



The Illinois Supreme Court Commission on Professionalism recommends that the Court amend the current CLE professional responsibility requirement to require that within the six hours of professional responsibility CLE mandated in each reporting period, one hour be devoted to diversity and inclusion, and one hour be in the area of mental health and substance abuse.¹ (“Diversity and Mental Health CLE Requirement”). The proposed amended rule is attached to this letter. (See Exhibit 1.) The rationale for the recommendation follows:

1. Lawyers Generally Are Not Taking CLE Programs In Diversity And Mental Health And Substance Abuse.

Under Rule 794(a), licensed attorneys in Illinois are required to complete 30 hours of CLE activity every two years.² Under Rule 794(d), of those 30 hours, Illinois attorneys are required to complete 6 hours of professional responsibility CLE. The areas covered are “professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics.” Attorneys can meet those requirements in a “traditional” manner, by taking a CLE course, or a non-traditional manner, by completing any of the courses or activities described under Rule 795(d), including the court-approved lawyer-to-lawyer mentoring program.

Lawyers may choose to fulfill their professional responsibility requirement by taking courses in any, some, or all of the five substantive areas described in Rule 794(d). The Commission has studied the choices of lawyers and the course offerings of CLE providers for approximately ten years.

Data collected by the Commission on Professionalism since 2010 shows that courses offered in the areas of both diversity and mental illness and addiction remain at a relatively low and static level. Despite a rising volume of courses offered in the area of professional responsibility generally, over time, the number of diversity and mental illness and addiction courses offered is significantly lower than other professional responsibility areas, particularly legal ethics and professionalism. (See Exhibit 2.)

The Commission believes that attorneys shun these types of courses for fear of the stigma attached. We have been informed by attorneys in our CLE Advisory Group and others that attorneys avoid wellness-type courses for fear that others will infer from their attendance that they “have a

¹ We also recommend that the term “mental illness and addiction issues” be reframed to “mental health and substance abuse”. We decided on this after sending a first draft of this recommendation to our sister organizations for feedback. We subsequently held a meeting with representatives of the Lawyers’ Assistance Program and the MCLE Board and then invited them to address the full Commission at its March 10, 2017 meeting. LAP explained in persuasive detail that they believed “mental health and substance abuse” over the more general term “wellness” would better address the problems identified in the 2016 ABA-Hazelden Report (discussed later in this recommendation) and to reduce the stigma of such programming.

² There are numerous exceptions to this requirement, including for newly-admitted attorneys, inactive attorneys, and the judiciary.



problem.” We are also told that attorneys – especially majority attorneys – avoid diversity courses because of the perception they are only for women and minorities.

In addition, many providers offer CLE courses in multiple states, and state CLE regulations vary as to what types of courses will qualify for CLE credit. Illinois has a broad definition of what qualifies for professional responsibility CLE credit. However, some states only give credit for ethics courses or professionalism courses that are unique to lawyers as opposed to applicable to a wider population, such as diversity or mental health and substance abuse courses.

2. The State Of Diversity And Mental Health And Substance Abuse Among Lawyers Is One Of Paramount Concern

Although lawyers are not availing themselves of education in the areas of diversity and mental health and substance abuse, those aspects of our profession continue to offer challenges to professionalism.

a. Diversity

Diversity is of central concern for the legal profession. Our population is getting increasingly diverse. Forty years from now, the United States will [not have a single ethnic majority](#). This transforming population means that lawyers are going to represent increasingly diverse clients. It should therefore be a priority that our legal profession reflect the diversity of our client base.

Furthermore, study after study has shown that [a diverse team is a better team](#). Diverse teams are smarter and generate more revenue for a company. A company with high turnover that continually loses workers due to attrition will not only be weaker internally, but will continue to have stunted growth as it competes in an increasingly competitive, and globalized, marketplace.

The numbers are clear that our profession is not doing well at increasing our diversity. According to the National Association of Legal Professionals’ [2016 Diversity Report](#), minorities constitute 22.72 percent of associates in large law firms but only 8.05 percent of partners. Overall, minorities represent only 14.62 percent of all American attorneys. The number for minority women is even more stark: only 2.76 percent of partners are minority women.

Generally, women account for 45 percent of associates at law firms. However, they only account for 22.13 percent of law firm partners. Moreover, [only 17.4% of equity partners are women](#), a number that has barely budged since 2006. Crucially, among non-equity partners



who graduated from law school in 2004 and later, 62 percent were men and only 38 percent were women.

According to the 2016 [Chicago Lawyer Annual Diversity Survey](#), of the 88 Illinois law firms that responded to the survey, women accounted for around 44 percent of all lawyers, but only 22.4 percent of all partners. According to NALP, which surveyed Chicago specifically, of the 6,747 attorneys in law firms, 32.56 percent were women, 12.42 percent were minorities, and 6.05 percent were minority women.

