



NEW YORK
CITY BAR

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October 17, 2016

Hon. Betty Weinberg Ellerin
Chair, NYS Continuing Legal Education Board
c/o Alston & Bird LLP
90 Park Ave.
New York, NY 10016-1387

Re: Proposal that New York adopt a separate CLE requirement for diversity, inclusion and the elimination of bias (“D&I CLE”) as per ABA Resolution 107

Dear Justice Ellerin:

Thank you for your continued consideration of the proposal to modify New York’s existing CLE requirements (without increasing the total required hours) by adopting a separate CLE requirement for diversity, inclusion and the elimination of bias. I am writing in response to your request for information about programs that already are being offered for CLE credit either under the D&I category or, in those states that do not currently recognize a D&I category, under some other category for accreditation.

To respond to your request, we surveyed CLE program offerings that we believe providers would consider accrediting for a D&I CLE requirement in New York, as well as courses that already are accredited in California and Minnesota, the two states that have long required attorneys to fulfill separate D&I CLE requirements. We also reviewed multistate online D&I CLE offerings because they provide a good overview of the types of courses that will be accessible to lawyers regardless of the location or size of their practices.

Based on our survey of existing offerings, it appears that D&I CLE courses fall into one or more of the following categories: (i) how lawyers perceive and interact with each other as employers, colleagues and partners; (ii) how lawyers perceive and interact with those they come in contact with during the course of practicing law, such as court personnel, witnesses, jurors, judges, opposing counsel, etc.; (iii) ways lawyers can better understand and represent their clients who face barriers, biases and discrimination; (iv) non-discrimination, non-harassment and competent representation as part of a lawyer’s ethical obligations; (v) discrimination and bias in the broader legal and societal context and the role of lawyers in addressing them; and (vi) the law and legal issues as they relate to diverse groups and protected classes.

This letter provides an overview of CLE courses we believe may be relevant to your consideration of this proposal. We understand that definitional and apportionment issues among the accreditation categories – i.e., ethics and professionalism, skills, areas of professional practice, law practice management, and diversity, inclusion and the elimination of bias - may still need to be discussed and ironed out. We are happy to continue participating in those discussions if you think that would be helpful.

New York City Bar Association:

In 2016, the New York City Bar Association hosted two diversity and inclusion programs as to which we awarded CLE credit. In light of the City Bar's position as a New York State accredited CLE provider, the City Bar's programs are presumptively accredited after being reviewed by our CLE Department for compliance with the CLE Board's regulations. Because of the special nature of these programs, however, we engaged in a dialogue with the CLE Board staff to ensure "pre-approval" and to maintain our own best practices for program review.

On April 22, 2016, we hosted Dr. Arin N. Reeves as she presented, "The Explicit Impact of Implicit Bias: Unpacking and Interrupting Implicit Bias to Create More Diverse and Inclusive Legal Workplaces," for which attendees received 2.0 credits of law practice management. The program materials are attached. Dr. Reeves is in great demand for this type of programming and we hope to engage her for similar programming in the future. Her program was extremely well received and well reviewed.

On May 24, 2016, we hosted a full-day Diversity and Inclusion Conference, sponsored by our Enhance Diversity in the Profession Committee. We had originally advocated for accreditation of three separate segments: (i) "Intersectionality"; (ii) "From Bystanders to Upstanders: Activating Allies and Advocates for Inclusion"; and (iii) a General Counsel and Managing Partners Forum. We received approval for only the third segment because, in the view of the CLE Board, the first two were not sufficiently related to the legal profession or the practice of law, and did not have the required legal "wrapper". Therefore, for the third segment, attendees received 1.5 credits in ethics. The program materials are attached.

In addition, the City Bar frequently hosts programs that cover anti-discrimination laws, civil rights and legal issues pertaining to diverse groups and protected classes. These programs currently are typically accredited for professional practice credits.

We anticipate that, should New York adopt this proposal, our CLE Department would consider each program on its individual merits and decide whether to award skills, professional practice, ethics, law practice management or D&I credit, or some combination. CLE providers make these assessments in the ordinary course of business and we do not anticipate a different approach to assessing D&I CLE programming for potential accreditation.

