AMOS S. DEINARD
MELVIN H. SIEGEL
SIDNEY LORBER
SIDNEY BARROWS
IRENE SCOTT
HAROLD D. FIELD, JR.
ALLEN I. SAEKS
MORRIS M. SHERMAN
GEORGE F. REILLY
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STEPHEN R. PFLAUM
CHARLES A. MAYS
NANCY C. DREHER
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FREDRIC T. ROSENBLATT
STEVEN D. DeRUYTER
JAMES P. GERLACH
THOMAS E. HARMS
STEPHEN J. DAVIDSON
STEPHEN R. LITMAN
DAVID C. ZALK
EDWARD M. MOERSFELDER

LAW OFFICES

LEONARD, STREET AND DEINARD

800 FARMERS & MECHANICS BANK BUILDING

520 MARQUETTE AVENUE

MINNEAPOLIS, MINNESOTA 55402

TELEPHONE 333-1346

AREA CODE 612

CABLE ADDRESS
"LEOND MINNEAPOLIS"

GEORGE B. LEONARD
1872-1956
ARTHUR L. H. STREET
1877-1961
BENEDICT DEINARD
1899-1969

January 27, 1975

Clerk of the Supreme Court
State Capitol
Aurora and Park Avenue
St. Paul, Minnesota 55155

Dear Sir:

Enclosed please find an original and 11 copies of a letter directed to the Justices of the Supreme Court of the State of Minnesota regarding the Proposed Rules of the Supreme Court for Continuing Professional Education of Members of the Bar, as Approved by the Minnesota Supreme Court on December 19, 1974. I do not desire to have an opportunity to be heard at the Hearing on January 31, 1975 regarding these Rules.

Thank you very much.

Very truly yours,

LEONARD, STREET AND DEINARD

By Steven D. DeRuyter

Steven D. DeRuyter

SDD:kkj

Enc.

AMOS S. DEINARD
MELVIN H. SIEGEL
SIDNEY LORBER
SIDNEY BARROWS
IRENE SCOTT
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1899-1969

January 27, 1975

To the Justices of the Supreme Court
of the State of Minnesota
State Capitol
Aurora and Park Avenue
St. Paul, Minnesota 55155

Re: Proposed Rules of the Supreme Court for Continuing Professional Education of Members of the Bar, as Approved by the Minnesota Supreme Court on December 19, 1974.

Gentlemen:

I am associated with the law firm of Leonard, Street and Deinard. I have discussed the above rules relating to the continuing professional education of members of the bar with the other members of my firm. The The concept of continuing professional education by attorneys is endorsed by all members of this firm; however, in discussing the proposed rules two areas of concern were expressed. For that reason, although I do not desire to be heard at the Hearing on January 31, 1975, I would like to submit the following written comments for your consideration with regard to the proposed rules.

Proposed Rule No. 2 places with the State Board of Continuing Legal Education (the "Board") the responsibility of determining which courses and programs may be taken by members of the bar in satisfaction of their minimum 45 hours of course work during a given three-year period. Because of the large number of courses and programs available and because of the changing nature of such courses and programs, it is understandable that the Board has been given a great degree of discretion in this regard. However, because the rule does not contain a definition or guideline of what courses and programs would satisfy such educational requirements, the concern arises that the Board will adopt a narrow approach whereby qualifying courses and programs will be limited to those which directly involve the discussion and analysis of "legal issues," i.e., those dealing specifically with statutes and/or common law issues and are offered by a law school or as part of a continuing legal education program or symposium. Such an approach would exclude many courses which, although not involving legal issues in

the strict sense of that term, nevertheless may significantly enhance an attorney's ability to analyze legal problems and to advise and assist his clients with respect to their legal problems.

An accounting course, for example, would enable an attorney to better understand and advise his clients with respect to a wide variety of commercial transactions and a knowledge of fundamental accounting principals is essential in many types of litigation involving commercial transactions. Additionally, an accounting course would provide invaluable assistance to an attorney engaged in a securities practice involving the analysis and preparation of the various documents which must be prepared and submitted to the securities division of the various states and the federal Securities Exchange Commission. Similarly, the knowledge which can be obtained in an economics course would be of great assistance to an attorney involved in antitrust litigation and in counseling clients with respect to antitrust matters. Finally, a course in medicine would be of assistance to a practitioner engaged in litigation involving personal injury claims.

Many more examples could be given of courses which would provide an attorney important insight and understanding of the problems that he encounters in counseling and advising clients. Although essential to an attorney's adequate representation of his clients, the information which could be derived from such courses may not be available in courses dealing directly with legal issues and problems. For that reason it is suggested that a provision be added to the proposed Rule 2 requiring the Board to provide for a procedure whereby an attorney, upon showing of the relationship to his legal practice, may take any course offered by an institution of higher learning in satisfaction of his minimum 45 hour course work requirement.

Rule 3 of the proposed rules states that a written report accompanied by proof that such attorney has completed a minimum of 45 hours of course work must be submitted by, "[e]ach attorney duly admitted to practice in this state . . . ." Rule 3 also provides that the Board may grant waivers or extensions of the minimum educational or reporting requirements in individual cases. These provisions raise a question with respect to the manner in which several classes of attorneys will be dealt with by the Board. These classifications might include attorneys who are public officials; judges, both on the federal and state levels; nonresident attorneys admitted to practice in this state; members of the bar, such as businessmen, who are not active practitioners; and retired attorneys.

