

In the Matter of the Petition of the  
State Bar of Wisconsin Regarding  
Cultural Competency and Reduction of Bias  
Training for Continuing Legal Education  
Under Chapter 31 of the Supreme Court Rules

PETITION 24-04

To: Chief Justice Annette Kingsland Ziegler  
Justice Ann Walsh Bradley  
Justice Rebecca Grassl Bradley  
Justice Rebecca Frank Dallet  
Justice Brian Hagedorn  
Justice Jill J. Karofsky  
Justice Janet C. Protasiewicz

**FILED**

JUN 27 2024

CLERK OF SUPREME COURT  
OF WISCONSIN

The State Bar of Wisconsin (the “State Bar”) respectfully petitions the Wisconsin Supreme Court (the “Court”) to provide for additions to SCR 31.02. Section 1 to recognize a new continuing legal education (CLE) credit type, the Cultural Competency and Reduction of Bias credit. We bring this to the Court in recognition of the legal profession’s collective obligation to promote equal justice. On June 19, 2024, the Board of Governors (the “BOG”) voted unanimously in favor of filing this Petition.

Attorneys take an oath (SCR 40.15) to support the U.S. and Wisconsin constitutions and their shared promise of individual freedom and equal protection under the law. Learning about the biases that hamper an attorney’s ability to fairly assess another individual in both the legal employment setting and in the delivery of legal services, working to understand the effects of bias in negatively impacting the delivery of legal services, recognizing when it is happening, and finding ways to reduce it, are all integral to upholding that oath.

The Court recognized the importance of continuing legal education on the delivery of legal services and created SCR Chapter 31 in 1986. Since then, the Court has recognized necessary additions and adjustments to Chapter 31 with the goal of keeping attorneys educated and up to date on relevant topics facilitating the best results for the citizens of Wisconsin. The Court created a 30-credit hour requirement which included a mandatory 3 credits of ethics and professional responsibility per reporting window. The Court most recently added the capped credit types of Law Practice Management (“LPM”) and Lawyer Awareness and Understanding (“LAU”). The State Bar believes the Court should do so again and create a category that clarifies and recognizes training for cultural competency and reduction of bias topics.

The State Bar is filing this Petition following the denial of Petition 22-01 for three reasons: 1) there appeared to be a miscommunication regarding voluntary versus mandatory credit. We make it clear that we are not asking for mandatory credits in this category. 2) we seek to further clarify and define the type of educational opportunities that should be offered in this category. 3) we are adding a cap to the credit type as suggested by the Board of Bar Examiners (the “BBE”) and the concurrence to Petition 22-01. It is our hope that this revised Petition better states the case for this credit type and will be accepted by this Court.

### **Voluntary Credit Type**

While several states do require some level of mandatory cultural competence and diversity training, the State Bar does not recommend consideration of such a requirement. This is not the unanimous position of all the Board members. Some continue to advocate for mandatory credit requirements. While those voices are heard and understood, the majority of the BOG continues to believe and advocate for the voluntary opportunity for attorneys to seek education that enhances their individual practices.

Following the decision in 2021 by the BOG to file Petition 22-01, then President Cheryl Furstace Daniels formed a separate task force to study the issue of mandatory credits. The directive to the group was to determine whether the State Bar should request mandatory credits for DEIA training. The answer was and still is no.

As part of its work, the Task Force commissioned a survey of State Bar members to be performed by St. Norbert College Strategic Research Institute. The survey showed significant support for Wisconsin’s overall mandatory CLE requirements (62.3% somewhat or strongly support). In addition, Wisconsin’s three-credit ethics and professional responsibility requirement received 71.6% support from respondents (27.3% somewhat and 44.3% strongly support).

The survey also asked about support for voluntary diversity, equity, inclusion, and access (DEIA) educational options and then about inclusion of a mandatory requirement. The survey demonstrated general acceptance of DEIA voluntary coursework.

*“More than half (55.2 percent) of respondents either somewhat supported (22.8 percent) or strongly supported (32.4 percent) the availability of optional coursework in this area of study. Just over one-in-five (20.2 percent) revealed strong (13.2 percent) or some (7 percent) opposition. The remaining respondents (24.6 percent) neither supported or opposed the addition of this training among the offered instruction.”*

- Wisconsin State Bar CLE DEIA Study, pg. 22.

There was markedly less support for making DEIA credits mandatory.

