ILLINOIS STATE BAR ASSOCIATION

FEBRUARY 2018 VOL 28 NO. 1

The Challenge

The newsletter of the Illinois State Bar Association's Standing Committee on Racial and Ethnic Minorities and the Law

Chair's column

BY YOLAINE DAUPHIN

Our world grows smaller every day thanks to the internet and various applications that allow us to communicate with family, friends and colleagues almost instantaneously. We share photos with friends and family, and talk about their activities as though we were there cheering them on. We share articles with colleagues and meet with them although separated by dozens if not thousands of miles. Technology also allows us to travel physically to meet with loved ones, acquaintances, and colleagues, participate in seminars and festivals, and sightsee around the globe. What would be considered our own back yard has grown exponentially in a world where we can see and touch and feel other cultures in a matter of hours and days rather than months and years. Against this backdrop, we can clearly see our similarities, and

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Letter from the Editor: Review of the podcast *Seeing White*

BY KHARA COLEMAN

If you are a reader of *The Challenge*, it is probably safe to say that you care deeply about issues affecting racial and ethnic minorities, both in our country and around the world. If your passion for these issues is anything like mine, this newsletter is but a small fraction of the information that you take in devoted to exploring and challenging the issues facing minority populations.

With that thought in mind, my first Letter from the Editor for the year 2018 is a podcast review. The podcast is called *Seeing White*, published by Scene on Radio.[1] On a scale of one to five stars, with five being "outstanding," I would give *Seeing White* a total of seven stars. Maybe eight.

My enthusiasm for this podcast simply cannot be overstated.

I discovered this podcast series by happenstance. I had a public radio "driveway moment" a few weeks ago, when a piece of *Seeing White* aired on a Sunday afternoon. I stayed in my car until I could hear and write down a title

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***(Notice to librarians:** The following issues were published in Volume 27 of this newsletter during the fiscal year ending June 30, 2017: October, No. 1; January, No. 2; June, No. 3).*

Chair's column

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understand our shared humanity. Our closeness should lead us to love one another as we are no longer strangers, with customs that are alien to one another. But that is not the case as demonstrated repeatedly by stories in the news. There are those who insist that only persons with similar cultural and ethnic backgrounds are acceptable. Anyone who is different must be rejected as worthless and cannot be considered an equal.

There is a monument in Georgia to Haitians who fought in the Battle of Savannah in 1779. The Haitian Chasseurs Volontaires covered the retreat of a combined French and American force whose frontal assault on Savannah had been repelled by the British. The bulk of the French and American force survived because of the bravery of the Chasseurs Volontaires. Perhaps knowledge about this feat of bravery and other contributions by Haitians to our country would lead to acceptance and a lessening of the rhetoric of hate. In an interview with ABC 7, Dr. Henry Ford, Chief of Surgery at Children's Hospital in Los Angeles, noted he has a brother who is Chief of Internal Medicine at Einstein Hospital in Philadelphia, another brother who is an anesthesiologist in New York, and three sisters who are nurses. This family of Haitian immigrants is contributing to the advancement of American society. I am also Haitian American, having moved to this country with my parents as a child. Like Dr. Ford, I believe that my family has contributed to American society. I have a sister who is a nurse in New York, a brother who is an accountant in Florida, a sister who is an OB/GYN in California, and three sisters, respectively an internist, a chemist and an administrator at a major hospital, in the Chicago area. Dr. Ford's family and mine are not unique, as the unfortunate circumstance for Haiti is that 85% of Haitian professionals live in Canada, the United States, France and other countries.

If hate is the currency being used to divide our society, we must fight it at every turn. As Chair of the Racial and Ethnic Minorities and the Law Committee, I am particularly proud of the efforts of our members to pursue the values of diversity and inclusion. I need look no further than our Newsletter to see these values demonstrated. Judge Geraldine D'Souza speaks of her father who emigrated to the U.S. from India, earned his PhD in Mechanical Engineering, and, among many contributions, served as a Professor at IIT Kent for 30 years. Board Liaison, Sony Williams, a member of the Illinois Supreme Court Commission on Professionalism since from 2005 until 2016, presented a report and recommendation that one of the 6 hours of the professional responsibility continuing legal education requirement be devoted to the area of diversity and inclusion. And our very own Editor, Khara Coleman writes an article summarizing *Pena-Rodriguez v. Colorado,* the Supreme Court's decision that racial bias affecting jury deliberations may be the basis for a new trial. Beyond the Newsletter, our Continuing Legal Education Subcommittee continues to plan great seminars on issues impacting minorities, including an upcoming seminar on racially based voter repression, and last year's seminars on housing injustice and the inappropriate use of non-competition agreements. Our Committee also has an active voice on legislation, providing comments to the Illinois State Bar Association on legislation proposed by Illinois Senators and State Representatives with potential impact on minorities. Lastly, we seek to impact the very face of the Bar Association through recommendations regarding inclusion and diversity.

