

**FILED**

October 5, 2023

**OFFICE OF  
APPELLATE COURTS**

**STATE OF MINNESOTA  
In Supreme Court**

**FILE NO. ADM09-8008**

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**Petition of the Minnesota State Board  
of Continuing Legal Education for Amendment  
of the Rules of the Minnesota State Board  
Continuing Legal Education**

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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 Court to amend the Rules of the Minnesota Board of Continuing Legal Education ("Rules") to adopt a series of proposed changes set forth below. The proposed amended Rules ("Proposed Rules") are attached as **Exhibit A**.

In support of its Petition, Petitioner offers the following:

1. The Minnesota Supreme Court has the exclusive and inherent power to regulate the practice of law in Minnesota. Minn. Stat. § 481.01; *Sharood v. Hatfield*, 210 N.W.2d 275, 279 (Minn. 1973).
2. Under the supervision of the Court, the Board is responsible for ensuring that lawyers who are admitted to the Bar of Minnesota continue their legal education and professional development throughout their active practice of law.
3. The State of Minnesota is one of 46 jurisdictions that requires lawyers to continue their legal education as a condition of licensure.<sup>1</sup> Minnesota requires 45 hours of

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<sup>1</sup> The jurisdictions that have not adopted mandatory CLE requirements are the District of Columbia, Maryland, Massachusetts, Michigan, and South Dakota.

continuing legal education every three years, including 3 hours of approved courses in ethics or professional responsibility and 2 hours of approved courses in the elimination of bias in the legal profession and in the practice of law.

4. In 2017, the American Bar Association House of Delegates (ABA) adopted the Model Rule for Minimum Continuing Legal Education and Comments (MCLE Rules), replacing the 1988 MCLE Model rule. The ABA encouraged jurisdictions to review the revisions and consider integrating some or all of its provisions in their respective CLE rules.<sup>2</sup> The 2017 MCLE Rules requires that lawyers take the following specialty credits, which count toward the general CLE requirement:
  - a. Ethics and Professionalism (average one credit per year);
  - b. Diversity and Inclusion (one credit every three years); and
  - c. Mental Health and Substance Use Disorders (one credit every three years).
5. Mental health and substance use disorders programming is defined in the MCLE Rules as “CLE Programming that addresses the prevention, detection, and/or treatment of mental health disorders and/or substance use disorders, which can affect a lawyer’s ability to perform competent legal services.”
6. The Comments to the MCLE note that many jurisdictions allow CLE courses addressing mental health and substance use disorder programming to count toward the general CLE requirements and/or ethics and professionalism credits.
7. While programs addressing mental health or substance use disorders generally count toward the elimination of bias or ethics credits required in Minnesota, the

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<sup>2</sup> <https://www.americanbar.org/events-cle/mcle/modelrule/>

Board recommends that the Court adopt the ABA's recommendation for a stand-alone requirement for mental health and substance use disorders courses to ensure that all Minnesota licensed lawyers take at least one credit that meets this requirement each reporting cycle.

8. The comments to the MCLE note that most jurisdictions, like Minnesota, have a lawyers assistance program that can offer, or help with offering, mental health and substance use disorders programming for the legal communities.
9. The February 2017 report noted that mental health and substance use disorders programming was currently in most jurisdictions, but just three jurisdictions (Nevada, North Carolina, and California) required the credits. The report advocated for jurisdictions to consider adopting a requirement, citing the release of the landmark study conducted by Hazelden Betty Ford Foundation and the American Bar Association Commission on Lawyer Assistance Programs. The report stated that lawyers may be reluctant to take credits in mental health and substance use disorders due to potential stigma, but that by requiring all lawyers to take the course, this concern can be greatly reduced.<sup>3</sup>
10. Currently, five jurisdictions have a stand-alone requirement for mental health and substance use CLE courses: California, Illinois, Nevada, North Carolina, and South Carolina.
11. In 2016, just before the ABA amended its Model Rules, the results of an ABA Hazelden Betty Ford sponsored study were reporting in "The Prevalence of Substance Use and Mental Health Concerns among American Attorneys." The

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<sup>3</sup> [https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2017/2017\\_hod\\_midyear\\_106.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2017/2017_hod_midyear_106.pdf)

study found that lawyers suffer from depression, anxiety, and substance use disorders at a much higher rate than the general population.