Judiciary numbers are of concern as well. The [Gavel Gap Report](#) rates each state based on the gap between the representation of women or minorities on the bench, and the representation of each group in the general population. The Gavel Gap is how much the state falls short of the forecast. According to the most recent report, in Illinois, 30.5 percent of state judges are women, whereas 50.93 percent of our state is female. The gender Gavel Gap is 40.10 percent, ranking us 23rd in the country in our representativeness rank. For minority representation, 26 percent of Illinois judges are people of color while 37 percent of our state's population are people of color. We have a 28.84 percent minority Gavel Gap, ranking us 13th in the country. We as a state can do better.

b. Mental Health and Substance Abuse

Mental health and substance abuse also plays a crucial role in the general outlook for our profession. The landmark [ABA-Hazelden Betty Ford Foundation study](#), completed in 2016, revealed some startling truths about the health of our legal profession. The study surveyed almost 15,000 attorneys in 19 states who were currently employed in the legal profession. The study reported that 21 percent of licensed, employed attorneys self-identify as problem drinkers, 28 percent struggle with depression, and 19 percent demonstrate symptoms of anxiety. Eleven and a half percent of lawyers surveyed have considered suicide. Reversing a trend revealed in earlier studies, younger attorneys in the first 10 years of practice reported the highest incidence of these problems. Moreover, as the study's researchers explained, attorneys in the United States have higher rates of drinking and mental health problems than equally high stress professions, such as physicians and surgeons. Lawyers working in law firms have the highest rates of alcohol abuse, and law students drink more alcohol and have higher rates of anxiety than their non-law peers.

Our profession's issues with mental health and substance abuse are long-documented. Alcohol is deeply ingrained in the culture of our profession. And the practice of law has high levels of stress associated with it, particularly when attorneys work in solo and small firms. Furthermore, as the study's experts explained, even if help is available (which it is in Illinois,



primarily through the Lawyers Assistance Program), lawyers are deterred from seeking help due to the stigma attached to mental health and addiction issues.

These findings matter. They demonstrate that many of our colleagues in the legal profession are suffering. Additionally, many of these colleagues are at greater risk of committing malpractice due to their poor mental health. The effects of that are numerous: ethical and disciplinary violations, increased insurance costs, damage to client cases, and across the board, reduced confidence in the integrity and efficacy of our profession and justice system.

The Commission on Professionalism believes that a Diversity and Mental Health and Substance Abuse CLE Requirement will ensure that lawyers receive education and help in areas crucial to their competence and professionalism. Teaching attorneys about the need for greater diversity in the legal profession, equipping attorneys with skills to increase diversity in their workplaces, challenging attorneys to counter biases in their professional circles, and encouraging attorneys to fully engage with an increasingly diverse client population, will ensure that attorneys maintain high standards of professional competence. Similarly, mandating one-hour of mental health and substance abuse training will ensure that attorneys improve their own personal wellness, advocate for the wellness of their colleagues, and ensure that they remain mentally, physically, and emotionally competent to serve their clients and our system of justice.

3. Illinois Would Be At The Forefront Of A National Movement For Increased Diversity And Mental Health And Substance Abuse Awareness In The Profession.

Mandating diversity and mental health and substance abuse CLE will demonstrate that Illinois is forward-thinking about professional responsibility CLE as encouraging a higher level of professionalism. Similar changes are being considered in the national arena.

Of the 45 states that currently have mandatory CLE, only seven states allow for diversity and inclusion to qualify for ethics/professionalism credit, including Illinois. Only three states – California, Minnesota and Oregon – require attorneys to take diversity and inclusion CLE. Illinois could become the fourth.

In February 2016, the ABA House of Delegates unanimously passed Resolution 107, encouraging states to require lawyers to participate in diversity and inclusion training as a standalone component of their CLE requirements.

As for mental health and substance abuse, the ABA-Hazelden Study has led to an outpouring of pro-active efforts across the nation. The study has been incorporated into many professionalism programs. The ABA Commission on Lawyer Assistance Programs Task Force on Lawyer Wellness is a



joint effort between the Commission, the National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, and others, to address the findings of the ABA-Hazelden study. Commission Executive Director Jayne Reardon is a member of the Task Force. The Task Force is currently drafting a report directed to state regulators on ways to improve lawyer wellness among their attorneys.

Finally, and of particular relevance to this recommendation, is the ABA MCLE Model Rule Project. In August 2014, the ABA Standing Committee on Continuing Legal Education started the MCLE Model Rule Review Project, focused on updating the MCLE Model Rule. The current Model Rule for MCLE was passed in 1988. Both MCLE Board Director, Karen Litscher Johnson, and Commission on Professionalism Diversity and Education Director, Michelle Silverthorn, participated in the Project. On February 6, 2017, the ABA House of Delegates adopted the revised Model Rule.

