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7 **IN THE SUPREME COURT**  
8 **STATE OF ARIZONA**

9 In the Matter of:

10 **PETITION TO AMEND RULE**  
11 **45(a)2 OF THE ARIZONA RULES**  
12 **OF THE SUPREME COURT**

Supreme Court No. R-21-

13 **STATE BAR OF ARIZONA**  
14 **PETITION**

15 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar  
16 of Arizona (the “State Bar”) hereby petitions the Court to amend Rule 45(a)(2), Ariz.  
17 R. Sup. Ct. If amended as proposed, active Arizona licensed attorneys—not  
18 otherwise exempt—will be required to dedicate 1 hour of continuing legal education  
19 (“CLE”) to training on diversity and inclusion as part of the 3.0 hours of professional  
20 responsibility mandatory CLE (“MCLE”) for each educational year. This proposed  
21 amendment does not increase the minimum number of requisite MCLE hours in an  
22 educational year; but rather, seeks to direct that one of these hours must be diversity  
23 and inclusion training. *See* Appendix A (proposed amendment).

24 **I. INTRODUCTION AND BACKGROUND**

25 Graduates of the Bar Leadership Institute brought this Petition to the State Bar

1 after convening a working group, in August 2019, to review the merits of a  
2 diversity-and-inclusion MCLE requirement. This working group reviewed the  
3 American Bar Association (“ABA”) Model Rules and other state requirements, as  
4 well as consulted with various Arizona stakeholders. Looking to ABA Model Rule  
5 8.4(g), the working group concluded that mandatory diversity and inclusion  
6 education for Arizona attorneys will aid in the advancement of the fair  
7 administration of justice, enhance public confidence in the legal profession, and  
8 advance diversity in the legal profession.<sup>1</sup>

11 Currently, the Arizona MCLE Rules and Regulations do not require  
12 educational training on diversity and inclusion, but instead, allow these subjects to  
13 count toward 3.0 hours professional responsibility MCLE under MCLE Regulation  
14 101(L) and Rule 45(a)(2), Ariz. R. Sup. Ct.

16 This Petition requests that this Court amend Rule 45(a)(2) to require active  
17 Arizona licensed attorney, not otherwise exempt, to complete 1 hour of CLE on  
18 diversity and inclusion as part of their professional responsibility MCLE

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22 <sup>1</sup> Model Rule 8.4(g) describes a lawyer’s professional misconduct as “engag[ing] in  
23 conduct that the lawyer knows or reasonably should know is harassment or  
24 discrimination on the basis of race, sex, religion, national origin, ethnicity, disability,  
25 age, sexual orientation, gender identity, marital status or socioeconomic status in  
conduct related to the practice of law.”

1 requirement for each educational year. *See* Appendix A. This approach will balance  
2 the importance of Arizona lawyers receiving this meaningful training, while  
3 ensuring that this requirement does not result in an increase to the number of  
4 requisite annual MCLE hours.

## 6 **II. OVERVIEW AND PROPOSED AMENDMENT**

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8 Diversity and inclusion training is consistent with the MCLE requirements set  
9 forth Section 3(A) of the current ABA Model Rule for Minimum Continuing Legal  
10 Education (MCLE). The ABA Report recognizes diversity and inclusion as among  
11 “several topics that are so crucial to maintaining public confidence in the legal  
12 profession and the rule of law, and promoting the fair administration of justice, that  
13 all lawyers should be required to take CLE in those topic areas.”<sup>2</sup> To date California,  
14 Illinois, Missouri, Minnesota, New York, and Oregon require their attorneys to  
15 complete courses on diversity, inclusion and elimination of bias. *See* Appendix B  
16 (requirements and Rule citations).  
17  
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19 Diversity and inclusion training will assist Arizona lawyers’ understanding of  
20 their obligations under ER 8.4(d), Arizona Rules of Professional Conduct, which  
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23 <sup>2</sup> American Bar Association Resolution 106, at Page 4 of the Report following the  
24 Model Rule for Minimum Continuing Legal Education (February 2017),  
25 [https://www.americanbar.org/content/dam/aba/directories/policy/2017\\_hod\\_midye\\_ar\\_106.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/2017_hod_midye_ar_106.pdf) .