I am honored to serve as Chair of the Standing Committee on Racial & Ethnic Minorities and the Law, and urge attorneys, whether or not they are members of the Illinois State Bar Association, to fight for justice, diversity and inclusion, and against hatred, intolerance and divisiveness. ■

The Challenge

Published at least four times per year. Annual subscription rates for ISBA members: $25.

To subscribe, visit www.isba.org or call 217-525-1760.

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Letter from the Editor

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or other reference to the program – I had to know more about what I was hearing. That evening, I learned that *Seeing White* is a "14-part documentary series exploring whiteness in America—where it came from, what it means, and how it works."[2] Produced by Scene on Radio, and hosted by John Biewen, this gripping podcast starts with the history of race – the very invention of whiteness in legal terms – in the land that was to become the United States of America. I listened to all 14 parts within about 10 days.

As a lawyer and armchair scholar on race and the law, there are many pieces of information in *Seeing White* that were not new to me. I know that race is only a social construct. I know that affirmative action *was not* some new concept invented to assist black Americans. I know about the Virginia Slave Code and the many steps taken to keep the African slave at the very bottom of the social hierarchy. I also know that many of our esteemed founders held some very racist views – views that they made no attempt to hide in their time, no matter how we may attempt to suppress such an unfavorable history now. And yet the way that this information is combined with true stories, historical anecdotes, quotes, guest scholars and lecturers, and legal decisions—this makes for an experience unlike any book or course I have encountered on these subjects. This is more than American legal history for the layperson. This is the self-help course for every lawyer or layperson who wants to understand "what the big deal is" when it comes to race in America.

In December 2017, National Public Radio named *Seeing White* as one of the nine favorite podcast series of the year.[3] You can subscribe to the podcast from your smartphone, or listen online. I would love you know if you find yourself as enthralled as I was. ■

1. http://podcast.cdsporch.org/
2. http://podcast.cdsporch.org/seeing-white/
3. https://www.npr.org/2017/12/21/572035055/9-favorite-new-podcasts-of-2017-that-arent-s-town

Immigrants (We get the job done)

BY ASSOCIATE JUDGE GERALDINE D'SOUZA

I recently visited the display at the Field Museum in Chicago titled "Beyond Bollywood: Indian Americans Shape the Nation," and it of course made me think of my own immigrant parents and the difficulties they must have faced in their efforts to make a better life for themselves by leaving their homes and families behind and seeking educational and work opportunities in the U.S. My father was from a part of India called Goa, and grew up in a small fishing village. Because of his great academic aptitude he was awarded a scholarship to the engineering college in Pune, India. He came to the U.S. on a student visa and went on to complete his Ph.D. in Mechanical Engineering from Purdue University in 1963. He then spent over 30 years as a professor at the Illinois Institute of Technology in Chicago, shaping and guiding countless young people in their own careers. He also authored textbooks, was a coveted speaker and spent his free time consulting around the world in the field of robotics and aeronautics. His expertise was especially desired in Korea, where his knowledge of robotic arms helped companies there develop assembly lines and compete on the world stage in car production. In spite of not being a citizen at the time, he obtained security clearance from NASA in the 1960s and worked with the team of engineers who designed the landing gear for the Apollo lunar landing module.

Nowadays, you see so many people who were born in India as well as Indian-Americans in Chicago and around the U.S. that it is easy to forget that there was a time where they were denied citizenship opportunities that were granted to white Europeans solely based on the color of their skin. In *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923), an Indian immigrant sued the U.S. government, which at the time only allowed "free white persons" to be granted U.S. citizenship along with "aliens of African nativity and to persons of African descent." Bhagat Singh Thind's argument was that since Indians are technically of the "Caucasian" race, they should be included in the group of individuals who were eligible for citizenship status. The U.S. Supreme Court concluded that, "If the applicant is a white person within the meaning of this section he is entitled to naturalization, otherwise not." The Court relied heavily on the fact that because Indians have dark skin, they could not assimilate as easily into what was then a white America. The U.S. Supreme Court stated in its ruling:

> It is a matter of familiar observation and knowledge that the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white. The children of English, French, German, Italian, Scandinavian, and other Europe parentage, quickly merge into the mass of our population and lose the distinctive hallmarks of their European origin. On the other hand, it cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry.

