

August 9, 2022

Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688

Supreme Court of Wisconsin – via email: clerk@wicourts.gov

RE: Rule Petition 22-01

Dear Honorable Justices,

Thank you for considering Legal Action of Wisconsin, Inc.’s (“LAW”) comments. LAW is a non-profit legal aid law firm that provides free legal representation to residents of Southern Wisconsin with low incomes. We write for two reasons: 1) to support the Petition’s recommendation that the Court take action to recognize education regarding diversity, equity, inclusion, access, and the recognition of bias (“DEIA”) for Continuing Legal Education (“CLE”) credit; and 2) to suggest an addition which would follow the American Bar Association’s Model Rule for Minimum Continuing Legal Education and Comments, and require Wisconsin lawyers to take one DEIA CLE credit each two-year reporting period. American Bar Association Resolution 106 (2017). We believe that a continuing education in DEIA is essential in fulfilling the lawyer’s ethical responsibilities to their clients, the profession, and their peers. LAW demonstrated its dedication to DEIA by creating a part-time position committed to DEIA issues in 2018—Diversity, Inclusion and Retention Coordinator. We now have two full-time positions: the Director of Diversity & Inclusion, and the Director of Racial Justice Advocacy & Litigation, that work cohesively to help LAW become an anti-racist law firm.

The client-lawyer relationship is at the heart of the practice of law. The Supreme Court Rules of Professional Conduct require that lawyers provide competent representation to clients, act with diligence in representing clients, and communicate with clients and understand their goals. SCR 20:1.1; SCR 20:1.3; SCR 20:1.4. Competent, diligent representation requires understanding the complexities of our clients’ lived experiences when they are different from our own. Too often, lawyers assume that clients, no matter their background, identity, or lived experiences, receive outcomes within the framework of a neutral system. But poverty, race, gender, sexual orientation, age, disability, capacity – and the intersection of any of these – do impact how our clients experience the legal system. And what’s more, a lawyer’s lack of awareness and education surrounding diversity, equity, inclusion, access, and implicit bias results in disparate outcomes for those clients. We, as legal professionals, must actively educate ourselves in these areas to be able to achieve more just outcomes for everyone. To meet our professional responsibilities to clients, this continuing duty falls on all lawyers; not just those who choose to pursue education in these areas.

At LAW, we see many clients who have faced discrimination in the legal system. We represent domestic violence survivors who choose not to report abuse because of sexist decisions made the last time they reported violence. We represent LGBTQ clients who must argue that

their identity does not disqualify them from parenting their own children. We represent elderly clients whose complaints of economic abuse are dismissed as confusion on the part of the client. We represent the parents of neuroatypical children when the special needs of those children are ignored by those supposed to be protecting them. And we represent communities of color who have faced centuries of consistent, systemic oppression – including mass incarceration, discriminatory zoning laws, and the removal of their children. It is this experience working with individuals who have faced discrimination in the legal system that has convinced us at LAW that educating lawyers about DEIA is critical to improving the integrity of the legal system.

The probity of our profession hinges on members who are knowledgeable in DEIA issues. The preamble to the Rules of Professional Conduct states that lawyers have a special interest in and responsibility for the quality of justice achieved in our legal systems. Model Rules of Prof'l Conduct Preamble (2020). This includes recognizing that our legal systems, and the people working within them, have faults; we are not immune to personal, interpersonal, institutional, or systemic bias. The legal profession is commonly viewed as elitist, and our legal institutions, inequitable. We must work assiduously to correct not only these perceptions, but the genuine issues perpetuating them. In acknowledging that DEIA education is essential to the integrity of the profession, the American Bar Association mandates that all ABA-accredited law schools provide DEIA education to all students at least twice during their legal studies. American Bar Association Resolution 300 (2022). By recognizing DEIA education as CLE and by requiring such credits, this court would advance current efforts to improve the integrity of our profession. This would ensure that all practicing lawyers understand what improving the integrity of the legal system entails, and their responsibility in that process. By valuing diversity, understanding and promoting equity, and welcoming and including people of all backgrounds, we can bolster the public's confidence in our legal system and increase access to justice.