1 states: “It is professional misconduct for a lawyer to ... engage in conduct that is  
2 prejudicial to the administration of justice[.]” The Rule’s comment explains that a  
3 “lawyer who in the course of representing a client, knowingly manifests by words  
4 or conduct, bias or prejudice based upon race, sex, religion, national origin,  
5 disability, age, sexual orientation, gender identity or socioeconomic status, violates  
6 [Rule 8.4(d)] when such actions are prejudicial to the administration of justice.”  
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8 Providing educational opportunities for attorneys about cultural competence,  
9 countering biases, and encouraging engagement and understanding of diverse client  
10 demographics, can only help to ensure that Arizona attorneys do not unwittingly fall  
11 short of the standards of conduct set forth in this Rule.  
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14 As members of the State Bar, diversity and inclusion awareness and practice  
15 also comports with one of the State Bar’s core values, diversity:

16 This value represents our commitment to ensuring that the legal  
17 profession and the justice system reflect the community it serves in all  
18 of its social, economic, and geographical diversity. It is seeking out  
19 representatives of underrepresented groups to add their strength to the  
20 legal profession and to the advancement of justice in all areas of  
21 society.<sup>3</sup>

22 This amendment will convey that all Arizona attorneys maintain individual  
23 responsibility to make a concerted effort to recognize and eliminate bias in our  
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25 <sup>3</sup> <https://www2.azbar.org/aboutus/mission-vision-andcorevalues/>.

1 justice system, to uphold principles of justice and equality, and to ensure our  
2 workplaces and institutions reflect those principles.

3           According to the 2019 survey from the National Association of Law  
4 Placement, structural and cultural hurdles in law firms result in dramatic  
5 underrepresentation of women and minorities in the equity partnership ranks. This  
6 report found that only one in five equity partners were women, and just 7.6% of  
7 equity partners being people of color.<sup>4</sup> Training leaders in the legal community on  
8 how to facilitate diversity in their workplaces is an important step toward growth of  
9 adequate representation of women and minorities at all levels of leadership in the  
10 legal profession.

11           This Petition’s proposed amendment differs from the ABA Model MCLE  
12 Rule in two material ways. First, to minimize the burden on Arizona attorneys to  
13 obtain specialty credit hours, the proposed amendment requires 1 hour of  
14 diversity and inclusion programming per educational year, instead of 1 hour  
15 of diversity and inclusion every three years, as recommended in the Model Rule.  
16 Second, the proposed diversity and inclusion requirement will count toward the 3.0  
17 hours of professional responsibility MCLE, instead of a general CLE requirement.  
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<sup>4</sup>[https://www.nalp.org/uploads/PressReleases/2019NALPReportonDiversity\\_PressRelease\\_12\\_18\\_19.pdf](https://www.nalp.org/uploads/PressReleases/2019NALPReportonDiversity_PressRelease_12_18_19.pdf).



## Appendix A

*(Please note: deletions are reflected by ~~strikethrough~~ and additions are reflected by underline.)*

### **Rule 45. Mandatory Continuing Legal Education**

#### **(a) Continuing Legal Education Requirements.**

1. Every active member of the bar, not exempted, shall complete a minimum of fifteen hours of continuing legal education activity in each educational year. An educational year shall begin on July 1 and end on the following June 30.

2. A minimum of three hours of continuing legal education activity each educational year shall be in the area of professional responsibility.

A. Professional responsibility includes instruction in legal and judicial ethics, professionalism, and malpractice prevention, and may include such topics as substance abuse, including causes, prevention, detection and treatment alternatives, attorneys' fees, client development, law office economics and practice, alternatives to litigation for managing conflict and resolving disputes, stress management, and the particular responsibilities of public lawyers, judges, and in-house counsel, to the extent that professional responsibility is directly addressed in connection with these topics.

