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## **Elimination of Bias Credit under the Minnesota CLE Rules: Course Review and Accreditation Determinations**

This document is intended to provide course sponsors seeking elimination of bias (EOB) credit an understanding of how decisions are made with regard to granting or denying EOB continuing legal education (CLE) credit. This may be a helpful guide to course sponsors as they plan future programming for which they intend to seek EOB credit.

The CLE office reviews each course submitted for credit determination and notes whether the course sponsor or the attorney is seeking EOB credit. The course approval form and the online application ask applicants whether EOB credit is being sought.

In considering whether a course or segment within a course is eligible for EOB credit, CLE staff use the questions listed below, each of which is essential to evaluating the course for EOB credit:

### 1. Course Description and Objective

Does the course meet the definition of an EOB program as defined by [CLE Rule 2G](#)?

Rule 2G defines an EOB course as a course “directly related to the practice of law that is designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.”

CLE staff reviews applications to determine whether the program meets each of the requirements within the EOB definition, and considers each of these elements by asking the question, does the program:

- “identify and eliminate”
- “from the practice of law and from the legal profession”
- “biases”
- “against persons”
- “because of one or more of the following:

- race
- gender
- economic status
- creed
- color
- religion
- national origin
- disability
- age or
- sexual orientation?"

This list is consistent with those categories protected under the Minnesota Human Rights Act.

## 2. Applying for CLE Credit

Does the program meet the [CLE Rule 4](#) requirements for “applying for credit?”

Rule 4 requires that courses seeking CLE credit must meet requirements for submission of an application either online through OASIS (the CLE office’s Online Attorney and Sponsor Integrated System) or by completion of the course approval form (Appendix I) found in the CLE Rules. The Rule 4 criteria set forth the administrative aspects of applying for credit and include the fee for accreditation, the need to list the date or dates on which the program was or will be presented, and the type of credit sought.

## 3. Request for Credit

Is the course sponsor seeking EOB credit?

Generally, the course sponsor must ask CLE staff to evaluate the course for EOB credit. The Board office receives thousands of applications for course credit each year and relies on sponsors to ask for credit in one of the special credit categories. Unless the sponsor or an attorney who attends the course seeks EOB credit, the course application may not be reviewed for EOB credit. If a sponsor or lawyer believes that credit should have been awarded in a category other than that which was given, the sponsor or lawyer may contact the Board office to provide additional information about the course and to ask for reconsideration.

#### 4. Standards for Court Approval

Does the program meet the “standards for course approval” of [CLE Rule 5A](#)?

Rule 5A lists the general requirements for course approval. The CLE office first determines whether the course is presented in a classroom setting, has significant intellectual or practical content, is “directly related to the practice of law,” and is taught by qualified faculty. The CLE office reviews the program materials to determine if they are consistent with the program description in the application. The sponsor must agree to maintain a list of all participants.

Note: A course would not be approved if, for example, it were an informal or ad hoc conversation among lawyers that included a discussion about biases against a particular group of minority lawyers. The event would not be approvable because it did not meet, among other requirements, the Rule 5 requirement that the course be taught by one or more faculty members. However, if a program were designed to include a discussion of biases against minority attorneys in the administration of justice, the session was led by a faculty member, the session met the definition of Rule 2G as well as the requirements of Rule 6B, the program would be approved, assuming all other requirements were met.

#### 5. Other Requirements

Is the program consistent with [CLE Rule 6B](#)?

Rule 6B describes the requirements for EOB courses, specifically that the course or course segment is:

- at least 60 minutes in length;
- is identified on the application form as fulfilling EOB requirements;
- include a “narrative describing how the course or segments within a course meets one or more of the learning goals” (the learning goals may be found at question #7 of the FAQs on the [CLE website](#) and in the Course Approval Form ([Appendix I](#))); and
- must not address the substantive law of illegal discrimination except under limited circumstances addressed below.

## 6. Course Narrative

The EOB narrative must describe *how* a particular course (or segment within a course) meets one or more of the learning goals. The narrative should reference the content of the program and describe specifically what is intended to be taught. Merely restating one or more of the EOB learning goals does not satisfy the narrative requirement. The information about the program found in the EOB narrative must be consistent with the description of the course in the agenda and other course materials.

## 7. Questions

### A. Does the course focus on issues in the “legal profession and in the practice of law” and not on “issues of bias in society in general,” as referenced in [CLE Rule 6B\(3\)](#)?

Even though there are many instances where a particular type of bias in the practice of law also exists in society in general, EOB credit is not given to a course that is intended to address general bias in society. In order to receive EOB credit, the course must have been designed to focus on conduct or actions that arise in the practice of law. The sponsor must show a connection between what the sponsor intends to teach and one of the three learning goals. The program materials should connect the learning goals to examples of conduct or scenarios which are likely to arise in the practice of law.

For example, a course addressing difficulties encountered by Native Americans integrating into the majority culture would not be approved as EOB. A course addressing problems encountered by Native American lawyers integrating into the culture of the practicing bar however, could be approved. Similarly, a course designed to teach lawyers about specific challenges or prejudices a lawyer may face when representing a Native American client could also be approved for EOB credit.