It is foreseeable that attorneys falling within some or all of the above classifications may request waivers of the educational requirements for various reasons. The policy of these rules as stated in Rule No. 1 would seem to require that attorneys falling within all of the above classifications, except for the retired attorneys, be subject to the educational

requirements. Because this matter is highly significant, it should not be left to the discretion of the Board to determine whether all attorneys falling into one or more of the above classifications should be required to strictly comply with the educational requirements of these rules. For that reason the Supreme Court, rather than the Board, should affirmatively state which, if not all, of such classes of attorneys must meet the educational requirements set forth in these rules. These rules should also provide that waivers and extensions of reporting requirements should be based upon the individual circumstances applicable to the attorney involved, and not upon the nature of his position or the nature of the practice engaged in by him. Moreover, if any class of attorneys is to be given a blanket waiver of the educational requirements, such attorneys should be given a special status whereby they cannot engage in the practice of law during the effective period of their waiver. Such disability should continue thereafter until the attorney completes a designated amount of course work.

Very truly yours,

LEONARD, STREET AND DEINARD

Steven D. DeRuyter

By
Steven D. DeRuyter

SDD:kkj

Standard Oil Company (Indiana)
200 East Randolph Drive
Chicago, Illinois 60601

January 21, 1975

45298

The Office of the Clerk
Supreme Court of Minnesota
St. Paul, Minnesota 55155

Dear Sir:

I respectfully request an opportunity to appear in writing to make comment about the PROPOSED RULES RELATING TO CONTINUED LEGAL EDUCATION. This is in connection with the hearing to be held by the Minnesota Supreme Court on January 31, 1975.

I have been a member of the Minnesota Bar in good standing since 1959. For the last several years, I have resided out of state as a result of being transferred by my corporate employer, Standard Oil of Indiana. I have taken steps to insure that I remain in good standing before the Supreme Court and have paid the attorney registration fee on an annual basis.

I am concerned that the proposed rules that require continued legal education will place me in an unfortunate dilemma. I am certainly interested in continuing my good standing before the Supreme Court and will take whatever steps are necessary to keep my position a valid one. However, because I reside out of state, I am placed at a disadvantage both financially and timewise in relation to other members of the bar. It would be a burden upon me to spend a required amount of time within the state each year to maintain my professional status.

I would, therefore, respectfully urge that the court consider rules that would provide for people such as myself who seek to comply with the requirements of the court without substantial burden upon themselves. May I suggest that the court give consideration to services performed by members of the bar on behalf of nationally recognized organizations. I have in mind specifically the service that I perform as a member of the American Bar Association State and Local Tax Committee (Property Tax Subcommittee) and various other types of organizations connected with my professional specialty. Specifically, the International Association of Assessing Officers, various State Taxpayer Associations, and various Industry Tax Committees that deal in particular, with my professional qualification and continuing education.

In addition to the foregoing, I would urge that the court give consideration to a correspondence method of maintaining professional status. It would appear that this would not only provide relief for out of state members of the bar such as I find myself, but it would also allow for members of the bar away from major metropolitan locations to maintain the standards to which the public has become entitled.

I am, of course, willing to undergo whatever requirements the court deems necessary to maintain my professional status which I value highly. If recognition can be given to my out of state status and continuing training in my professional corporate specialty, the burden upon me would be easier to bear.

I appreciate the consideration given to my comments.

Yours truly,

John R. Herman

/mc

HARRY H. PETERSON
ATTORNEY AND COUNSELLOR
738 MIDLAND BANK BUILDING
MINNEAPOLIS, MINNESOTA 55401
335-5254

January 10, 1975

Mr. John McCarthy, Clerk
Minnesota Supreme Court
St. Paul, MN 55100

In Re: Petition of Minnesota State Bar Association, etc., No. 45298

Dear Mr. McCarthy:

This is to thank you for yours of December 17, 1974, realtive to the above matter and to advise you that I shall not participate in the hearing on the said Petition.

Mr. John Remmington Graham spoke to me about this matter some time ago and I expressed myself as being opposed to the Petition as being unnecessary, shameful and degrading of all concerned, and one that ought to be denied; and that, if the opponents of the Petition can not pursuade the Court to reject the same, bad as it is, they will deserve exactly what the proposed continuing legal education will give them.

Yours very truly,

Harry H. Peterson

HHP:lg

SOHIO THE STANDARD OIL COMPANY

MIDLAND BUILDING, CLEVELAND, OHIO 44115

SHERMAN J. KEMMER
GENERAL MANAGER
PATENT & LICENSE DIVISION

CABLE: SOHIOCLEVE
TELEX: 980599
PHONE: (216) 575-5613

January 14, 1975

Mr. John McCarthy, Clerk
Supreme Court of Minnesota
St. Paul, Minnesota

Dear Sir:

Subject: Proposed Rules of Supreme Court for Continued Professional Education of Members of the Bar

As I am sure you are well aware, the Bar of the Supreme Court of Minnesota is made up of lawyers who reside not only in Minnesota but also many, like myself, who currently reside outside of the State.

While I am not opposed, in principle, to continuing legal education, it is my opinion that any rules promulgated with respect to continuing legal education should take into account the difficulties that lawyers who reside outside Minnesota will have with respect to meeting this requirement.

Very truly yours,

Sherman J. Kemmer

SJK:lp

THE UNIVERSITY OF NEW MEXICO ☐ ALBUQUERQUE, NEW MEXICO 87131
UNIVERSITY COUNSEL
SCHOLES HALL ☐ TELEPHONE 505: 277-5035

January 15, 1975

Mr. John McCarthy, Clerk
Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota

45298

Dear Mr. McCarthy:

The undersigned is an attorney licensed to practice in Minnesota, but who is resident in New Mexico and currently practicing in New Mexico.

