

MAY 30 2003

STATE OF MINNESOTA

In Supreme Court

FILE NO. C2-84-2163

FILED

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**Petition of the Minnesota State Board  
Of Continuing Legal Education For  
Amendment of the Rules of the  
Minnesota Supreme Court and State  
Board for Continuing Legal Education  
Of Members of the Bar**

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**PETITION FOR  
RULE AMENDMENT**

**TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT**

Petitioner, the Minnesota State Board of Continuing Legal Education ("Board"), respectfully petitions this Honorable Court to amend the Rules of the Minnesota Board of Continuing Legal Education of Members of the Bar ("Rules") to expand the scope of accredited continuing legal education ("CLE") in order to include courses in personal and professional development.

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

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

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

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

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

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

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

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

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

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

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

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

## **Rule 1**

The purpose of these Rules is to require that lawyers continue their legal education and professional development throughout the period of their active practice of law; to establish the minimum requirements for continuing legal education; to improve lawyers' knowledge of the law; and through continuing legal education courses, to address the special responsibilities that lawyers as officers of the court have to improve the quality of justice administered by the legal system and the quality of service rendered by the legal profession.

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

### **Rule 2P**

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

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

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

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

**Rule 5A(2)**

With the exception of a professional development course as defined in Rule 2P, ~~The~~ course shall deal primarily with matter directly related to the practice of law or to the professional responsibility or ethical obligations of participants or to the elimination of bias in the legal profession.

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

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

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

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

**Rule 7B**

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



development courses that specifically address elimination of bias in the law office or in the practice of law may be accredited instead as elimination of bias CLE and when so designated are not subject to the 6-hour maximum on professional development ~~law office management~~ courses.

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

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

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

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

**Rule 2Q**

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

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

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

### **Rule 7E**

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

- (1) A narrative describing course learning goals and articulating how the literary discussion topics are directly related to the practice of law or to the professional responsibility or ethical obligations of participants or to the elimination of bias in the legal profession and in the practice of law;
- (2) A list of discussion questions that the faculty uses to guide the discussion; and
- (3) Evidence that program registrants are instructed to read the designated literary work prior to attending the course.

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

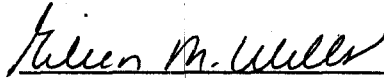
16. The law and literature course application must be accompanied by a narrative describing course learning goals, a statement addressing how the discussion topics are related to the practice of law, and a list of the discussion questions the course faculty plans to use to elicit discussion. The proposed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

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

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

Dated:

May 30, 2003



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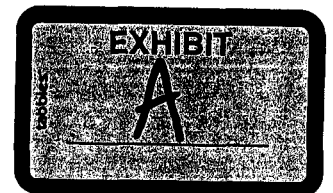
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**Rules of the Minnesota  
Board of  
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## **RULES OF THE MINNESOTA BOARD OF CONTINUING LEGAL EDUCATION**

### **Rule 1. Purpose**

The purpose of these Rules is to require that lawyers continue their legal education and professional development throughout the period of their active practice of law; to establish the minimum requirements for continuing legal education; to improve lawyers' knowledge of the law; and through continuing legal education courses, to address the special responsibilities that lawyers as officers of the court have to improve the quality of justice administered by the legal system and the quality of service rendered by the legal profession.

### **Rule 2. Definitions**

In these Rules,

- A. "Approved Course" means a course approved by the Board.
- B. "Board" means the State Board of Continuing Legal Education.
- C. "Chairperson" means the chairperson of the Board.
- D. "Classroom setting" means a room, including an office, suitably appointed with chairs, writing surfaces, lecterns and other normal accouterments of a teaching room, that is exclusively devoted to the educational activity being presented.
- E. "Director" means the Director of the Board.
- F. "Laboratory Setting" means a mock courtroom, law office, negotiation table, or other simulated setting in which demonstrations are given, role-playing is carried out or lawyers' activities are taught by example or participation.
- G. "Participant" means a lawyer licensed in Minnesota attending an approved course and actively engaged in the subject matter being presented.
- H. "Course in ethics and professional responsibility" means a course or session within a course that deals with the Minnesota Rules of Professional Conduct, the ABA Model Rules of Professional Conduct, the rules of professional conduct or professional responsibility of other jurisdictions, or the opinions and case law arising from the application of any of the above-specified rules, including a course or session within a course that addresses in a specific way concepts such as professionalism, civility and ethical conduct in the practice of law and in the legal profession.