### B. May a course addressing the “substantive law of illegal discrimination” ever be approved as EOB?

Generally, no. Courses addressing changes and developments in the substantive law of illegal discrimination are approvable as standard credit, not EOB. This prohibition exists because the law of illegal bias is a substantive law

area and deals with the law, and does not address concerns about bias in the practice of law and how to identify it and eliminate it.

The EOB learning goals articulate specific circumstances under which lawyers can be educated about how to identify and eliminate bias and prejudice in the legal profession. This can arise in the context of a discussion of substantive law.

**C. May a course fit within the narrow exception of [CLE Rule 6B\(4\)](#) thereby permitting a substantive law course to be accredited as elimination of bias?**

Possibly. Rule 6B(4) leaves open the possibility that a substantive law course may qualify for EOB credit. Rule 6B(4) states that an EOB course “[m]ust not include courses on substantive law of illegal discrimination unless such courses meet one or more of the learning goals for elimination of bias courses set forth in the Course Approval Form at Appendix I”. This exception would apply when a course includes a segment discussing a proposed or existing law, but focuses the majority of the learning on one or more of the specific EOB learning goals. The substantive discussion in these courses would be the context for the EOB discussion.

The EOB learning goals describe how an EOB course should go beyond merely teaching an understanding of the law. The learning goals narrative should articulate the specific circumstances under which lawyers should be taught about how to identify and eliminate bias and prejudice in the legal profession. This can arise in the context of a discussion of substantive law.

The Rule 6(B)4 provision would be applicable for a course that includes a foundation in the substantive law of illegal discrimination against the disabled but then focuses the learning on actions that lawyers could take to remove barriers to the hiring and retention of disabled lawyers in private law firms. A course that is designed in a matter consistent with learning goal #2 to “educate lawyers regarding barriers to hiring, retention, promotion, professional development and full participation” of disabled persons, as defined under Rule 2G, could be approved as EOB.

Assuming all other requirements are met, courses could be approved as EOB because the *primary* focus is to educate lawyers about how changes in the law may impact the underlying problem of discrimination and bias in the legal profession. In this example, the substantive law of illegal discrimination can be the *vehicle* used to teach lawyers to recognize that lawyers with disabilities are

able to be fully contributing members of the legal profession, but are sometimes subject to prejudices resulting in their exclusion.

Rule 6B(4) is a narrow exception to the general rule that a substantive law course is not approved as EOB. Those seeking credit under this provision must not only be able to show that the course meets the exception under Rule 6B(4), but they must also show that course focuses upon issues in the “legal profession and in the practice of law and not on issues of bias in society in general” as referenced in Rule 6B(3).

#### **D. Does the course meet one or more of the learning goals?**

The learning goals for EOB (found in [Appendix I](#)), consist of three broad statements describing the types of learning that a course must be *designed* to impart to those in attendance. EOB courses must meet one or more of the following learning goals:

1. The first learning goal references a program designed to educate “lawyers” about the elimination of bias or prejudice “in the legal profession,” in the “practice of law,” and/or in the “administration of justice.” The CLE office looks at each program description in light of the learning goals and attempt to find evidence that the program in question fits within one of these categories:
  - An example of EOB “in the legal profession” would be a course that identifies instances of prejudice against lawyers of a particular religion who do not participate in certain bar functions because of their religious beliefs. To be approved as EOB, the program would need to be designed to identify and eliminate those prejudices.
  - An example of EOB in the “practice of law” would be a course that deals with examples of bias by opposing counsel when negotiating with a disabled lawyer.
  - An example of EOB in the “administration of justice” would be a course that attempts to raise awareness about practices in the courtroom that may be perceived as being prejudicial to female criminal defendants. Such a course would be approved so long as it identifies bias in a setting involving the administration of justice, such as a courtroom.
2. The second learning goal addresses educating lawyers about “barriers to hiring, retention, promotion, professional development and full participation of

lawyers of color, women, the disabled, etc.” For example, a course that addresses how a law firm with few minority or female members may benefit by examining the firm’s culture to determine whether they have failed to create a welcoming environment for minority or female lawyers may address the second learning goal.

3. The third learning goal states that a program would be approved as EOB if it is designed to educate lawyers about the problems identified in “studies, reports or treatises which describe bias and prejudice in the legal profession, in the practice of law and/or in the administration of justice.”

This learning goal specifically mentions two reports prepared by Supreme Court-appointed Task Forces in the 1980s and 1990s. A course discussing other reports that address bias and prejudice in the legal profession may also be approved as EOB, even though the reports were not produced by a Court-appointed group. This learning goal permits the exploration of bias and prejudice in the legal profession wherever these concerns may be identified, but the biases and prejudices explored must be found in the legal profession or arise out of the practice of law. A program that addresses the results of studies of bias among professionals in education or in medicine, for example, would not be approvable as EOB.

Questions regarding whether a course or proposed program would qualify for EOB credit should be directed to the CLE Office Administrator at 651.201.2704 or by email to [lvanderbeek@mbcle.state.mn.us](mailto:lvanderbeek@mbcle.state.mn.us).