I have read with interest the proposed rules of the Supreme Court for continuing professional education for members of the Minnesota Bar. I would hope that the implementation of these rules would allow attorneys such as myself to be able to complete the requirements so that we may maintain our Minnesota licenses. Obviously, I could not be physically present in Minnesota to attend courses. However, I would be happy to take them by correspondence. Or, perhaps, a better solution would be to give me credit for the compulsory continuing legal education which the Bar of New Mexico is in the process of implementing.

Would you kindly bring these comments to the attention of the Justices or the State Board of Continuing Legal Education.

Sincerely yours,

D. Peter Rask

DPR:ar

STATE OF MINNESOTA
IN SUPREME COURT

In re: Proposed Rules
Relating to Continuing Legal Education

To the Supreme Court of Minnesota:

I have not had an opportunity to review the subject proposed rules and in view of the time limitations deem it proper to offer my comments regardless.

Whereas, many attorneys licensed to practice law in the State of Minnesota are non-residents of the State and are employed in the service of their country either in military service of the United States or as civilian employees of the Federal Government; and

Whereas, the continued practice of law in such capacity is dependent upon continued good standing before the Supreme Court of Minnesota, and

Whereas, travel expenses from distant out of state locations are in many cases prohibitive, thereby reducing the availability of Continuing Legal Education programs conducted in the State of Minnesota;

It is therefore submitted that rules requiring Continuing Legal Education course participation as a condition of continued good standing before the Minnesota Supreme Court make provision for non-resident attorneys to participate in Continuing Legal Education courses in the State wherein they reside or are regularly employed, if such are available, or make such other arrangements as are acceptable to the Supreme Court regarding Continuing Legal Education.

Respectfully Submitted

Timothy M. White
Attorney at Law

STATE OF MINNESOTA

IN SUPREME COURT

Hearing on Proposed Rules
Relating to Continuing Legal
Education.

PETITION IN OPPOSITION

Comes now Your Petitioner, James Malcolm Williams, who is a properly admitted practicing attorney before the State of Minnesota and petitions this Honorable Court to refer the Proposed Rules Relating to Continuing Legal Education to an appropriate independent committee for further study, modification and/or rejection and the undersigned further requests the Clerk of Supreme Court enter the undersigned as one who desires to be heard in opposition to the Proposed Rules on Friday, January 31, 1975.

The following is a list of generalized objections. Your Petitioner also wishes to be entered of record in support of the constitutional objections heretofore filed by John Remington Graham, Esq.

1. The Proposed Rules are too indefinite and vague. Why should a teacher be exempt? There is no standard for enforcement whether of education or punishment. It is arbitrary and hollow - apparently a mere scheme to make money out of the legal education programs. There is no basis for costs or required accomplishments. It is an invasion of the rights of independence of practicing lawyers who should also be exempt.

2. There should be an intelligible standard of education and punishments provided as an aid to enforcement and may amount to a deprivation of the rights of lawyers to their livelihood if competent without continuing legal education.

3. This is not a plan to eliminate incompetence or make the practicing lawyer more intelligently skilled but a plan to compel contracts between lawyers and self-appointed "educational" agencies. The plan may in fact be utterly worthless.

4. It would have some merit if applied to non-practicing lawyers or those who practice in a narrow area or those who do not try lawsuits or to those who lave left the profession and are returning to it or to those who have had a limited practice. Otherwise, the plan is arbitrary, capricious and can be oppressive if unfairly administered by arbitrary standards.

5. The court has no authority to regulate in this way without some proof of inadequacy or incompetency of an individual lawyer who is ordered back to school as a condition of practice in good standing.

Respectfully submitted,

Dated: January 24, 1975

JAMES MALCOLM WILLIAMS
Attorney at Law
212 West Franklin Avenue
Minneapolis, Minnesota 55404
Telephone: (612) 871-8885

Michael Welch will argue

ST. PAUL BANK FOR COOPERATIVES

JACKSON AT FIFTH STREET, ST. PAUL, MINNESOTA 55101

TELEPHONE: AREA CODE 612-725-7761

January 24, 1975

Honorable Robert Sheran, Chief Justice
Minnesota Supreme Court
Saint Paul, Minnesota 55155

Re: Proposed Rules for Continuing Legal Education of Lawyers

Dear Justice Sheran:

Please accept this letter as notice of intention to appear in opposition to the Rules, as published, with the public hearing scheduled for 2:00 p.m., January 31, 1975.

I am Counsel for the St. Paul Bank for Cooperatives, with our home office in St. Paul, Minnesota, at the address given above. This is one of the three Farm Credit Banks, Regional Federal Instrumentalities serving agricultural credit needs in Michigan, Wisconsin, Minnesota, and North Dakota. Between the three banks we have 13 lawyers, whose sole practice is for the Farm Credit Banks. We operate under Federal laws and regulations; but, of necessity and comity comply with Minnesota law so long as consistent with our Federal purpose.

Most of our lawyers are specialists in very limited areas. Six deal exclusively in title examinations covering all four states. While we are governed primarily by Federal laws and regultions, we try to also comply with the laws of the states involved as a matter of practicality as well as comity.

Because of the limited legal area in which most of our attorneys practice, it is suggested that the CLE rules be modified to not only permit application to the Board for variance, but to require the Board to recognize special limited and local in-house courses. For example; a course on "Indian Rights in Land as the Rights Relate to Title Examination" would be a course of interest to every attorney in the Land Bank; however, the possibility of such a course or one like it even being offered through CLE (state or national) is very remote. Therefore, such a course, if given in-house to Land Bank attorneys, should be given credit as qualified course work under the proposed mandatory education requirements. I am aware that such in-house courses could lead to abuse; however, if they are limited to those specialties for which MCLE could not possibly offer course-work, and limitations are made on the number of credits permitted for such in-house courses, the possibility of abuse is outweighed by the advantage of giving relevant training to those who would not otherwise receive it through MCLE. As a former attorney for the Land Bank, and a recipient of all CLE literature (state and national), I can honestly say that in the past five years I have not seen one course offered through CLE which would be of material value to the attorneys of the Farm Credit System or the farmers and their cooperatives which we serve.