- I. "Course in the elimination of bias in the legal profession and in the practice of law" means a course directly related to the practice of law that is designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.
- J. "Court" means the Supreme Court of the State of Minnesota.
- K. "Restricted Status" means the status of a lawyer licensed in Minnesota who has voluntarily chosen not to comply with the educational and reporting requirements of these rules. See Rule 12 for additional provisions.
- L. "Involuntary Restricted Status" means the status of a lawyer licensed in Minnesota who is not in compliance with the educational and reporting requirements of these Rules and who has been involuntarily placed in that status by order of the Court. See Rule 12 for additional provisions.
- M. An "in-house course" is one sponsored by a single private law firm, a single corporation or financial institution, or by a single federal, state or local governmental agency for lawyers who are members or employees of any of the above organizations.
- N. For the purposes of Rule 6(B), an "established continuing legal education course sponsor" is a person or entity regularly retained by firms or organizations for the purpose of presenting continuing legal education programs, who is completely independent of the firm or organization for whose members the continuing legal education course is presented.
- O. "Fee" means a check or money order made payable to the Minnesota State Board of Continuing Legal Education.
- P. "Professional Development Course" means a course or session within a course designed to enhance the development and performance of lawyers by addressing issues such as stress management, mental or emotional health, substance abuse, gambling addiction, career satisfaction and renewal, time management, law office management, technology in the law office, mentoring, or staff development. Professional development courses do not include individual or group therapy sessions.
- Q. "Law and literature course" means a course otherwise meeting the requirements of Rule 5A and Rule 7E, based upon a literary text and designed to generate discussion, insight and learning about lawyers' professional and ethical responsibilities or about the elimination of bias in the legal profession and in the practice of law.

**Rule 3. State Board of Continuing Legal Education**

**A. Membership of the Board.** This Court shall appoint twelve members and a chairperson. The membership of the CLE Board shall consist of:

- 3 members of the public;
- 1 member who is a district court judge;
- 6 lawyer members who are nominated by the Minnesota State Bar Association; and
- 3 lawyer members appointed by the Court.

**B. Terms of Members.** Appointments shall be for staggered 3-year terms, with no member serving more than two 3-year terms, and each member serving until a successor is appointed and qualifies.

**C. Officers of the Board.**

(1) **Chair.** The chair of the Board shall be appointed by this Court for such time as it shall designate and shall serve at the pleasure of this Court.

(2) **Vice Chair.** A vice chair shall be designated by the Chair and shall maintain the minutes of meetings of the Board.

**D. Authority of the Board.** Subject to the general direction of the Court in all matters, the Board shall have supervisory authority over the administration of these Rules, shall accredit courses and programs which satisfy the educational requirements of these Rules, and shall have authority with respect to the following:

(1) **Waivers and Extensions.** Waivers of strict compliance with these Rules or extensions of time deadlines provided in these Rules may be made in cases of hardship or other compelling reasons.

(2) **Supplemental Policies.** The Board may make and adopt policies not inconsistent with these Rules governing the conduct of business and performance of its duties.

**E. Board Procedures.** Robert's Rules of Order shall govern the conduct of Board meetings where practicable.

**F. Confidentiality.** Unless otherwise directed by this Court, the files, records, and proceedings of the Board, as they may relate to or arise out of any failure of an active attorney to satisfy the continuing legal education requirements shall be deemed confidential and shall not be disclosed except in furtherance of its duties, or upon request of the attorney affected, or as they may be introduced in evidence or otherwise produced in proceedings in accordance with these Rules.

**G. Persons with Disabilities.** It is the policy of the Board to administer these Rules in a manner consistent with state and federal laws prohibiting discrimination against persons with disabilities and to make reasonable modifications in any policies, practices, and procedures that might otherwise deny equal access to individuals with disabilities.