New York State Bar Association:

A sampling of recent and upcoming offerings of the State Bar that appear to fall into one of the above-mentioned six categories include:

- Representing LGBT Clients After Obergefell
- Human Trafficking in NYS: Legal Issues and Advocating for the Victim
- Representing the Transgender Client Through the Arc of Life
- The Path to Marriage Equality & Beyond: Representing LGBT Clients in a Post-DOMA World
- Justice, Race and Police Force
- Contemporary Civil Rights in Relation to the 50th Anniversary of the Civil Rights Act
- The Impact of Implicit Bias on Lawyers and the Legal Profession

Timed agendas and outlines for these programs are attached.¹

American Bar Association:

The ABA² offers online D&I/elimination of bias CLEs, including, “Canaries in the Coalmine: Succeeding as Female Counsel in Male-Dominated Industries,” and recently hosted a webinar entitled, “Transgender Issues in the Legal Profession and its Impact on Diversity and Inclusion.” Furthermore, as part of Resolution 107, the ABA has pledged to assist in the development and creation of D&I CLE. Thus, we can anticipate additional relevant programming and materials to be offered through the ABA in the future. For instance, on October 6, 2016, the ABA held a program entitled “Implicit Bias: How to Recognize and Address It – and New Model Rule 8.4(g),” which awarded attendees 1.0 credit in the “elimination of bias” category.

California:

The State Bar of California website³ lists 34 online programs that qualify for elimination of bias credit and are offered in a variety of formats, including on demand, CLEtoGo (podcasts), self-study articles (review an article and answer 20 questions at the end—counts as 1 hour of credit) and webcasts.

Some programs focus on elimination of bias within the profession:

- Bias in the Legal Profession
- Discrimination and Bias: Strategies for Preventing and Responding in the Intellectual Property Bar
- Guess Who’s Coming to Court

¹ Questions regarding State Bar programming can be directed to H. Douglas Guevara, Senior Director, Continuing Legal Education, 518-487-5580 or dguevara@nysba.org.

² <http://www.americanbar.org/aba.html>.

³ <http://mcle.calbar.ca.gov/MCLE/OnlineCLE.aspx>.

- Recognizing and Addressing Implicit Gender Bias in the Arena of the Solo & Small Firm
- Avoiding Cultural Missteps

Other programs focus on elimination of bias across a broad range of practice areas, relevant to both large firm and solo practitioners, including criminal justice, environmental law, family law and litigation:

- Addressing the Needs of Persons with Disabilities in the Criminal Justice System
- Bias: The Enemy of Persuasion
- Bring Diversity and Equity in Environmental Planning
- Cultural Competency in Domestic Violence Cases
- Delights, Diversions, and Discriminations: The Bias and Business of Show Business
- Elimination of Bias in Jury Selection: Wheeler/Batson/Lenix in the Courtroom
- Religion Issues Affecting Family Law Strategy
- Does Gender Matter in Antitrust Law? Tips from Experienced Practitioners in Private Practice, Government and In-house Roles on How to Survive and Thrive in Your Antitrust Practice
- Ten Common Mistakes in Mediation and How to Avoid Them

In addition, California lawyers can access CLE programs sponsored by State Bar of California-approved MCLE providers through online vendors like Versatape,⁴ which offers elimination of bias programs such as:

- Elimination of Bias: Transgender Rights
- Challenges Faced by Minorities and Women in the Legal Profession
- How to Recognize Cross Cultural Issues in Litigation, Negotiation and Mediation
- Understanding and Mitigating Bias (including a professional responsibility segment)

Minnesota:

The Minnesota State Bar Association offers a wide variety of D&I/Elimination of Bias CLE courses through their website,⁵ including the following programs on-demand or through teleconference and webcast:

⁴ <http://www.versatape.com/>.

⁵ <http://www.mnbar.org/cle-events/on-demand-cle/on-demand-elimination-of-bias-cles>.