*“Nearly half (47.7 percent) of those answering strongly oppose (31.2 percent) or somewhat oppose (16.5) adding DEIA course to the roster of required training. Those who somewhat (17.4 percent) and strongly support (17.0) mandatory DEIA education barely exceeded a third of survey participants, with an additional 17.9 percent neither supporting or opposing such a proposal.”*

- Wisconsin State Bar CLE DEIA Study, pg. 23.

With these results, the State Bar recommends that the best approach is to provide high quality cultural competency and reduction of bias training that members can choose to take. With this new Petition, we ask the Court to create a new category of voluntary credit.

### **The Legal Community and Client Base is Changing**

Attorney client relationships are the foundation of the legal profession. To continue to enjoy confidence with the public, the legal profession must be prepared to meet the clients' expectations and needs. The changing demographics of Wisconsin's population and in the legal profession demonstrate that the practice of law itself is changing as the client base and practicing attorneys change. The State Bar seeks to enhance lawyer competency as officers of the court and to promote the profession's legitimacy and the public's confidence. Wisconsin's legal professionals must be prepared to competently assist clients with what they bring to the table, including individual traits such as their race, gender, religion, cultural background, income, or disability among other attributes and to consider how biases impact the legal system.

Wisconsin continues to trend toward an older, more racially and religiously diverse population. Wisconsin's population increased 3.6% between 2010 and 2021, slower than the national average of 7.3%. The category of persons over 65 grew the most, increasing 35% while those 35 to 49 decreased 6.8%.<sup>i</sup>

Wisconsin's disabled population increased from 10.8% in 2010 to 12.5% in 2022, with a large portion of those 65 and over.<sup>ii</sup>

While still dominated by Christian faiths, since the 1990s, the share of Christians in Wisconsin has decreased. Religions such as Buddhism have seen growth.<sup>iii</sup>

Wisconsin's "white only" population decreased 3.4% between 2010 and 2020. Between 2010 and 2021, the Hispanic/Latino population grew the most, increasing 1.6%.<sup>iv</sup>

Wisconsin's attorney population is also changing. In 2010, women represented approximately 32% of the total membership. In 2021, it was over 36%. That demographic will continue to change. In 2022, 55.7% of all students at ABA accredited law schools across the nation were women.<sup>v</sup>

Nationally, the percentage of lawyers of color has risen from 11% of the profession in 2013 to 21% in 2023.<sup>vi</sup> The likelihood that attorneys will encounter cultural situations outside of their personal norms is much higher today, both within their firms and with their clients.

### **Recognition of Cultural Competency and Reduction of Bias Education**

The State Bar recognizes the importance of cultural competency and the reduction of bias in the practice of law to ensure that the legal system is equally responsive to the legal needs of all people. The justice system should not generate disparate results based upon an individual's inherent traits. It is our hope that a revised Petition will clarify the State Bar's intent in advocating for this specific type of credit and how it is intended to improve the provision of legal services in Wisconsin. It is not the State Bar's intent to promote divisive or discriminatory programming.

In February of 2017, the American Bar Association (ABA) adopted a revised Model Rule for Mandatory Continuing Legal Education (MCLE)<sup>vii</sup>. In the Model Rule they provide a purpose statement for MCLE: "To maintain public confidence in the legal profession and the rule of law, and to promote the fair administration of justice, it is essential that lawyers be competent regarding the law, legal and practice-oriented skills, the standards and ethical obligations of the legal profession, and the management of their practices." In Section 3(B)(c) of the Model Rule, the ABA recommends that all lawyers be required to take at least one credit hour of diversity and inclusion credits every three years. They further recommend that jurisdictions create a stand-alone credit type for diversity and inclusion topics versus merging it with ethics and professional responsibility credits to ensure lawyers are taking this education.

As of November 2020, twenty-three (23) states have specifically recognized the value of training on cultural competency and elimination of bias and approved rules allowing those topics to be accredited (See attachment). While some states have created stand-alone categories for this training, others have made it part of the ethical and professional responsibility education requirements. Ten (10) states go so far as to mandate that lawyers take some diversity and inclusion credits every reporting period.

In February of 2022, the ABA passed a rule requiring law schools to educate students about bias, racism, and cross-cultural competency to be accredited by the ABA<sup>viii</sup>. The rule mandates that law schools provide bias training at the beginning of law school and at least once more before a student graduates. The rule was supported by a letter from 150 law school deans (75% of the deans in America) and easily passed the ABA's House of Delegates.