Since the U.S. Supreme Court did not characterize Bhagat Singh Thind as a "free white person," he was denied citizenship in the United States, despite the fact that he had enlisted in the U.S. military and fought for the United States in World War I. It was not until the Luce-Celler Act was passed by Congress in 1946 that Indians and Filipinos had the right to seek U.S. citizenship or to even own property.

While visiting the exhibit, I learned that before the 1960s there were only about 350 Indian born individuals living in the Chicagoland area, which is hard to believe considering the impact they have had on our modern day society, as well as the sheer number of Indian restaurants and businesses on Devon Avenue on the north side of Chicago. In the 1960s, when the U.S. was facing a growing threat from a nuclear Soviet Union, it began to open its doors to immigrants from India who were trained in engineering and who spoke English in order to aid the U.S. in its efforts to stay competitive in the global arms race. My father was one of the original Indian immigrants to begin his life here in the U.S. He went to graduate school in the Midwest in the late 1950s, and my parents can recall a time when they were first married in 1965 when they could not find any Indian food in Chicago. They would mail order for all of their Indian delicacies from New York.

Currently, individuals born in India and Indian-Americans proliferate our society, especially in the Chicagoland area, where a large percentage of our health care workers and engineers are of Indian origin. But was the Supreme Court wrong when they stated that the "Hindu" people would not be able to assimilate as easily as the white Europeans? I was born in Chicago to an Indian father and a Chilean mother (who also came to the U.S. for graduate school). Because of my dark skin, "Where are you really from?" was a common question I received from strangers growing up in a mostly Irish-American part of Chicago, or even when I travel abroad, and proudly state, "I am from Chicago." We must strive for the type of society where you do not have to have white skin to be considered a "real American." Diversity is what makes this country great, and it must include not just diversity of thought but also diversity of skin color.

We like to think that we have progressed from the days of yore where people could be legally and outright discriminated because of the color of their skin, but has that much really changed? With Deferred Action for Childhood Arrivals (DACA)

seemingly repealed and the potential for having the children of illegal immigrants who are currently going to college, serving in our armed forces and contributing to our workforce expelled from our country, are we not excluding the future college professors and inventors and leaders? Does the fact that so many of the DACA individuals come from Latin American countries affect the decisions being made by the Washington politicos? The federal government continues to seek to impose travel bans on refugees from Muslim majority countries, which puts a barrier to entry into the U.S. based solely on the majority religion in their home country and is quite obviously a race based exclusion. It does not sound like we have progressed much from the days when Mr. Singh Thind was excluded from our country because he was dark-skinned.

Immigrants have given this country so much, and all they ask for in return is opportunity. Without immigrants we would not have ATM machines, Pentium chip processors or even handheld hairdryers, to name just a few examples. One survey found that immigrants own double the number of patents as those granted to native born Americans. Almost all of us have ancestors who initially hailed from a foreign land, and we as attorneys have taken full advantage of the educational and career opportunities that the U.S. offers. As members of the legal community we must let our voice be heard and make sure our country continues to be the land of opportunity and the melting pot that we cherish so dearly. ■

Associate Judge Geraldine D'Souza
Circuit Court of Cook County
Sixth Municipal District, Markham Courthouse

Can a court grant a new trial based on proof that racial bias affected jury deliberations? SCOTUS says YES.

BY KHARA COLEMAN

Until about a year ago, had I been asked whether a jury verdict undisputedly influenced by racial bias could stand, I would have insisted that it could not. I would have insisted that a jury verdict based on racial bias was unconstitutional, in violation of the Sixth Amendment, and that in the year 2017 no American court would let such a verdict stand.

Before last spring, I would have been wrong. My mistake would have been based on a legal evidence rule that I remember little to nothing about from my law school years. This rule is referred to as the "no impeachment rule."

As lawyers know, our legal system gives great respect and deference to the role of a jury in a trial, leading to the adoption of the "no-impeachment rule."[1] As Justice Kennedy recently put it, "A general rule has evolved to give substantial protection to verdict finality and to assure jurors that, once their verdict has been entered, it will not later be called into question based on the comments or conclusions they expressed during deliberations." *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855, 861 (2017). In essence, this rule means that one cannot later impeach the jury's verdict/finding based on information from deliberations that would seem to call into question the verdict's validity or fairness. The rule is reflected in Federal Rule of Evidence 606(b) and all states follow some version of the no-impeachment rule, while permitting some exceptions to the rule. 137 S. Ct. 865.

