encouraged to make available tapes similar to those described above for use by law firms, organizations, public bodies, etc. As indicated, there are a number of tapes now available, and presumably because of the California requirement, more will be available in the future.

3. The above groups should be encouraged to make use of the tapes thus made available, in the context of live programs/discussions of the issues raised.

4. Interested groups should be encouraged to write articles on the issues for publication in Bench and Bar, the Hennepin Lawyer, and other local law publications.

5. Minnesota CLE and other providers should work with other interested groups to identify speakers and topics to promote greater diversity in faculty in CLE presentations.

The recommendation at this time of no express requirement in the area of diversity should not be taken as the subcommittee's conclusion that there is no problem that needs to be addressed; quite the contrary is the case. Rather the subcommittee feels that the problem probably is best addressed--at least for the present--by other means.

EXHIBIT B

**Supreme Court of Minnesota
Board of Continuing Legal Education
Constitution Avenue, Suite 110
St. Paul, Minnesota 55155
Telephone (612) 297-1800
Facsimile (612) 296-5866
TDD (612) 282-2480**

MEMORANDUM=====

**To: Mike Galvin, President, Minnesota State Bar Association
Jarvis Jones, President, Hennepin County Bar Association**

From: Peg Corneille

Date: April 4, 1995

Subject: a recap of questions regarding the MSBA Petition for CLE rule changes

It was a pleasure meeting with both of you and Merritt Marquardt for lunch the other day. I feel as though we have made a great deal of progress in addressing issues surrounding the proposed CLE rule change.

As promised, I have reviewed all my notes and memoranda regarding the proposed rule changes. I found that most of the essential questions were incorporated in my March 14, 1995 memo to Bar associations and others inviting them to comment on April 11. I have, however, turned up a few additional questions which I think might be helpful to your committees. These questions came from a variety of sources over the past 6 or 8 months, and do not reflect the opinions of members of the Board or of myself.

With respect to the definition of diversity training, should the **groups** to be included within the training be articulated, and if so, how?

- all of the groups protected within various subdivisions of the Minnesota Human Rights Act, i.e. race, color, creed, religion, national origin, sexual orientation, age, disability or status with respect to public assistance?
- all of the groups referenced by the MRPC 8.4(g): sex, race, age, creed, religion, color, national origin, disability, sexual preference, or marital status?
- those groups (women and persons of color) who were identified in the Gender Fairness and the Race Bias Task Force Reports as experiencing discrimination within the legal profession?

What are the **learning objectives** for attorneys who attend voluntary or mandatory courses in diversity and/or elimination of bias in the legal system?

- to eliminate prejudice and bias in the actions of Minnesota attorneys?
- to eliminate barriers to attorneys of color, women or other protected groups who are practicing in the legal system?
- to encourage the hiring, retention and promotion of protected group individuals within the court or judicial system? in the private sector?
- to foster greater understanding of other cultures and races?
- to broaden the world-view of attorneys in Minnesota who do not frequently come into contact with protected group individuals or attorneys?
- to address, and begin to rectify through education of Minnesota attorneys, the problems and concerns identified in the Gender Bias Task Force Report? In the Race Bias Task Force Report? In the Hennepin County Glass Ceiling Report? In other reports or studies compiled in other jurisdictions? In all such reports written in this or other jurisdictions?

A number of questions have arisen regarding how best to assure the **quality** of courses which are mandated. In the past, the Board did not deal with the issues of quality because attendance was not required in any distinct category of courses. It was assumed the market would assure the quality.

- With sub-categories of required courses, is there a greater need for quality assurance?
- how much guidance should be provided to potential course sponsors of diversity training programs for attorneys?
- should courses which do not reflect the values articulated in the Race Bias and Gender Bias Reports be denied?
- will highly qualified diversity trainers be less likely to plan and present diversity training programs for attorneys because they will think they are not being given adequate time to address the complexity of the topic?
- will highly qualified presenter be discouraged by the cost of presenting a 2 hour course which may be nearly as great as the cost of producing a 6 hour course?

- will enough appropriate diversity training ("directly related to the practice of law") be produced for attorneys who do not come into contact with the criminal or civil courts? what topics will be covered?

There are a number of issues with respect to how the proposed diversity and ethics requirements will **interface with existing requirements of the Rules.**

- should courses which are designed to be presented to deal with diversity problems within a law firm or government office be denied accreditation because of the Rule 101(k) prohibition on accreditation of in-house courses?
- if a diversity training course is accredited as law office management, should the 6 hour cap on law office management courses be applied to the diversity training course?
- should diversity courses be accepted in fulfillment of the ethics requirement?
- if not, cannot the argument be made that virtually any diversity course provides education in how to avoid the misconduct prohibited by MRPC 8.4(g) or (h)?

The question has been raised whether the ethics and diversity training should be **mandatory** or whether the teaching and learning might not be more effective in a **voluntary** setting:

- Assuming that some form of diversity training will be included within CLE, should such training be more effective if it is voluntary or if it is mandatory?

Concern has been raised regarding the special difficulties encountered by Minnesota's **out of state practitioners** in complying with CLE requirements.

- How will Minnesota's 5,000 out-of-state attorneys find and attend CLE courses which will fulfill the diversity training requirement?
- Is it likely that any significant number of out-of-state attorneys will change from active status to restricted status as a result of the ethics and/or diversity training requirements, thereby reducing funding to the Lawyers Professional Responsibility Board?

Should diversity training and/or ethics be **inside or outside the regular 45 hour CLE** requirement?

- should there be a cap on the number of hours an attorney can accrue in attendance at diversity training courses?

- should unlimited hours in diversity training be accepted in fulfillment of the 45 hour requirement?

A number of questions have been asked regarding the definition of the proposed **ethics** requirement.

- should ethics be restricted to legal ethics as defined in the Rules of Professional Conduct or should credit be given for courses which deal with general ethical concerns of society?
- should ethics courses be accredited which include teaching about professionalism, civility, alcohol and drug addiction prevention, alternatives to law practice, stress management, etc.?

Questions regarding the **mandatory 3 hour long ethics program**, include the following:

- what is the rationale for the three hour program?
- are there specific learning objectives for this program?

Questions regarding the requirement that ethics programs be at least **60 minutes in length** include the following:

- will a 60 minute requirement encourage providers to leave out discussions of ethics knowing that their audience will not be able to claim the 50, 40 or 20 minute segment in fulfillment of the ethics requirement?
- did the MSBA intend to delete the Rule 2 ethics requirement by proposing the change to Rules 3 adding a specific ethics requirement
- will all providers still be expected to address ethics whether or not a distinct ethics segment is included?

I hope this is of some value to you. Please feel free to contact me if you have any questions prior to the meeting on April 11.

cc: Phil Bruner
Merritt Marquardt
Mary Jo Ruff

EXHIBIT C

MSBA



April 10, 1995

Minnesota
State Bar
Association

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In-state
1-800-662-MSBA
Facsimile
612-333-4927

Margaret Fuller Corneille
The Supreme Court of Minnesota
Board of Continuing Legal Education
25 Constitution Avenue
St. Paul, Minnesota 55155

Re: Minnesota State Bar Association Petition on Mandatory
Diversity CLE Requirement.

Dear Peg:

As you are aware, a joint committee (the "committee") of the Minnesota State Bar Association (MSBA) and the Hennepin County Bar Association (HCBA) is currently working to elaborate on the purpose and goal of the MSBA's petition to the Minnesota Supreme Court regarding a mandatory diversity requirement. In your letter dated April 4, 1995 to Mike Galvin and Jarvis Jones, you detail numerous questions and concerns posed by the Board of Continuing Legal Education (the "Board") with regard to the diversity CLE requirement. The joint committee has discussed your letter and instructed me to respond to your specific concerns.

Before discussing the issues expressed in your letter, I think it is important that you understand the central perspective of the committee. The committee is of the opinion that Diversity CLE is no different and should be treated no differently than any other CLE. The committee has drafted a definition of "diversity" and by linking course outlines to the definition, the committee feels the CLE Board's task of reviewing and approving courses should be no more difficult than current course approvals. Realize that although the definition being developed by the committee will provide a framework from which the CLE Board can work, it is being written in a manner which will provide the CLE Board with a certain amount of latitude. The committee trusts the CLE Board will exercise the same common sense it currently exhibits when determining if a course qualifies for law office management or professional responsibility credit. Both law office management and professional responsibility are broad concepts and subject to numerous interpretations, but with an understanding of the goals underpinning these types of training, and with

President
Michael J. Galvin, Jr.
St. Paul

President-Elect
Lewis A. Remels, Jr.
Minneapolis

Secretary
Sheryl Ramsdahl Hvass
Minneapolis

Treasurer
John N. Nys
Duluth

*Executive Committee
Members At-Large*
Thomas A. Clure
Duluth
Gregory N. Gray
St. Paul
Hon. Edward Toussaint, Jr.
Minneapolis

Tim Groshens
Executive Director

Mary Jo Ruff
Associate Executive Director

broad definitions, we are confident that the CLE Board can effectively enforce the spirit of these CLE requirements.

Now, with regard to your specific questions:

1. With respect to the definition of diversity training, should the groups to be included within the training be articulated, and if so, how?

The fact that the petition does not expressly limit diversity training to "protected groups" or to specific characteristic has led the committee to conclude that no limitation was intended. While previous reports have identified specific concerns with regard to racial and gender bias, it is the committee's belief that any unfounded bias which may inhibit an attorney's ability to accurately, honestly, effectively or professionally deal with clients, colleagues, or others, is an appropriate focal point for training under the proposed petition.

2. What are the learning objectives for attorneys who attend voluntary or mandatory courses in diversity and/or elimination of bias in the legal system?

The CLE Board has offered the following examples of the types of learning objectives the petition could be focused on:

- to eliminate prejudice and bias in the actions of Minnesota attorneys.
- to eliminate barriers to attorneys of color, women or other protected groups who are practicing in the legal system.
- to encourage the hiring, retention and promotion of protected group individuals within the court or judicial system or the private sector.
- to broaden the world view of attorneys in Minnesota who do not frequently come into contact with protected group individuals or attorneys.
- to address, and begin to rectify through education of Minnesota attorneys, the problems and concerns identified in the Gender Bias Task Force Report or in the Race Bias Task Force Report or in the Hennepin County Glass Ceiling Report or studies written in other jurisdictions.

It is the committee's opinion that the suggested learning as well as other objectives not noted above, would certainly be acceptable under the petition. However, the committee also feels it is outside the committee's jurisdiction to specify objectives. To my knowledge there are no express objectives for other

types of CLE programs. The committee believes that a reasonably descriptive definition of "diversity training" and a general knowledge of the background leading to the petition (as specified in item 4 of the petition), should equip the CLE board with sufficient information to perform its duties.

3. A number of questions have arisen regarding how best to assure the quality of courses which are mandated. In the past, the Board did not deal with the issues of quality because attendance was not required in any distinct category of courses. It was assumed the market would assure quality.

It appears from the wording of this comment that the Board seems to fear that market forces will not apply to diversity training. The committee respectfully disagrees. Even though a particular type of CLE would be mandated under the petition, there would be no limitation as to who can provide that CLE. Therefore, the committee anticipates that there will be numerous providers. With numerous providers, market forces should ensure that only quality CLE curriculums and providers will survive. Furthermore, the committee encourages the Board to enforce the Rule 101 standards which apply to all CLE courses. Rule 101 provides a measure of quality assurance over and above market forces.

4. Will highly qualified diversity trainers be less likely to plan and present diversity training programs for attorneys because they will think they are not being given adequate time to address the complexity of the topic?

The committee finds it unlikely that diversity trainers would refuse to develop programs simply because of the two hour CLE requirement. Trainers like other professionals provide a service to meet the needs of specific clients. If a market exists there will be qualified programs developed to serve that market. Furthermore, the two hours of diversity training mandated by the petition are a floor not a ceiling. It does not seem unreasonable to predict that a portion of the attorneys in the marketplace will purchase programs in excess of the two hours mandated.

5. Should courses which are designed to be presented to deal with diversity problems within a law firm or government office be denied accreditation because of the Rule 101(k) prohibition on accreditation of in-house courses?

It is the committee's understanding that there are already exceptions to Rule 101(k), for example, the MSBA's Gender Bias video has been approved for CLE credit when used by law firms. Furthermore, while eliminating Rule 101(k) would make it easier for certain entities to present diversity programs, the committee is content to leave such a procedural determination to the CLE Board. The petition

being considered by the Court does not request an exception from Rule 101(k) or from any other Board Rules.

6. If a diversity training course is accredited as law office management, should the 6 hour cap on law office management courses be applied to the diversity training course?

The petition does not cap diversity training at 2 hours. As noted previously, the 2 hour requirement is a floor not a ceiling. If an attorney requests law office management credit for a course which qualifies for both diversity credit and law office management credit, I would hope the CLE board would inform the attorney that the course qualified for both types of credit and then allow the attorney to decide which type of credit they would prefer. Individual attorney may make different requests based upon their unmet CLE requirements.

7. Should diversity courses be accepted in fulfillment of the ethics requirement? If not, cannot the argument be made that virtually any diversity course provides education in how to avoid the misconduct prohibited by MRPC 8.4(g) or(h)?

As the question clearly identifies, there is overlap between diversity and ethics. In those situations where a course would qualify for both types of credit, the Board would certainly be within its authority to allocate the credits in any manner consistent with its rules.

8. The question has been raised whether the ethics and diversity training should be mandatory or whether the teaching and learning might not be more effective in a voluntary setting.

The question of whether diversity or ethics training should be mandatory or voluntary is moot. The petition before the court specifies mandatory diversity and ethics CLE courses. I would note that questions as to the need for and value of mandatory, as opposed to voluntary, diversity and ethics CLE, have been fully debated before the Gender Bias Task Force, the Racial Bias Task Force, the Hennepin County Bar Association Governing Council, the Minnesota State Bar Association Board of Governors and the Minnesota State Bar Association House of Delegates.

9. Concern has been raised regarding the special difficulties encountered by Minnesota's out of state practitioners in complying with CLE requirements.

The committee is sympathetic to the concerns of out of state practitioners, however, the committee fails to see any significant difference with regard to their obtaining diversity or ethics CLE versus any other CLE. If the concern is that

there are not sufficient out of state providers, the committee would disagree. Furthermore, there is the possibility of presenting taped CLE programs.

10. Is it likely that any significant number of out of state attorneys will change from active status to restricted status as a result of the ethics and/or diversity training requirements, thereby reducing funding to the Lawyers Professional Responsibility Board?

This question is certainly outside the jurisdiction of the committee, however, the committee imagines the same concern was raised when the first CLE requirements were established for Minnesota attorneys. The practice of law is a privilege not a right. The committee hopes the Court bases its decision on whether the diversity/ethics requirement is in the interests of the profession, and not based upon speculation as to what out of state lawyers may or may not do.

10. Should diversity and/or ethics be inside or outside the regular 45 hour requirement?

The petition which has been submitted to The Supreme Court of Minnesota leaves intact the minimum 45 hour CLE requirement. The petition expressly notes that the two hours of diversity training and three hours of ethics training are included in the 45 hour minimum.

11. Should unlimited hours of diversity training be accepted in fulfillment of the 45 hour requirement.

Yes. The petition specifies that the 2 hours of diversity training are a minimum. Diversity training should be treated like any other CLE. Frankly, the committee views the concern that attorneys may take 45 hours of diversity training as being rather unrealistic. Furthermore, even if attorneys do take 45 hours of diversity training is that any different than 45 hours of mediation training or 45 hours of bankruptcy training. Attorneys should have flexibility to determine their own individual needs within the confines of the CLE rules.

12. A number of questions have been asked regarding the definition of the proposed ethics requirement.

You should be receiving a separate letter from Tim Groshens, Executive Director of the Minnesota State Bar Association, which responds to your concerns regarding the ethics requirement.

13. Will a 60 minute requirement encourage providers to leave out discussions of ethics knowing that their audience will not be able to claim the 50, 40, or 20 minute segment in fulfillment of the ethics requirement?

The petition does not request or require the deletion of the Board's Rule 2 CLE requirement. If the rule is not deleted, providers will still be required to have an ethics component to their CLE curriculums. The committee would urge the Board to examine Rule 2 in light of the current petition and make their own determination as to whether Rule 2 is still necessary if and when the Supreme Court adopts the mandatory requirements.