At LAW, we invite and encourage staff to engage with our DEI committee, whose goals are to increase diversity, retain those diverse staff members, and improve morale. We also conduct a monthly book club to discuss literature that tackles subject matters including anti-racism and white privilege. We consistently offer firm-wide trainings in various DEIA topics ranging from trauma-informed care to inclusive practices for working with transgender and non-binary clients. We are committed to ensuring that our colleagues are equipped to be their best selves as representatives of the legal profession.

Beyond the lawyer's responsibilities to their clients and the profession as a whole, it is imperative that lawyers extend respect, understanding and empathy to their peers. Even in our adversarial system, lawyers must remain professional and courteous, treating all persons involved in the legal system with respect. SCR 20: Preamble. The concept of "respect" is constantly evolving alongside our understanding of DEIA issues. Workplace microaggressions, deadnaming, and inaccessible spaces all denote disrespect. Without proper DEIA education, our peers and colleagues who belong to impacted marginalized communities will continue to unfairly shoulder the responsibility of advocating for a safe and respectful workplace. The research is clear that within the legal community itself, implicit and explicit bias are pervasive and entrenched.¹ Lawyers who identify as Black, Indigenous, or persons of color, as women, as having a disability, as LGBTQIA+, or the intersection of any of these, experience hostility and discrimination in the workplace.² And, they are disproportionately excluded from opportunities

to access the work, the resources, and the relationships they require to succeed.³ Because of this, lawyers from underrepresented groups have significantly higher attrition rates than other groups.⁴ Unfortunately, not every lawyer understands or even considers why their actions might disrespect or harm one of their peers, or how their actions might reinforce barriers that disproportionately affect legal professionals in underrepresented or marginalized groups. DEIA education is imperative so that lawyers can better understand their peers' lived experiences and the systems of oppression giving rise to those experiences, leading to better relationships and a better legal system overall. Moreover, lawyers who feel respected by other members of their profession and have positive relationships with other lawyers are less likely to experience burnout, substance abuse, or to leave the profession.

In 2020, LAW introduced three affinity groups to the firm: ASPIRE, Mosaic and Onyx. Staff can fellowship with those in similar ethnic/racial backgrounds while sharing tools to increase their awareness of our differences while learning ways to decrease harmful biases. In response to 2020, leadership at LAW stressed the importance of "self-care" and emphasized that we all extend grace to one another and to ourselves.

For the reasons above, LAW also urges the court to go beyond what Rule Petition 22-01 requests and mandate that lawyers take one DEIA CLE credit for each two-year reporting period. In 2017, the American Bar Association House of Delegates adopted the Model Rule for Minimum Continuing Legal Education and Comments, which recommend one required "Diversity and Inclusion" CLE credit per reporting period to "addresses diversity and inclusion in the legal system of all persons regardless of race, ethnicity, religion, national origin, gender, sexual orientation, gender identity, or disabilities, and programs regarding the elimination of bias." American Bar Association Resolution 106 (2017). Many states already require some sort of DEIA CLE credits each reporting period, including Minnesota, Iowa, Illinois, Missouri, Florida, West Virginia, Maine, New York, New Jersey, Vermont, Colorado, California, and Oregon. Rules of the Minnesota State Board of Continuing Legal Education 6(B); Iowa Court Rule 42.2(1); Illinois Supreme Court Rule 794(d)(2)(i); Missouri Supreme Court Rule 15.05(a)(2); Rules Regulating The Florida Bar 6-10.3(b); West Virginia State Bar Administrative Rule 6.02(b); Maine Bar Rule 5(c)(3); 22 Codes, Rules and Regulations of the State of New York 1500.2(g); New Jersey Board of Continuing Education Rule 1:42-1; Vermont Rules for Mandatory Continuing Legal Education 3(A)(4)(c); Colorado Rules of Civil Procedure 250.2(1)(a)(i); California Rules of the State Bar 2.72(A)(1)(b); Oregon State Bar Rule 3.2(e). To bring Wisconsin in line with the ABA's model rule and its neighbors Iowa, Minnesota, and Illinois, LAW would request the court add the following language to the proposed changes to SCR 31.02(5): "A lawyer shall attend a minimum of 1 of the hours required under sub. (1) on the subject of diversity, equity, inclusion, access, or recognition of bias in every reporting period." Adopting this minimal requirement would not be unduly burdensome to lawyers. It would also be one small step this court can take to improve public confidence in our profession and our legal system.