But what if it is essentially conceded in a given case that the jury's verdict was influenced by blatant racial discrimination – by the illegal consideration of race and racial stereotypes? What if there was proof that racial bias motivated members of the jury pool? Could a judge consider the verdict tainted and grant a new trial? Until recently, there was something of a circuit split on this issue. In many jurisdictions, based on precedent such as *Tanner v. United States*, 483 U.S. 107 and *Warger v. Shauers*, 574 U.S. ––––, 135 S.Ct. 521, the answer this question would have been "no."

This very issue came before the state appellate courts of Colorado in 2012 and 2015, before making its way to the Supreme Court of the United States.[2] In Colorado, after a trial and a guilty verdict against Miguel Angel Peña-Rodriguez in a sexual contact case, two jurors voluntarily spoke with defendant's counsel to report events from the deliberations. 137 S. Ct. 861-62, 870. The two jurors told counsel that a particular juror, called "H.C." or "Juror 11" in the proceedings, had expressed a strong bias against Mexican men such as defendant Peña-Rodriguez.

> [H.C.] told the other jurors that he "believed the defendant was guilty because, in [H.C.'s] experience as an ex-law enforcement officer, Mexican men had a bravado that caused them to believe they could do whatever they wanted with women." The jurors reported that H.C. stated his belief that Mexican men are physically controlling of women because of their sense of entitlement,

> and further stated, " 'I think he did it because he's Mexican and Mexican men take whatever they want.' " According to the jurors, H.C. further explained that, in his experience, "nine times out of 10 Mexican men were guilty of being aggressive toward women and young girls." Finally, the jurors recounted that Juror H.C. said that he did not find petitioner's alibi witness credible because, among other things, the witness was "'an illegal.'"

Peña-Rodriguez, 137 S. Ct. 862 (internal citations omitted); *see also Peña-Rodriguez v. Colorado*, 350 P.3d 287, 289 (Colo. 2015).

Affidavits were obtained from these two jurors, under the supervision of the Colorado trial court. Notably, the court did not dispute whether or not racial bias had influenced the decision of juror H.C. Rather, the issue was whether the court had any power to do anything about a rendered verdict that may have been influenced by racial bias. The Colorado state courts, at each step, answered, "No." First, the trial court refused to consider the affidavits, finding them barred by the no-impeachment rule and not falling within any exceptions to the codified rule. Second, affirming the decision of the trial court, the Colorado Court of Appeals rejected the request for a new trial on a number of grounds, including finding that no exception to the no-impeachment rule of Colorado Rule of Evidence 606(b) applied. 2012 WL 5457362 at *7-8. Third, framing the question as "whether CRE 606(b) applies to such affidavits and, if so, whether the Sixth Amendment nevertheless requires their admission," the Supreme Court of Colorado held that defendant Peña-Rodriguez's Sixth Amendment right to an impartial jury was not violated. 350 P.3d 288.

In an eagerly awaited decision, the majority opinion of the Supreme Court of the United States reversed the Supreme Court of Colorado.

> [This] Court now holds that where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

Peña-Rodriguez, 137 S. Ct. 869. Justice Kennedy, writing for the majority, distinguished the juror bias in Peña-Rodriguez's trial from the juror bias at issue in the cases deemed by many as the operative precedent.

> Racial bias of the kind alleged in this case differs in critical ways from the compromise verdict in *McDonald*,[3] the drug and alcohol abuse in *Tanner,* or the pro-defendant bias in *Warger*. The behavior in those cases is troubling and unacceptable, but each involved anomalous behavior from a single jury—or juror—gone off course.

Id at. 868. The Court noted, "Not only did juror H.C. deploy a dangerous racial stereotype to conclude petitioner was guilty and his alibi witness should not be believed, but he also encouraged other jurors to join him in convicting on that basis." *Id*. at 870.

The Supreme Court also clarified that its decision did *not* stand for a proposition that that *any* mention of race or a mere comment suggesting racial bias would be grounds for a new trial.

> Not every offhand comment indicating racial bias or hostility will justify setting aside the no-impeachment bar to allow further judicial inquiry. For the inquiry to proceed, there must be a showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict. Whether that threshold showing has been satisfied is a matter committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence.