The committee realizes that the CLE Board may have additional questions or that they may want further elaboration on responses contained in this letter. The committee therefore invites you to or any of your board members to attend one of our meetings. The committee wants the Board to feel comfortable that the petition, should it be approved by the court is workable. The committee looks forward to your continued support.

Sincerely,



Gregory N. Gray
Member, Joint Committee on Diversity CLE Petition

cc: Terri Mandel
Jane Schoenike
Mary Jo Ruff
Glen Oliver
Barbara Jerich
David Herr

EXHIBIT D

Supreme Court of Minnesota
Board of Continuing Legal Education
25 Constitution Avenue, Suite 110
St. Paul, Minnesota 55155
Telephone (612) 297-1800
Facsimile (612) 296-5866
TDD (612) 282-2480

MEMORANDUM=====

To: All Minnesota bar association presidents
All district bar presidents
Co-Chairs, MSBA Diversity Issues Committee
Co-Chairs, Hennepin County Bar Diversity Committee
Chair, MSBA Rules of Professional Conduct Committee
Co-Chairs, Women in the Legal Profession Committee
Chair, MSBA Continuing Legal Education Committee
Director, Lawyers Professional Responsibility Board
Director, MN CLE
Director, MILE
University of Minnesota School of Law, CLE coordinator
Hamline University School of Law, CLE coordinator
William Mitchell College of Law, CLE coordinator
Minnesota Society of Certified Public Accountants, CLE coordinator
Minnesota Trial Lawyers Association, CLE coordinator
American Arbitration Association, Minnesota Chapter, CLE coordinator
Chair, Individual Rights Foundation

From: Peg Corneille, Director, Minnesota Board of Continuing Legal Education

Date: March 20, 1995

Subject: Open meeting regarding Petition to amend rules of the State Board of CLE to require separate accreditation of ethics courses and to require diversity training

The Minnesota Board of Continuing Legal Education is studying the Petition to Amend Rules which was filed by the Minnesota State Bar Association in the Minnesota Supreme Court. The petition requests an amendment to the Rules of the State Board of Continuing Legal Education to require attendance at accredited diversity training and ethics courses as part of each Minnesota attorney's three year continuing legal education attendance requirement. A copy of the petition is enclosed.

Philip Bruner, the Chairperson of the CLE Board, appointed a Petition Review Committee made up of Board members and chaired by Merritt Marquardt to gather information regarding the Petition and to assist the Board in preparing a response to the Petition. Members of the committee include Board members Steve Zachary, Linda Close, Lee Hanson, and Ivonne Tjoe Fat.

The Petition Review Committee is inviting the president, chairs or designated representatives of each of the bar associations in Minnesota, as well as the organizations and committees listed above, to attend an open meeting on ~~Wednesday~~ *Tue* **April 11, at 2 PM at the Minnesota Judicial Center Room 230.** The purpose of this meeting is to solicit from these bar-related organizations and CLE providers comments and suggestions regarding the recommended amendments. In addition, the committee is interested in soliciting specific thoughts regarding implementation of the Petition's proposals.

In particular, the committee is interested in comments which will address the following questions:

- How should diversity training be defined?
- Should learning objectives for attorneys who attend diversity training be defined? If so, how?
- Should course approval criteria be articulated to describe the types of courses which would be approved? If so, what would such criteria incorporate?
- Should diversity training courses be required to comply with the "directly related to the practice of law" and other requirements of CLE Rule 101 (a) through (e) (a copy of which is enclosed)?
- Should all CLE providers be permitted to present diversity training courses or should certain approved providers only be authorized to present accredited programs?
- If providers are restricted to only those who are pre-authorized, what standards should be in place to assess the quality of the programs presented by these approved providers?
- What is the proper scope of the definition of ethics? Does it include such topics as diversity training, training in the elimination of bias in the profession, professionalism, civility, stress management, violence elimination, and/or chemical dependency within the profession? Should it be limited to the Rules of Professional Responsibility and the cases decided in connection with these Rules?

- Should the two hour diversity requirement or the three hour ethics requirement be in addition to the current 45 hour requirement or incorporated within it?
- Should ethics course segments which last less than 60 minutes be disapproved for ethics credit?
- Should the course curriculum for the three hour ethics "jump start" or "one-time-only" course be left to the discretion of the provider or should the CLE Rules define the course content?
- Should there be special provisions for compliance for out of state attorneys with respect to either the diversity or the three hour ethics requirement?

The format for the meeting will be informal. However, because we have invited a large number of organizations, we may have to limit the time for each person's comments. We have set aside two and one-half hours for the meeting. Written comments will also be accepted in lieu of or in addition to oral comments. I have enclosed a reply card which will allow us to plan for the size of the group.

Please return the card as soon as possible. We greatly appreciate your taking the time to give the Board your thoughts on this important topic.

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

FILED

C2-84-2163

STATE OF MINNESOTA
IN SUPREME COURT

In re:

Amendment of Rules for
Continuing Legal Education
of Members of the Bar

REQUEST FOR ORAL PRESENTATION OF ATTORNEY PETER A. SWANSON

Pursuant to the March 7, 1995 Order of this Court in the above-captioned matter, the undersigned hereby requests to make an oral presentation.

DATED: 5-8-95



Peter A. Swanson
Atty. Reg. #251604
135 North Nathan Lane #104
Plymouth, MN 55441
(612) 542-1839

WASHINGTON SQUARE LAW OFFICE

ROBERT W. HERR, Attorney at Law

4687 Clark Avenue
White Bear Lake, MN 55110-3416
(612) 426-1661

April 21, 1995

Frederick Grittner
Clerk of the Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

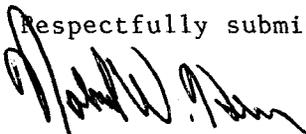
Re: Petition to Amend the Rules for Continuing Legal Education

I wish to note my objection to the portion of the proposal of the Minnesota State Bar Association to Amend Rule 3 of the Minnesota Rules for Continuing Education insofar as it requires "diversity" training.

My position is as follows:

1. I do not believe that the Minnesota Supreme Court should involve itself in requiring lawyers to receive "training" other than in substantive areas of law and well established ethical principles.
2. I do not believe there is a problem with "diversity/gender or racial bias" in the legal employment arena; and if there is such problem on the part of some employers/attorneys, it should not be required that all attorneys participate in remedial training.
3. I do not believe there is any basis for agreement as to what "diversity training" should consist of; rather, it appears, that various interests, whether based upon gender or race, will have their own notion as to what appropriate training will be and it does not seem fitting that the legal profession should be subject to such experimental instruction.
4. It bothers me that the Supreme Court might begin a course of social engineering through mandatory training programs. I do not believe that it is the function of the Supreme Court in regulating members of the bar to address lawyer employment practices, even if the Court concludes that there may be a state-wide problem with gender and racial bias in legal employment--although I do not concede this, (and it certainly has not been true in my personal practice).

Respectfully submitted,



Robert W. Herr
RWH/als

MMLA

Minnesota Minority Lawyers Association

Loring Station Box 50176
Minneapolis, MN 55403
(612) 649-4450

EXECUTIVE OFFICERS

Jeffrey A. Crawford
President 540-3729
Jerry Blackwell
Vice President 349-0601
Fred Ramos
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BOARD MEMBERS

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Carol Barsell 348-6123
Joseph Carter 298-5797
Mark Criser III* 321-9331
Hope Jensen 296-2906
Monica Miller* 348-8231
Degalynn Wade* 341-9122

*Student Representative

Frederick Grittner
Minnesota Supreme Court
245 Judicial Center
25 Constitution Avenue
St. Paul MN 55155

Re: Request for Oral Presentation and Support of the HCBA Supplemental Memorandum In Support Of MSBA Petition For Amendment Of Rules For Continuing Legal Education Of Members Of The Bar

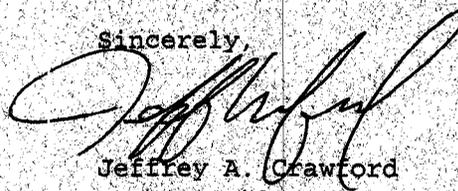
Dear Mr. Grittner:

Please consider this a request for an oral presentation at the May 12, 1995, hearing to consider the petition of the Minnesota State Bar Association to amend Rule 3 of the Minnesota Rules for Continuing Education of Members of the Bar. Appearing on behalf of the Minnesota Minority Lawyers Association (MMLA) will be Jeffrey A. Crawford.

Please also consider this a letter supporting the Hennepin County Bar Association Supplemental Memorandum In Support of MSBA Petition For Amendment of Rules for Continuing Legal Education of Members of the Bar.

Enclosed are 12 copies of MMLA's request for oral presentation.

Sincerely,



Jeffrey A. Crawford
MMLA President

JAC:edg
MMLA/Grittner.doc
cc: Mike Galvin Jr.
David Herr
Jarvis Jones
Trudy Halla

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

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Hennepin County Bar Association

Jane L. Schoenike
Executive Director

Minnesota Law Center #350 • 514 Nicollet Mall • Minneapolis, MN 55402-1021 • Phone 612-340-0022
Fax 612-340-9518

May 8, 1995

Mr. Frederick K. Grittner
Clerk of Appellate Courts
245 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

OFFICE OF
APPELLATE COURTS
MAY 8 1995

Re: Petition of MSBA re: Amendment of Rules of Continuing Legal Education

Dear Mr. Grittner:

I am enclosing the original and 12 copies of the Supplemental Memorandum of the Hennepin County Bar Association in support of the MSBA Petition to Amend the Rules of Continuing Legal Education for Members of the Bar. We have previously requested time to speak at the hearing on May 12, 1995. Mr. Jarvis Jones, President and Mr. Glenn Oliver will speak on behalf of the Hennepin County Bar Association.

If you have any questions, please contact me at your earliest convenience.

Sincerely,

Jane L. Schoenike
Jane L. Schoenike
Executive Director

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

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

FILED

In re:

Amendment of Rules for
Continuing Legal Education
of Members of the Bar

MEMORANDUM

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

In May, 1993, the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System found substantial evidence of racial bias throughout the system. In its Final Report, the Task Force continually recommended that judges, court administrators, attorneys and other court personnel receive required diversity training to help alleviate the bias problem. This Court followed that recommendation and court personnel received the mandatory diversity training. Now, studies show that the problem of bias is pervasive throughout the profession and creating institutional inequality for certain groups of lawyers in the state. The studies confirm the Racial Bias Task Force's finding that mandatory diversity education is necessary to eliminate this problem.

The Hennepin County Bar Association ("HCBA") submits this Supplemental Memorandum in Support of the Petition filed by the Minnesota State Bar Association ("MSBA") on September 19, 1994, to amend the Rules For Continuing Legal Education of members of the Bar to add additional continuing legal education ("CLE") requirements in diversity. HCBA also supports MSBA's recommendation that additional CLE requirements be added in ethics

and professional responsibility. This Memorandum provides information to the Court on the need for such requirements and explains how the new requirements will impact Hennepin County.

I. INTRODUCTION

HCBA is the largest local bar association in Minnesota. Its membership includes approximately one-half of the state's lawyers. Its current membership comprises lawyers from all areas of practice and every ethnic group including African Americans, Asian Americans, Hispanic Americans and American Indians. Also, 25% of HCBA's membership are women lawyers. The number of women lawyers and lawyers of color in Hennepin County increases every year. HCBA has devoted significant resources to study and develop programs to enhance the professional opportunities and the professional competence of Hennepin County's 7,000 lawyers. In furtherance of that effort, HCBA formed the Glass Ceiling Task Force in September 1992 to study the effects of bias in the legal profession against women lawyers and lawyers of color in Hennepin County. The Glass Ceiling Task Force consisted of a broad cross section of lawyers, including senior lawyers from law firms, corporate legal departments, government agencies and academia. Equally important, lawyers from a broad range of historically underrepresented groups were asked to serve on the Glass Ceiling Task Force. The Glass Ceiling Task Force's Report was adopted by HCBA at its May 19, 1993 membership meeting. Subsequently, the Glass Ceiling Task Force's Report was adopted by MSBA's General Assembly.

After considerable testimony, the Glass Ceiling Task Force found that "[t]here is a very firm 'glass ceiling' in place in Twin Cities law firms, government, and corporate law offices for both women lawyers and lawyers of color." Task Force Report at 5. The testimonials given at the Glass Ceiling Task Force's hearings and summarized in its Report prove that the glass

ceiling is a problem that needs immediate attention. Despite overwhelming evidence of the glass ceiling's existence, the Glass Ceiling Task Force also found that legal employers in Hennepin County continue to insist that there is no glass ceiling in their organizations. Unfortunately, this itself is part of the problem.

HCBA has formed committees to begin addressing the needs and concerns of historically underrepresented groups practicing law in Hennepin County. Although HCBA is in the process of implementing the Glass Ceiling Task Force's recommendations, the most important recommendation can only be implemented by this Court - mandatory diversity CLE. HCBA requests that this Court adopt the Glass Ceiling Task Force's recommendation and institute mandatory diversity CLE for members of the bar.

In 1993, HCBA's Professional Conduct and Professionalism Committees began discussing the need for additional CLE requirements in the area of ethics and professionalism. Each committee formed working groups to study the current requirements and to make recommendations for change. The Professional Conduct Committee reviewed CLE requirements in ethics from around the country, held a forum with CLE providers and representatives from the Supreme Court Board on CLE and issued a statement on the need for additional educational professional responsibility requirements. The Professionalism Committee discussed the Minnesota Rules of Professional Conduct and recommended that CLE courses on professionalism be mandated. As these issues came together, HCBA's Governing Council requested that a joint task force be formed with MSBA to reconcile the separate recommendations. The Joint Task Force concluded that there was a need for mandatory CLE requirements in ethics and professional responsibility. The Joint Task Force report was adopted by the HCBA Governing Council, the MSBA Board of Governors and the MSBA General Assembly.

II. WHY DIVERSITY CONTINUING LEGAL EDUCATION SHOULD BE MANDATORY

The reasons for adopting mandatory diversity CLE are summarized in remarks by HCBA President Jarvis Jones and the late Supreme Court Justice Thurgood Marshall. At MSBA's General Assembly in June 1994, HCBA President Jarvis Jones said:

"There is no doubt in my mind that the MSBA must support the concept of diversity training within the mandatory continuing legal education requirement. ... there is a recognized body of learning to support diversity training in both the legal and human resources fields. Simply because that body of learning extends beyond the legal field is no reason to deny its validity or appropriateness as a subject of a continuing legal education curriculum. Especially in the areas of civil and human rights, legal decisions have taken these areas into consideration and found them persuasive.

...I urge the Assembly to take an honest look at the need for all members of the profession to develop attitudes and create environments which are free of bias and which promote respect for each of us within the profession. The Supreme Court, bar associations and others have issued numerous reports on the presence of gender and racial bias in the profession. Is this an appropriate topic for continuing legal education? Absolutely. The concept of mandatory continuing legal education was embraced in this state to assure that the lawyers in this state were competent and continually updated on new developments. Why? To adequately represent their clients. I would argue that our competence and ability to adequately represent our clients in this day and age requires each lawyer to eliminate bias and embrace diversity. This is merely an extension of our commitment to the profession and the public. Certainly it will make us better individuals, but it will undoubtedly make us better lawyers.

... Practically speaking, this continuing legal education mandate is necessary to reach every member of the profession. ...It is not enough for us to talk the talk, we must walk the walk."

The following quote excerpted from the Final Report of this Court's Task Force on Racial Bias is also instructive:

"I wish I could say that racism and prejudice were only distant memories... and that liberty and equality were just around the bend. I wish I could say that America has come to appreciate diversity and to see and accept similarity.

But as I look around, I see not a nation of unity but of division - Afro and white, indigenous and immigrant, rich and poor, educated and illiterate. Even many educated whites and successful Negroes have given up on integration and lost hope in equality. They see nothing in common - except the need to flee as fast as they can from our inner cities.

The legal system can force open doors, and, sometimes, even knock down walls. But it cannot build bridges. That job belongs to you and me. We can run from each other, but we cannot escape each other. We will only attain freedom if we learn to appreciate what is different and muster the courage to discover what is fundamentally the same. Take a chance, won't you? Knock down the fences that divide. Tear apart the walls that imprison. Reach out; freedom lies just on the other side"

Justice Thurgood Marshall, July 4, 1992 (adopted and quoted in the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System Final Report, May 1993, at ix-x).