**H. Payment of Expenses.** The chairperson, the vice-chair and other members of the Board shall serve without compensation, but shall be paid reasonable and necessary expenses certified to have been incurred in the performance of their duties.

#### **Rule 4. Applying for Credit**

**A. Course Approval and Fee Information.** In applying for credit, a sponsoring agency or attorney shall submit to the Board an application for course approval (Appendix I, which is incorporated herein) to include the following:

- (1) Title of the program under consideration;
- (2) Location of the program;
- (3) Names and credentials of the speakers, including those of persons designated to act as moderators for video-tape or satellite programs;
- (4) Type of presentation;
- (5) Agenda or course schedule showing beginning and ending times of each session;
- (6) Identification of type of credit for which approval is sought (standard CLE, ethics/professional responsibility CLE, elimination of bias CLE) for each segment of the course. No segment of any course shall be accredited in more than one category of credit.
- (7) A fee in the amount of \$35. This fee may be subject to waiver under the provisions of Rule 3D(1). A fee is not required when submitting an application for either of the following types of courses meeting Rule 4 and Rule 5 requirements:
  - (a) a previously accredited course which has been video taped, and is replayed at a later date in its entirety;
  - (b) a course 60 minutes or less in duration.
- (8) Such other information as the Board may from time to time require.

**B. Professional Responsibility or Ethics: General Treatment.** Every CLE course approval form must include:

- (1) A description of the general treatment of professional responsibility and ethical considerations; or
- (2) An explanation of why professional responsibility and ethical considerations are not included.

**C. Sanctions for Failure to Include Ethics.** If in the opinion of the Board, the general treatment of professional responsibility or legal ethics topics within courses accredited as standard continuing legal education is inadequate without satisfactory explanation, the Board may refuse to grant full credit for all hours in attendance, impose a deduction from credit hours which would otherwise be granted, and in the case of persistent refusal to cover these topics, refuse to grant further credit for courses offered by the sponsor.

**D. Notice of Credit.** The Board shall inform the sponsor or applicant of the number and type of credit hours granted or denied.

#### **Rule 5      Standards for Course Approval**

**A. General Standards.** A course must meet the following standards before approval is granted.

- (1) The course shall have significant intellectual or practical content.
- (2) With the exception of a professional development course as defined in Rule 2P, the course shall deal primarily with matter directly related to the practice of law or to the professional responsibility or ethical obligations of participants or to the elimination of bias in the legal profession.
- (3) The course shall be taught by faculty members qualified by practical or academic experience to teach the specified subject matter. Legal subjects should be taught by lawyers.
- (4) Any written materials should be thorough, high quality, readable, carefully prepared, and distributed to all participants at or before the time the course is offered.
- (5) The course shall be presented and attended in a suitable classroom or laboratory setting. Video-tape, motion picture, simultaneous broadcast, teleconference, or audio-tape presentations may be used provided that a faculty person is in attendance at all presentations, either in person or through live transmission,

allowing all seminar participants to hear and participate in the question and answer session. Subject to the exception of paragraph (11) below, no program will be approved which involves solely TV or videotape viewing in the home or office, correspondence work or self-study, including on-line self-study.

- (6) Credit will not normally be given for speeches at luncheons or banquets.
- (7) A list of all participants shall be maintained by the sponsoring agency and transmitted to the Board upon request, following the presentation of the course.
- (8) Credit shall be awarded on the basis of one hour for each 60 minutes actually spent in attendance at an approved course.
- (9) A lawyer shall not receive credit for any course attended before being admitted to practice law in Minnesota, but one so admitted may receive credit of one hour for each 60 minutes actually spent in attendance, for attending for credit or as an auditor a regular course offered by a law school approved by the American Bar Association.
- (10) Notwithstanding the provisions of paragraph (9) above, a person who takes approved courses or teaches in an approved course after sitting for the Minnesota Bar Examination, but before admission to practice, may claim credit for the courses taken or the teaching done, if he or she passes that bar examination.
- (11) Lawyers residing or working outside of the State of Minnesota during the CLE reporting period who, because of non-residence are unable in good faith to attend courses accredited as "elimination of bias" as defined in these rules, may receive up to 2 hours of credit in fulfillment of the elimination of bias requirement by viewing a videotaped course or courses that otherwise meet the requirements of these rules. If a lawyer views a videotaped elimination of bias course not previously approved for credit under these rules, the lawyer may seek approval by completing and submitting the Course Approval Form in Appendix I.

