



REPORT
OF THE
COMMERCIAL AND FEDERAL LITIGATION SECTION
OF THE
NEW YORK STATE BAR ASSOCIATION

concerning

The Report of the NYSBA Committee on Continuing Legal Education

Proposed Diversity and Inclusion and Elimination of
Bias CLE Requirement for New York State Attorneys

DECEMBER 6, 2016

**Opinions expressed herein are those of the
Commercial and Federal Litigation Section.
They do not represent those of the New York State Bar Association
unless and until the report has been adopted by the
Association's House of Delegates or Executive Committee.**

**Report of the Section as recommended
by the Diversity Committee Working Group***

I. Introduction and Summary of the Proposal

At the November 5, 2016 NYSBA House of Delegates meeting, the Committee on Continuing Legal Education (“CLE Committee”) proposed that the Bar adopt a mandatory diversity and inclusion and elimination of bias (“D&I”) CLE requirement for all attorneys admitted in New York. The CLE Committee’s proposal is not without precedent, and is modeled on the unanimously approved resolution supported by the American Bar Association’s House of Delegates at its mid-year meeting in February 2016. Similarly, California and Minnesota both have adopted mandatory D&I CLE requirements.

The genesis of this proposal in New York – as well as in other jurisdictions – is the fact that issues surrounding race, ethnicity, religion, national origin, gender, sexual orientation, disability discrimination, etc., remain critically important in our society. Similarly, lack of access to legal representation by traditionally disadvantaged groups and the continuing underrepresentation of women and minorities within the highest ranks of the profession continue to present challenges for the legal community as a whole.

As set forth in the attached detailed Report of the NYSBA CLE Committee (“Report”), one of the key drivers of the recommendation is NYSBA’s core belief that increasing diversity and inclusion – as well as the elimination of bias – within the profession is essential for legal practitioners to be able to respond effectively to our society’s rapidly changing demographics. The proposal is also aimed at increasing lawyers’ core competencies by educating them to not

* The Diversity Committee Working Group was comprised of the current Diversity Committee Co-Chairs, The Honorable Sylvia Hinds-Radix and Carla M. Miller, Esq., as well as former Committee Chair, The Honorable Barry Cozier and former Section Chair and House of Delegates Alternate Representative Tracee Davis, Esq.

only better serve an increasingly more diverse client base, but also to continue to work on the forefront of the social justice issues for which the profession traditionally has fought for over half a century. (See Report, at 3, describing the four basic values of professional responsibility; including, *inter alia*, “striving to promote justice, fairness and morality”).

Accordingly, the CLE Committee’s specific recommendation is that all accredited CLE providers within the state “be encouraged to create a wide range of programs for all practice areas that incorporate diversity and inclusion, which would include the elimination of bias – whether dealing with other attorneys, clients, courts or anyone else in the legal system.” Moreover, the CLE Committee proposes that “one (1) or two (2) credit hours of D&I CLE be required for the biennial reporting period.” Importantly, the new credit hour requirement would be a standalone or “floating” requirement, **but not add to** the current requirements of thirty-two (32) credit hours for new attorneys, or twenty-four (24) hours for experienced attorneys.

II. Recommendation to Adopt CLE Committee’s D&I Requirement

The Commercial and Federal Litigation Section recommends the adoption of the CLE Committee’s Report. NYSBA’s adoption of the new CLE requirements would be entirely consistent with the Bar’s longstanding positions on D&I generally, and would align New York with the ABA on the issue, along with the other states that already have adopted such CLE requirements. The Section also emphasizes that support of the CLE Committee’s recommendation would further augment the Section’s stated commitment to increasing diversity within the profession, and the field of litigation in particular, that it started over a decade ago with its annual Smooth Moves CLE program and awards presentation, and the Commercial Division 1L Minority Fellowship.

Other than the fact that it would now become part of each attorney’s mandatory CLE requirement, we further note that fulfilling the requirement should not be onerous, since there are currently numerous CLE programs on D&I topics offered by several of the New York-based bar associations, including NYSBA itself, the Bar of the City of New York, and the New York County Bar Association, as well as private CLE providers. (For example, one notable, upcoming CLE course offering by the City Bar that likely would satisfy the proposed D&I requirement, and also enhance competency within the profession is entitled *Assisting Victims of Hate Crimes and Bias and Representing Peaceful Protesters*). In addition, one significant advantage of the proposal is that, while it imposes a mandatory D&I requirement, it does not increase the current biennial hourly CLE requirements and could easily be melded into existing requirements much like the mandatory ethics CLE credits. Accordingly, the actual requirement is nominal, as it presumably would entail completion of only a single CLE course over the biennial period.

We recognize that the proposal is not without some measure of controversy concerning how and in what manner diversity and inclusion would be defined. To address this potential issue, the Section would like to see the CLE Committee provide further clarification in two areas. Specifically, the proposal could be clearer regarding the language within a CLE course description that a provider would need to use in order to determine whether the credit has been satisfied – *i.e.*, currently, there exists a clear understanding of what it means to satisfy the Ethics credit requirement, but unless providers are given clear guidelines of what to include in a course description – as well as substance, of course – to make clear that the D&I requirement is met, then some confusion could ensue. Further, the Section also recommends that the CLE Committee clearly decide the precise requirement, instead of the current statement of “one (1) or two (2) credit hours.”

In sum, the Section believes that the overall value to the New York legal profession of the CLE Committee's proposal outweighs any nominal burden, particularly if the D&I CLE requirement can be satisfied through the myriad course offerings currently in existence, and within the current mandatory biennial hours framework.