12. Minnesota Lawyers Concerned for Lawyers (LCL) also notes on its website that lawyers, judges, and law students experience higher rates of addiction/dependency and mental illnesses than those in other professions.<sup>4</sup>

Many lawyers will suffer from symptoms for years before seeking help, largely due to perceived stigmas surrounding mental health and substance use in the legal profession.

13. These issues have increased amongst law students as well. In the spring of 2022, law professors David Jaffe (Washington College of Law), Jerry Organ (University of St. Thomas) and Katherine Bender (Bridgewater State University) released results from a 2021 Survey of Law Student Well-Being. Of the 33,000 students who participated in the 2020 study, nearly 40% experienced depression and 35% engaged in binge drinking two or more times in the prior two weeks.<sup>5</sup>

14. Although organizations like the MSBA, the ABA, LCL, the Board, and others have tried to de-stigmatize issues surrounding mental health and substance use, many lawyers are still reluctant to seek help.

15. Requiring lawyers to engage in one hour of mental health and substance use disorders programming per three-year reporting period may reduce the concern related to a perceived stigma surrounding such issues.

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<sup>4</sup> <https://www.mnlcl.org/issues/>

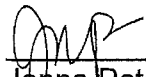
<sup>5</sup> "It's Okay to Not be Okay": The 2021 Survey of Law Student Well-Being, American University Washington College of Law, Spring 2022.

16. Additionally, the Board recommends that the Court impose a requirement that the program contain resource information on how to obtain assistance.

17. This recommendation is also consistent with the Minnesota Supreme Court's Call to Action for Lawyer Well-Being.<sup>6</sup>

For the foregoing reasons, Petitioner respectfully requests that the Court amend the current Rules of the Board of Continuing Legal Education and adopt the proposed amended Rules, attached to this Petition as **Exhibit A**.

Dated: 10/02/2023



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Chair

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<sup>6</sup> <https://www.mncourts.gov/lawyer-well-being.aspx>

**Proposed Rule Amendments to the Rules of the Board of Continuing Legal Education:**

Rule 2:

H. “Course in mental health and substance use in the legal profession and in the practice of law” means a course that educates attorneys about substance use, addiction and/or mental health issues related to the practice of law. This includes, but is not limited to: (a) the reduction of risk for and detection, referral, and treatment of substance use and/or mental health issues and the assistance available for impaired attorneys; (b) recognizing signs of misuse, addiction, and mental health disorders in oneself or one’s colleagues; (c) impairment, intervention, treatment and available lawyer assistance programs, including steps to assist and refer an affected attorney; and (d) stress management programs which focus on building awareness and reducing the risk of stress-related problems in the law, including, but not limited to, recognizing signs of stress in oneself or one’s colleagues, addressing the connection between stress, burnout and other factors on the development of mental health issues, work/life balance, instituting preventative measures individually, and the development of policies and practices within a law firm, legal department, or other organization employing lawyers for reducing the risk of impairment, supporting well-being, and guiding organizations on options when an attorney may be impaired.

Rule 6:

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**C. Mental Health and Substance Use in the Legal Profession and in the Practice of Law.** To be approved for mental health and substance use credit, the course or session within the course must meet the following requirements:

- (1) Be at least 30 minutes in length;
- (2) Be identified on the application as fulfilling the mental health and substance use requirement and be accompanied by a narrative describing how the course or sessions within the course meets the definition of Rule 2H;
- (3) Address issues in the legal profession and in the practice of law and not issues of mental health and substance use in society in general;
- (4) Be taught by someone with particular knowledge of impairment and well-being in the legal profession; and
- (5) Include information on lawyer wellness programs and local resources.

Rule 9:

B. Special Categories of Credit. Lawyers must report:

- (1) No fewer than 3 hours of approved courses in ethics or professional responsibility;
- (2) No fewer than 2 hours of approved courses in the elimination of bias in the legal profession and in the practice of law;
- (3) No fewer than 1 hour of approved courses in mental health and substance use in the legal profession and in the practice of law;
- ~~(3)~~(4) No more than 6 hours of credit for pro bono legal representation provided pursuant to Rule 6D and reported by Appendix II; and
- ~~(4)~~(5) No more than 30 hours of credit for on-demand courses.