In connection with the same concern about this sudden drastic change in eligibility to practice law in <u>any</u> area, individual lawyers, who become lawyers in reliance on the law and rules then in effect, and perhaps retired in reliance on supplementary social security or pensions by small practice of law, can now be disfranchised without

Proposed Rules for Continuing Legal Education of Lawyers

individual notice or hearings. My predecessor, as General Counsel of this Bank, has been ill, and got notice only because I sent him a copy. He asked that I say a few words particularly about his right to probate a few wills he has drawn when friends and clients die over the next few years, and as he continues to represent a few clients he has taken on to supplement his pension. He is willing to not take on new types of clients or problems without getting appropriate CLE to qualify.

We are concerned about rights decided by a board with no representation or understanding of our problems, from large firms, general practitioners, corporate, patent and governmental counsel, and ask that minority and individual rights be given more consideration.

It appears the rules will result in a cost in time, money and expense to each lawyer of near $500 per year. Presumably the large firms will pass the added costs on to clients, and the small firms and individual practitioners will try to.

In corporations where lawyers are primarily employees, I understand it is probable the corporations will only pay for CLE required of the lawyers as individuals, and the training is such as to benefit the corporation and its interests.

It is hopeful this informal letter will be considered sufficient notice and brief, etc., within the requirements of the filing by January 24, as published in Finance and Commerce.

I, personally, plan to appear at the hearing on January 31, at 2:00 p.m. There is a possibility one or more of the other attorneys from the system will appear with me if schedules permit.

There are other thoughts that have been given consideration, but which have been left out of this letter in the interests of brevity. If time permits I hope we may be heard generally but briefly.

Very truly yours,

Michael J. Welsh
Senior Attorney

cc: John McCarthy, Clerk
Minnesota Supreme Court

DOW CHEMICAL U.S.A.

MIDLAND, MICHIGAN 48640

January 24, 1975

Supreme Court of the State of Minnesota
230 State Capitol Building
St. Paul, Minnesota 55155

45298

Re: Hearings on Proposed Rules for Mandatory Continuing Legal Education

Honorable Justices of the Supreme Court:

As a member of the bar in Minnesota, I wholeheartedly support adoption of the proposed rules requiring all Minnesota attorneys to complete forty-five hours of continuing legal education each three years.

As a corporate patent attorney practicing outside the state, however, I urge the Court to adopt liberal criteria in defining the courses for which credit will be given. Certified courses should not be limited to those offered by the Continuing Legal Education program at the University of Minnesota, but should include those offered through programs sponsored in cooperation with other well established law schools throughout the nation. Also, those of us practicing in specialized areas of the law often find that programs most suited to our needs are sponsored by private institutions such as the Patent Resources group of Washington, D. C., and the Practising Law Institute of New York City. These programs are generally of high calibre and should be recognized as fulfilling the requirements of any rules which are adopted.

Respectfully submitted,

Glenn H. Korfhage

Glenn H. Korfhage
Patent Department
Attorney License No. 73943

dc

1-27 Copy to all Justices
WJ.

CALLINAN, RAIDT & HAERTZEN
ATTORNEYS AT LAW
SUITE 621 - 730 SECOND AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55402

TELEPHONE (612) 333-2421

EDWARD M. CALLINAN
JEROME O. RAIDT
THOMAS L. JOHNSON
ARVID W. RYDHOLM

January 23, 1975

Minnesota Supreme Court
State Capitol
St. Paul, Minnesota

Gentlemen: Re: Proposed Rules of the Supreme Court for Continuing Professional Education

I hereby wish to make the following comments and suggestions regarding the above matter on behalf of Michael Callinan, a duly admitted Minnesota attorney currently serving with the United States Air Force Judge Advocate General Corps.

Rule 3 of the proposed rules allows the board to grant waivers or extensions of the minimum educational or reporting requirements. In order to alleviate any hardships a member of the United States military may face in meeting such educational requirements, I propose the following revisions.

That the educational requirement be automatically waived for those members of the United States military serving in overseas assignments. Further, that the board promulgate specific course requirements and time limitations for those military personnel stationed in the United States but not in Minnesota.

Respectfully submitted,

Edward M. Callinan

Edward M. Callinan

EMC:dn

STATE OF MINNESOTA

IN SUPREME COURT

Hearing on Proposed Rules Relating to Continuing Legal Education.

BRIEF IN OBJECTION TO PROPOSED RULES FOR CONTINUING PROFESSIONAL EDUCATION OF MEMBERS OF THE BAR AS APPROVED BY THE MINNESOTA SUPREME COURT ON DECEMBER 19, 1974

The undersigned, members of the Bar of the State of Minnesota, hereby object to the Proposed Rules For Continuing Professional Education of Members of the Bar as Approved by the Minnesota Supreme Court on December 19, 1974 on the grounds that

1. If lawyers are so unmindful of their obligation to the Bar, the public and their clients to maintain and improve their competence to practice law in Minnesota that it is necessary to require formal, continuing study to maintain their right to continue to practice, then the Proposed Rules are manifestly insufficient to attain this end, and

2. The adoption and publicizing of the Proposed Rules, to the extent that they have the effect of representing to the public that the Rules will assure the competence of the attorneys whose licenses are continued in force by virtue of compliance with the Rules, would constitute a fraud on the public and bring the profession and this Court into disrepute.