137 S. Ct. 869. The Court explicitly did not dictate what procedures lower courts should follow when confronted with objections to jury verdicts based on racial animus, nor did the Court decide "the appropriate standard for determining when evidence of racial bias is sufficient to require that the verdict be set aside and a new trial granted." *Id*. at 870. And while the state court decisions and the oral arguments before the Supreme Court showed awareness and concern about other types of bias (such as religious bias) that might unfairly affect jury deliberations, the Supreme Court ultimately recognized that racial bias is different because it implicates an especially "pernicious" type of harm to our justice system. "Permitting racial prejudice in the jury system damages both the fact and the perception" of the jury's role as "a vital check against the wrongful exercise of power by the State." *Id*. at 868 (internal marks and citations omitted).

In a wise and eloquent conclusion, Justice Kennedy noted that our country continues to make efforts to "overcome race-based discrimination, adding, "It is the mark of a maturing legal system that it seems to understand and implement the lessons of history." *Id*. at 871. Joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan, the votes of the majority thereby reversed the judgment of the Supreme Court of Colorado, remanding the case for further proceedings. *Id*.

While there are a number of articles and published analyses concerning the *Peña-Rodriguez* opinion, it clearly does not come with a recipe or cure for the "pernicious" influence of racial bias in a jury pool. How many questions about racial bias need to be asked during voir dire? What if fellow members of the jury do not report such comments after the trial? Should the jury be instructed to report such comments BEFORE rendering a verdict – and would such an instruction have any curative effect? None of those questions are

answered by the trio of cases addressing this particular factual scenario.

Perhaps just knowing that the courts are constitutionally permitted to enter this thicket is good news enough. Our society, and therefore our justice system, has particular issues in dealing with racial diversity. Sanctioned racial discrimination is not so far in the past, and despite Civil Rights legislation after the Civil War, American courts have had a hard time eliminating racial discrimination in the courtroom and jury system.[4] Given such history, some of us might call it "progress" to hear the Supreme Court state, "It must become the heritage of our Nation to rise above racial classifications that are so inconsistent with our commitment to the equal dignity of all persons." *Id*. at 867.

But for some of us, the fact that this was even a question in 2017 is cause for lamentation, and proof of the need to keep fighting for awareness, for diversity in the profession, and for a better justice system. ■

1. Fed. Rule Evid. 606(b); Colorado Rule of Evidence 606(b).

2. *Peña-Rodriguez v. Colorado*, No. 11CA0034, 2012 COA 193, ¶ 3, 2012 WL 5457362 (Nov. 8, 2012); 350 P.3d 287, 288 (Colo. 2015).

3. *McDonald v. Pless*, 238 U. S. 264 (1915)

4. *See, e.g.,* Brian Serr & Mark Maney, *Racism, Peremptory Challenges, and the Democratic Jury: The Jurisprudence of a Delicate Balance*, 79 J. Crim. L. & Criminology 1 (1988).

Illinois among minority of states requiring CLE on mental health and diversity issues: Q & A on recent amendments to Ill. S. Ct. R. 794(d)

BY KHARA COLEMAN AND SONNI WILLIAMS

In spring 2017, the Illinois Supreme Court announced new additions to the continuing legal education (CLE) in Illinois requirements for Illinois attorneys. These rules went into effect on July 1, 2017. One of our own REM Committee members has been involved in the effort to make Illinois a leader in diversity and inclusion issues – and has volunteered to answer a few questions for Illinois lawyers.

1. Please tell us a bit about how this amendment to Rule 794(d) came to fruition and describe your involvement in this effort.

Having served on the Illinois Supreme Court Commission on Professionalism since its inception in 2005 to 2016 and on its precursor, Special Supreme Court Committee on Civility from 2001 through 2005, I was honored to present a report and recommendation that one hour of the 6 hours required in professional responsibility requirement be devoted to the area of diversity and inclusion at my last Commission meeting in December 2016.

The impetus behind the requirement that one hour of the professionalism CLE hours be devoted to diversity and inclusion topic is the harsh reality that our profession is not faring well in increasing our diversity. The 2016 Diversity Report by the National Association of Legal Professionals presents the stark national statistics: minorities constitute 22.72 percent of associates in large law firms, but only 8.05 percent of partners; minorities represent only 14.62 percent of all American attorneys; only 2.76 percent of partners are minority women; although women account for 45 percent of associates at law firms, they only account for 22.13 percent of law firm partners.[1] Illinois doesn't fare any better than the national figures. The 2016 Chicago Lawyer Annual Diversity Survey of the 88 Illinois law firms that responded to the survey indicates that women accounted for around 44 percent of all lawyers, but only 22.4 percent of all partners.[2] According to NALP, which surveyed Chicago specifically, of the 6,747 attorneys in law firms, 32.56 percent were women, 12.42 percent were minorities, and 6.05 percent were minority women.[3]

The lack of diversity in the legal professionalism is very apparent, yet data collected and maintained by the Illinois Supreme Commission on Professionalism since 2010 indicates that courses offered in the area diversity remains at a relatively low and static level. The Commission on Professionalism determined that teaching attorneys about the need for greater diversity in the legal profession, equipping attorneys with skills to increase diversity in their workplaces, challenging attorneys to counter biases in their professional circles, and encouraging attorneys to fully engage with an increasingly diverse client population, will ensure that attorneys maintain high standards of professional competence.

