



## The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness

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December 28, 2022

Katey Buggy, Associate Administrator  
Continuing Legal Education Board  
Supreme Court of Pennsylvania  
601 Commonwealth Ave, Suite 3400  
Harrisburg, PA 17106-2495

Re: Comments on Board's Proposed Amendments to Pa.R.C.L.E. 105, Corresponding Regulations

Dear Ms. Buggy:

We hope this letter finds you well.

On behalf of the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness ("Commission"), we are submitting the Comments below in response to the November 2022 request from the Pennsylvania Continuing Legal Education ("CLE") Board for feedback on its proposed amendments to Rule 105 of the PA Rules for CLE ("Pa.R.C.L.E.") and Section 3 of the applicable CLE regulations.

The Commission commends the CLE Board for its responsiveness to stakeholders' suggestions that Pennsylvania attorneys be required to complete mandatory courses on the proposed subject matter. Incorporating such diversity and anti-harassment requisites into the regulation of attorney education signals to Pennsylvanians and individuals across the country that our Commonwealth takes these issues seriously. However, we respectfully recommend that the Board amend its proposal so that the Diversity, Inclusion and Anti-Bias credit mandate is an annual, or, at minimum, semi-recurring requirement.

### **Background**

As the Board notes in its Notice of Proposed Rulemaking, the Commission was established in 2005 to implement the recommendations set forth in the Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System (the "Report").<sup>1</sup> The Report covers fourteen individual topics, among which is an entire chapter devoted to addressing instances

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<sup>1</sup> See Final Report of the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, available at <https://pa-interbranchcommission.com/wp-content/uploads/2022/01/FinalReport.pdf>.

of harassment and discrimination “as perceived, reported and reflected by actual participants in the judicial process – judges, attorneys, litigants, witnesses and court employees.”<sup>2</sup> In particular, the study found widespread evidence of discriminatory and offensive conduct by Pennsylvania attorneys and judges, levelled at plaintiffs, defendants, clients, court employees, counsel, and even presiding judges throughout the Commonwealth.

To remedy this problem, the Report recommended that the Supreme Court of Pennsylvania take several actions, including requiring that “all Pennsylvania attorneys receive training concerning the effects of racial, ethnic, and gender bias within the legal system as part of their continuing mandatory legal ethics education requirement.”<sup>3</sup> The Report also listed the recommended subject matter of the required training as follows:

- Civility within the courtroom;
- Cultural diversity and its effect upon treatment in the court system;
- What constitutes, or can be perceived to constitute racial-, ethnic-, and gender-biased language and conduct;
- The effect of racial, ethnic, and gender biases upon determinations of credibility and competence; and
- The racial, ethnic, and gender stereotypes and cultural impediments that inhibit minorities, persons of varying ethnic backgrounds, and women from having confidence in, and utilizing, the Commonwealth’s judicial system.<sup>4</sup>

Over the past seventeen years, the Commission has worked to implement these recommendations by, among other things, sponsoring and conducting training for attorneys, judges, and court administrators on the topics outlined above; drafting the language of and accompanying complaint procedures for the Unified Judicial System Policy on Non-Discrimination and Equal Employment Opportunity; and drafting and advocating for modifications to the ethics codes for judges and attorneys. Most germane to our comments today, we also wrote a letter to the Pennsylvania Bar Association in 2017, supporting its recommendation to the Court that it suggest a mandatory, annual CLE course on diversity, inclusion, and antibias for all Pennsylvania attorneys.

## **Recommendations**

Consistent with the best practices set forth in the original Report, we recommend that the Board strengthen its proposed amendments by crafting a Diversity, Inclusion, and Anti-Bias credit requirement that renews each compliance period or, at minimum, every other compliance period. As it stands, the Board’s proposal would merely require attorneys to engage in a singular iteration of coursework on diversity and antibias. We do not believe that touching upon these critical subjects in an incidental, one-and-done manner will appreciably remedy the widespread evidence

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<sup>2</sup> *Id.* at 304.

<sup>3</sup> *Id.* at 371.

<sup>4</sup> *Id.*

of discriminatory attorney conduct documented at length in our original Report, nor will it engender the “comprehensive dialogue” on proper standards of professional behavior that the Board emphasizes in its Notice of Proposed Rulemaking.