In 2023, UW Law School faculty formally adopted Law School Rule 3.03<sup>ix</sup> requiring students to earn credit for at least one course on issues of bias, cross-cultural competency, and racism within the legal system. UW law students weighed in and asked that these concepts also be covered in substantive law courses. The University of Wisconsin Law School now teaches students on these topics through mandatory courses and through incorporating bias, racism, and cultural competency education into the curriculum of substantive law topics where relevant. In addition,

one of the graduation requirements for Marquette Law School students is a “program in bias, cross-cultural competency, and racism<sup>x</sup>.” New lawyers coming into the profession will have been educated on cultural competency and reduction of bias topics and they will expect colleagues and professionals within the judicial system to understand the issues as well.

Other professions have found disparities in outcomes related to the inherent traits of the parties involved. The *Journal of Health and Economics* from ScienceDirect.com published the results of a study in December of 2023 looking at the effect of physician-patient race-match on outcomes. They found that physician-patient race-match for Black patients reduced the likelihood of within-hospital mortality by 0.28 percent, which equated to a 27% reduction relative to the overall mortality rate<sup>xi</sup>. Patients reported better communication and satisfaction, but it is not clear whether better outcomes were as a result nor whether effects from racial concordance would persist if patients were randomly assigned their physician.

Similarly, the *Economics of Educational Review* from ScienceDirect.com published results in April of 2021 for student-teacher race match effects. It found that a race-matched teacher is associated with a small but significant increase in course grade on average<sup>xii</sup>. The study did not determine the mechanisms behind the effects.

### **The Addition of a Definition Provides Clarity**

Establishing a specific definition with a designated credit category clarifies for attendees the content that they can expect to learn and clarifies for providers that these courses will be approved for continuing education credit. The concurrence to Petition 22-01 includes a list of courses already approved by the Board of Bar Examiners (the “BBE”) for the 2022-23 reporting period. Of the 193 seminar titles listed, 97 of them are duplicate listings. Of the 96 unique titles, 16 are substantive law topics surrounding employment, hiring, pay equity, estate planning, and health law. Of the remaining 80 seminars, 30 were accredited as Law Practice Management (LPM) or Lawyer Awareness and Understanding (LAU) credits instead of CLE.

The list included the seminar “Unconscious Bias – Knowing What You Don’t Know” which was granted 1.0 LPM on March 11, 2022. The exact same seminar was denied credit by the BBE on June 6, 2022. This is a result that should not happen, and it would be a lot less likely to happen with an approved cultural competency and reduction of bias credit type.

The State Bar recommends two categories within diversity programming: cultural competency and reduction of bias within the legal system. The State Bar further defines these categories:

- Cultural Competency means a course designed to improve client communication and representation through the lens of knowledge and understanding of diverse populations with a sensitivity to cultural and other differences in personal traits for application when interacting with members of the public, judges, jurors, litigants, attorneys, and court personnel.

- Reduction of bias means a course designed to educate attorneys to identify and reduce from the legal profession, the practice of law and the legal system at large, biases against persons because of, but not limited to age, race, gender, gender identity, economic status, veteran status, creed, color, religion, national origin, disability, or sexual orientation and to remove barriers to access to justice arising from discriminatory behavior.

The definitions developed by the State Bar's Continuing Legal Education Committee make clear the programming under this category should enhance an attorney's proficiency in the practice of law. Similar to programming under the LAU and LPM categories, education in the cultural competency and reduction of bias category, while not necessarily including substantive legal content, nonetheless enhances an attendee's proficiency in the practice of law.

This is true for other programming featuring non-substantive law topics that have been approved for general CLE credit. An example is "Accounting for Lawyers." It is difficult for attorneys to counsel clients, even on the standard law elements, if they do not understand the financial transaction taking place. Other examples include "Understanding Independent Medical Examinations" and "Anatomy for Lawyers." Both topics provide context of medical terms and practices needed for an attorney to competently assist clients with legal matters in these areas.

All biases, even if they are unconscious or implicit, in the legal system by reason of inherent traits and characteristics undermine confidence in the legal system. They affect professional relationships between attorneys, judges, and clients and may lead to disparate outcomes. Learning about these topics that can factor into the outcomes of a case is analogous to learning about accounting or medical procedures. It helps attorneys understand the situation, to assess and take them into account, and leads to better results for their clients.

The State Bar wants to make clear that it is not asking the Court to give any individual trait preference to the detriment of any other. We are asking that the Court acknowledge those attorneys seeking to expand their legal competence by granting credit for education related to the diverse client and legal community they experience.

Assisting attorneys in being intentional and deliberative in recognizing their own biases and addressing them when dealing with colleagues, clients, and the public in general helps lawyers better deliver legal services competently and ethically.