2. The Amended Rule states, "Each attorney subject to these Rules shall complete a minimum of six of the total CLE hours for each two-year reporting period in the area of professionalism, civility, legal ethics, diversity and inclusion, or mental health and substance abuse."

For Illinois lawyers, can you shed any light on what "diversity and inclusion" means? Does this new CLE category refer to training on diversity issues, inclusion issues, sensitivity training, or all of the above? Is there a single definition?

The following is the guide provided by

the Commission on Professionalism on its website at https://www.2civility.org/programs/cle/professional-responsibility-cle-guidelines/.

Diversity and inclusion CLE should focus on challenges faced by groups under-represented in the legal profession.

Courses should focus on eliminating bias, increasing representation, reducing harassment, and barriers to hiring, retention, promotion, professional development and full participation of underrepresented groups in the legal profession.

Courses should have practical advice to participants that they can utilize and employ when improving diversity and inclusion in their professional circles. If a panel is utilized, the panelists should have personal and/or professional experience with diversity and inclusion and offer unique insight into the challenges facing the legal profession and the justice system. Valid and measurable research should be utilized where possible.

Courses should include interactive activities to allow participants to engage with each other while learning diverse perspectives and challenging their own biases.

Programs about substantive law as it relates to representing clients from under-represented groups will not qualify for professional responsibility CLE credit. For example, courses focused on immigration laws, the tax code and divorce law would not qualify for professional responsibility credit. Programs addressing communication skills necessary for effective representation of diverse clients could qualify under the "professionalism" topic area.

Examples of diversity and inclusion courses include:

- Challenging Implicit Biases
- Advancing Women In The Profession
- Restructuring Organization Policies To Encourage Retention
- Mentoring Relationships Between Majority And Minority Attorneys
- Client-Initiated Efforts To Increase Diversity Of Lawyers

3. What about the new category of "mental health and substance abuse"? Is this requirement directed towards lawyers who may find themselves facing mental health or substance abuse issues, or is it directed towards everyone who may encounter these issues while representing clients or otherwise practicing law?

Providers should utilize mental health and substance abuse CLE programming to explore ways to increase the health and well-being of the bar.

Course providers should mention the role of Lawyers' Assistance Programs and provide contact information for the state's LAP entity or similar organization.

Examples of topics for a mental health and substance abuse course include:

- Balancing Personal And Professional Priorities
- Maintaining Emotional And Mental Health
- Stress Management
- Suicide Prevention
- Recognizing Signs And Symptoms Of Mental Health And Substance Abuse
- Strategies For Dealing With Mental Health And Substance Abuse
- The Relationship Between Mental Health And Substance Abuse And Disciplinary Actions
- The Effects Of Lawyer Impairment On Our Profession
- Destigmatizing Mental Health And Substance Abuse

4. Who will be approved for presenting programs in these two areas? Due to the broad scope of these subject areas possibly beyond the field of law, might we see non-lawyer experts approved for CLE programming?

The Illinois Supreme Court Commission on Professionalism will still continue to approve the programs for professional responsibility and like all CLE courses, a diversity and inclusion course or a mental health and substance abuse course must directly relate to issues in the legal profession and in the practice of law. Credit will not be given to courses that are not specifically oriented toward attorneys.

5. How will CLE programs and their presenters be certified to meet these requirements – as addressing "diversity & inclusion" or "mental health and substance abuse"?

The Commissioners of the Illinois Supreme Court Commission on Professionalism consists of law school faculty, judges, lawyers, and non-lawyers appointed to volunteer service by the Illinois Supreme Court. With the leadership team lead by Executive Director Jayne Reardon, the Commission on Professionalism oversee and approve programs that meet the standards for addressing diversity and inclusion or mental health and substance abuse courses as well as the other professional responsibility courses.

6. The Amended Rule also provides that this requirement applies "beginning with the two-year reporting period ending June 30, 2019." The language is a little awkward, but does it mean that for those whose reporting year started on July 1, 2017, this amendment applies? Does it apply as well for those whose reporting period started on July 1, 2016?