Justice Marshall's 1993 remarks are as applicable now as they were then. Although there are more women and people of color working in law firms, corporate legal offices and government offices than ever before, these lawyers face what has been characterized as a "plexiglas" ceiling because, unlike glass, it is impossible to break. The problems are particularly acute in law firms, where efforts to retain women lawyers and lawyers of color have been largely unsuccessful. The factors preventing the retention and advancement of women and people of color are subtle, behavioral, and influenced by unconscious socialization. According to HCBA's Glass Ceiling Task Force, "[a] primary cause of the glass ceiling is negative gender and race stereotypes and attitudes. These stereotypes often serve as justification for exclusion and discrimination." Glass Ceiling Task Force Report at 16. Mandatory diversity CLE is needed to eradicate this problem.

This Court's Task Force on Racial Bias confirmed the need for mandatory diversity CLE.

For example, the Racial Bias Task Force Report states:

"1. With a rapidly growing minority population and a disproportionate number of people of color subject to the court system, substantial proportions and sometimes a majority of case loads concern people of color.

2. Little emphasis is placed on providing predominately white justice system employees with the training needed to help them understand and respond appropriately to the cultures and communities of the people of color with whom they are involved.

3. The poor representation of people of color and inadequate training combine with other systemic problems to create common instances of biased and insensitive treatment and patterns of adverse impact on minorities involved in the justice system."

The Final Report by this Court's Task Force explicitly recommends diversity training for judges, lawyers, and other court personnel to eliminate the bias found to exist in almost every facet of the judicial system.

The legal profession could potentially be as diverse as the population that it serves if gender-based, race-based, and other barriers to full participation were eliminated. Moreover, the profession's future will increasingly depend on its ability to accommodate the increasingly diverse population of lawyers, judges, and others involved in the justice system.

This Court should not allow or encourage the Minnesota bar to cling to often unconscious, stereotype-driven behaviors that are preventing equality of opportunity in the profession and the justice system. Lawyers have historically been the advocates for eliminating societal barriers to equality. But standing for equality does not mean giving lip service to it. If we cannot clean our own house, then we cannot continue, in good faith, to tell others to clean theirs. This Court's Racial Bias Task Force has proven the need for mandatory diversity training and the Court has begun the difficult process of mandating diversity education for judges, lawyers and other court personnel. We now know that there are institutional barriers to equality in the profession that are as rampant as in other areas of society. Nowhere is the problem in need of a solution more than Hennepin County, the state's largest and most diverse county. HCBA strongly urges the adoption of mandatory diversity CLE as a first step in the right direction.

III. ETHICS AND PROFESSIONAL RESPONSIBILITY EDUCATION SHOULD BE MANDATORY

HCBA supports MSBA's request to institute mandatory ethics and professional responsibility. The ethics and professional responsibility proposals are twofold: 1) that ethics education should be a separate, recognized area of CLE, compliance with which is the responsibility of each individual lawyer licensed to practice in Minnesota; and 2) that professionalism courses, which go beyond the minimum standard contained in the Rules of Professional Conduct, are necessary. Moreover, these courses should be creditable as CLE and made an integral part of the ethics and professional responsibility training for Minnesota lawyers. This request is not novel as the Supreme Court Board on CLE has accredited individual courses on professionalism in the past. Much more than a public relations tool to improve the image of lawyers, the ethics and professional responsibility requirement is designed to ensure that Minnesota's lawyers understand the importance of ethics, professionalism and professional responsibility to the practice of law and the justice system. Adopting this proposal will set Minnesota on a path which has been taken by numerous other jurisdictions. This is further evidence that the Court will be taking a step in the right direction.

The MSBA Petition seeks a definition of professional responsibility education that includes such topics as civility, courtesy, respect, integrity, trust in the legal profession, client communication, client relations and relationships with colleagues and the courts. HCBA supports this expansive definition. It is well recognized that the lack of civility and professionalism are serious problems for lawyers today. These problems are exacerbated by the extremely competitive market for legal services. The current climate is causing lawyers to become frustrated and increasingly disappointed with the practice of law. We must

accept the responsibility of self-regulation and demonstrate that we are willing, as a profession, to impose upon ourselves high standards for professional conduct. As a profession, we must require that our members learn those standards and recognize that respect for colleagues, clients and the courts is essential to the profession's integrity and essential to maintaining public confidence in the justice system. The proposed ethics and professional responsibility amendments are needed and should be adopted by this Court.

IV. THE IMPACT OF THE PROPOSALS IN HENNEPIN COUNTY

HCBA has been a leader in developing educational programs for Hennepin County's lawyers. HCBA is striving to meet the challenge of serving the most diverse legal community in the state of Minnesota. The expansion of both lawyer and lay diversity will require HCBA to continue focusing on diversity issues. HCBA has already endeavored to conduct continuing legal education programs on diversity in compliance with the recommendations of its Glass Ceiling Task Force Report. HCBA has also developed partnerships with the minority and women's bar associations in other diversity initiatives. Mandatory diversity CLE will open the door for CLE providers to assist in eliminating the barriers to equal opportunity through diversity education.

The proposed mandatory CLE requirements for ethics and professional responsibility will also support HCBA's current efforts. Mandatory ethics and professional responsibility CLE will attract greater attention to the ethics and professional responsibility education programming HCBA provides to lawyers in our legal community. Through HCBA's Professional Conduct and Professionalism Committees, it will encourage broader discussion of ethics and professional responsibility topics. Knowledge and awareness of these issues is particularly important for today's urban lawyers. Mandatory CLE on ethics and professional responsibility should be adopted.

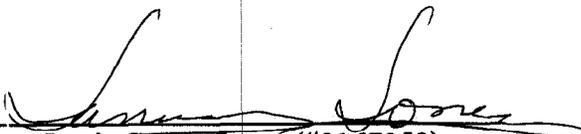
V. CONCLUSION

HCBA encourages this Court to accept the challenge of leadership in adopting MSBA's Petition. The lawyers of Hennepin County and our community as a whole will benefit from educational programs which encourage a dialogue and examination of diversity, bias and prejudice among Minnesota's lawyers. The fear of those who are different, and the natural inclination of individuals to trust only those who look and behave like themselves perpetuates the problem. As stated in the HCBA Glass Ceiling Task Force Report, "each member of this Task Force has come to the irrevocable conclusion that lawyers of color and women lawyers face unequal, severe, unnecessary and improper obstacles to fulfilling, rewarding careers." *Id.* at 47. The mandatory two hour diversity CLE requirement will help to reduce those obstacles. Placing upon each individual practitioner the burden of exposing him or herself to additional education in ethics, professional responsibility and professionalism will also improve the integrity of the profession and the justice system.

Dated: May 8, 1995

Respectfully submitted,

HENNEPIN COUNTY BAR ASSOCIATION

By: 
Jarvis Cedric Jones (#0167952)
Its President

GLENN D. OLIVER, ESQ.

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MAY 8 1995

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May 8, 1995

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT

Re: Petition To Amend The Rules For Continuing Legal Education

Dear Chief Justice Keith and Associate Justices:

I oppose that part of the Minnesota State Bar Association Petition which seeks to require a minimum of two hours of diversity training in courses approved by the Board of Continuing Education within the three-year reporting period. According to the Petition, and the various task force studies which prompted the Petition, a problem in human relationships has developed within the profession which has been identified as "bias within the legal system" and "gender and racial bias in legal employment." No one would deny that gender and racial bias exist in society. But that hardly justifies the presumption that the bar members, who generally possess skills in problem solving, are either ignorant of these issues or their ignorance, which is the source of ingrained bias, can be dispelled by special education.

My opposition is not based on a reluctance to address the real and corrosive effects of gender and racial bias in society. For those of you who are unfamiliar with my professional efforts to reduce bias in the legal profession, I would like to point out that I employed a female associate in the early 1970's long before some of the larger downtown firms were hiring women attorneys. Gender was never a factor in the selection of the 22 associates that I have hired over the years. During the decade of 1960-70, I performed many hours of pro bono service for Indian clients and organizations, both in the Twin Cities and on reservations of both Minnesota tribes. In fact at that time I tried, unsuccessfully, to educate the Minnesota Supreme Court in the basic concepts of diversity. See Munnell v. Rowlette, 275 Minn. 92, 145 N.W.2d 531.

In my opinion, mandatory diversity courses will have the opposite effect intended by the sponsors. The reasons are primarily based on the complex origins of individual bias and the impropriety of including it as a topic of professional study. My analysis and arguments are as follows:

Honorable Justice of the Minnesota Supreme Court
Page 2
May 8, 1995

ILLUSIONARY AND NAIVE

The Petition adopts the recommendations of the various task forces to eliminate gender and racial bias. Even though it is understood that this would be an ideal goal, the need to characterize it as an absolute only underscores the futility in promoting this endeavor. Programs on diversity are not going to rehabilitate prejudiced attorneys, and it is naive to think that two hours of lecture every three years will produce greater tolerance comparable to achieving a higher level of professional competence.

DIVISIVE AND CONTROVERSIAL

We should recognize that interpretations of diversity have propelled academia into bitter battles on college campuses throughout the nation. It appears from the brochure of a local legal education organization that diversity training will not limit its focus on gender and racial bias. The Minnesota Institute of Legal Education brochure announcing a course for "Navigating Diversity in the Workplace" scheduled for May 10, 1995 at the Marriott Hotel refers to the public awareness of "cultural" diversity. It is of alarming concern to me that this course will become a debate on political correctness. Whatever biases exist in the recesses of attorneys' minds are not going to be tempered by courses in cultural diversity.

MISGUIDED SOLUTION

If there are glass ceilings which prevent women from becoming partners in law firms because of gender bias, the solution is not mandatory legal education courses in diversity. Admittedly the discrimination is subtle, secretive, and subjective, thereby not lending itself to Human Rights action under Chapter 363. The evidence undoubtedly is not sufficiently demonstrative to warrant media attention. But the frequency of this type of discrimination must for the most part be predominant in the larger firms. I must believe the controlling male partners in these firms are deliberately, upon reflective acquiescence with their peers, perpetuating a policy of gender bias. They should be ashamed of themselves, but requiring them to periodically attend a seminar on diversity will not produce much shame. The bar association should develop its own program to challenge glass ceiling bias with confrontational inquiries if necessary. Why should the small firms and solo practitioners be forced to be part of a solution which is merely symbolic and not pragmatic?

Honorable Justice of the Minnesota Supreme Court
Page 3
May 8, 1995

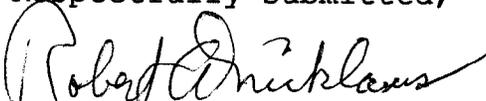
DETRACTS FROM INDIVIDUAL RESPONSIBILITY

At the risk of sounding cynical, this attempt to combat racial bias in the legal profession is another addition to a long list of legal remedies which are repetitive in failure. For many years now, federal and state legislative bodies have been devising mandatory programs which were intended to eliminate racial discrimination in society. The Petition presented to the Minnesota Supreme Court bears a strong conceptual resemblance to those legislative failures. A successful effort to reduce and someday eliminate racial bias does require the personal effort of each attorney, but it should be accomplished as an individual in concert with his responsibility to the community. Sitting in a classroom with fellow attorneys listening to a lecture on diversity would be an insult to the intelligence of the profession since it assumes lawyers are uninformed and presupposes a vast number of the bar members are predisposed to engage in biased behavior or to approve of its consequences in the courtroom.

Finally, as a practical matter, I don't believe the possible benefit warrants the time spent on the courses. Given the increase in procedural rules, administrative compliance, and specialized complexity of the law (I would suggest the Court review some of the Workers' Compensation changes under consideration in the current session of the legislature), most attorneys do not have the time to waste on legal education courses that will not enhance their skills. I am writing this statement while attending a dull Second District congressional political convention. Otherwise I would not sacrifice office time to make this objection which I consider to be directed to a very important issue.

I am convinced the MSBA has misjudged not only the problem but the remedy to the bias issues encountered in the practice of law. I do not believe the action taken by the delegates to the MSBA convention in Duluth represents the thinking of the bar membership. More important, I do not find a justification for diversity legal education courses in the recommendations of the Supreme Court Task Force on Racial Bias report. I would request that the Supreme Court have the District bar associations poll their membership after an open debate on this issue. I believe the Petition would be overwhelmingly rejected because it is likely to have a negative impact on the practitioner as well as on the public perception that attorneys are insensitive and need to be educated on racial and gender bias.

Respectfully submitted,


Robert A. Nicklaus

RAN:mlb

**SERKLAND LUNDBERG ERICKSON
MARCIL & MCLEAN, LTD.**

Founded In 1888

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May 3, 1995

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JACK G. MARCIL*
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BRAD A. SINCLAIR*
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JANE L. DYNES*
CARY R. STEPHENSON*
GARY A. ROCKNE
OFFICE MANAGER

*Also Licensed in Minnesota

Mr. Frederick Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitutional Avenue
St. Paul, MN 55155

**RE: Proposed Amendment to Rule 3 Report of Continuing Education
(Diversity Training)**

Dear Mr. Grittner:

I just received my April issue of the "Bench and Bar of Minnesota" yesterday, May 1, 1995, as did my other partners. It was in that issue that I discovered the March 7, 1995, order by Judge Keith fixing the hearing date for the proposed rule requiring diversity training. I think it would have been better if this published notice had been more timely.

In any event, I believe that a diversity training requirement is unwarranted, particularly on a state wide basis.

I have been a great proponent and participate in the continuing legal education process. I have been serving on the Continuing Legal Education Committee for the State Bar Association of North Dakota for 8 years now. I also served as chairman for 4 of those years.

I also serve as a faculty member on continuing legal education programs on average 3 or 4 times a year. Most of my programs are presented through the State Bar Association of North Dakota or through private providers like National Business Institute, Inc.

Some years ago, I even served as a faculty member at the "Bridge-The-Gap" seminar presented in Minneapolis.

My involvement with continuing legal education has taught me that the very concept of mandatory continuing legal education itself is not without controversy. I believe that there are still certain jurisdictions that do not have mandatory legal education. In fact, California was one of the hold outs.

Mr. Frederick Grittner
May 3, 1995
Page 2

Although I have had a few doubts in my own mind about mandatory continuing legal education, I believe that the benefits far out weight any disadvantages. Typically continuing legal education programs are presented by licensed professionals where the subject matter relates to a settled body of law, case or statutory developments or some other practical agenda.

The recent trend, however, has been to add to the good concept of continuing legal education, other matters such as mandatory ethic's training, professionalism, and so forth.

Now Minnesota proposes to be the first state to require mandatory diversity training.

The problem with this is that the requirement adds needless complexity to the reporting requirements. It might also require out of state attorneys to attend programs in inconvenient locations.

Worse yet, the time spent with diversity training is time taken away from practical legal education.

If the reporting requirements are going to be made more complex, a moments reflection will show that other subjects should be addressed before any requirement of diversity training. For example, a mandatory requirement concerning american constitutional history or even plain writing style, would certainly have much more merit.

The idea of diversity training strikes me as political correctness at its worst. I am certain that diversity training will involve lectures about how one should think and how one should behave.

One wonders who the lecturers, sometimes called "trainers" will be, what their qualifications will be and what their political agendas will be.

I do not believe it is appropriate for the Minnesota Supreme Court to make diversity training. A requirement for licensing of attorneys.

Please pass my views onto the court. I'm sorry I can't attend the hearing in person.

Yours very truly,

SERKLAND, LUNDBERG, ERICKSON,
MARCIL & McLEAN, LTD.


Roger J. Minch

RJM/slm

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CHAMBERS OF
MICHAEL J. DAVIS
DISTRICT JUDGE
WARREN E. BURGER BUILDING
316 NORTH ROBERT STREET
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May 3, 1995

OFFICE OF
APPELLATE COURTS

MAY 4 1995

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Clerk of Court
Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155-6102

Re: In re: Amendment of Rules for Continuing Legal Education
of Members of the Bar
C2-84-2163

To the Honorable Justices of Minnesota Supreme Court:

I am writing this letter in support of the proposal for the amendment of the rules for continuing legal education. The proposed requirement that members of the bar participate in two hours of diversity training is plainly needed and long overdue. As both the Hennepin County Bar Association's Glass Ceiling Report and the Supreme Court's Racial and Gender Bias Reports documented, there is a great deal of intolerance and discrimination within the legal profession. While I am certain that a mere two hours of diversity training over a three year period will not eradicate the sexism and racism which are thriving in our midst, such a requirement can be a beginning. I am, therefore, wholeheartedly in favor of requiring at least two hours of diversity training over each continuing legal education reporting period for every member of the Minnesota bar.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Davis". The signature is written in a cursive style with a large, sweeping flourish at the end.