#### **B. Standards for Course Approval for In-House Courses**

- (1) An in-house course as defined in Rule 2 (M) will be approved if:
  - (a) The requirements of Board Rule 5 (A) and other applicable Board rules are met;
  - (b) 25% of the hours of approved instruction are taught by instructors having no continuing relationship or employment with the sponsoring firm, department, financial institution or agency;

- (c) Notice of the course is given to enough outside lawyers so that the audience can potentially be composed of at least 25% participants who are not lawyers working in or for the sponsoring firm, department, institution or agency; and
  - (d) Approval is sought prior to its presentation.
- (2) An in-house course, as defined in Rule 2, that is presented and controlled by an established continuing legal education course sponsor as defined in Rule 2N, may be approved for credit, notwithstanding the fact that the course does not comply with requirements of Rule 5B(1) (b) and (c) above.
  - (3) An in-house course as defined in Rule 2M shall not be approved for credit if it is presented primarily for clients or clients' counsel.

**Rule 6 Special Categories of Credit.**

- A. Ethics Courses.** In order to be approved as ethics or professional responsibility under these Rules, courses or sessions within courses must be at least 30 minutes in length and must be separately identified as ethics or professional responsibility on the course agenda and on the Course Approval Form Appendix I.
- B. Elimination of Bias Courses.** Courses or sessions within courses accredited as elimination of bias:
  - (1) Must be at least sixty (60) minutes in length;
  - (2) Must be identified on the Course Approval Form as fulfilling the elimination of bias requirement and be accompanied by a narrative required by Appendix I of these Rules;
  - (3) Must focus on issues in the legal profession and in the practice of law and not upon issues of bias in society in general; and
  - (4) Must not include courses on the substantive law of illegal discrimination unless such courses meet one or more of the Goals for the Elimination of Bias as set forth in the Course Approval Form at Appendix I.

**Rule 7 Other Credit**

- A. Teaching Credit.** Credit for teaching in an approved course shall be awarded to presenting faculty on the basis of one credit for each 60 minutes spent by the faculty preparing the presentation and materials for the course. No credit shall be awarded for teaching directed primarily to persons preparing for admission to practice law. A

lawyer seeking credit for teaching and preparation for teaching shall submit all information called for on the Affidavit of CLE Compliance at Appendix II.

**B. ~~Law Office Management. Professional Development.~~** A lawyer may receive credit ~~for attendance at a course on law office management~~ to a maximum of six credits ~~per~~ in a reporting period for attendance at a professional development course or courses. The course must be submitted for review pursuant to Rule 5. ~~Law office management~~ Professional development courses that specifically address elimination of bias in the law office or in the practice of law may be accredited instead as elimination bias CLE and when so designated are not subject to the 6-hour maximum on professional development ~~law office management~~ ~~courses.~~

**C. Courses at Universities.** Courses which are part of a regular curriculum at a college or university, other than a law school, may be approved for a maximum of 15 hours per course when the lawyer requesting approval submits evidence supporting the conclusion that the course meets the Rule 5A(1) through (5) criteria and that it is directly related to the requesting lawyer's practice of law.

**D. Retroactive Credit.** A lawyer, or a course sponsor, may seek retroactive approval of courses by submitting the necessary information on the Course Approval form.

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

- (1) A narrative describing course learning goals and articulating how the literary discussion topics are directly related to the practice of law or to the professional responsibility or ethical obligations of participants or to the elimination of bias in the legal profession and in the practice of law;
- (2) A list of discussion questions that the faculty uses to guide the discussion;  
and
- (3) Evidence that program registrants are instructed to read the designated literary work prior to attending the course.