B. At least 1 hour of the professional responsibility requirement must address diversity and inclusion in the legal system of all persons regardless of race, ethnicity, religion, national origin, gender, sexual orientation, gender identity, disabilities, age, or any other protected class, as well as, the elimination of bias.

3.-5. [No change in text.]

**(b)-(k)** [No change in text.]

## Appendix B

### Comparison of Diversity and Inclusion Requirements by State/Bar

State/Bar	Professional Responsibility Requirement	Diversity and Inclusion Requirement	Average Annual Professional Responsibility Requirement (Average Annual D&I Requirement)
California	Four hours legal ethics and one hour substance abuse and/or other mental/physical health issue that impairs ability to perform legal services each three year reporting period as well. <i>See</i> Cal. R. 2.72.	One hour during each three year reporting period. <i>See</i> Cal. R. 2.72.	1.66 hr/yr (0.33 hr/yr) ** D&I requirement in addition to other professional responsibility requirements**  Average Total Hr/Yr = 2 hr/yr
Illinois	Six hours for each two year reporting period of which one hour must be in mental health and substance abuse and one hour in diversity and inclusion. <i>See</i> Il. R. 794(d)	One hour of diversity and inclusion CLE for each two year reporting period. <i>See</i> Ill. R. 794(d)	3.0 hr/yr (.5 hr/yr) ** D&I requirement is included in professional responsibility requirement.  Average Total: Hr/Yr =3 hr/yr
Missouri	Two hours each reporting year. <i>See</i> Mo. R. 15.05(e).	One hour during reporting year. <i>See</i> Mo. R. 15.05(e) (effective July 1, 2019).	2 hr/yr (1 hr/yr) ** D&I requirement in addition to professional responsibility requirement**  Average Total Hr/Yr = 3 hr/yr
Minnesota	Three hours each three year reporting period. <i>See</i> Minn. R. 9(B).	Two hours each three year reporting period. <i>See</i> Minn. R. 9(B).	1 hr/yr (0.66 hr/yr) ** D&I requirement in addition to professional responsibility requirement**  Average Total Hr/Yr = 1.66 hr/yr
New York	Four hours every two years. 22 N.Y.C.R.R. § 1500.22 **This is the rule for “experienced” attorneys (attorneys with more than two years practice). Newly admitted attorneys must complete three hr/yr for their first two years)	One hour every two years. <i>See</i> 22 N.Y.C.R.R. § 1500.22 ** Only applies to “experienced” attorneys. Attorneys in their first two years of practice do not need to comply.**	2 hr/yr (0.5 hr/yr) for experience attorneys ** D&I requirement in addition to professional responsibility requirement**  Average Total Hr/Yr = 2.5 hr/yr

State/Bar	Professional Responsibility Requirement	Diversity and Inclusion Requirement	Average Annual Professional Responsibility Requirement (Average Annual D&I Requirement)
Oregon	Five hours every three years as well as one hour in abuse reporting and one hour in mental health & substance abuse education every three years. <i>See</i> Ore. R. 3.2.	In alternate three year reporting periods, attorneys must complete three hours in “access to justice” which is defined to be activities which “educate attorneys to identify and eliminate from the legal profession and from the practice of law barriers to access to justice arising from biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.” <i>See</i> Ore. R. 3.2., 5.14(d).	2.33 hr/yr (0.5 hr/yr) **D&I requirement in addition to other professional responsibility requirements**  Average Total Hr/Yr = 2.83 hr/yr
Am. Bar Association	One credit hour/year in ethics and professional responsibility and one credit hour every three years in mental health and substance abuse orders. ABA Model R. § 3(A)(2).	One credit hour every three years. ABA Model R. § 3(A)(2)(c).	1.33 hr/yr (0.33 hr/yr) *D&I requirement in addition to other professional responsibility requirements**  Average Total Hr/Yr = 1.66 hr/yr
<b>Average # of Professional Responsibility Hours/Yr</b>			1.72 hr/yr
<b>Average # of D&amp;I Hours/Yr</b>			0.56 hr/yr in addition to other professional responsibility hours
<b>Average # of Professional Responsibility &amp; D&amp;I Hours/Yr</b>			2.28 hr/yr