Michael J. Davis
United States District Court Judge

LINDQUIST & VENNUM P.L.L.P.

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ATTORNEYS AT LAW

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May 2, 1995

OFFICE OF
APPELLATE COURTS

MAY 4 - 1995

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The Honorable Justices of the
Minnesota Supreme Court
c/o Clerk of Appellate Courts
Minnesota Judicial Center
25 Constitution Avenue
St. Paul MN 55155-6102

Re: Petition of MSBA Regarding Amendment of Rules of Continuing
Legal Education

Dear Honorable Justices:

I wish to state my full support for the MSBA Petition on
Diversity CLE. In my capacity as co-chair of the Hennepin County
Bar Association Diversity Committee and Managing Partner of
Lindquist & Venum, I believe it is extremely important for those
of us in the legal profession to receive high quality training
designed to help all of us become more culturally sensitive to
our colleagues, both within and without the profession. There is
much to be learned and I believe the Petition represents a good
initial start to the learning process.

Very truly yours,

LINDQUIST & VENNUM P.L.L.P.



Thomas H. Garrett

THG:bes

cc: Lindquist & Venum Management Committee

DIRECTOR
MARCIA A. JOHNSON
FIRST ASSISTANT DIRECTOR
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May 8, 1995

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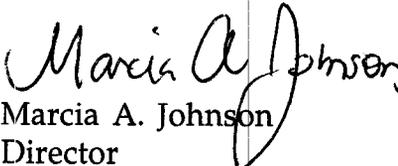
Office of Appellate Courts
25 Constitution Avenue
Room 305
St. Paul, MN 55155

Re: In Re Petition to Amend the Rules for
Continuing Legal Education.
Supreme Court File No. C2-84-2163.

Dear Clerk:

Enclosed are the original and twelve copies of (1) Request to Make Oral Presentation,
and (2) Comments of the Office of Lawyers Professional Responsibility on *In re
Petition to Amend the Rules for Continuing Legal Education*.

Very truly yours,


Marcia A. Johnson
Director

tt

Enclosures

cc: Honorable M. Jeanne Coyne

FILE NO. C2-84-2163
STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

MAY 8 1995

FILED

In Re Petition to Amend the Rules for
Continuing Legal Education

**REQUEST TO MAKE
ORAL PRESENTATION**

The Office of Lawyers Professional Responsibility requests leave for
Marcia A. Johnson, Director, to address the Court concerning the Minnesota
State Bar Association petition to amend the Rules for Continuing Legal
Education.

Dated: May 8, 1995.

Respectfully submitted,

Marcia A. Johnson

MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
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FILE NO. C2-84-2163
STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS

MAY 8 1995

FILED

In Re Petition to Amend the
Rules for Continuing
Legal Education.

COMMENTS OF THE OFFICE
OF LAWYERS PROFESSIONAL
RESPONSIBILITY

The Office of Lawyers Professional Responsibility ("OLPR") submits its comments with respect to the petition of the Minnesota State Bar Association ("MSBA") to amend the Minnesota Rules for Continuing Legal Education to require three (3) hours of continuing legal ethics and professional responsibility education credit as part of the 45 hour CLE requirement.

The OLPR's primary function is to investigate and prosecute complaints regarding lawyers' ethical misconduct. A secondary mission of the Office is to help educate the bench and bar regarding legal ethics and professional responsibility. The Director and Assistant Directors devote significant resources to preventing misconduct through presentations at CLE seminars and other bar functions as well as through the Office's telephone advisory opinion service. It is from the Office's perspective as educator that these comments are offered.

While Rule 2 of the CLE Rules generally requires sponsoring agencies to cover legal ethics and professional responsibility problems in CLE courses, more can be done to familiarize the practicing bar about these issues. In this regard, both Iowa and Wisconsin now impose a mandatory ethics component as part of their CLE requirements. See Wisconsin Supreme Court Rules Chapter 31 (amended 1993) (three hour ethics requirement in each two year reporting cycle); Iowa Supreme Court Rules, Rule 123.3(b)(amended 1988) (two hour ethics requirement in each two year reporting cycle).

It should be noted that in supporting the adoption of a mandatory ethics requirement, the OLPR does not recommend that the requirements of Rule 2 be voided. Professional responsibility and ethical considerations should continue to be emphasized in all continuing legal education courses. Presentation of these issues in the context of diverse, substantive areas of law by practitioners in those fields is critical to a full understanding, recognition and appropriate resolution of professional responsibility issues.

The terms "ethics and professional responsibility" are not defined in the MSBA petition. The OLPR believes that the CLE Board should be allowed discretion to make determinations as to what courses satisfy the requirement. We note for the Court's information that in Wisconsin, the CLE Board must specifically approve each course that will satisfy the ethics requirement. A listing of courses approved/disapproved to date is attached as Exhibit 1. Iowa's Board also reviews each request for credit individually, but approves only courses that specifically address the Code of Professional Responsibility or Judicial Canons.

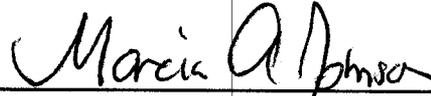
The OLPR does not support that portion of the MSBA petition which would require that a qualifying ethics course must be at least 60 minutes in length. It is our understanding that the concern this requirement was designed to address was those courses that currently leave the ethics discussion until the end of the seminar, have no designated speaker or materials, and are titled generally as "Questions and Answers About Ethics." Imposing a specific minimum time requirement may resolve this problem, but it cuts too wide a swath. The CLE Board should certainly be equipped to assess whether a proposed ethics or professional responsibility course qualifies for credit by consideration of the topic presented, the speaker designated and the new requirement making written materials mandatory. To require a specific time allotment is unnecessary and likely counterproductive.

First, many ethics issues do not require or justify a full hour presentation. Generally, even the most complicated topic can be adequately covered in 30 - 45 minutes. While some topics may necessitate a full hour, that should not be a Court ordered minimum. In 1994, the OLPR provided speakers at nearly 50 law related functions, the vast majority of which were for CLE credit. Very few of those presentations were for a full 60 minutes in length. Most were 30 - 45 minutes. Second, the imposition of mandatory ethics will not reduce the number of requests for speakers from the OLPR, and likely will engender many more such requests. As stated, while education is considered an extremely important function for the Office, it is not the primary function. The preparation time required for a 60 minute presentation is significantly longer than that for a 30 minute topic. Imposing such a mandatory "minimum" could place a real strain on the available resources the OLPR can provide to educational efforts.

As a final matter, the OLPR questions the imposition of a one-time only "jump start" for the ethics component. As drafted, it purports to require lawyers to attend a single three hour ethics and professional responsibility course to fulfill the new requirement in the first three-year reporting period after adoption. Lawyers admitted to practice in Minnesota after that three-year period apparently would be exempt. Hence, it is not directed at a particular set of practitioners, either those new to the practice or those who would benefit from an intensive refresher course, but simply at a window in time. The petition does not address what perceived benefit is to be gained by this one-time requirement. At the open meeting to address these

issues held by the CLE Board on April 11, 1995, no explanation was proffered.
Neither Wisconsin or Iowa have imposed similar start-up requirements when
adding the mandatory ethics requirement to their CLE rules.

Dated: May 8, 1995.



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EPR TOPICS

HAVE BEEN APPROVED FOR USE TOWARD THE EPR REQUIREMENT

COMPETENCE

Legal Knowledge and Skill in Representation
Thoroughness and Preparation
Maintaining Competence

SCOPE OF REPRESENTATION

Independence From Client's Views or Activities
Services Limited in Objectives or Means
Criminal, Fraudulent and Prohibited Transactions

DILIGENCE

COMMUNICATION

Withholding Information

FEES

Basis or Rate of Fee
Division of Fee
Disputes over Fees

CONFIDENTIALITY OF INFORMATION

Authorized Disclosure
Withdrawal
Dispute Concerning Lawyer's Conduct
Disclosures Otherwise Required or Authorized
Former Client

CONFLICT OF INTEREST: General Rule

Loyalty to a Client
Lawyer's Interests
Consultation and Consent
Conflicts in Litigation
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 PRO BONO PUBLIC SERVICE
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 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION
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 GENDER BIAS
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 JUDICIAL ETHICS
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 DIFFICULT CLAIMS
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STRESS MANAGEMENT FOR LAWYERS

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Best Mode

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to avoid willful infringement

Assumption of prosecution; antitrust and misuse issues

Willful infringement; other egregious conduct

Best Mode; fallback positions

National Asian Pacific American Bar Association - Minnesota Chapter

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Re: File No. C2-84-2163

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Enclosed please find twelve copies of the Memorandum of the Minnesota Chapter of the National Asian Pacific American Bar Association in Support of MSBA Petition for Amendment of Rules for Continuing Legal Education of Members of the Bar.

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Respectfully submitted,

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OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

FILED

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

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

In Re:

FILED

Memorandum of the Minnesota Chapter
of the National Asian Pacific American
Bar Association in Support of MSBA
Petition for Amendment of Rules for
Continuing Legal Education of Members
of the Bar

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

The Minnesota Chapter of the National Asian Pacific American Bar Association (NAPABA-MN) strongly supports the petition of the Minnesota State Bar Association to amend Rule 3 of the Minnesota Rules for Continuing Legal Education of Members of the Bar to add requirements for continuing legal education courses in ethics, professional responsibility, and diversity.

Various task forces such as the Minnesota Supreme Court Gender Task Force Report (September 1989), the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System (1993), and the Hennepin County Bar Association Glass Ceiling Task Force Report (April 1993) have all recognized that bias and prejudice are barriers to equal opportunity and fairness of treatment in the state judicial system. These task force reports all demonstrate the need for diversity training of members of the bar with the goal of elimination of bias in the court system.

Respectfully submitted,

NATIONAL ASIAN PACIFIC AMERICAN
BAR ASSOCIATION - MINNESOTA CHAPTER

By:

Terry M. Louie
Terry M. Louie, President
612-335-2270

Date:

May 3, 1995

MSBA

May 8, 1995

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VIA MESSENGER

Mr. Fredrick Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, Minnesota 55155-6102

**Re: Petition of the Minnesota State Bar Association
File No. C2-84-2163**

Dear Mr. Grittner:

Enclosed for filing is the original and twelve (12) copies of Petitioner's Memorandum in connection with the Petition to amend the Rules for Continuing Legal Education.

Sincerely,



M. J. Galvin, Jr.
President

MJG:jw
Enclosures

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

FILED

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

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

In Re:

FILED

For Amendment of Rules for
Continuing Legal Education of
Members of the Bar

MEMORANDUM OF PETITIONER
MINNESOTA STATE BAR ASSOCIATION

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

The Minnesota State Bar Association ("MSBA") filed a petition on September 19, 1994 to amend the Rules for Continuing Legal Education of Members of the Bar to add additional requirements for continuing legal education courses in diversity ethics, professional responsibility, and professionalism to be included in the current 45 hour continuing legal education requirement for all members of the Bar. This Memorandum will further demonstrate the reasons for the Petition and the reasons why such education is necessary, to define further what such education would include and to provide suggestions on how the new requirements could be administered.

I. DIVERSITY

A. PROCEDURAL HISTORY

In 1987, this Court commissioned a Task Force to examine the nature and extent of gender-related bias in the courts. In September of 1989 the Final Report of the Minnesota Supreme Court Task Force for Gender Fairness in the Courts was issued. 15 *William*

Mitchell Law Review, 827-948 (1989). It was in this report that the first formal recognition and recommendation for education of issues on diversity was made.

In 1990, the Supreme Court commissioned a similar task force to study the effects of racial bias in the court system. The report of this task force also stressed the need for training and education in cultural diversity to eliminate bias within the justice system. See, Minnesota Supreme Court Racial Bias Task Force Report in *Hamline Law Review*, Volume 16, No. 3 (1993).

In addition to the Supreme Court Task Force reports, numerous other studies have been done by various organizations of the Minnesota Bar which also recommend diversity education for the legal profession, including the Minnesota State Bar Association Report from the Commission on Women in the Legal Profession (April 1990), and the Hennepin County Bar Association Glass Ceiling Task Force (May 1993). The Minnesota State Bar Association Diversity Issues Committee endorsed the Glass Ceiling Task Force recommendation on diversity education in April, 1994.

In 1993, the MSBA, in conjunction with the Hennepin County Bar Association (HCBA), appointed the MSBA/HCBA Joint Task Force on CLE Requirements and directed it to study the desirability of requiring mandatory education in the areas of ethics, professionalism and diversity. The Joint Task Force on CLE Requirements recommended mandatory ethics and professionalism training, but did not recommend mandatory diversity education. However, at the MSBA convention held in Duluth, Minnesota on June 25, 1994, a resolution that two hours of diversity continuing legal education be included in the 45 hour CLE requirement was considered and debated. Although the MSBA/HCBA Joint Task Force on CLE Requirements did not vote in favor of the diversity recommendation, the

General Assembly of the MSBA voted to approve and recommend to the Court the proposed amendment to the CLE rules.

The MSBA's Petition to Amend the Rules for Continuing Legal Education to require two hours of diversity education in each 45 credit reporting period is made in recognition and furtherance of the reports and recommendations cited above.

B. RATIONALE FOR ADOPTION OF MANDATORY DIVERSITY CLE

1. This Court Has Already Recognized The Need For Mandatory Diversity Education.

This Court has recognized that bias and prejudice are barriers to equal opportunity and fairness of treatment in the state judicial system on numerous prior occasions.

In the Minnesota Supreme Court Gender Fairness Task Force Report (September, 1989), recommendations were made for education to eradicate bias and stereotypes suffered by female attorneys and litigants:

"Judicial and attorney education programs should reflect an awareness of the inappropriateness of the defense tactic of appealing to gender stereotypes." (page 84.)

...

"Sensitivity training for lawyers and courtroom personnel should be provided by law schools, continuing legal education and employee training programs." (page 96).

The Minnesota Supreme Court Task Force on Racial Bias in the Judicial System noted in several sections the need for members of the court system to understand minority cultures and communities and work towards the elimination of bias in the system itself:

"A recurrent theme of this Task Force Report is that people of color in Minnesota are confronted by a court system composed almost exclusively of white justice system employ-

ees who often have little understanding of minority cultures or communities." (at page 134.)

...

"... we need to ensure that judges, attorneys, court personnel, probation officers, law enforcement personnel, and others involved in the system receive high quality training designed to help them become more culturally sensitive to the people they serve." (at page 134.)

Leading the profession, the Judges and Court personnel of the State of Minnesota are undergoing mandatory diversity education. According to the July, 1994 Progress Report issued by the Court's Implementation Committee on Multicultural Diversity and Racial Fairness in the Courts, the state's Conference of Chief Judges has required all judges to take part in diversity education by March, 1995. In addition, each judicial district has developed and implemented its own cultural diversity education plan for employees. Court personnel are benefitting from an educational opportunity that allows them to be alert to bias and cultural insensitivity in the performance of their duties and in their relationships with colleagues and members of the Bar. It is clear that diversity education and multicultural literacy are priorities for this Court and are viewed as essential to the performance and effectiveness of the justice system in this state.

In addition to the task forces commissioned by the Supreme Court, the Hennepin County Bar Association formed a Glass Ceiling Task Force to study and make recommendations on eliminating barriers to full and fair participation of women and minorities in the legal community. One of the findings of the Glass Ceiling Task Force was the existence of negative gender and race stereotypes and attitudes as the primary cause of the glass ceiling in the profession. See, Hennepin County Bar Association Glass Ceiling Task Force Report

(April 1993), at 16. As a result of this and other findings, the Glass Ceiling Task Force report recommended the following:

"Submit a proposal to the Minnesota Supreme Court to require that all attorneys licensed in the state receive at least two (2) hours of diversity education in each CLE reporting period." Report at 36.

This recommendation, as well as the entirety of the Glass Ceiling Task Force Report, was adopted by the Diversity Issues Committee of the MSBA.

In addition, the 1990 Report of the Minnesota State Bar Association Committee on Women in the Legal Profession recommended that:

"The Minnesota Supreme Court mandate training for lawyers designed to promote the best possible understanding of gender-related issues that affect the profession, and to promote respect and accommodation of an by male and female lawyers for each other." Report at 3.