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

## **Rule 8      Announcement of Approval**

Any person may announce, as to a course that has been given approval that: "This course has been approved by the Minnesota Board of Continuing Legal Education for \_\_\_\_\_ hours in the following category or categories of credit:

- standard continuing legal education;
- ethics or professional responsibility continuing legal education; or
- elimination of bias continuing legal education."

## **Rule 9      Affidavit of Continuing Education**

- A. Contents of Affidavit.** To maintain active status, a lawyer must submit a written affidavit to the Board on the affidavit form published as Appendix II and incorporated herein, setting forth all information called for and showing that the lawyer has completed a minimum of 45 hours of course work either as a participant or a presenter in approved continuing legal education courses, including:
- (1) no fewer than three (3) hours of courses on ethics and professional responsibility education; and
  - (2) no fewer than two (2) hours of courses in the elimination of bias in the legal profession and in the practice of law.
- B. Timely Affidavit.** The affidavit is timely if filed not later than 60 days after the close of the 3-year period specified by the Office of Attorney Registration as the lawyer's continuing legal education reporting period.
- C. Late Affidavit Fee.** The lawyer who submits an Affidavit of CLE Compliance after the 60-day filing period, but before issuance of a Notice of Noncompliance, shall submit along with the late affidavit a late filing fee in the amount of \$50.00. This fee is payable notwithstanding the Board's grant of an extension of time to file. Additional late fees will not be charged for late affidavits filed within a single reporting period.
- D. Notice of Noncompliance Fee.** The lawyer who submits an affidavit after the issuance of a Notice of Noncompliance, but prior to the issuance of a Court order placing the lawyer on involuntary restricted status, shall submit along with the affidavit a fee in the amount of \$100.

## **Rule 10.      Director's Determinations and Board Review**

- A. Director's Determinations.** The Director shall have the following authority and responsibility:
- (1) To respond in writing to written requests for approval of courses giving reasons for the determination;
  - (2) To grant credit to lawyers for attending or teaching in approved courses;
  - (3) To grant or deny requests for transfer, waiver, extension of time deadlines or interpretation of these Rules; and



(4) To inform the Board about determinations made since the Board's last meeting, together with observations and comments relating to matters under the Board's jurisdiction.

**B. Board Review.** A lawyer or sponsoring agency affected by an adverse determination of the Director may request Board review of the determination, and may present information to the Board in writing and in person. The Board may take such action as it deems appropriate and shall advise the lawyer or sponsoring agency of its determination.

#### **Rule 11. Notice of Noncompliance**

**A. Notice Required.** The Director shall send a notice of non-compliance to any lawyer who:

(1) Fails to meet the requirements of these Rules; and

(2) Fails to request and obtain an extension of time in which to file a report as required by these Rules.

**B. Service of Notice.** The notice shall be sent by regular mail to the lawyer's last known address.

**C. Contents of Notice.** The notice shall state the nature of the noncompliance, and shall inform the lawyer of the right to request a hearing within 30 days of the mailing of the notice, the right to be represented by counsel, and the right to present witnesses and evidence.

**D. Effect of Notice.** If no hearing is requested, the Director's determination of non-compliance shall become final and shall be reported to the Supreme Court with the recommendation that the lawyer be placed on CLE involuntary restricted status.

**E. Board Hearing.** If a hearing is requested, the following will apply:

(1) The Board may employ special counsel;

(2) The Chairperson shall preside at the hearing, which may be held before the entire Board or a committee there appointed by the Chairperson, and shall make necessary rulings; and

(3) The hearing shall be recorded and a transcript shall be provided to the lawyer at a reasonable cost.

**F. Determination.** Following the hearing, the Board shall issue a written decision. If the lawyer is determined to be in noncompliance with these Rules, the Board may

recommend to the Supreme Court that the lawyer's license be placed on CLE involuntary restricted status or take such action as is appropriate.

**G. Petition for Review.** A lawyer who is adversely affected by the decision of the Board may appeal to the Court by filing a petition for review with the Clerk of Appellate Courts within 20 days of receipt by the lawyer of the decision together with proof of service of the petition on the Director of the Board. The petition shall state briefly the facts that form the basis for the complaint, and the lawyer's reasons for believing the Court should review the decision. Within 20 days of service of the petition, the Board shall serve and file a response to the petition and a copy of the final decision of the Board. Thereupon, the Court shall give such direction, hold such hearings and make such order as it may in its discretion deem appropriate.