Section 3 of the 2017 MCLE Model Rule states:

As part of the required Credit Hours referenced in Section 3(A)(1), lawyers must earn Credit Hours in each of the following areas:

- (a) Ethics and Professionalism Programming (an average of at least one Credit Hour per year);
- (b) Mental Health and Substance Use Disorders Programming (at least one Credit Hour every three years); and
- (c) Diversity and Inclusion Programming (at least one Credit Hour every three years).

4. A Distant Effective Date Will Ensure The Availability Of Quality Courses In Diversity And Mental Health And Substance Abuse.

Having consulted with the MCLE Board, the Commission recommends that the amended rule become effective for lawyers completing their reporting period in June 2019. This will afford both attorneys and providers time to adjust to the new requirement.

It should be noted that several free diversity and mental health and substance abuse CLE courses are available to attorneys in Illinois. Attorneys can search the MCLE Board's website to find all courses available for free. Of particular note for diversity is the annual Practicing Law Institute's *Diversity and Inclusion in Law Practice* that is available for attorneys to stream on-demand, as well as Prairie State Legal Service's recording of *Racial Justice: A Tool Kit for Advocacy*.

The Illinois Supreme Court Commission on Professionalism has developed and partners with bar associations and law firms to facilitate a program on diversity, inclusion and implicit bias. We will also



be creating an online program on diversity and inclusion that attorneys can take anywhere. As for mental health and substance abuse, the Illinois Lawyers' Assistance Program currently offers eight in-person training programs that they currently deliver across the state. LAP also offers 5 one-credit online mental health and substance abuse seminars that attorneys can take to obtain professional responsibility CLE credit. The Commission and LAP have plans to increase collaboration on programming in the mental health and substance abuse area.

Although Illinois CLE providers have offered a variety of diversity and mental health and substance abuse courses, more will be required to meet the increased demand. If the Diversity and Mental Health and Substance Abuse Requirement is adopted, providers will have added incentive to offer more courses on diversity and mental health and substance abuse, and the Commission on Professionalism will assist in quality course development.

5. Conclusion

For the reasons listed above, the Illinois Supreme Court Commission on Professionalism unanimously recommends that the Illinois Supreme Court revise Rule 794(d)(1), as set out in the attachment, to allow for mandatory diversity and mental health and substance abuse CLE in Illinois. This proposal has also been reviewed by the MCLE Board and the Illinois Lawyers' Assistance Program. We all believe that the time is now to permanently change the conversation on diversity and mental health and substance abuse in the legal profession. A mandatory CLE requirement is a crucial step in achieving that goal.

Sincerely,

A handwritten signature in cursive script that reads 'Debra B. Walker'.

Judge Debra B. Walker, Chair

CURRENT Supreme Court Rule 794(d)

(d) Professional Responsibility Requirement

(1) A minimum of four of the total hours required for the first two reporting periods must be in the area of professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics. Beginning with the reporting periods ending on June 30 of either 2012 or 2013, in which 30 hours of CLE are required, and for all subsequent reporting periods, a minimum of six of the total CLE hours required must be in such areas.

(2) Such credit may be obtained either by:

(i) Taking a separate CLE course or courses, or participating in other eligible CLE activity under these Rules, specifically devoted to professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics; or

(ii) Taking a CLE course or courses, or participating in other eligible CLE activity under these Rules, a portion of which is specifically devoted to professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics credit. Only that portion of a course or activity specifically devoted to professionalism, diversity issues, mental illness and addiction issues, civility, or legal ethics shall receive CLE credit for the professional responsibility requirement of this paragraph.

PROPOSED Supreme Court Rule 794(d)

(d) Professional Responsibility Requirement

(1) Each attorney subject to these Rules shall complete a minimum of six of the total CLE hours for each two-year reporting period in the area of professionalism, civility, legal ethics, diversity and inclusion, or mental health and substance abuse.

(2) These minimum six hours shall include either completing the Rule 795(d)(11) year-long Lawyer-to-Lawyer Mentoring Program or:

(i) at least one hour in the area of diversity and inclusion; and

(ii) at least one hour in the area of mental health and substance abuse.

Effective date: July 1, 2017 (for those attorneys completing their two year reporting period June 30, 2019).

We recommend that Paragraph 2 of the current Rule 794(d) be omitted. It has been ten years since the CLE rules have been in place and attorney and providers understand they may receive credit for a separate course or a portion of a larger course devoted to professional responsibility subject areas.

Illinois Professional Responsibility CLE Courses