We mustn't remain married to a status quo that only continues to harm our clients, the legal profession, and our peers. A vital method for ensuring this is to offer CLE credit in the areas of diversity, equity, inclusion, and access and the recognition of bias. Taking it a step further by mandating such CLEs will bring us closer to a legal system that functions as a wholly

fair and just entity. For these reasons, Legal Action of Wisconsin, Inc. supports the petition's recommendation.

Sincerely,

Legal Action of Wisconsin, Inc.

/s/

Jennifer L. Johnson
Director of Diversity & Inclusion

/s/

Monica Cail
Director of Racial Justice Advocacy & Litigation

¹ See e.g., ABA Commission on Women in the Profession, *Visible Invisibility: Women of Color in Law Firms* (2006) [hereinafter *Visible Invisibility*], available at <https://www.americanbar.org/content/dam/aba/administrative/women/visibleinvisibility.pdf>; ABA Commission on Women in the Profession, *From Visible Invisibility to Visibly Successful: Success Strategies for Law Firms and Women of Color in Law Firms* (2008) [hereinafter *Success Strategies*], available at https://www.americanbar.org/content/dam/aba/administrative/women/visibly_successful.pdf; Minority Corporate Counsel Association (MCCA), *Sustaining Pathways to Diversity: The Next Steps in Understanding and*

Increasing Diversity and Inclusion in Large Law Firms (2009), available at https://www.ctbar.org/docs/default-source/resources/the-next-steps-in-understanding-and-increasing-diversity-in-large-law-firms.pdf?sfvrsn=d7af1deb_0; Kathleen Nalty, *Strategies for Confronting Unconscious Bias*, 45 *The Colorado Lawyer* 45 (May 2016), available at <https://kathleennaltyconsulting.com/wp-content/uploads/2016/05/Strategies-for-Confronting-Unconscious-Bias-The-Colorado-Lawyer-May-2016.pdf>; Todd A. Collins, Tao L. Dumas, and Laura P. Moyer, *Intersecting Disadvantages: Race, Gender, and Age Discrimination Among Attorneys*, 98 *Social Science Quarterly* 1642 (2017); ABA Commission on Women in the Profession and the Minority Corporate Counsel Association, *You Can't Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession* (2018) [hereinafter *Interrupting Racial & Gender Bias*]; Robert L. Nelson et. al., *Perceiving Discrimination: Race, Gender, and Sexual Orientation in the Legal Workplace*, 44 *Law & Social Inquiry* 1051 (2019); Destiny Peery, Paulette Brown, and Eileen Letts, *Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color*, ABA Commission on Women in the Profession (2020), available at <https://www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbehind-int-f-web-061020-003.pdf>; 2020 *Vault/MCCA Law Firm Diversity Survey Report* [hereinafter *2020 Vault/MCCA Survey*], available at https://mcca.com/wp-content/uploads/2021/02/2020-Vault_MCCA-Law-Firm-Diversity-Survey-Report-FINAL.pdf.

² See e.g., *Visible Invisibility*, *supra* note 1 at 24-26; *Success Strategies*, *supra* note 1 at 7; MCCA, *supra* note 1 at 20; Nalty, *supra* note 1 at 46-47; Collins, *supra* note 1 at 1649-52; *Interrupting Racial & Gender Bias*, *supra* note 1; Nelson, *supra* note 1 at 1065-77; Peery, *supra* note 1 at 4-9.

³ See e.g., *Visible Invisibility*, *supra* note 1 at 21-23, 29-31; *Success Strategies*, *supra* note 1 at 7; MCCA, *supra* note 1 at 21-24; Nalty, *supra* note 1 at 46-47; Collins, *supra* note 1 at 1645-46; *Interrupting Racial & Gender Bias*, *supra* note 1; Nelson, *supra* note 1 at 1065-77; Peery, *supra* note 1 at 9-10.

⁴ See e.g., New York City Bar Association, *2014 Diversity Benchmarking Report*, 2-3 (2015), available at http://documents.nycbar.org/files/NYC_Bar_2015_Diversity_Benchmarking_Report.pdf; *Visible Invisibility*, *supra* note 1 at 11; *Success Strategies*, *supra* note 1 at 7; MCCA, *supra* note 1 at 28-34; Peery, *supra* note 1 at 12; *2020 Vault/MCCA Survey*, *supra* note 1 at 6.