Attorneys offering themselves to the public as learned in the law have the duty to maintain their professional skills and to refrain from accepting employment in areas of the law in which they are unqualified. Attorneys who do not satisfy this duty will, as a result of their incapacity to render proper service to their clients, denigrate the profession. Means to protect the public and the profession from the incompetence of the few already exist, however, in the existing Committee on Professional Responsibility. The courts and the Bar generally need only refer to that organization cases of incompetence of which they become aware in the course of their practice. The

courts themselves are in the best position of all to note the incompetence of the few who, in practice before them, demonstrate a lack of requisite legal skills.

Many, if not most, of the lawyers practicing in this State do so as partners and associates of partnerships. The disciplines imposed out of self-interest by the members of such groups on their co-members should be far more effective in assuring professional competence than the minimal requirements of the Proposed Rules. To expect seriously that meeting a requirement of "45 hours of course work" over a period of three years, without examinations or other assurance that any of the materials presented have been understood and absorbed will protect the public from professional incompetence is to dream the impossible dream.

Many lawyers already voluntarily attend seminars and other study arrangements in fields in which they have particular interests. Others attain the same ends by constant study of the voluminous available legal periodicals applicable to their practice and which cover every facet of the law. The time consumed in such study by conscientious lawyers will so far exceed the yearly fifteen hours of course work contemplated by the Proposed Rules as to make the latter negligible. No recognition, however, is given to this form of professional self improvement. The adoption of the Proposed Rules will suggest that this Court believes that compliance with them will insure the skills a lawyer needs and justify renewal of his license to practice.

If an affirmative program for the continuing development of the skills of the Bar is desirable, it might well take the form of a program offering to the members of the Bar the opportunity to develop, under the supervision of, and certification by, the Minnesota State Bar Association, qualification in various specialties, such as Trial Practice, Taxation, Estate Planning, Labor law and Corporate and Securities law, to name a few. Such programs should require meaningful study and appropriate examination to justify claims of expertise. On the other hand, if the aim is to only protect the public from

loss or damage resulting from incompetence of practitioners, an appropriate method might be to require each practitioner to maintain a minimum legal of malpractice insurance.

In conclusion, the Proposed Rules are either unnecessary or inadequate. If adopted, they would misrepresent to the public that compliance with them in any material degree protects the public from incompetence of any member of the Bar.

Respectfully submitted,

JOHN F. CORCORAN
MICKEY L. MAGNESS
ATTORNEYS AT LAW
SUITE 807 LAWYERS TITLE BUILDING
199 NORTH STONE AVENUE
TUCSON, ARIZONA 85701
(602) 792-2190

ATTORNEYS FOR

STATE OF MINNESOTA

IN SUPREME COURT

IN RE Hearing on Proposed Rules Relating to Continuing Legal Education	PETITION FOR ADDITION TO RULES

Petitioner respectfully requests that the following addition be made to Paragraph 2 of Rule 3 of the Proposed Rules of the Supreme Court for Continuing Professional Education of members of the Bar:

> Waivers shall be granted automatically to members of this Bar who hold "non-resident" licenses.

Patently, the burden that would be imposed on such members to participate in 15 hours per year, or 45 hours each 3 year period, would be inordinate. Therefore, the requirement of a waiver should be made mandatory in such cases, and not be subject to the requirement of periodic justification by said members, other than making a showing that the member holds a non-resident license.

This member will be unable to be present at the public hearing before the Minnesota Supreme Court at 2:00 p.m. on January 31, 1975. It is requested, therefore, that the within petition be considered at that time by the Court with the same force and effect as if this member were then and there present in person to present his petition orally.

RESPECTFULLY SUBMITTED this 20th day of January, 1975.

JOHN F. CORCORAN
Non-Resident License #10359

WILLIAMS, ERICKSON & WALLACE
(PROFESSIONAL CORPORATION)
ATTORNEYS AT LAW
SUITE 1110 CAPITOL LIFE CENTER
DENVER, COLORADO 80203

WAYNE D. WILLIAMS
HOWARD E. ERICKSON
WESTEL B. WALLACE
JAMES R. CRASSWELLER

TELEPHONE
222-9424
AREA CODE 303

February 28, 1975

Mr. John McCarthy, Clerk
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota

Dear Mr. McCarthy:

With great interest, I have followed Minnesota's commendable move towards requiring continuing education in order to maintain a licensed practice in the state of Minnesota. Assuming that the proposed rules were adopted by the Supreme Court without any difficulty, I am inquiring as to their application to me. I am presently engaged in the practice of law in Denver, Colorado and hold a non-resident license in Minnesota, #10841.

My particular difficulty with the rule involves some interpretation which you could perhaps clarify. First, what will be deemed "proof satisfactory" that I have completed the courses required under rule 3? Second, how will I be able to determine which courses, conferences or seminars will be satisfactory in scope so as to meet the requirements of the rule? For example, the Federal Bar Association here in Denver is holding an annual conference in April of this year. The entire conference is devoted to teaching the new Federal rules of evidence. Would such a course meet the requirements of the rule? If so, what is needed to meet the "proof satisfactory" requirement?

As you can see, those of us who are holders of non-resident licenses will have some procedural difficulties with the rules. Since I am in total agreement with the concept of continuing legal education, I hope to more than meet the 45 hour requirement within the next three years. I do, however, desire that the courses and conferences that I attend satisfy the rules as much as they enhance by ability and competency here in Denver.

Yours truly,

WILLIAMS, ERICKSON & WALLACE, P.C.

James R. Crassweller

JRC:kg

OFFICE OF THE CLERK

Supreme Court of Minnesota

St. Paul, Minn.