Yes, the amendment applies to those whose reporting year started on July 1, 2017. It does not apply to those whose reporting period started on July 1, 2016. The Amended Rule became in effect on July 1, 2017, and in order to ensure that all attorneys have a fair full 2-year opportunity to complete their one carve-out hour for diversity & inclusion course and one carve-out hour for mental health and substance abuse course, the Amended Rule applied with the first group of attorneys that started their 2-year window of taking CLE courses instead of applying to a group of attorneys who would have been in the middle of their 2-year CLE window such as the group whose reporting period would have started on July 1, 2016.

7. The Amended Rule also states that the requirements may be met by either six CLE hours or by "completing the Rule 795(d)(11) year-long Lawyer-to-Lawyer Mentoring Program." Does this mean that some Illinois lawyers will never be required to get any continuing training that focuses specifically on these issues?

Part of the six CLE Lawyer-to-Lawyer mentoring program which a year-long program encompasses discussing topics of diversity & inclusion and mental health and substance abuse issues, so the Illinois lawyers participating in these mentoring programs would be addressing these specific topics.

8. I understand that Illinois is one of a very short list of states to impose a requirement that a minimum number of CLE credits address diversity and inclusion, or mental health and substance abuse. What are the other states? Why has Illinois been an early adopter?

The Supreme Court Commission on Professionalism has determined that mandating diversity and mental health and substance abuse CLE will demonstrate that Illinois is forward-thinking about professional responsibility CLE as encouraging a higher level of professionalism. Only three states – California, Minnesota and Oregon – require attorneys to take diversity and inclusion CLE. Illinois became the fourth.

The following is an excerpt from the Commission on Professionalism's Chair, Honorable Debra Walker, in which outlines to the Illinois Supreme Court the reasons why the Illinois Supreme Court Commission on Professionalism unanimously recommends that the Illinois Supreme Court revise Rule 794(d)(1) to allow for mandatory diversity and mental health and substance abuse CLE in Illinois. https://www.2civility.org/wp-content/uploads/Recommendation-Letter-to-Court-CLE-Requirement.pdf.

In February 2016, the ABA House of Delegates unanimously passed Resolution 107, encouraging states to require lawyers to participate in diversity and inclusion training as a standalone component of their CLE requirements.

As for mental health and substance abuse, the ABA-Hazelden Study has led to an outpouring of pro-active efforts across the nation. The study has been incorporated into many professionalism programs. The ABA Commission on Lawyer Assistance Programs Task Force on Lawyer Wellness is a joint effort between the Commission, the National Organization of Bar Counsel, the Association of Professional Responsibility Lawyers, and others, to address the findings of the ABA-Hazelden study. Commission Executive Director Jayne Reardon is a member of the Task Force. The Task Force is currently drafting a report directed to state regulators on ways to improve lawyer wellness among their attorneys.

Finally, and of particular relevance to this recommendation, is the ABA MCLE Model Rule Project. In August 2014, the ABA Standing Committee on Continuing Legal Education started the MCLE Model Rule Review Project, focused on updating the MCLE Model Rule. The current Model Rule for MCLE was passed in 1988. Both MCLE Board Director, Karen Litscher Johnson, and Commission on Professionalism Diversity and Education Director, Michelle Silverthorn, participated in the Project. On February 6, 2017, the ABA House of Delegates adopted the revised Model Rule.

Section 3 of the 2017 MCLE Model Rule states:

> As part of the required Credit Hours referenced in Section 3(A)(1), lawyers must earn Credit Hours in each of the following areas:
>
> (a) Ethics and Professionalism Programming (an average of at least one Credit Hour per year);
>
> (b) Mental Health and Substance Use Disorders Programming (at least one Credit Hour every three years); and
>
> (c) Diversity and Inclusion Programming (at least one Credit Hour every three years).

9. It's a great thing to be in the vanguard among the states on issues that so clearly affect both the practice of law and the distribution of and access to justice. Who do we have to thank for this change?

The Commissioners who were at the December 2016 meeting and unanimously voted to recommend approval the amendment, Executive Director Jayne Reardon and her dedicated team, Chair Judge Debra Walker, and the Illinois Supreme Court that officially approved the amendment. I was fortunate enough to be the Commissioner who made the report to the Commission on Professionalism advocating what has been my goal in which someday, our legal profession would reflect and include the diversity of the communities that we serve. ■

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1. http://www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf.
2. http://www.chicagolawyermagazine.com/Archives/2016/05/women-equity-partners-May16.aspx
3. http://www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf.