2. Other Studies Also Document That Bias, Prejudice and Stereotypes Continue To Have A Profound Effect On The Professional Lives of Minnesota's Lawyers And On The Justice Systems Of The State Of Minnesota.

In addition to the task forces commissioned by this Court, a series of studies and reports provide compelling support for the correctness of the Court's conclusion and provide evidence of the lack of opportunity and the persistence of bias in the profession. The following are only a very few of the many examples which demonstrate the magnitude and severity of the problem.

"When I was in law school I had an inherent belief that if a minority attorneys were talented, politically and culturally aware, worked hard and produced good work, the system would allow some minorities to sneak through. However, now that I work for a large law firm institution, the institution is more biased and toxic than I thought, making the glass ceiling virtually untouchable for minorities. (Male

Lawyer of Color, Law Firm)." HCBA Glass Ceiling Task Force Report, (April 1993), at 6.

"When I moved to this legal community I experienced discrimination five times worse than what I had seen previously. Opposing counsel are, at times rude, verbally abusive and patronizing. (Woman Lawyer of Color)" Ibid.

"I've endured racial jokes, been nearly thrown out on a Saturday by a janitor who wondered why a person my color would be in the building, and been brought to meetings as a 'token black,' never to see the client or the file again. It's very degrading and defeating. (Male Lawyer of Color, Law Firm)" Id. at 16.

"There is a very firm 'glass ceiling' in place in Twin Cities law firms, government and corporate law offices for both women lawyers and lawyers of color." HCBA Glass Ceiling Task Force Report, (April 1993) at 5.

"Young minority attorneys have to aggressively seek work from busy partners, but these same busy partners often make a special effort to seek out young white associates to work on their projects." HCBA Glass Ceiling Task Force Report, (April 1993). Id. at 23.

To be a law partner and a person of color is to be a pioneer, someone trying to find professional satisfaction in a world that, until quite recently, did not welcome you." Steven Keeva, "Unequal Partners: It's Tough at the Top for Minority Partners," ABA Journal, February 1993, p. 50.

The Minorities Report (sic) found lawyers of color under-represented at the partnership levels in law firms and in the upper echelons of corporate offices. The 1988 San Francisco Bar Association study found that 27 of 250 largest law firms in the country reported employed no black lawyers and 98 firms employed no Hispanic lawyers. ... most recently, a February 1993 article in the ABA Journal reported that today less than 3% of all partners in America's largest firms are persons of color. HCBA Glass Ceiling Task Force Report. (April 1993), Id. at 9.

These problems do not exist only in Minnesota. The American Bar Association as well as local and state bar associations around the country have devoted considerable resources to studying the problem of bias and prejudice in the profession.¹

It is also worth noting that the problem is not only endemic to the legal system. Governor Carlson recently commissioned a Task Force to examine Glass Ceiling Issues existing throughout the State of Minnesota.

Education of the Bar on the elimination of bias and prejudice within the profession is a necessary step in the eradication of day-to-day experiences of the nature of those cited in the various reports and studies.

C. DEFINITIONAL REQUIREMENTS FOR DIVERSITY CONTINUING LEGAL EDUCATION

1. What Do We Mean By "Diversity"?

"Diversity" as a concept generally refers to a spectrum of human characteristics and differences commonly considered immutable or difficult to change, which have historically been considered barriers to full employment, and objects of prejudice, bias and discrimination within the legal profession and the justice system. Diversity includes, but is not limited

¹See, e.g., American Bar Association Commission on Opportunities for Minorities in the Profession, "Report and Recommendations," (January 1986); American Bar Association Commission on Women in the Profession, "Report to the House of Delegates," (August 1988); Association of the Bar of the City of New York, "Multicultural Initiatives," (November 1992); Bar Association of San Francisco, "Minority Employment Survey: Final Report," (April 1988); Connecticut Law Firms, "Statement of Fifteen Connecticut Law Firms Regarding the Hiring and Retention of Minority Lawyers," (January 1991); District of Columbia Metropolitan Area Law Firms and Corporate Legal Departments Policy Statement Regarding Minority Hiring and Retention, (May 1992); New Jersey Law Firm Group, "Annual Report 1990-1991," (May 1991); State Bar of Georgia Special Committee on the Involvement of Women and Minorities in the Profession.

to, classes of individuals who are protected by antidiscrimination legislation and encompasses all participants in the legal profession and justice system, including white males.

2. What Is Diversity Continuing Legal Education?

A diversity continuing legal education course is one that provides instruction on the elimination of bias and prejudice in the legal profession, in legal institutions, or within the justice system; or on the identification and removal of institutional, attitudinal or behavioral barriers to fair and equal participation and employment in the profession by all lawyers in Minnesota.

Diversity continuing legal education is not the promotion of a particular political ideology, nor is its purpose to resolve moral issues or questions of conscience. Course content and faculty should encourage exploration and discussion about diversity issues in an intellectual, practical and respectful manner.

**D. RECOMMENDATIONS FOR IMPLEMENTING THE DIVERSITY
CLE REQUIREMENT**

1. The Diversity CLE Requirement Can Be Administered In The Same Fashion As Current CLE Courses.

The diversity education requirement does not require a separate set of rules or procedures. Rule 101 of the State Board of Continuing Legal Education sets forth the standards and governs the implementation of continuing legal education in Minnesota. The CLE board must review course outlines against Rule 101 and approve or deny credit accordingly. While diversity education courses will differ in content from those currently offered by CLE providers, the standards of Rule 101 combined with a review utilizing the definition of diversity CLE in Section C above will provide guidance on the qualification of diversity CLE offerings.

In some ways, diversity CLE courses are closely aligned to courses currently being offered as professional responsibility or law office management courses. Both law office management and professional responsibility are broad concepts and subject to interpretation, but with an understanding of the goals of this type of education and with broad definitions, the CLE Board can, as it has in these other topic areas, effectively regulate the providers of diversity education.

2. Learning Objectives Of Diversity Education Courses Should Be Derived From The Definition Of Diversity CLE And Rule 101.

Petitioner MSBA believes a simple definition of what would constitute "diversity education" for purposes of the proposed rule should permit the CLE Board to review proposed courses. Learning objectives are contained in the following definition of diversity CLE, specifically:

- a. To promote understanding and elimination of bias and prejudice in the legal profession, legal institutions and the justice system; and
- b. To promote understanding and elimination of barriers to the full participation and employment in the profession of all lawyers.

In addition, findings and recommendations contained in the numerous studies and reports on the topic of bias in the legal profession provide an adequate resource for developing learning objectives and course outlines which comply with the definition of diversity CLE. The CLE Board would have the jurisdiction and authority, as under present rules, to determine if proposed courses should receive credit for the diversity requirement.

3. Separate Quality Assurance Standards For Diversity CLE Courses Should Not Be Required.

As stated earlier in this section, it is the position of the MSBA that diversity CLE courses be subject to the same standards and quality control measures as the current CLE courses submitted for accreditation. There is no reason to believe that market forces will fail to ensure that only quality CLE curriculum and providers will survive. Members of the Bar are not a vulnerable community and will make known their expectations for quality diversity CLE curricula.

4. Two Hours Is An Adequate Amount Of Time To Provide A Quality Education seminar To Members Of The Bar.

Concern has been expressed over the proposed requirement of two hours of diversity education. Two hours of diversity education is a floor and not a ceiling. It is within the discretion of providers to offer and for attorneys to attend programs in excess of two hours in length. Two hours appears to be sufficient to provide the benefits to the participants and not be excessively burdensome on the participants.

5. Requests For Diversity Accreditation For Courses Offered As Part Of In-House Programs Or For Out-Of-State Practitioners Should Be Handled On A Case-By-Case Basis.

The CLE Board currently reviews each request for accreditation on its merits using Rule 101 for a guide. It has made exceptions in the past for the use of the MSBA Gender Bias video to be used in in-house seminars and each circumstance should be reviewed individually and left to the discretion of the Board.

As it relates to out-of-state practitioners, diversity and ethics accreditation may be requested for courses submitted for credit by out-of-state providers, as is currently the practice. The Court should consider alternative procedures to permit out-of-state lawyers

to participate in diversity education in the event such training is not available in their locality. Such alternatives could include videotape or similar procedures which are utilized in other jurisdictions.

6. Two Hours Of Diversity Education Is A Minimum Requirement For Compliance During The 45-Credit Cycle.

Petitioner recommends that the two hours of diversity education be a floor, not a ceiling, and that diversity and professional responsibility training be included within the current 45 hours of CLE required during each reporting period. Participants should have the flexibility to determine how many total hours of diversity education is appropriate for themselves.

7. A Credit Hour That Qualifies For Both Diversity And Ethics Credit Should Be Allocated To The Fulfillment Of One Or The Other Requirement.

While there is the potential for overlap between diversity and ethics, it is the recommendation of the MSBA that an attorney should be required to designate the requirement he or she is attempting to fulfill by that hour of CLE. To the extent a course may qualify for both requirements, the MSBA recommends that a participant designate the requirement, but be permitted to satisfy one or the other requirement, but not both.

E. CONCLUSION

Mandatory diversity education for Minnesota lawyers is a logical next step in addressing the numerous findings identifying bias and prejudice within the profession and to improve the effectiveness and fairness of the justice system. It is not an end, but a beginning in eliminating bias and prejudice in the legal profession, legal institutions and the justice system which impedes a person's ability to have free and equal access to the justice system or to the legal profession.

II. PROFESSIONAL RESPONSIBILITY AND ETHICS

A. PROCEDURAL HISTORY

The MSBA has also petitioned the Court to add additional requirements for continuing legal education courses in professional responsibility and ethics to be included in the current 45 hours of CLE for all members of the Bar. The origin of the Petition and the reasons for its presentation to this Court have previously been addressed in this memorandum.

B. RATIONALE FOR ADOPTION OF MANDATORY PROFESSIONAL RESPONSIBILITY/ETHICS CLE

This Court has already recognized the need for mandatory professional responsibility/ethics training in Court Rule 2 and Rule 101(B) of the Rules of the Supreme Court for Continuing Legal Education of members of the Bar. Court Rule 2 requires the sponsoring agency to submit to the Board a description of the treatment given professional responsibility and ethical consideration in the courses being submitted. Court Rule 2 also authorizes the CLE Board to refuse credit, reduce credit or refuse to give full credit to courses in which the Board does not believe that issues of professional responsibility or legal ethics are omitted or inadequately treated.

Petitioner believes that while courses approved may contain an ethics or professional responsibility component in conforming with these rules, the component is not always easily identified and oftentimes is the last subject to be discussed and consequently, the full impact of the ethics or professional responsibility subjects are lost on the participants.

Given the current public view of lawyers and identifiable reoccurring ethical and professional responsibility issues, a focused program on these subjects is in the best interests of the Court, the profession and the public. Petitioner further believes that the "jump start"

concept described in the Petition requiring all lawyers to complete three hours of such training in their next 45 hour reporting cycle is also in the best interest of the profession and the public.

The education of a lawyer needs to be viewed as a continuum beginning in law school and continuing throughout the lawyer's career. Any system of education for lawyers should contain a specific and identifiable emphasis on ethics and professional responsibility in order to assure the public, the courts and other lawyers that each lawyer is educated in issues of professional responsibility as in other substantive areas of law. This specific emphasis already exists in law school and in the admissions process in the form of the Multi-State Professional Responsibility exam. It should continue through each lawyer's career through continuing legal education requirements. Such a rule will encourage more substantive treatment of ethical issues within CLE programs and is consistent with what is being done in other jurisdictions.

C. DEFINITIONAL ISSUES; PROFESSIONAL RESPONSIBILITY AND ETHICS

Professional responsibility and ethics refers to the ethical and professional obligations lawyers have to colleagues, clients, tribunals and other individuals involved with or part of the legal profession and the administration of justice. A definition of professional responsibility and ethics may provide courses which deal with the Minnesota Rules of Professional Responsibility, the ABA Model Rules of Professional Conduct, and the caselaw arising from those rules. In addition, the definition may include courses designed to promote improvement in the practice of law through the promotion of professionalism, civility, malpractice prevention and ethical conduct wider in scope than the prohibitions contained in the Rules of Professional Conduct.

Courses which would not qualify for professional responsibility and ethics continuing legal education credit would be those such as personal improvement topics or marketing.

D. NO ADDITIONAL PROCEDURAL RULES

CLE Rule 101(B) makes reference to the requirement of professional responsibility or ethical components in CLE courses. The Petitioner believes this requirement can be interpreted to include courses in professionalism as an integral part of the Rules of Professional Responsibility. The addition of professionalism topics, such as civility, client communication, relationship with the courts and judiciary, and malpractice prevention are directly related to professional responsibility and ethics.

E. RECOMMENDED METHOD OF IMPLEMENTATION OF PROFESSIONAL RESPONSIBILITY AND ETHICS RULE CHANGE

The Professional Responsibility and Ethics Rule change could be administered in accordance with the Board's current rules, with the following suggested additional provisions:

1. The three hours of additional training in the area of ethics and professional responsibility would be within the 45 hours of required CLE.
2. Courses submitted for fulfillment of the professional responsibility and ethics CLE requirement would be at least one hour in length. The purpose of the one hour minimum is to increase the importance of this requirement and encourage that sufficient time be devoted to course preparation and materials. Petitioner does not intend that a professional responsibility course of less than 60 minutes be disapproved, only that such courses do not qualify for fulfillment of the "professional responsibility and ethics" CLE credit requirement of three hours per reporting period.

3. The "jump start" provision, which would require lawyers to attend a single three-hour long professional responsibility course during the first three year period after adoption of the requirement, is intended to accelerate the training of all members of the Bar in professional responsibility education. It is envisioned that there would be "jump start" programs designed by providers for specific segments of the Bar, such as public lawyers, criminal law lawyers and corporate lawyers.

4. Compliance by out-of-state lawyers registered in Minnesota should not be difficult, since many ethics programs are available nationwide and it should not be more difficult for the out-of-state attorney to meet a professional responsibility requirement than it is to meet the other mandatory CLE requirements. It is anticipated that the marketplace will quickly accommodate the 60 minutes length and jump start provisions of the proposed rule.

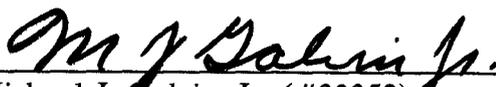
F. CONCLUSION

Petitioner MSBA respectfully submits that this Honorable Court should grant its Petition and adopt amendments to the Rules of Continuing Legal Education of Members of the Bar to expand the requirements for ethics, professional responsibility, and professionalism training for lawyers and to adopt mandatory diversity education.

Dated: May 8, 1995.

Respectfully submitted,

MINNESOTA STATE BAR ASSOCIATION

By 
Michael J. Galvin, Jr. (#33352)
Its President



OFFICE OF
APPELLATE COURTS

THE MINNESOTA COURT OF APPEALS
MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE
ST. PAUL, MINNESOTA 55155

MAY 3 1995

FILED

CHAMBERS OF
JUDGE ROLAND C. AMUNDSON

(612) 297-1005

May 1, 1995

The Minnesota Supreme Court
c/o Frederick Grittner
Minnesota Judicial Center Room 305
25 Constitution Avenue
Saint Paul, Minnesota 55155

Justices:

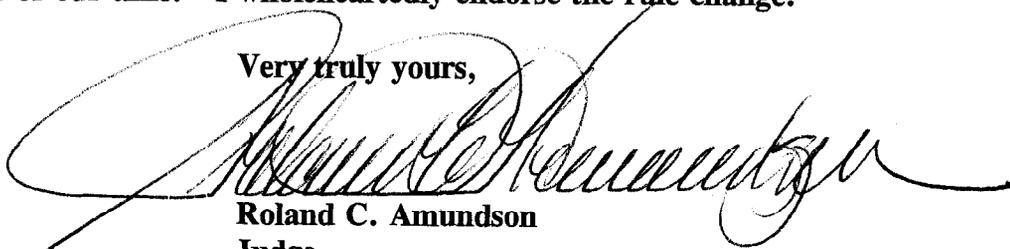
I am pleased to present material for consideration by the court relating to the rules for continuing legal education. Specifically, I support the inclusion of both an ethics component and training in diversity. Each is an essential element for any professional--most particularly those who seek to serve justice.