JOHN McCARTHY
CLERK
WAYNE TSCHIMPERLE
DEPUTY

March 7, 1975

Mr. James Crassweller
1110 Capitol Life Center
Denver, Colorado

In re Continuing Legal Education,
No. 45298

Dear Mr. Crassweller:

Thank you for your letter of February 28th which reached our office in this morning's mail. They (the court) had an open hearing on these rules On January 31st. Everything is still under advisement, and nothing has been formulated or particularized so that we can answer your questions with any specificity. I will place your letter in the file for the availability and consideration of the court. Thanks for your interest.

Sincerely,

John McCarthy

John McCarthy, Clerk

Whiteley and Caine
PATENT LAWYERS
911 FOSHAY TOWER
MINNEAPOLIS, MINN. 55402

FRANK A. WHITELEY 1911-52
ARTHUR S. CAINE

336-1478
AREA CODE 612

April 21, 1975

Clerk of the
Supreme Court of Minnesota
State Capitol
St. Paul, Minnesota 55155

Re: No. 45298

Sir:

I am in receipt of a communication from your office, No. 45298 Order of Promulgation, dealing with the general subject of continuing legal education for members of the Bar. I have read through this document, and it occurs to me that in connection with the general program that is being planned, the Court should take into consideration a matter which does not seem apparent on the face of the instructions that I have received, namely, that all lawyers do not engage in the same field of activity, and hence any program of continuing education would have to take that matter into consideration.

As an example, I am a patent lawyer, and while I am admitted to practice in the State of Minnesota, my practice is limited to matters principally pertaining to trademarks, patents, copyrights, and matters related thereto. Thus, any program of continuing education which would be required for the purpose of maintaining fitness in my branch of the practice would have to be related to the field of my specialty. This does not appear to be apparent from the instructions I have received. Moreover, a great deal of my practice is restricted to matters occurring in the United States Patent and Trademark Office, or in the patent and trademark offices of foreign governments, which is in no way concerned with Minnesota laws, either of a civil or of a criminal nature.

I pass on these comments for whatever value they may be to the Court in dealing with the subject of continuing education for members of the Bar.

Very truly yours,

Arthur S. Caine

ASC:dc

OFFICE OF THE CLERK

Supreme Court of Minnesota

St. Paul, Minn.

JOHN McCARTHY
CLERK
WAYNE TSCHIMPERLE
DEPUTY

April 23, 1975

Mr. Arthur Caine
911 Foshay Tower
Minneapolis, Minnesota

Dear Mr. Caine:

In re: Continuing Legal Education, 45298

Thank you for your letter of April 21. A hearing was conducted on the proposed rules at the end of January. At least 2 dozen sets of documents were filed. The sentiments expressed in your letter have, in a general fashion, already been enunciated. However, we will send a copy of your letter to

Mr. Douglas Heidenreich, Executive Director
Board of Continuing Legal Education
2100 Summit Ave. St. Paul, Minnesota.

Yours sincerely,

John McCarthy, Clerk

cc: Douglas Heidenreich

JOHN REMINGTON GRAHAM
COUNSELOR AT LAW
212 WEST FRANKLIN AVENUE
MINNEAPOLIS, MINNESOTA 55404

TELEPHONE 332-6685
AREA CODE 612

January 14, 1975

45517
45298

Mr. John McCarthy, Clerk
Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota

Dear Sir:

This will acknowledge notice of hearings to be held on the 31st of this month relative to the new criminal rules (Case No. 45517), and compulsory legal education (Case No. 45298), in which members of the bar are entitled to participate.

I hereby request recognition in oral argument in the morning on the new criminal rules. A formal brief will be filed, a copy to each Justice and to yourself, will be filed on or before the 20th of this month.

I also request recognition in oral argument in the afternoon on compulsory legal education. I have already filed a counter-petition and memorandum. A supplemental memorandum will be filed on or before the 24th of this month.

Thanking you for your attention, I remain

Respectfully yours,

John Remington Graham

January 16, 1975

Mr. Graham:

We have filed this letter and have added your name to the list of those who will appear in these matters.

John McCarthy
John McCarthy

STATE OF MINNESOTA
IN SUPREME COURT
No. 45298

Appearance of
John Remington Graham:

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

SUPPLEMENTAL
MEMORANDUM OF LAW

MAY IT PLEASE THE COURT:

1. In his first appearance, Counter-petitioner submitted written argument on several aspects of his objection to compulsory legal education of the practicing bar by order of this Court, as proposed by Petitioner. Essentially, he argued all but points C and D listed in Article the Third of his Counter-petition. In this supplemental memorandum, he proposes to argue one further point, viz., that the Petition calls for the exercise of legislative power, both in the form of regulation and taxation, by the judiciary. Additionally, Counter-petitioner will conclude with suggestions for possible accommodation.

2. As heretofore demonstrated, attorneys, as members of the bar, are a privileged class of citizens learned in the law whose status continues during good behavior, and cannot be divested save for immoral, dishonorable, or criminal conduct on notice and hearing after the fact. 3 Bl. Com. 25-29; Ex Parte Garland, 4 Wall. 333 (U.S. 1866). Common law courts have inherent power to prescribe standards for admission; to establish disciplinary procedures for suspension or disbarment; and from time to time, to promulgate standards of good conduct for future guidance according the accepted notions of the profession -- these constitute the traditional sphere of judicial regulation of law practice. Now and again, there have been over-ambitious power-plays to expand the scope of judicial regulation beyond time-honored limits. These are to be expected given the nature of mankind in politics. But the hope against such usurpations generally rests in a few members of the bench and bar more watchful than the rest, and adequate balance of power between the bench and bar, and between the bar and bar associations.

