

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

OFFICE OF
APPELLATE COURTS

MAY 8 - 1995

FILED

In re:

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

MEMORANDUM

TO THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

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

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

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

I. INTRODUCTION

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

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

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

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

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

II. WHY DIVERSITY CONTINUING LEGAL EDUCATION SHOULD BE MANDATORY

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

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

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

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

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

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

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

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

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

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

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

For example, the Racial Bias Task Force Report states:

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

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

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

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

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

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

III. ETHICS AND PROFESSIONAL RESPONSIBILITY EDUCATION SHOULD BE MANDATORY

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

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

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

IV. THE IMPACT OF THE PROPOSALS IN HENNEPIN COUNTY

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

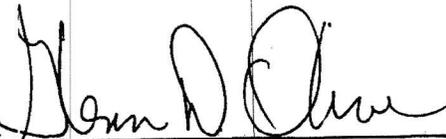
The proposed mandatory CLE requirements for ethics and professional responsibility will also support HCBA's current efforts. Mandatory ethics and professional responsibility CLE will attract greater attention to the ethics and professional responsibility education programming HCBA provides to lawyers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

Respectfully submitted,

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