## **Rule 12      Restricted Status.**

**A. Election of Restricted Status; Restrictions Imposed.** A lawyer duly admitted to practice in this state may elect CLE restricted status as defined in Rule 2(K) by sending written notice of such election to the Director. A lawyer on restricted CLE status shall not be required to satisfy the educational and reporting requirements provided by these rules and shall be subject to the following provisions and restrictions:

- (1) A lawyer on restricted status may not engage in the practice of law or represent any person or entity in any legal matter or proceedings within the State of Minnesota other than himself or herself.
- (2) The name of a lawyer on restricted status may not appear on law firm letterhead without a qualification that the lawyer's Minnesota license is restricted. A law firm name may continue to include the lawyer's name if the name was included prior to the lawyer's placement on restricted status. A restricted lawyer may not be listed "of counsel" or otherwise be represented to clients or others as being able to undertake legal business.
- (3) A restricted lawyer may not have a financial interest in a law firm that is a professional corporation.
- (4) A referee or judicial officer of any court of record of the State of Minnesota or lawyer employed and serving as attorney or legal counsel for any employer, including any governmental unit of the State of Minnesota, is not eligible to apply for restricted status.
- (5) A restricted lawyer shall be issued a wallet license that is marked "CLER" ("continuing legal education restricted") in place of the reporting category.

**B. Transfer from Restricted Status to Active Status.**

- (1) **Notice to Director and Fee.** Unless otherwise ordered by this Court, a lawyer on restricted CLE status who desires to resume active CLE status shall notify the Director in writing of the lawyer's intention to resume active CLE status, and submit a transfer fee of \$125.
- (2) **Transfer Requirements.** A lawyer on restricted CLE status who submits a notice and fee for transfer to active CLE status shall be transferred upon the Director's determination that the lawyer has fulfilled the requirements of (a) or (b) below:
- (a) **Automatic transfer requirements.** The lawyer has completed the number of CLE hours that the lawyer would have had to complete to meet reporting requirements and to be current on a proportional basis had the lawyer not been on restricted status, or
- (b) **Discretionary transfer requirements.** The lawyer has completed such lesser requirements as the Director determines are adequate provided that the number of hours completed total no fewer than 45 hours during the three years immediately preceding transfer. The Director will specify no more than 90 hours. Determinations will be made subject to the criteria set forth in paragraph (c) below.
- (c) **Discretionary transfer criteria.**  
The Director may transfer a lawyer to active status when the lawyer has fulfilled appropriate CLE conditions precedent or agreed to fulfill appropriate CLE conditions subsequent as determined by the Director. In making discretionary transfer decisions, the Director will take the following into consideration:
- i. The number of CLE hours the lawyer has taken in the past;
  - ii. The lawyer's other educational activity, and its nature;
  - iii. The lawyer's practice of law in another jurisdiction;
  - iv. The lawyer's law-related work other than the practice of law, and its nature;
  - v. Whether the lawyer acted reasonably in not anticipating the need to take the appropriate number of CLE hours before being transferred from active status; and
  - vi. Whether the lawyer has demonstrated circumstances of hardship or other compelling reasons that show that the lawyer should be

transferred to active status temporarily before completing the appropriate number of CLE hours.

- (3) **Report to the Board.** The Director shall report to the Board at its next meeting the terms and conditions upon which transfers to active status were made.
- (4) **Failure to Abide by Transfer Conditions.** The lawyer who fails to comply with the conditions of transfer shall be restored to restricted status upon notice from the Director sent by regular mail to the lawyer's last known address.
- (5) **Appeal to Board.** Upon written request from the lawyer, the Board shall review the Director's determination of transfer requirements and notify the lawyer in writing regarding the outcome of that review.

**Rule 13. Transfer from Retired Status to Active Status.**

A lawyer on retired status who seeks to transfer to active status is subject to the provisions of Rule 12 and shall notify the Office of Attorney Registration of his/her intention to transfer to active status.