Counter-petitioner proffers these propositions, to wit: first,

judicial regulation of attorneys must always bear a necessary and proper relation to the competence, integrity, and independence of the bar; secondly, additional regulation of attorneys, if any, belongs to the legislature; and finally, legislative regulation of attorneys must not interfere with inherent judicial powers, and must bear a necessary and proper relation to the general or specific objects of legislative concern, principally the welfare and rights of the people. See, e.g., Ex Parte Secombe, 19 How. 9 at 13 (U.S. 1856); In re Greathouse, 189 Minn. 51, 248 N.W. 735 (1933); Sharood v. Hatfield, 296 Minn. 416, 210 N.W. 2d 275 (1973); including authorities cited and discussed in the foregoing cases.

This Court has no inherent power to order the proposed program of compulsory legal education, for reasons discussed on pages 4 through 7 of the initial memorandum of Counter-petitioner. Not taking a specific course prescribed by a committee is no evidence of incompetence, because private study by a lawyer related to the specific problems of his clients is sufficient, and it is degrading to presume that mature men and women of the bar do not undertake such private study. Moreover, the proposed program permits uncontrolled discretion in accreditation which is subject to incalculable abuse, to the detriment of an independent bar. Therefore, the Petition does not bear a necessary and proper relation to the legitimate objects of judicial regulation. The proposal in effect calls for regulation which is legislative in nature, because it exceeds the limits of judicial regulation. Even if the proposal were adopted by statute, it would be doubtful whether legitimate legislative concerns would be served thereby.

3. The proposal calls for the imposition of a 5-dollar "registration fee" amounting to an occupations tax. Taxation is a legislative power. This Court did not address itself to this point in Sharood v. Hatfield, supra. Attorneys can be taxed the same as any other profession -- that is conceded. But we should pause to reflect on a phase in the development of the British Constitution, of which the Minnesota Constitution is a counterpart in republican form. The Court will recall that the baronial rebellion against royal power in 1215 was based largely on a protest against taxation without legislative consent. Hence the 12th Article of Magna Carta says, "No scutage or aid shall be imposed, unless by the Common Council of the Nation . . . ." Attempted

circumvention of this ancient principle by various means was prohibited in the Petition of Right, to which King Charles I gave his assent in 1628, and which says that no man shall "be compelled to make or yield any guift, loane, benevolence, taxe, or such like charge, without common consent by Acte of Parliament." This was again reaffirmed in the Bill of Right framed at the conclusion of the Glorious Revolution in 1689: ". . . levying money for or to the use of the Crowne by pretense of prerogative, without grant of Parlyament . . . is illegall . . . ." There can be no doubt that the legislative character of taxation was retained in the notion of a republican form of government wrought in the American Revolution, because all the state constitutions framed in that crisis make reference to this established and fundamental notion of power. For example, the Virginia Constitution of 1776 plainly says, ". . . elections of members to serve as representatives of the people, in Assembly, ought to be free . . . all men . . . cannot be taxed . . . without their consent, or that of their representatives so elected . . . The legislative, executive, and judicial departments shall be separate and distinct, so that neither exercise powers properly belonging to the other . . . ." In ~~Article III, as well as~~ Article IV, Section 18, of the Minnesota Constitution of 1974, we have corresponding provisions of the same tenor and spirit.

It took centuries of constitutional history to wrestle the power of taxation from royal hands, and then to vest it securely in the legislative branch, forever free thereafter from executive usurpation and circumvention. We do not have a tradition of judicial attempts to purloin taxation from the legislative power, only because the great instruments of fundamental liberty, such as Magna Carta, have thus far been held as sacred and inviolable in the courts. In the first round of this controversy, the state bar association needed awakening to simple notions of due process of law, including the practice of fair notice. Now they must be reminded that taxation is not a judicial power under our ancestoral and current constitutions. All of this manifest error on the part of the state bar association, on such basic matters, makes their pretentions to judge the competence of their fellow lawyers so shockingly absurd as to warrant immediate and peremptory dismissal of their petition.

5. While Counter-petitioner certainly agrees with Judge Harry Peterson's characterization of the present proposal before the Court as "unnecessary, shameful, and degrading of all concerned," his purpose in making appearance and objection is not purely to destroy the fruit of much hard work and sincere concern of his fellow lawyers in the state bar association. The basic purpose of their proposal is most laudable. Becoming an attorney means moral dedication to a lifetime of study. Yet the greatest incentive for study is love of the subject: no monetary incentive, no provision in terrorem, can replace or substitute for the inner joy of seeing the hope of justice after spending untold hours, sometimes late at night, reading large and numerous law books -- in that hope alone, to the extent that it lives in our hearts, is the glory of our profession. Love of the law, and the hope for justice, are the only adequate, natural motivations and means to competence, integrity, and independence of lawyers, whether they serve as advocates, technical draftsmen, businessmen, judges, or teachers. If it be unrealistic to inspire love of the law and hope for justice among the bench and bar, it would be so only because our day had become culturally corrupt in materialistic madness: no program of compulsory legal education could ever save us; the only remedy for such a condition is moral renaissance. This Court should renew that great work, teaching by example. Let it appear to be and be that the Judges of this Court are scholars and men of pure character. Such a process will cost nothing in money, but it will take time, patience, and dedication: the end result will not only be astonishingly good jurisprudence; but learned, honest, fair-minded, and free-spirited attorneys serving the public well.