Upcoming CLE programs

TO REGISTER, GO TO WWW.ISBA.ORG/CLE OR CALL THE ISBA REGISTRAR AT 800-252-8908 OR 217-525-1760.

March

Thursday, 03-01-18 - Webinar— Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 03-02-18 – ISBA Chicago Regional Office—9th Annual Animal Law Conference. Presented by Animal Law. 9:00AM to 4:30PM.

Monday, 03-05-18 – LIVE Webcast—Nuts & Bolts of a DUI Blood Draw Case. Presented by Traffic Law. 12:00-1:00 PM.

Tuesday, 03-06-18 – LIVE Webcast—The Ethics of Social Media for Attorneys and Judges. Presented by Bench and Bar. 1:00-2:30 PM.

Wednesday, 03-07-18 – LIVE Webinar—Fixing the Underperforming Practice. Presented by LOME. 12:00-1:00 PM.

Thursday, 03-08-18 – ISBA Chicago Regional Office—The Complete UCC. Master Series, Presented by the ISBA. 8:25-4:45.

Thursday, 03-08-18 – LIVE Webcast—The Complete UCC. Master Series, Presented by the ISBA. 8:30-5:00.

Thursday, 03-08-18 Webinar— Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 03-09-18 – ISBA Chicago Regional Office—Malpractice Avoidance Program. Presented by Trusts and Estates. 8:30-4:00.

Friday, 03-09-18 – Webcast— Malpractice Avoidance Program. Presented by Trusts and Estates. 8:30-4:00.

Monday, 03-12 to Friday, 03-16— Pere Marquette Lodge, Grafton IL—40 Hour Mediation/Arbitration Training. Master Series, presented by the ISBA—WILL NOT BE ARCHIVED. 8:30 -5:45 daily.

Tuesday, 03-13-18 – LIVE Webcast— Don't Panic – What to do When a Letter Arrives from the ARDC. Presented by ARDC. 2:00-3:00 PM.

Thursday, 03-15-18 – Webinar—Hello My Name is PAC: An Introduction to the Attorney General's Public Access Duties. Presented by Local Government. 12:00-1:00 PM.

Thursday, 03-15-18 – Webinar— Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

Friday, 03-16-18 – Holiday Inn & Suites, Bloomington—Solo and Small Firm Practice Institute. 8:00-4:55.

Monday, 03-19-18 – LIVE Webcast—2018 Traffic Law Update. Presented by Traffic Law. 11:00 AM – 12:00 PM.

Wednesday, 03-21-18 – LIVE Webcast—Topics in Professionalism 2018: Mental Health and Substance Abuse Impacting Lawyers, and Diversity and Inclusion in the Legal Profession. Presented by General Practice. 12:00-2:00 PM.

Friday, 03-23-18 – ISBA Chicago Regional Office—Applied Evidence: Evidence in Employment Trials. Presented by Labor and Employment. 9:00 am – 5:00 pm.

Friday, 03-23-17 – LIVE Webcast— Applied Evidence: Evidence in Employment Trials. Presented by Labor and Employment. 9:00 am – 5:00 pm.

Friday, 03-23-18 – Quincy—General Practice Update 2018: Quincy Regional Event. Presented by General Practice. All day.

April

Wednesday, 04-04-18 – LIVE Webcast—Hot Topics in Trial – Session 1 – Jury Selection and Jury Questions. Presented by Tort Law. 12:00-1:30 PM.

Thursday, 04-12-18 – ISBA Chicago Regional Office—Secrets of the Citation Act and Tips for Enforcing Judgement. Presented by Commercial Banking. 8:45 AM – 12:15 PM.

Thursday, 04-12-18 – LIVE Webcast— Secrets of the Citation Act and Tips for Enforcing Judgement. Presented by Commercial Banking. 8:45 AM – 12:15 PM.

Thursday, 04-13-18 – NIU Hoffman Estates—Spring 2018 DUI and Traffic Law Program. Presented by Traffic Law. All day.

Wednesday, 04-18-18 – LIVE Webcast—Mastering the Dead Man's Act. Presented by Trusts and Estates. 2:00-3:15.

Thursday, 04-19-18 – LIVE Webcast—Interns and Externs: Training, Supervision and Professionalism Issues. Presented by LEAC. 12:00-2:00.

May

Thursday and Friday, 05-03 to 05-04, 2018 – ISBA Chicago Regional Office—17th Annual Environmental Law Conference. Presented by Environmental Law. All day. ■