Over the past several months, I have spoken to several dozen groups, including service clubs, private law firms, the Minnesota Association for Court Administration, and the Minnesota Legal Administrators Association about ethics. I have been to Hennepin County and held eight sessions for county employees on the topic. People are hungry for knowledge and help in living an ethical professional and personal life. I do not pose myself as exemplary, but I invite them to walk through ethical models in arriving at their own decisions. The response is very gratifying. (I am enclosing a copy of one of the letters I received following the Hennepin seminars.) This is an area we must address as a profession. The need is too obvious to necessitate detailing the case.

Diversity training is worthwhile for its own sake and as a component of ethical life. I am also enclosing a letter I wrote to the presenters at this court's diversity training last fall, and also remarks I have given at service clubs, and other groups about diversity. These speak my testament to the necessity for diversity training.

I am pleased the Supreme Court is considering this rule change. It reflects sensitivity to the necessities of our time. I wholeheartedly endorse the rule change.

Very truly yours,

A large, stylized handwritten signature in black ink, which appears to read "Roland C. Amundson". The signature is written over the typed name and title.

Roland C. Amundson
Judge

pc: **Jarvis Jones, President**
Hennepin County Bar Association
c/o St. Paul Fire and Marine Insurance Company
385 Washington Street
St. Paul, MN 55102-1396

Michael J. Galvin, Jr.
Briggs and Morgan
2200 First National Bank Bldg.
St. Paul, MN 55101

All Court of Appeals Judges
Minnesota Judicial Center

STATE OF MINNESOTA
FOURTH JUDICIAL DISTRICT COURT



COURT ADMINISTRATION
PROBATE DIVISION
HENNEPIN COUNTY GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487

April 17, 1995

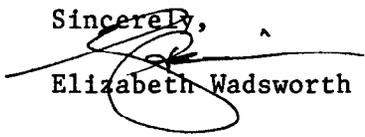
Honorable Roland C. Amundson
MN Court of Appeals
MN Judicial Center
25 Constitution Ave
St. Paul MN 55155

Dear Judge Amundson:

Thank you for conducting the "Ethics in the Court" seminar today. It was thought provoking and time well spent; however, most of the credit for that success belongs to you. In other hands it might have been ruined. You were kind, courteous, and thoughtful. You treated the participants respectfully, as if they had a meaningful role and hence, contribution to give. Your warm manner (i.e., greeting people with a handshake) and personable approach (calling people by name) enhanced your invitation for involvement. You were in the trenches with us.

In her autobiography, Angela Davis writes that as a young child in elementary school her heart was broken by seeing children go without lunch; therefore, she stole coin from her father to give to, "my hungry friends....It seemed to me that if there were hungry children, something was wrong and if I did nothing about it, I would be wrong too." (Angela Davis, An Autobiography, Int'l Publ., N.Y., c1974.) I found this vignette telling in light of our discussion of ethos, principles and standards.

Sincerely,


Elizabeth Wadsworth Procai



THE MINNESOTA COURT OF APPEALS
MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE
ST. PAUL, MINNESOTA 55155

CHAMBERS OF
JUDGE ROLAND C. AMUNDSON

(612) 297-1005

April 20, 1995

Elizabeth Wadsworth Procai
Court Administrator
Probate Division
Hennepin County Government Center
Minneapolis, MN 55487

Dear Ms. Procai:

Thank you for your kind letter about the ethics seminar. I enjoyed it immensely, and I was grateful for your contributions and letter.

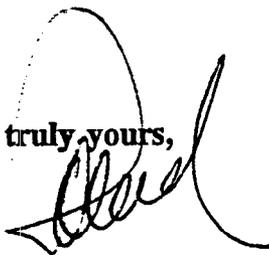
I was especially interested in your reference to Angela Davis' thoughts. I return the favor with words from Jesse Jackson's address at the Democratic National Convention in July of 1984 where he said:

If in my high moments, I have done some good, offered some service, shed some light, healed some wounds, rekindled some hope, or stirred someone from apathy and indifference, or in any way along the way helped somebody, then this campaign has not been in vain....If in my low moments, in word, deed or attitude, through some error of temper, taste or tone, I have caused anyone discomfort, created pain or revived someone's fears, that was not my truest self....I am not a perfect servant. I am a public servant doing my best against the odds. As I develop and serve, be patient. God is not finished with me yet.

This seems to be excellent advice for anyone -- especially those of us in public service.

Again, thank you for your letter and keep up the good work -- it's a journey not a destination.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Roland C. Amundson', written over the typed text 'Very truly yours,'.

**Roland C. Amundson
Judge**



THE MINNESOTA COURT OF APPEALS
MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE
ST. PAUL, MINNESOTA 55155

CHAMBERS OF
JUDGE ROLAND C. AMUNDSON

(612) 297-1005

November 4, 1994

Ms. Myrna Marofsky
Mr. Ken Morris
Professional Development Group, Inc.
6442 City West Parkway, Suite 205
Eden Prairie, MN 55344

Dear Ms. Marofsky and Mr. Morris:

Thank you for an excellent day "Appreciating Differences."
Your work with our group was thoughtful, sensitive, respectful - -
and effective.

As I told you Thursday, I hope there will be an opportunity
for you to tell the court about your impressions and thoughts at
the conclusion of your sessions. It seems this would be an
invaluable insight as we move to address the gender, racial and
other invidious biases which impede our lives and the work of our
courts.

I believe we need to reduce the "we/they" dichotomy, invite
colleagues and give ourselves the chance to stand before the
mystery of another person, listen to them, speak our own truths and
embrace any paradox or ambiguity.

I do not think that anyone need regard all claims to truth as
equal or believe that judgment is no more than the expression of
personal preference. Rather, when we have conflicting values, for
example, we should acknowledge they are not matters of whim and
happenstance. History has given them to us. They are anchored in
our experience, in our heroes, in our folkways, traditions, and
standards. Some of these values seem to us so self-evident that
almost everyone thinks they have, or ought to have, universal
application; the right to life, liberty and the pursuit of
happiness, for example; the duty to treat persons as ends in
themselves; the prohibition of slavery, torture, genocide. Other
values are not so evident. People with a different history will
have different values.

The shock of the new, the fear of the strange, the urge to conform. All these are such powerful forces. It still seems to me that some appeal can be made to the "we." That is, the advantage flowing to an individual when they are freed of invidious bias. The possibility that great benefit can be realized by both "they" and "we" is alluring, isn't it? Nothing human is foreign to me, Oscar Wilde is reported to have said. Rainer Maria Rilke put it poetically, saying:

This is at bottom the only course that is demanded of us: to have courage for the most strange, the most singular, and the most inexplicable that we may encounter.

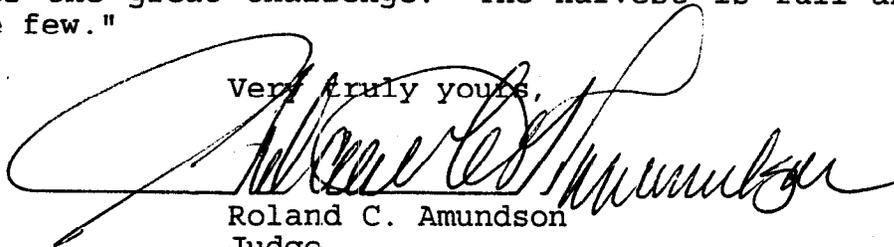
That humankind has in this sense been cowardly has done life endless harm; the experiences that are called "visions," the whole so-called "spirit-world," death and all those things that are so closely akin to us have, by daily parrying, been so crowded out of life that the senses by which we could have grasped them are atrophied.

To say nothing of God.

Again, thanks for your valuable contribution to the work of this court.

Remember the great challenge: "The harvest is full and the laborers are few."

Very truly yours,

A large, flowing handwritten signature in cursive script, which appears to read "Roland C. Amundson". The signature is written in dark ink and is positioned above the typed name and title.

Roland C. Amundson
Judge

MGK[®]

McLAUGHLIN GORMLEY KING COMPANY
8810 Tenth Avenue North • Minneapolis, Minnesota 55427-4372 U.S.A.

May 5, 1995

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

FILED

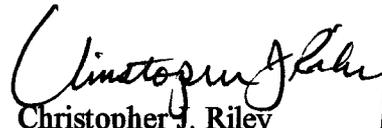
Frederick Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Proposed Amendment To Rules For Continuing
Legal Education

Dear Mr. Grittner:

Pursuant to the Court's March 7, 1995 order, I enclose 12 copies of my written comments on the proposed amendment. I do not wish to make an oral presentation.

Very truly yours,


Christopher J. Riley
General Counsel

CJR/mm

MAY 8 - 1995

STATE OF MINNESOTA
IN SUPREME COURT

FILED

**In Re Proposed Amendment
To The Rules For Continuing
Legal Education Of Members
Of The Bar**

C2-84-2163

**WRITTEN COMMENTS
BY CHRISTOPHER J. RILEY**

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

I respectfully submit the following comments for the Court's Consideration.

1. I have no objection to the proposed amendment to the extent it requires a minimum of three hours of continuing ethics and professional responsibility education.
2. I object to that portion of the amendment that requires a minimum of two hours of "diversity training."
3. "Diversity training" is not defined in the rule except to the extent that the course must be approved by the Board.
4. There have been many reports of diversity training gone awry, with serious, lasting adverse effects on the participants. Without further guidance I fear similar results.

5. If "diversity training" means that attorneys will review federal and state anti-discrimination statutes, that should be stated. I and the vast majority of my colleagues are already well versed in these issues.
6. Without further definition, I fear that the rule will simply require attorneys to endure lectures on "sensitivity".
7. This aspect of the rule takes political correctness to new extremes.
8. I respectfully request that the Court approve the amendment except as to the diversity training component.



CHRISTOPHER W. RILEY

Attorney Registration No. 177866

8810 Tenth Avenue North

Minneapolis, MN 55427

(612) 544-0341

May 5, 1995



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (612) 296-6196

May 8, 1995

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

FILED

Frederick Grittner
Clerk of the Appellate courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Petition of MSBA re Amendment of Rules of Continuing Legal
Education

Dear Mr. Grittner:

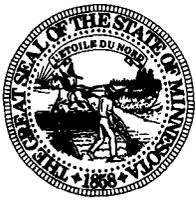
Enclosed for filing please find an original and 11 copies of the written
statement of Attorney General Humphrey concerning the above noted
subject matter.

Sincerely,

A handwritten signature in cursive script that reads "H. Camilla Nelson".

H. CAMILLA NELSON
Civil Rights Policy Director

cc: Michael J. Galvin, Jr.
President, MSBA



STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

102 STATE CAPITOL
ST. PAUL, MN 55155-1002
TELEPHONE: (612) 296-6196

May 8, 1995

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

The Honorable Justices
Minnesota Supreme Court
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

FILED

Dear Justices:

I am writing to express my support for the proposed amendment to the Minnesota Rules for Continuing Legal Education to include a minimum of two hours of diversity training. Many recent studies and reports completed both locally and nationwide have reached the same conclusions. First, racial and gender bias exist within our system of justice. Second, and more important, the existence of bias impedes the administration of justice.

We have an obligation to eliminate bias in the judicial system because it negatively impacts access, effectiveness and fairness and runs counter to the constitutional principle of equal justice under the law. Continuing legal education about issues of diversity can increase the cultural competence of the practicing Bar and in turn decrease the risks of miscommunication and bias in all areas of legal practice.

Therefore, I fully support the petition of the Minnesota State Bar Association to amend Rule 3 of the Minnesota Rules for Continuing Education of Members of the Bar.

Best regards,

A handwritten signature in cursive script, appearing to read "Hubert H. Humphrey III".

HUBERT H. HUMPHREY III
Attorney General

Facsimile: (612) 297-4193 • TDD: (612) 297-7206 • Toll Free Lines: (800) 657-3787 (Voice), (800) 366-4812 (TDD)

May 8, 1995

Frederick K. Grittner
Minnesota Supreme Court
25 Constitution Avenue
Saint Paul, Minnesota 55155

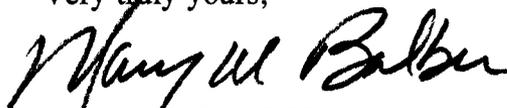
RE: Petition of MSBA re: Amendment of Rules of Continuing
Legal Education
Court Docket No. C2-84-2163

Dear Mr. Grittner:

Please consider this a request for an oral presentation at the May 12, 1995 hearing to consider the petition of the Minnesota State Bar Association to amend Rule 3 of the Minnesota Rules for Continuing Education. Appearing on behalf of the Minnesota American Indian Bar Association will be Mary Al Balber, current president of the association.

Enclosed are 12 copies of the Association's summary of the statement to the Court.

Very truly yours,



MARY AL BALBER
MAIBA President

(612) 282-5708

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

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

FILED

In re: Support of the MSBA Petition
 For Amendment of the Rules for
 Continuing Legal Education of
 Members of the Bar

MEMORANDUM

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

The Minnesota American Indian Bar Association ("MAIBA") submits this memorandum in Support of the Petition filed by the Minnesota State Bar Association ("MSBA") on September 19, 1994, to amend the Rules for Continuing Legal Education of Members of the Bar to add additional requirements for continuing legal education ("CLE") in diversity training. MAIBA also concurs with the Supplemental Memorandum of the Hennepin County Bar Association filed in this matter as it relates to support of the CLE diversity requirements.

I. INTRODUCTION

The Minnesota American Indian Bar Association is a four year old not-for-profit organization comprised of 100 members, American Indian and non-Indian, who are attorneys, law students, tribal advocates engaged in, or with an interest in, the practice of law relating to American Indians. Most of MAIBA members are attorneys admitted to practice law before this Court and lower courts of the State of Minnesota as well as a number of tribal courts in the region.

The MAIBA has three missions which the organization and individual members strive to promote:

1. unity, cooperation and the interchange of ideas among persons associated with Indian law;
2. education of the public with regard to legal issues affecting Indian people; and
3. justice and effective legal representation for all Indian people.

We believe that mandatory diversity CLE requirement will assist us in achieving our mission and result in more culturally knowledgeable members of the bar, thereby helping to erode the over 500 years of educational ignorance, misunderstanding and deliberate indifference by the legal community of American Indian individuals, communities and nations.

II. DIVERSITY CONTINUING LEGAL EDUCATION SHOULD BE MANDATORY

In May, 1993 the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System issued its Final Report. The Task Force's findings confirmed what communities of color, particularly the American Indian community, had long suspected; that there was substantial evidence of racial bias throughout the system. The Final Report also made specific findings about the lack of understanding and knowledge regarding Native American/American Indian nations and the legal status of Minnesota's 50,000+ American Indian residents and recommended that action be taken to address these findings.

The Final Report expressly recommended diversity training for judges, lawyers and other court personnel to eliminate bias and insensitive treatment of people of color and other cultures. In April and August, 1994, MAIBA responded to this recommendation and provided American Indian culture, law and policy sessions for District Court Judges in the Ninth and Tenth Judicial Districts which are made up of 25 counties in Minnesota. A significant number of American Indians reside within the two Judicial Districts, and include the Leech Lake, White Earth and Red Lake Ojibwe Reservations. In addition, MAIBA offered two similar sessions for district court personnel at the February, 1995 Minnesota District Court

Administrators Conference. The Response to such trainings has been extremely positive. (See attached article, **Indian children get courtroom advocates**, Star Tribune, May 16, 1994.)

MAIBA believes that mandatory diversity training of numerous cultures, particularly as it is related to substantive areas of law will be just as successful.

III. IMPLEMENTATION OF MANDATORY DIVERSITY CLE REQUIREMENT

The American Indian culture and traditions have endured despite centuries of systemic efforts to silence the Nations, physically, emotionally and spiritually. Many American Indians believe that what action we take today will affect the seventh generation of children yet to be born. It is with that thought that MAIBA has dedicated and committed itself to educating our legal colleagues in the practice of law as it relates to American Indians.

The MAIBA supports the premise of the MSBA petition that the diversity requirement can be implemented and administered within the current requirements of of the Supreme Court CLE Board's Rule 101. MAIBA will assist the Supreme Court and CLE providers in identifying and recruiting American Indian and non-Indian individuals with legal and/or cultural expertise to provide high quality programs to satisfy this requirement.

