



MEMORANDUM

To: The Honorable Members of the Wisconsin Supreme Court
From: Atty. Ryan M. Billings, President
Atty. Dean R. Dietrich, Past President
State Bar of Wisconsin
Date: October 21, 2024
Re: Response to Comments Regarding Petition 24-04

We write in response to comments filed with the Court regarding Petition 24-04, requesting credit for cultural competency and reduction of bias.

BOARD OF BAR EXAMINERS Response: The Board of Bar Examiners (BBE) has proposed a total limit of 12 credits for those “specialty” categories of continuing legal education. While we appreciate the Board’s concerns related to substantive law, we believe the proposal would create significant challenges for the Board of Bar Examiners, the State Bar and those attempting to conform to the limitation.

The proposed cap implies that substantive law education is always relevant to the practicing attorney. We again point out that the current rules do not guarantee that attorneys are taking substantive courses that are relevant to their practice. Caps on credits will not avoid that reality.

In addition, the State Bar has noted shifting classification decisions for existing coursework. For example, where past decisions categorized courses focused on developing negotiation and mediation knowledge and skills as substantive law, they are now consistently being categorized as Law Practice Management (LPM). The rationale appears to be that they are not deemed “substantive” enough. This is problematic with the current six-credit cap. Attorneys that practice family law, litigators, mediators, and many others that require the use of these techniques to properly serve their clients to the best of their abilities can only take 6 credits out of 30 over a two-year period. Those practitioners are being incentivized to take topics of lesser importance to their fields to be able to report the credits. And if they also happen to need law office management training related to technology or human resources, that leaves even less room for courses devoted to negotiation or mediation training. The current situation is problematic, and an additional cap creating even more limitations would only heighten these concerns. In addition, such a cap would create a disincentive for those attorneys seeking appropriate training that best meets their needs.

The proposed 12-credit limitation would garner considerable confusion for those attempting to comply. The limitation would be a “floating” target with attorneys struggling to keep track of when the limit has been reached (including because courses may be described as garnering one

type of credit, but then approved for a different type of credit later) and putting them in potential risk of noncompliance at the end of their reporting period.

WILL Response: Certain comments have been provided by the Wisconsin Institute for Law and Liberty, Inc (“WILL”). WILL argues that the Court should deny the Petition or at a minimum, clarify phrases in the proposed Rule.

In its letter opposing this new category of education, WILL cites a study that WILL suggests provides evidence that required DEI training doesn’t work. In fact, the cited evidence argues only that mandatory training evokes adverse reactions. “Try to coerce me to do X, Y, or Z, and I’ll do the opposite just to prove that I’m my own person.” (WILL Letter at page 2.) Nowhere in the State Bar’s proposal is there a coercion for attorneys to take these or any other courses. In fact, it has been the long-standing position of the State Bar that attorneys are in the best position to determine what training would best benefit their practice and best serve clients. The purpose of the Petition and request from the State Bar is not to create similarity of thought amongst lawyers or in any way attempt to dictate individual lawyer thinking regarding their personal beliefs. WILL misses the purpose for this additional category of approved credits. If attorneys don’t want to take courses in family law, or business law, or civil rights, or anti-bias, this petition is not forcing them to do so. The purpose of CLE rules is to lay out a consistent set of standards for the BBE to evaluate course work that will guide practitioners in their career toward being ethical, professional advocates for Wisconsin’s citizens and worthy officers of the Court.

A 2021 publication by the National Judicial College, *Judging the Book by More Than Its Cover: A Symposium on Juries, Implicit Bias, and the Justice System’s Response*, acknowledges the challenges that implicit bias brings to jury trials. “Implicit biases can affect the outcome of a trial, especially when those biases are held by jurors about a defendant, a plaintiff, or a witness. They can affect a juror’s understanding of the facts, decision-making, and behavior without them even realizing it, and can lead to unfair or unjust results. Judges are not immune to, and are also influenced by, implicit bias. As such, it is important to reduce bias in the justice system whenever and wherever possible.” To quote the WILL memo, “It is weird, to say the least[]” that WILL is so opposed to allowing attorneys to arm themselves with knowledge to address a topic such as potential juror bias. https://www.judges.org/wp-content/uploads/2021/04/NJC_WHITE-paper_web_singlepages-1.pdf

In addition, the suggestion that this Court define all words and phrases to such a level of specificity proposed by WILL would take away the authority of the Board of Bar Examiners to assess the validity of courses and the topics covered by those courses. WILL invokes a “parade of horrors” claiming the BBE is incapable of evaluating content based on its relation to the practice of law. As we hope the BBE will work toward more guidance on other CLE categories, we hope too they would prepare guidance on programming that complies with the rule as it is proposed.

Further, the State Bar also does not support the suggestion to reduce CLE hours from 30 hours to 24 hours, nor do the State Bar members. Wisconsin lawyers have been required to earn 30 credit

hours since the inception of the CLE requirement. The proposal from the State Bar expands the variety of courses that a lawyer can choose from that would meet the 30-credit requirement. This provides greater opportunity for the lawyer to choose courses that will assist the lawyer in meeting the needs of their clients.

Finally, WILL uses this vehicle to conflate the issue of a broader offering of educational opportunities with mandatory CLE. WILL argues that CLE doesn't work and somehow voluntarily taking courses they don't agree with is the culprit. The topics offered have no bearing on the subject matter of mandatory CLE and mocks the values of this Court regarding continuing legal education.

As mentioned in the Bar's memorandum in support of the petition, the St. Norbert College Strategic Research Institute survey conducted on behalf of the State Bar showed that members somewhat or strongly support (62.3%) the current overall mandatory CLE requirements. This petition merely seeks to provide a broader scope of relevant coursework that would fit within the 30-credit requirement.

The State Bar respectfully requests that the Court grant the Petition to provide greater definition of course credits that will assist Wisconsin lawyers in their legal practice.