



Lambda Legal Defense & Education Fund, Inc.
120 Wall Street, 19th Floor
New York, NY 10005

February 15, 2017

John W. McConnell, Esq.
Counsel
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004
rulecomments@nycourts.gov

Via Electronic Mail

Re: Diversity and Inclusion CLE Requirement for New York State Attorneys

Dear Mr. McConnell:

We write to support the proposal of the New York Unified Court System to include a one-credit Continuing Legal Education (“CLE”) requirement for experienced attorneys addressing the subject of diversity, inclusion, and elimination of bias. Lambda Legal, a national organization headquartered in New York City, is committed to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender (“LGBT”) individuals and individuals living with HIV through impact litigation, education, and public policy work.

In *Obergefell v. Hodges*, the landmark ruling affirming the right to marry for same-sex couples, the Supreme Court emphasized that “new insights and societal understandings can reveal unjustified inequality within our most fundamental institutions that once passed unnoticed and unchallenged.” 135 S. Ct. 2584, 2603 (2015). This holds true for our fundamental legal institutions, where we, as lawyers, have the special responsibility—and honor—to strive for “new insights and societal understandings” in the service of our clients and the courts. The proposed one-credit CLE requirement is an appropriate and measured way to assist members of the Bar to meet their responsibilities and live up to the best ideals of our profession.

Attorneys and judges have an ethical responsibility to ensure LGBT people and people living with HIV are treated fairly and respectfully in the legal system. But the reality falls far short of that ideal. As lawyers, litigants, and jurors, LGBT individuals commonly face overt discrimination as well as more subtle discriminatory treatment. In 2012, Lambda Legal

completed a national survey, *Protected and Served?*,¹ exploring the discrimination LGBT people and people living with HIV experience in the court system. The results show that the promise of fair and impartial court proceedings is frequently undermined by bias related to sexual orientation, gender identity, and HIV status. For example:

- Nineteen percent (19%) of respondents reported hearing a judge, attorney, or other court employee make negative comments about a person’s sexual orientation, gender identity, or gender expression.
- Sixteen percent (16%) reported feeling their own sexual orientation or gender identity was raised when it was not relevant.
- Fifteen percent (15%) reported having their HIV status raised when it was not relevant.

As is often the case, respondents with intersecting marginalized identities — such as LGBT individuals who are low-income, people of color, or disabled — reported significantly higher instances of discrimination. Twenty-eight percent (28%) of low-income respondents, thirty percent (30%) of people of color, and fifty-three percent (53%) of transgender or gender non-conforming people of color reported hearing a judge, attorney, or other court employee make negative comments about sexual orientation, gender identity, or gender expression. Only twenty-seven percent (27%) of transgender people and thirty-three percent (33%) of LGBT people of color said that they “trust the courts.”

Lambda Legal is acutely aware of the importance of education in eradicating discrimination and bias. We have seen dramatic nationwide shifts in attitudes towards the communities we represent as judges, attorneys, and the public have come to a better understanding of people who are LGBT and living with HIV and the injustice of denying them legal dignity and equality. A growing body of research indicates that implicit bias training is effective in reducing the impact of bias.² Lambda Legal provides many educational opportunities for attorneys and judges throughout the year aimed at reducing bias toward LGBT people and people living with HIV and increasing professional and cultural competency regarding these populations. In the past year, just a few of the programs we have provided include: “Representing the Transgender Client Through the Arc of Life,” for the New York State Bar Association; “What Every Lawyer Should Know about Representing the LGBT Parent or Child,” for a New York Matrimonial Law Program; “Ethical Representation of LGBT Clients of Color,” for the National Bar Association’s Annual Conference; and “Don’t Judge Me: LGBTQ Youth and the Courts,” for the Florida Conference of Circuit Judges.

¹ Available at <http://www.lambdalegal.org/protected-and-served>.

² See, e.g., Jo Handelsman & Natasha Sakraney, White House Office of Sci. & Tech. Policy, *Implicit Bias* 3 (2015), available at https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/bias_9-14-15_final.pdf; Ciara Torres-Spelliscy, Monique Chase & Emma Greenman, Brennan Ctr. For Justice, *Improving Judicial Diversity* 8 (2d ed. 2010), available at https://www.brennancenter.org/sites/default/files/legacy/Improving_Judicial_Diversity_2010.pdf.

*Lambda Legal Letter to
John W. McConnell, Esq.
February 15, 2017
Page 3 of 3*

The legal system should be at the forefront of the effort to eradicate bias and injustice. The guarantee of fair and impartial courts is a cornerstone of our democracy; attorneys must be educated and equipped to play their critical role in our legal system. To this end, we urge the Office of Court Administration to approve a required CLE credit that addresses diversity, inclusion, and elimination of bias.

Thank you for your consideration.

Very truly yours,

/s/

Susan Sommer

Associate Legal Director and Director of Constitutional Litigation

/s/

Ethan Rice

Fair Courts Project Attorney