V. CONCLUSION

MAIBA joins the HCBA and other minority bar associations in urging this Court to adopt the MSBA's petition for mandatory diversity training. By doing so, the Court will have taken another step towards eliminating the legal profession of racial bias and enhancing the integrity of the justice system.

Dated: May 8, 1995

Respectfully submitted,

By

Mary Al Balber

MARY AL BALBER

MAIBA President

Atty. Reg. No. 209715

Suite 840

Midland Square Building

331 Second Avenue South

Minneapolis, Minnesota 55401

Indian children get courtroom advocates

Twin Cities lawyers aim to change system that ignores kids' culture

By Donna Halvorsen
Staff Writer

For a state that prides itself on doing the right thing, Minnesota looked pretty sheepish when Congress took up the cause of Indian children in the 1970s.

In congressional hearings, Minnesota was held up as a case study in how to break up Indian families. One of every eight Indian children in the state had been adopted, Congress was told, and 97.5 percent were placed in non-Indian homes.

The Indian Child Welfare Act was passed in 1978 as a way to see that Indian children grow up as Indians, embracing rather than shunning their culture.

Sixteen years later, half the Indian children adopted in Minnesota still are adopted by non-Indians, and Indian children are placed in foster care 10 times as often as other children.

But a new spotlight on the issue is a local one, not one beamed on the state from Washington, D.C. This time, the catalysts for change are a group of young, activist Indian attorneys who are bent on preserving Indian culture, and a state court system that seems willing to confront its own biases.

"Our numbers are small, but we think our voice is strong," said Mary Al Balber, president of the Minnesota American Indian Bar Association, which made Indian children one of its primary causes when it was formed three years ago.

Until recently, there were few Indian attorneys in Minnesota. Now there are about 40, and some of them are making waves.

"It's an issue that's near and dear to all the tribes. We need our kids, and our kids need us."

**Anita Fineday, tribal
attorney for the Leech
Lake Band of
Chippewa**

■ Mark Fiddler heads the new Indian Child Welfare Law Center, which opened in December as a visible and vocal advocate for Indian children. Previously, public defenders represented Indian families in cases involving the federal law, but they were "woefully underfunded and overworked," said Fiddler. The center's three full-time lawyers, working out of the Minneapolis American Indian Center, are finding themselves in the same bind. "We're getting buried" with cases, Fiddler said. But so far, the lawyers have managed to place 87 percent of the children with Indian families. Fiddler, a 1988 graduate of the University of Minnesota Law School, is a member of the Turtle Mountain Band of Chippewa in North Dakota.

■ Balber, an assistant attorney general, was one of three Indian women who recently conducted a cultural sensitivity session for about two dozen judges from the 10th Judicial District, an eight-county area north of the Twin Cities. The session was a pilot for similar training programs elsewhere in the state, and it succeeded "beyond our wildest expectations," said Anoka County District

Children continued on page 5B

Children/ State court ruling is expected to have nation

Continued from page 1B

Judge Lynn Olson, head of the district's bias elimination team. "There were audible gasps for some of the statistics and some of the comments that the women made." Balber, a 1990 graduate of Hamline University Law School, is a member of the northern Wisconsin Ojibwe tribe.

■ Anita Fineday, who helped train the judges, is the lead attorney in a case before the Minnesota Supreme Court that is being watched nationally. The case involves a non-Indian Bemidji couple who want to adopt three Indian sisters for whom they have been foster parents. "It's an issue that's near and dear to all the tribes," said Fineday. "We need our kids, and our kids need us." Fineday, tribal attorney for the Leech Lake Band of Chippewa, is a member of the White Earth Band of Chippewa. She's a 1988 graduate of the University of Colorado Law School.

The official underpinning for the lawyers' efforts is a report by the state Supreme Court's racial bias task force. Nearly a year ago, the task force reported widespread cultural insensitivity and "an astounding ignorance" of the law among judges, attorneys and social workers.

Bias elimination teams, such as the one headed by Olson, have been set up in each of the 10 judicial districts as a result of the report.

Balber is pleased with such efforts rather than disgruntled that they have taken so long. "It had come to a point, like every other movement, where it's time," she said.

Olson said judges need to challenge long-held assumptions that are based on cultural biases.

For example, the well-being of an Indian child might be challenged because the child lives in a crowded household, with no bed of his own. But one of the differences of Indian culture, she said, is that "they're always willing to take in one of their own, even if there's no bed."

"What's the definition of a good home?" she asked. "We all know what a good home is. Well, maybe we don't."

As a social worker in the 1970s, Olson recalls, she saw foster and adoptive parents who were so eager to assimilate Indian children into white, middle-class society that "they were vehement about not talking to them about Indian culture."

At the same time, judges tended to think that "kids are kids," and that their backgrounds were irrelevant, she said. "I think we're beginning to realize that if we're going to do what's in the best interests of the child, we've got to take into account what their heritage is."

How do you decide what's in the best interests of Indian children? When is it OK to deviate from the federal law?

All eyes will be on the state Supreme Court on May 31 when it takes up those questions. Seven tribes and Indian organizations have entered the case as "friends of the court," generating a 14-inch stack of paperwork.

"All of the tribes which are still in existence today have lost much of their land [and] most of their resources, and much of their sovereignty has been stripped away," Fineday wrote in her brief to the court. "Tribes and the Leech Lake Band [of Chippewa] are now fighting for their very survival, their children."

In the midst of the dispute are three girls, ages 6, 8 and 10, members of the Leech Lake Band whose parents' rights were terminated in 1991. The children have lived in several foster

homes, including that of the white Bemidji couple who want to adopt them, and now are with an Indian foster mother.

The adoption was approved by a lower-court judge and upheld by the Minnesota Court of Appeals, which said permanence is more important for the children than growing up in an Indian culture.

The Leech Lake Band and others who have intervened in the case say that the court ruling should be overturned, and that the children should be placed with a relative who now has come forward to adopt them.

Under the federal law, Indian children are to be placed with family members, members of the child's tribe or members of another tribe unless there is "good cause" to do otherwise.

The Court of Appeals said the "good cause" in this case is the children's "extraordinary emotional needs," which make having a permanent home especially important.

If the ruling is upheld, "it'll be pretty much the end of the Indian Child Welfare Act," said Fineday. "Every child, in foster care especially, needs

permanence."

State Human Services Commissioner Maria Gomez has intervened in the case on the side of the tribes. So have Beltrami County and the Hennepin County public defender's office.

Assistant Attorney General Kim Beuchel Mesun, who is representing Gomez, said the commissioner believes that if the lower-court ruling is allowed to stand it will lead to many adoptions of Indian children by non-Indians.

"This issue is one of first impression in Minnesota: What is 'good cause' to place an Indian child outside the

placement preferences of the act?" Mesun said. "It hasn't really been decided directly in many other states, either."

Fineday expects the state Supreme Court's ruling to have national impact.

"Because there are so few cases on the Indian Child Welfare Act, courts tend to look at decisions in other states," she said. "So we know that it will be picked up on in other states."

Said Fiddler, "There's going to be lots of fireworks over this."

MAY 8 - 1995

FILED

911 6th Avenue N.W.
Austin, MN 55912
April 19, 1995

Fredrick Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

Re: Court File No. C2-84-2163

Dear Mr. Grittner:

Please accept this letter and the attached correspondence for submission to the court on the above-entitled petition for its hearing on May 12, 1995.

I believe it is critical that the court make the distinction between the legitimate goals of diversity training relating to benign characteristics such as color and ethnic background and the controversial aspects of diversity training relating to sexual orientation and politically correct indoctrination. Few, if any, attorneys in Minnesota would object to the former, but I'm firmly convinced that a large number would object to the latter.

I believe it can be demonstrated that the latter will be the inevitable result of embarking on the road of mandating diversity training. A recent article in the March - April 1995 of the Hennepin Lawyer entitled, "A Compass for the Journey of Diversity" was offered by Barbara A. Jerich, the consultant to the Hennepin County Bar Association which is the motivating agency behind this proposed rule change. The politically correct nature of this proposal is revealed by the buzz words appearing in that article: culture change, agenda, deep systemic change, and "...a certain amount of disruption and fear. Diversity/change strategies, by their very nature, challenge the status quo." And, finally, she refers to disruption of "business as usual." These do not sound like the words of one who is interested only in fairness to other economic groups. I fear that the purpose behind this is more than

May 5, 1995
Fredrick Grittner
Page 2

just equality of the races, but a deep desire to challenge those of us who reject the politically correct idea that the only modern "sin" is intolerance.

For these reasons as well as those articulated in the attached correspondence, I would respectfully ask that the Supreme Court deny the above Petition.

Very truly yours,

BAUDLER, BAUDLER, MAUS & BLAHNIK


By: David L. Forman

DLF/alb

Enclosure

911 6th Avenue N.W.
Austin, MN 55912
May 5, 1995

Peg Corneille
Supreme Court of Minnesota
Board of Continuing Legal Education
25 Constitution Avenue, Suite 110
St. Paul, MN 55155

Re: Open Meeting on Ethics and Diversity Training Proposal

Dear Ms. Corneille:

I attended the recent open meeting on April 11, 1995. I raised my hand to speak a couple of times at the end of the session, but was not noticed by the chair. Therefore, I have chosen to submit my comments in writing.

I brought my own concerns about the proposal to the meeting, but as I sat there, a couple of other issues arose which I would like to address first. There was a great deal of discussion regarding the difficulty in formulating a definition for diversity training. I can certainly understand the difficulty in formulating a definition for there are probably as many definitions as individuals present at the hearing. I would guess that the definition that will ultimately come out of the Hennepin County Bar Association could adequately be termed a consensus, rather than a definition. But as I sat and listened to the discussion the other day, it was impossible to determine what exactly you were proposing, since there was no definition to even consider. Until you have a definition, how can you even address issues such as how long should the training be? The cart appears to be before the horse, and no one can even turn around to actually tell us what kind of horse is pushing this cart.

It is my impression that if racial, gender, and age discrimination are all that are intended to be covered by the proposal, one hour or two hours of diversity training would be all that would be necessary. All of us know what we should do in these areas, and we would simply need a brief reminder of our responsibility and perhaps some practical suggestions. If you actually need three hours of mandatory training,

April 19, 1995
Peg Corneille
Page 2

I wonder whether indoctrination and "changing people's minds" is the agenda, and whether that is appropriate.

One other practical issue came to mind during the discussion. Why would the CLE Board be even considering mandating an untried and untested form of training? Even the proponents admitted that there will be a period of time necessary to get the system running smoothly. Wouldn't the prudent course of action be to develop and test the program prior to considering whether to make the program mandatory?

Now for the concerns I brought with me. I honestly thought I would come and find the fingerprints of the lavender lobby all over this bill, since they will probably benefit more from this requirement than any other protected class. The Petition itself refers to "other protected classes," but does not define the term. There was a real reluctance on everybody's part to define that at the meeting. However, I must admit I could find no evidence of the Gay and Lesbian Task Force behind this proposal. However, I remind you that sexual orientation is a protected class under the State's Human Rights Act. Therefore, the Board of Continuing Legal Education could find itself hauled before the State Human Rights Commission, or even into court if its diversity programs do not include sexual orientation issues. Perhaps even the Supreme Court itself could be forced to answer for its failure to eliminate bias against this "protected class." Due to the inclusion of sexual orientation as a protected class in the State's Human Rights Act, I am convinced that diversity training must either include sexual orientation, or mandate no training at all.

I have a personal stake in this issue. Due to my own sincerely held religious beliefs, there are certain things that I would refuse to pursue for a gay or lesbian client. I fear that some day those firmly held religious beliefs may require me to follow in the footsteps of the Landlord from Marshall, Minnesota, who refused to rent to unmarried couples on religious grounds. Some day I may have to defend my religious freedoms all the way to the Supreme Court. So, you can imagine my fear that this proposed diversity training may increase the likelihood of needing to defend myself in that manner.

One final matter before I close. I was asked following the meeting whether I would object to the California Definition of Diversity, which essentially requires the elimination of all forms of bias. But that definition is patently absurd! There is bias inherent in every system, including the legal profession. We have bias for witnesses who tell the truth, bias against clients who pay, bias in favor of those who remember to come to court, and bias against those who ignore or forget court

April 19, 1995
Peg Corneille
Page 3

hearings. Any definition of diversity which stigmatizes all forms of bias begs the question of determining what forms of bias are ethical, and those which are not.

In summary, although I do not believe the proponents of this measure intend it to be a dagger aimed at the heart of my religious beliefs, I believe it could certainly become such a threat in the future. I believe that the CLE Board itself is at risk of legal repercussions, if they attempt to implement the proposed training and restrict it to exclude sexual orientation. There are also practical problems with trying to implement an undefined curricula and mandating attendance at untried and unproven courses. For all of these reasons, and the numerous other reasons articulated at the hearing, I would respectfully ask the CLE Board and the Supreme Court to deny the Petition.

Very truly yours,

David L. Forman

David L. Forman

DLF/alb

MAY 8 1995

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To the Honorable Justices of the Minnesota Supreme Court:

I respectfully file this request to be heard on May 12, 1995. I oppose mandatory diversity training because it violates my constitutional right to think what I want and because I do not believe that focusing on diversity and our differences will lead to racial or societal harmony. My ideas are better expressed in three books, of which I ask the court to take judicial notice; and which I respectfully ask the court to read:

The Disuniting of America. Reflections on a Multicultural Society, 1991
by Arthur M. Schlesinger, Jr.

Illiberal Education. The Politics of Race and Sex on Campus, 1991
by Dinesh D'Souza

Dictatorship of Virtue, Multiculturalism and the Battle for America's Future, 1994
by Richard Bernstein

1. The mandatory feature of the proposal is inappropriate. The state is not free to impose whatever requirements it chooses as a condition to my practice of the law. To put it extremely, the state cannot require me, for example, to belong to a particular political party as a condition to my licensure as an attorney. Mandatory diversity training crosses the line between acceptable condition and impermissible thought control because diversity training includes teaching about a number of political and sociological issues, including affirmative action, multiculturalism, and gay rights. The state should not require me to learn someone else's views on these subjects. It does not do to say that I am only required to listen, or that both sides of these issues can be presented. It is certainly coercive to require me to listen, and the court has no way of policing programs to ensure balance and indeed no good way of knowing what that balance should be.

2. Diversity training is counterproductive and represents unwise social policy. Racial harmony is among the most important objectives for the long term health of this country. There currently exists deep seated mistrust and even animosity between the races, and that is not good. Diversity training only exacerbates that mistrust and animosity, for it does not draw us together as a nation but rather separates us into different groups.

I have tried to learn about diversity training in preparing this letter. I attended the Board of Continuing Legal Education hearing last month. I have consulted texts at the public library and public bookstores. As best I can determine, diversity training involves sensitizing individuals to the peculiar traits of different groups. These groups can be defined along any line the divider wishes, but the primary group lines are based on race, sex, sexual preference, and age. Once these lines are identified, the diversity trainer educates us about the peculiarities of these groups and draws a contrast with the so-called "dominant" white male European culture.

We are taught that the goal is not to perpetuate our existing American culture, nor to ask groups to accommodate their culture to American culture; rather that the values and norms and differences in these cultures should be preserved, celebrated, respected and accommodated by the dominant American culture. Also a part of diversity training is the notion that there is something wrong with the values inherent in the dominant American culture, which is due to the fact that that culture originates from white European males who have wrongfully crafted male and European values and imposed them on the rest of society. Diversity training assumes that a multicultural society is the ideal, and that we are a nation of diverse groups and different cultures.

The librarian at Baxter Bookstore told me that he has heard that the best diversity training book is Managing Diversity, by Lee Garden Swartz and Anita Rowe (1993). I read large sections of this book. The heart of the book appears to be in chapter three. In that chapter, the author teaches that managers need to be aware of the following differences:

"Mexicans, Filipinos and Middle Easterners. . .are loyal to individuals rather than abstractions." pg. 32

"Americans seem naively open." pg. 31

"Dominant American preference for directness." pg. 19

"Most other cultures are more formal than the dominant American culture." pg. 24

"Smiling. . .is another proverbial cue that can be misinterpreted." pg. 28

"In the Middle East, people stand close enough to be able to feel your breath on their face. . ." pg. 24

The author even provides a chart comparing "mainstream American culture" with "other cultures" (pg. 37) and another "analyzing cultural differences" (pg. 40).