### **Cultural Competency and Reduction of Bias Credits Cap**

In our experience, attorneys do not spend their time and money to attend courses that are not relevant to their practice of law. Their time is too precious to be wasted attending courses that have no real-world application to making them better attorneys. Even if this new credit type is capped, attorneys could take all non-relevant substantive law topics to maintain their license. Nothing in the rules would stop them from doing so. The State Bar believes they won't because attorneys value their time and money.

The State Bar has and continues to believe that Wisconsin's attorneys are in the best position to determine the education necessary to be competent in their own fields of practice. As we stated in our December 7, 2022, letter to the Court related to Petition 22-01, "The capping of DEIA credits does not recognize the legal and business needs of specific members and their evolving firms. It prevents Wisconsin lawyers from expanding their knowledge and skillset in a way that makes it possible for them to adequately represent their clients." We would leave it to individual attorneys to decide for themselves what program topics are most relevant to their needs to remain proficient in the law, to efficiently run their practice, and to best serve their clients. However, the State Bar acknowledges the position of the BBE and of the concurrence to Petition 22-01 concerning capping this potential new credit type. The State Bar is conceding the point in the hope that we will find common ground where all parties can support the creation of a cultural competency and reduction of bias credit type. Thus, the new Petition includes language installing a six (6) credit cap per reporting period into the language of the rule.

## CONCLUSION

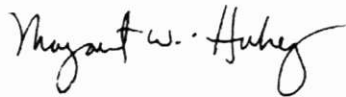
The State Bar sees the creation of a new credit type as necessary to acknowledge cultural competency and reduction of bias topics as legitimate and important continuing legal education topics for credit. A new credit type will provide clarity and consistency in the accreditation process. This acknowledgement by the Wisconsin Supreme Court will also create incentives for attorneys to attend these courses, to reach the goal of improving the quality of legal services, by better serving the rapidly growing diverse public and working with our increasingly diverse lawyer population. The State Bar continues to believe that training in the matters of cultural competency and reduction of bias in the legal system is valuable to lawyers and necessary to ensure equitable outcomes and that these topics encompass the legal profession's collective obligation to promote equal justice and to best serve our clients.

STATE BAR OF WISCONSIN



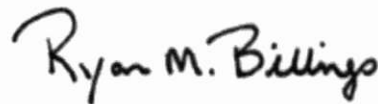
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- <sup>i</sup> USA Facts. “Our Changing Population: Wisconsin.” <https://www.scribbr.com/citing-sources/cite-a-website/#:~:text=Author%20last%20name%2C%20First%20name,%2C%20Day%20Month%20Year%2C%20URL>.
- <sup>ii</sup> United States Census Bureau. “Disabled Population in Wisconsin is 12.5%.” <https://data.census.gov/all?t=Disability&g=040XX00US55>
- <sup>iii</sup> The Association of Religion Data Archives. “Wisconsin – State Membership Report (2020).” <https://www.thearda.com/us-religion/census/congregational-membership?t=1&y=2020>
- <sup>iv</sup> USA Facts. “Our Changing Population: Wisconsin.” <https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/state/wisconsin/>
- <sup>v</sup> ABA Legal Profile. “Legal Education.” <https://www.abalegalprofile.com/legaled.html>
- <sup>vi</sup> ABA Legal Profile. “Demographics (Lawyers by race and ethnicity).” <https://www.abalegalprofile.com/demographics.html#byrace>
- <sup>vii</sup> ABA Model rule for MCLE [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)
- <sup>viii</sup> Reuters. “U.S. law students to receive anti-bias training after ABA passes new rule” <https://www.reuters.com/legal/legalindustry/us-law-students-receive-anti-bias-training-after-aba-passes-new-rule-2022-02-14>.
- <sup>ix</sup> UW Law School Rules <https://law.wisc.edu/current/rules/chap3.html#3.03>
- <sup>x</sup> Marquette University Law School Academic Regulations, November 2023 <https://law.marquette.edu/assets/current-students/pdf/current-academic-regulations.pdf>
- <sup>xi</sup> Journal of Health Economics “Physician-patient race-match reduces patient mortality” [https://www.sciencedirect.com/science/article/abs/pii/S016762962300098X?dgcid=rss\\_sd\\_all](https://www.sciencedirect.com/science/article/abs/pii/S016762962300098X?dgcid=rss_sd_all)
- <sup>xii</sup> Economics of Education Review “Does student-teacher race match affect course grades?” <https://www.sciencedirect.com/science/article/abs/pii/S0272775721000042>