Furthermore, the range of topics that fall under the umbrella of “diversity, inclusion, and antibias” is quite voluminous, as evidenced in part by the multitude of suggested subjects contained in the Report recommendation cited above. Each of those topics – from civility in the courtroom to racial, ethnic, and gender stereotypes and cultural impediments – could arguably be the sole focus of an entire CLE course. Certainly, though, a one-credit course is not capable of covering, let alone redressing, all of these critical issues, especially if the rule does not require attorneys to revisit them for the balance of their careers.

Other states agree with our determination that a more comprehensive reflection on these issues is critical, both to attorneys’ ongoing education and to ensuring public confidence in the judicial system. Missouri, for instance, requires licensed attorneys to annually devote at least one of their three ethics credit hours to explicit or implicit bias, diversity, inclusion, or cultural competency.<sup>5</sup> New Jersey CLE requirements oblige licensed attorneys to complete 24 credit hours every two years, at least two of which in each reporting period must cover diversity, inclusion, and the elimination of bias.<sup>6</sup> Similarly, the California State Bar’s Board of Trustees recently amended their CLE requirements to increase the minimum number of elimination of bias credits from one to two required credit hours in each three-year reporting period.<sup>7</sup> These efforts – coupled with those undertaken in other states<sup>8</sup> - signify an increasing acknowledgment on the part of state bars that robust antibias educational requirements for attorneys improve the equitable administration of justice. In joining these states, our Commonwealth similarly stands to benefit.

Thank you for the opportunity to comment on your proposed amendments to the PACLE requirements. If you have any questions or concerns regarding our comments, please do not hesitate to contact us by phone, at (412) 298-9148, or by email, at [lissette.mccormick@pacourts.us](mailto:lissette.mccormick@pacourts.us).

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<sup>5</sup> Mo.R.C.L.E. 15.05(a)(2), available at <https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/5c20face4921fe3286256ca6005212b6?OpenDocument>.

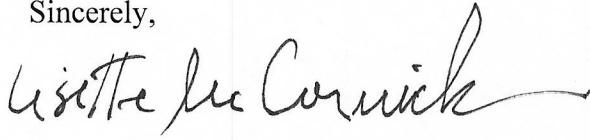
<sup>6</sup> N.J.R.C.L.E. 1:42-1, available at <https://www.njcourts.gov/attorneys/rules-of-court/continuing-legal-education-required>.

<sup>7</sup> Cal.R.C.L.E. 2.72, available at [https://www.calbar.ca.gov/Portals/0/documents/rules/Rules\\_Title2\\_Div4-MCLE.pdf](https://www.calbar.ca.gov/Portals/0/documents/rules/Rules_Title2_Div4-MCLE.pdf).

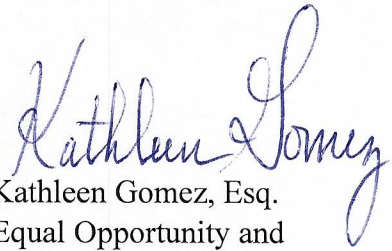
<sup>8</sup> See Wash.R.C.L.E. (c)(1)(ii) (requiring licensed attorneys in Washington state to complete a minimum of one ethics credit on equity, inclusion and the mitigation of bias for every three-year reporting period), available at [https://www.courts.wa.gov/court\\_rules/pdf/APR/GA\\_APR\\_11\\_00\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_11_00_00.pdf); see also Minn.R.C.L.E. 9(B)(2) (requiring licensed attorneys in Minnesota to complete a minimum of two ethics credits on the elimination of bias for each three-year reporting period), available at <https://www.cle.mn.gov/wp-content/uploads/2021/04/CLE-RULES-1-21-2021-booklet.pdf>.

We look forward to continuing to work with you to encourage attorneys' careful consideration of and attention to these important issues.

Sincerely,



Lisette McCormick, Esq.  
Executive Director



Kathleen Gomez, Esq.  
Equal Opportunity and  
Diversity Committee Chair

cc: Equal Opportunity and Diversity Committee  
Interbranch Commission Members