I also reviewed a 1992 Department of Labor publication, Valuing Cultural Diversity, which describes the need for managers to discern cultural differences and then to accommodate them. In this publication, the authors state:

Valuing diversity has a different objective. It is not about numbers or goals, but about understanding different cultural values and altering our traditional patterns of behavior to accommodate these values. An organization that values diversity encourages its employees of different cultural backgrounds to follow the rules of their own culture to the extent possible.

Historically, white Anglo-Saxon (A/S) males have overwhelmingly been the leaders of our organizations. Not surprisingly, the patterns of behavior within these organizations strongly reflect the values and rules of action of the dominant white Anglo-Saxon group. An organization that is learning to value diversity encourages its employees of different cultural backgrounds to assert their own values in the workplace. This means that the old (white, A/S, male) rules can be modified, negotiated, dropped or broadened so that all workers will be comfortable working within them.

They also state the following goals (among others) for diversity training:

3. Recognize common behavioral patterns of selected minority and female groups.
4. Given selected scenarios which include behaviors different from typical (white-male) organizational culture, recognize the different behaviors, identify the underlying cultural value and propose appropriate responses to the situation.

I object to diversity training as contained in these texts. In the first place, I think it is wrong to stereotype people. I was always taught to treat each person first as an individual, and not to prejudge him or her. I was taught that we should have a color blind society, where people are not judged by the color of their skin, nor their religion or ethnic background.

It is not conducive to equal opportunity to prejudge people, or to assume they will think or act in a particular way because of their race, or membership in some group. You cannot treat an individual as unique if you have a preconceived notion of how that person is supposed to act, think, talk or respond to you, based on her or his group status.

Moreover, I am not sure the diversity trainers have the expertise to know everything there is to know about a particular group. How can a diversity trainer possibly know enough about all the cultures in the world to be able to teach others, accurately, about how people from these cultures are supposed to talk and act? I have a Filipino friend. He would laugh at me if I told him I was supposed to think of him as more shy than me. I have an American Indian friend. If I told him that I understand he doesn't want to be praised in a group, he'd tell me to mind my own business and treat him just like everyone else.

Secondly, I think it is wrong to emphasize differences between cultures even if we could be accurate about those differences and even if focusing on them wasn't counterproductive to a color and race blind society. America's strength is in its immigrants and the new blood and energy they have infused into our culture. America's strength also lies in the unity of these immigrants into a single culture, in the willingness of immigrants to join with

other immigrants in forging ahead together not as multiple units but as a single unit, America. If we tell new immigrants that there is no American culture, if we do not welcome them to join us, but rather tell them to maintain their own culture, to preserve it and to stay separate, then we will not come together as a nation and as a people. America's success does lie in its capacity to absorb and accommodate new groups. No one has asked immigrants to give up their heritage, but immigrants have been asked to become American in culture. There is nothing wrong with that, and assimilation and evolution are in my view good and not bad things.

Finally, I oppose diversity training because it assumes that the values in our existing culture are not good or correct, because they reflect white, male and European values. There is nothing wrong with our value system, which is based on spirituality, peace, stewardship, truth, equality of opportunity and access, liberty, charity, the rule of law, personal property, and freedom of religion and speech. As a nation, we have not always been true to these values, but that does not diminish them. Deviant behavior (like racial or sexual prejudice or indiscriminate violence or excessive materialism) should not be tolerated, and that behavior should be recognized as deviant and not reflective of a misguided value system. There is nothing wrong with our historical American value system.

Our problem lies in the fact we have strayed from it.

3. The task force study does not prove racism. I would also like to say that I object to the use of the Task Force on Racial Bias in the Criminal Justice System study to justify the need for diversity training. I have read that study and the appendices which include regression analyses. This study most assuredly does not prove racial bias. Blacks came out worse in the various categories than whites sometimes ("outcomes"), but often whites comes out worse than blacks! It is wrong for anyone to say this study proves racial prejudice.

Respectfully Submitted,


Gregory J. Pulles

88626 #

GJP:kml

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WILLIAM J. WERNZ
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May 8, 1995

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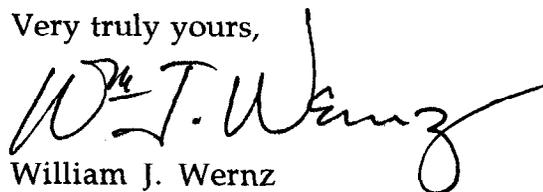
Mr. Frederick Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitution Avenue
Saint Paul, MN 55155

Re: MSBA Petition for Amendment of Rules for
Continuing Legal Education of Members of the Bar
File No. C2-84-2163

Dear Mr. Grittner:

Enclosed for filing in the above matter are twelve (12) copies each of the Statement of William J. Wernz and Request of William J. Wernz to Make an Oral Presentation.

Very truly yours,


William J. Wernz

WJW/lk
Enclosures

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

In Re MSBA Petition for Amendment
of Rules for Continuing Legal Education
of Members of the Bar

STATEMENT OF
WILLIAM J. WERNZ

This Statement is submitted in general support of the Petition of the Minnesota State Bar Association to amend the Rules for Continuing Education of Members of the Bar to add requirements for continuing legal education courses in ethics and professional responsibility. However, I support the position of the Board of Continuing Legal Education in opposition to the "one-time-only" three hour ethics and professional responsibility course proposed by the MSBA.

This Statement is also submitted to raise several questions regarding the MSBA's Petition to amend the Rules for Continuing Education of Members of the Bar to add requirements for diversity training.

Ethics and Professional Responsibility. In 1993-1994 I chaired a Joint Task Force of the Minnesota State Bar Association and Hennepin County Bar Association on CLE Requirements. In 1992-1993 I chaired the Hennepin Count Professional Conduct Committee. I have also served as a member of the Minnesota State Bar Association Rules of Professional Conduct Committee. All of these groups endorsed, in largely parallel forms, proposals now reflected in the MSBA's Petition for a requirement that each attorney take at least three hours of continuing ethics and professional responsibility education.

The above committees surveyed other states' requirements and met with CLE providers, regulators and other interested parties. The current CLE system centers on providers and the Board, rather than making it the responsibility of each attorney to obtain appropriate ethics education. The committees found that, unfortunately, some courses which should include ethics components either do not or treat ethics summarily.

There appears to be broad support and little opposition to the basic recommendation of the MSBA for a three hour ethics requirement. The requirement would place Minnesota in the middle of the states generally regarding CLE ethics requirements. The only debate at the MSBA convention regarding the ethics proposal had to do with various particulars.

The proposed one-time three hour jump start program does not seem to me to be warranted. The need for it has not been demonstrated. The CLE Board apparently believes that this requirement will be expensive to administer. Lawyers in some practice areas may benefit more from several shorter courses. The demands for qualified faculty may be excessive.

Diversity Training. I believe that several questions must be answered persuasively before the Court could approve this portion of the Petition. I raise these questions not out of opposition to diversity, nor to diversity training; I believe that diversity training within law firms, corporations and government law offices is desirable and can be effective. I raise these questions out of doubt that Court-

mandated diversity training as part of Continuing Legal Education is constitutional, prudent or efficacious.

1. What is "diversity training?" An article in the current Hennepin Lawyer states, "In general, 'diversity' has become synonymous with 'differences.'" Jerich, "A Compass for the Journey of Diversity," 64 Hennepin Lawyer No. 4 (1995) at 12. The same article notes that "diversity" has "included everything from sexual orientation and disability to personality characteristics and thinking style. It is generally accepted that a broad definition is more useful than a narrow definition." Id. Private organizations and employers can work constructively with their diversity concerns without concern about definitional issues, but a subject so elastic as "diversity" is not obviously fit for legal mandate. Definitional issues have never been more than peripheral for existing subjects of continuing legal education. "Diversity" must be properly defined by the Court before it is mandated.

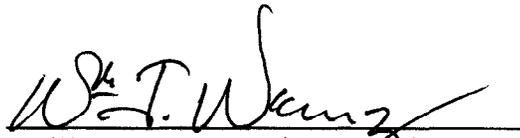
2. Does the Court have a constitutional warrant to require diversity training? The Court has a limited jurisdiction to govern lawyers, because we are the Court's officers. Our behavior in the justice system, our professional education and our ethics are clearly within that jurisdiction. The Court has not previously held that our beliefs and our attitudes about broad questions of human nature are within that jurisdiction. Any broadly defined or undefined adoption of mandatory diversity training raises serious constitutional questions and creates a precedent for the Court to act as if it were a legislature for lawyers generally.

3. Would two hours of diversity training every three years be efficacious?

Before adopting requirements, a legislature, or a Court legislating for attorneys, should be persuaded that the requirements are likely to produce certain results. However, regarding diversity education, "The first and most common misconception is the belief that diversity may be successfully addressed by doing a little training here and there . . . The idea that a dose of training will do the trick is a common mistake." Id. at 13. Because no other state has adopted mandatory diversity training for lawyers, there is no evidence that it is effective generally or at the level of two hours every three years. Good pedagogy requires good teachers and good books. Do we know whether they are available on a scale requisite for Minnesota lawyers? "The maxim 'buyer beware' is applicable to the purchasing of diversity-related services or materials." Id. at 14-15. Unlike all other areas of Continuing Legal Education, diversity training for lawyers has, so far as I know, no eminent scholars, great books, standard curriculum or even standards for certification or licensing of its teachers.

I thank the Court for the opportunity to make these comments on the MSBA petition, which I regard as a subject of great importance.

Dated: May 8, 1995.


William J. Wernz (#11599X)
Pillsbury Center South
220 South Sixth Street
Minneapolis, Minnesota 55402-1498
Telephone: (612) 340-5679

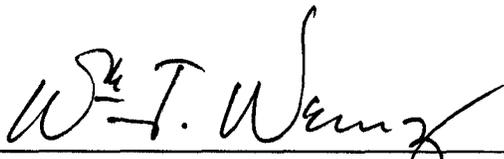
STATE OF MINNESOTA
IN SUPREME COURT
File No. C2-84-2163

In Re MSBA Petition for Amendment
of Rules for Continuing Legal Education
of Members of the Bar

**REQUEST OF
WILLIAM J. WERNZ TO
MAKE AN ORAL
PRESENTATION**

I, WILLIAM J. WERNZ, hereby request leave of the Court to make an oral presentation with respect to the proposed amendment of the Rules for Continuing Legal Education of Members of the Bar.

Dated: May 8, 1995.


William J. Wernz (#11599X)
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POPHAM HAIK

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May 9, 1995

MAY 9 1995

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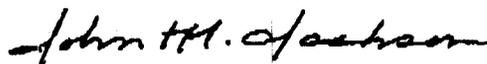
Frederick K. Grittner
Minnesota Supreme Court
25 Constitution Avenue
St. Paul, MN 55155

Re: Oral Presentation on Proposed Amendment to Rule 3 of the Minnesota Rules
for Continuing Education of Members of the Bar

Dear Mr. Grittner:

As the representative of the Twin Cities Committee on Minority Lawyers in Large Law Firms ("TCC"), I am formally requesting an opportunity to give an oral presentation on behalf of TCC at the hearing scheduled for Friday, May 12, 1995 at 9:00 a.m. to consider the petition of the Minnesota State Bar Association to amend Rule 3 of the Minnesota Rules for Continuing Education of Members of the Bar. If you have any questions or comments, please contact me at your earliest convenience.

Very truly yours,



John Jackson



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RE: Petition to Amend Rules of Continuing Legal Education
Court File No. C2-84-2163

Carol Chomsky
Past President
229 19th Avenue South
Minneapolis, MN 55455
(612) 625-2885

Dear Mr. Grittner:

Enclosed are 12 original copies of a letter in support of the MSBA's
Petition to Amend the Rules of Continuing Legal Education, with respect
to diversity education.

Board Members

Deborah Eisenstadt
Frances S. P. Li
Susan Rester Miles
Michelle Miller
Susan Richard Nelson
Melissa Raphan
Stephanie Schwartz
Michele D. Vaillancourt

Sincerely,

Corrine A. Heine

Enclosure

Student Liaisons

Caroline Koepf
Hamline University School of Law

Bridget McKeon
University of Minnesota Law School

Lisa Youngers
William Mitchell College of Law

cc: MWL Board Members (w/enc)
Jane Schoenike (w/enc)
Elizabeth Olson (w/enc)

Elizabeth Olson
Executive Director

MSBA



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MAY 10 1995

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Minnesota
State Bar
Association

May 5, 1995

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Tim Groshens
Executive Director

Mary Jo Ruff
Associate Executive Director

**Frederick K. Grittner, Clerk of Appellate Courts
Minnesota Supreme Court
25 Constitution Avenue
St. Paul, MN 55155**

Dear Mr. Grittner:

Please consider this a request for an oral presentation at the May 12 hearing to consider the Minnesota State Bar Association petition to amend the Minnesota Rules for Continuing Education of Members of the Bar. Appearing on behalf of the Minnesota State Bar Association will be its President-Elect Lewis A. Remele Jr., who will introduce the petition, and David Herr, who will present substantive remarks representing the Association's position.

Sincerely,

**Tim Groshens
Executive Director**

TG:JG

**c: Michael J. Galvin Jr.
David Herr
Lewis A. Remele Jr.**

Michael D. Pederson
Attorney at Law

103 West Second Street
P.O. Box 119
Chaska, Minnesota 55318
(612) 448-9950

May 1, 1995

Frederick Grittner
Clerk of Appellate Courts
245 Judicial Center
25 Constitutional Avenue
St Paul MN 55155

Re: Proposed Amendment to the Rules of
Continuing Legal Education

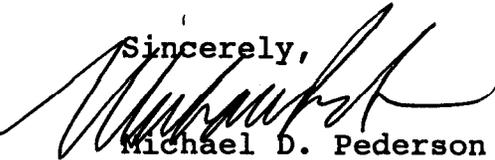
Dear Mr. Grittner:

I submit this letter as my written statement concerning the
above-referenced matter.

I oppose that part of the proposed amendment which requires all
attorneys to take classes in diversity training. I believe that
diversity training is merely the most recent in a long line of
trendy, social-psychological programs designed to cure our
society of its most recently perceived problem. While everyone
should be considerate of other peoples' rights and customs, I
believe that it cheapens the continuing education program to
require all attorneys to take classes in such a trendy program as
diversity training. Furthermore, mandating education in an area
that does not have well established rules or criteria could
result in chaotic and potentially counter-productive classes.

I do not oppose that part of the proposed amendment which
requires attorneys to take classes in ethics and professional
responsibility. Unlike diversity training, ethics and
professional responsibility are well established programs that
have stood the test of time. Because every lawyer's license can
be suspended or revoked for unethical behavior, ethics and
professional responsibility clearly impact on the practice of all
attorneys in the state. Furthermore, legal opinions and written
rules of professional behavior provide guidance and structure as
to how classes in ethics and professional responsibility should
be taught.

Sincerely,



Michael D. Pederson

mp/bms

STATE OF MINNESOTA
IN THE SUPREME COURT

MAY 11 1995

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In the Matter of:)
)
PETITION OF MINNESOTA) C2-84-2163
STATE BAR ASSOCIATION)
TO AMEND RULES OF CLE)

TO: Hon. A. M. Keith, Chief Justice
and Hon. Justices of the Court

STATEMENT IN OPPOSITION

The undersigned is a member of the State of Minnesota and State of Missouri Bar Associations and currently residing and practicing in St. Louis, Missouri. I have maintained an active Minnesota bar standing and have faithfully complied with the existing requirements of the Minnesota CLE program even before such were required by the State of Missouri because I believed in the concept of continuing legal education.

However, the proposed change, requiring what I understand to be "a minimum of two hours of diversity training" to be unnecessary and, in the case of lawyers, like myself, who live outside the State of Minnesota, oppressive in that I, and others like me, would be forced to come to Minnesota solely for the purpose of attending a mandatory legal seminar neither required by, nor offered any place else.

The cost of transportation and lodging alone would far out weigh any benefits which I might enjoy. It seems to me that this proposed change does little but add to the already exploding cottage industry of CLE courses. It is already frustrating enough to have the Minnesota CLE office reduce the credit hours allowed by the Missouri office.

Please do not allow this additional requirement to be approved without some mechanism that allows a non-resident, but fully active license holder to be exempt from this additional mandatory "diversity training" in a manner similar to that of the IOLTA accounts for non-residents.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Thomas E. Allen", is written over a horizontal line.

THOMAS E. ALLEN
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Fax: 314-725-7075