- Impact of Technology on Diversity and Inclusion in the Legal Profession
- Fisher v. University of Texas at Austin (a conversation about the value of diversity in education and legal practice as well as the challenges and contributions of black attorneys and law students in Minnesota, in response to questions raised by Chief Justice Roberts)
- Helping Your Client Legally Change Gender
- The Mall of America Protest Cases, Black Lives Matter, and the Minnesota Legal System
- Understanding Ogbergefell v. Hodges: The decision and its effects on related areas of law
- Clients from Other Cultures: Traps & Tips
- Transgender People Interacting with the Legal and Healthcare Industries— Personal and Practical Insights

In addition, the Minnesota state court system offered a program in May 2012, “Ramsey County Mental Health Court: Working with the Mentally Ill Defendant”.⁶

Multistate:

Multistate CLE providers offer a range of programs as well. For example, the Practising Law Institute⁷ lists upcoming online programs that qualify for elimination of bias credit in California and/or Minnesota, as well as for ethics or other CLE credit in multiple other states, including New York:

- PLI’s California MCLE Marathon 2016: Current Developments in Legal Ethics – Competence Issues—Elimination of Bias (approved in California for 4 credits in ethics, 1 credit in elimination of bias, and 1 credit in competence issues; approved in New York for 7 credits in ethics)
- How to Become a Culturally Competent Attorney (approved in California for 1 credit in elimination of bias; approved in New York for 1 credit in ethics)
- Representing Transgender Clients: Practical Skills and Cultural Competency (approved in California for 1 credit in elimination of bias and 5.25 general credits; approved in New York for 1 ethics credit and 6.5 credits in professional practice)
- Working with Immigrants: The Intersection of Basic Immigration, Housing and Domestic Violence Issues in California (approved in California for 1 credit in elimination of bias and 5.25 general credits; approved in New York for 7 credits in professional practice)

⁶ Available at http://www.mncourts.gov/Documents/2/Public/Criminal/RCMHC_CLE_Flyer_5-23-12.pdf.

⁷ <http://www.pli.edu/>.

- Diversity & Inclusion in Law Practice 2016 (approved in California and Minnesota for 2.25 elimination of bias credits and 1 general credit; approved in New York for 2.5 ethics credits and 1.5 credits in professional practice)
- Providing Respectful and Culturally Competent Services to LGBT Clients (approved in California for 1 credit in elimination of bias; approved in New York for 1 credit in professional practice)

Likewise, LawLine⁸ offers multiple programs that qualify for elimination of bias credit in states that have that requirement and for ethics or other types of CLE credit in other states, including New York. Course offerings include:

- Steps to Eliminate Bias in the Profession (approved in California and Minnesota for 1 elimination of bias credit; approved in New York for 1 ethics credit)
- Implicit Bias: The Bias You Didn't Know You Have... But You Do (approved in Minnesota for 1 elimination of bias credit; approved in New York for 1 ethics credit)
- Leveling the Playing Field: Elimination of Bias in the Legal Profession (approved in California and Minnesota for 1 elimination of bias credit; approved in New York for 1 ethics credit)

Similarly, LexVid⁹ offers courses that qualify for elimination of bias credit in California and/or Minnesota and are approved for credit in multiple other states, including New York, such as:

- Respect in the Workplace—The Legal Landscape of Harassment, Bias & Discrimination in the Workplace, Part II (approved in California for 1.75 elimination of bias credits; approved in New York for 2.0 credits {unspecified; presumably professional practice});
- Unconscious Bias and the Legal Profession (approved in California for 1 hour of elimination of bias credit; approved in New York for 1 hour of ethics credit)
- Bias and LGBT Issues in the Legal Workplace (approved in California for 1 elimination of bias credit; approved in New York for 1 ethics credit)
- The Elimination of Bias in the Practice of Law (approved in California for 1 hour of elimination of bias credit; approved in New York for 1 hour of ethics credit)

⁸ <https://www.lawline.com/>.

⁹ <http://www.lexvid.com/>.

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I hope this information is useful for your purposes. Please let me know if I can be of any further assistance. Thank you again for your attention to this important proposal.

Respectfully,

A handwritten signature in black ink, appearing to read "John S. Kiernan", with a horizontal line extending to the right from the end of the signature.

John S. Kiernan

Encl.

cc: Elise Geltzer, Esq., Counsel, NYS Continuing Legal Education Board (w/encl.)
Office of Court Administration
25 Beaver Street
New York, NY 10004