Yet if the Court feel that some program should be instituted to require an accounting of attorneys for legal study, the following modifications of the proposal of the state bar association are urged:

(a) In Proposed CLE Rule 2, all references to the right of the state bar association to nominate members of the accreditation committee should be stricken. The state bar association is merely a corporation, independent of the State Bar, and having no special status, power, or right of influence before this Court. See, e.g., the superb opinion of Judge Harry Peterson in LaBelle v. Hennepin County Bar Ass'n., 206 Minn. 290 at 296, 299-300, 288 N.W. 788 (1939). The Court should

appoint such persons to the accreditation committee as are qualified and of good character. Nominations from any citizen, association, or corporation should be allowable, but subject always to rejection or acceptance by the Court.

(b) In Proposed CLE Rule 3, a proviso should be added to the effect that a sworn or solemnly affirmed affidavit by any attorney of completion of a self-imposed program of legal study consisting of not less than 30 hours each year, or 90 hours each three years, on subjects specified by the affiant, whether related to specific problems in his or her office, or matters of his or her general concern or interest, shall satisfy the requirement of continuing legal education, so long as undertaken in good faith. This would eliminate the most serious objections to the unwisdom of the present proposal. See particularly the full paragraph on page 6, and the following paragraph on pages 6-7 of the initial memorandum of Counter-petitioner.

(c) In Proposed CLE Rule 4, there should be an express provision to the effect that in no event may the Board of Professional Responsibility recommend disbarment, contempt, or non-self-correcting suspension for non-compliance. In other words, a lawyer not in compliance should be able to reinstate himself, simply by undertaking a course of self-imposed or committee-accredited study at any time, and notice of such an undertaking satisfactory to the accreditation-committee, or the Board of Professional Responsibility or the Court itself, should work reinstatement automatically. Disbarment, contempt, or suspension are traditional sanctions against immoral, criminal, or dishonorable conduct, and are clearly too heavy-handed for a program of continuing legal education.

(d) As to the Proposed Amendment to Registration Rule 2, the Court should request the Legislature for statutory authority to assess an occupations tax on practicing attorneys not to exceed $30.00 per year. A tax imposed by court order alone is manifestly unconstitutional as a judicial exercise of legislative power.

Respectfully submitted,

JOHN REMINGTON GRAHAM
Counselor at Law
212 West Franklin Avenue
Minneapolis, Minnesota 55404
Telephone 871-8885.

STATE OF MINNESOTA

IN SUPREME COURT

No. 45298

Appearance of
John Remington Graham:

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

NOTICE OF MOTION
AND MOTION

TO THE PETITIONER AND THE ATTORNEYS THEREOF:

You will please take notice that in the Public Chamber of this Court in the State Capitol, St. Paul, on the 31st day of January, 1975, at 2:00 P.M., or as soon thereafter as Counsel can be heard, the aforesaid Counter-petitioner shall, in addition to the relief he has already requested of record herein, make the following Motion, to wit:

That the Petition be in all things denied on grounds set forth in the following Affidavit.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

Your Affiant, JOHN REMINGTON GRAHAM, on solemn affirmation, deposes and says:

That he is the aforesaid Counter-petitioner. That following the filing of his Supplemental Memorandum with the Clerk of this Court on the 17th day of January, of which he made service by mail on the Petitioner the same date, he happened to read the December, 1974, issue of the Bench and Bar, the official monthly publication of the Petitioner.

On pages 2-3 thereof appeared an article entitled "From the President's Pen," which purports to be a report from the chief executive officer of the Petitioner. The first part of the article deals with the program of continuing legal education proposed by the Petitioner. In reference to the first hearing in this matter, which was conducted without notice on the 10th day of October, 1974,

the article states, "Since the hearing on our petition, the members of the Executive Committee, and John Byron, Chairman of the Continuing Professional Competence Committee, have met on several occasions with members of the Court to discuss details for implementing and operating such a plan . . . We appreciate the opportunity to work closely with the Court in this matter, and look forward to being the first State to take action of this sort to assure continuing professional competency."

It therefore is clear that the Petitioner, a mere corporation, has sought a complex order of this Court against members of the State Bar, as individuals; and in doing so, they not only failed to give notice in the first instance, a deficiency sought to be cured by the Order of the 19th day of December, 1974, but also they have privately met with Justices of the Court for purposes of making partisan arguments and comments not in the presence of or with the consent of Counsel for opponents of the Petition. It is never permissible pending litigation for counsel to make partisan arguments in favor of the substantive or procedural interests of his clients privately to the judge or judges assigned to hear the matter, save by consent of and notice to opposing parties and their counsel. Such conduct of the Petitioner amounts to a serious breach of professional ethics worthy of disciplinary censure.

It perhaps may be true that Petitioner acted under the false assumption that they are an official organ of this Court or the State Bar. This might mitigate to some extent the extremity of their wrong, so as to suggest informal warning instead of formal discipline. Nevertheless, it would reflect manifest lack of awareness of the status of an incorporated association of attorneys, as described clearly by this Court in the past. LaBelle v. Hennepin County Bar Ass'n., 206 Minn. 290 at 296, 288 N.W. 788 (1939). Moreover, it makes their presumption to judge the competence of their fellow lawyers all the more preposterous. In any event, their activities have irreparably destroyed the rights of the opponents of the Petition to fair, unbiased hearing and consideration, in consequence whereof the opponents of the Petition have been denied due process of the laws guaranteed under the state and federal constitutions. Since equitable relief is sought, equitable principles govern. The Petition

should be dismissed, because he who seeks equity must do equity and have clean hands. Repetition should not be entertained until the next session of this Court in the fall of 1975 at the earliest.

FURTHER SAYETH YOUR AFFIANT NAUGHT.

John R. Arlington Pelham

Solemnly affirmed and subscribed before me this 22nd day of January, 1975.

M. Jacqueline Stevens

NOTARY PUBLIC, Residing at Helena, Montana
My Commission Expires Dec. 17, 1977