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February 15, 2017

Hon. Janet DiFiore
Chief Judge of the State of New York
New York State Unified Court System
Office of Court Administration, Rm. 852
25 Beaver Street
New York, NY 10004

Re: Diversity & Inclusion CLE requirement for New York State attorneys

Dear Chief Judge DiFiore:

The undersigned respectfully urges the licensing and regulatory authorities governing attorney admission in New York State to include, as a separate required credit, programs regarding diversity and inclusion in the legal profession and programs regarding the elimination of bias (“D&I CLE”).

This issue was an agenda item at the American Bar Association (ABA)’s mid-year meeting in February 2016 as Resolution 107, which was approved unanimously and without opposition by the ABA House of Delegates.¹ The resolution expands upon a 2004 House of Delegates resolution—Resolution 110—which amended the language of the Commentary to Section 2 of the Model Rule for Minimum Continuing Legal Education to provide that regulatory systems require lawyers—either through a separate credit or through existing ethics and professionalism credits—to complete programs related to racial and ethnic diversity and the elimination of bias in the profession. Resolution 107 **expands the definition** of diversity and inclusion to include all persons regardless of race, ethnicity, gender, sexual orientation, gender identity or disabilities; and it also encourages all licensing and regulatory authorities that currently require mandatory continuing legal education (MCLE) to include, **as a separate required credit**, D&I CLE. The resolution does not specify the number of hours of D&I CLE required or call for an increase in the total number of MCLE credits required per cycle.

Of the 45 states that currently have mandatory continuing legal education, only two—California and Minnesota—have adopted stand-alone D&I CLE requirements. Thus, the resolution, if implemented nationally, would have a wide-ranging impact on attorneys licensed to practice law in the United States.

¹ Resolution 107 and the ABA’s related report are available at http://www.americanbar.org/news/reporter_resources/midyear-meeting-2016/house-of-delegates-resolutions/107.html.

Despite efforts by many New York City law firms to increase their engagement and investment in diversity progress and retention, the attrition rate of minority attorneys at those and other New York law firms remains disproportionately high. We must do more to reverse this trend.

Instituting D&I CLE as a separate required credit for attorneys licensed to practice in New York would be a significant step toward addressing this pervasive, but often unspoken, problem within our profession. We believe this change would be straightforward and easily understood by attorneys. Similar to the stand-alone ethics requirement under our current continuing legal education system, all lawyers renewing their New York State registration would certify that they had completed, as part of their required 20 hours of non-ethics credits, the required number of credit hours in D&I CLE during the immediately preceding biennial reporting cycle.

Moreover, we need not limit diversity and inclusion to the ABA's suggested definition. Rather, we suggest that the Board adopt the broader definition set forth in New York's Human Rights Law, which prohibits discrimination on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status or marital status (Executive Law § 296). Since New York has defined its protected classes under state law, any New York CLE program that educates lawyers on diversity, inclusion and the elimination of bias should follow suit.

The legal profession is grounded on principles of equality, access to justice and the rule of law. It therefore behooves us—as legal practitioners who advocate for these principles in the courtroom—to learn to recognize discrimination within our own organizations and law firms and to work toward eliminating bias in all aspects of the profession, including in our workplaces, in the courthouses and vis-à-vis our clients. CLE programs are an important tool to raise awareness of both explicit and implicit bias within the profession and to educate and empower those who can effect change, particularly law firm leaders. And, like the ABA, we believe that D&I programs are appropriate for MCLE certification because their “primary objective [is] to increase the professional legal competency of the attorney in ethics and professionalism, skills, practice management and/or areas of professional practice.” See 22 NYCRR 1500.4(b)(2).

I stand ready to assist in whatever way will help the Board to implement this important addition to our state's CLE requirements. Thank you for your consideration.

Respectfully,



Deborah Epstein Henry

CC: Maria Cilenti, Senior Policy Counsel, New York City Bar Association
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