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IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:)
PETITION TO AMEND RULE) **Supreme Court No. R-21-**
45(a)(2) OF THE ARIZONA RULES) **OBJECTION TO**
OF THE SUPREME COURT) **PETITION**
_____)

We, the 71 undersigned Arizona-licensed attorneys, oppose the proposed amendment to Rule 45(a)(2) of the Arizona Rules of the Supreme Court for the following reasons:

1. There is an insufficient basis for the proposed amendment in the Arizona Rules of Professional Conduct.

According to the Petition, the primary underlying authority upon which the Graduates of the Bar Leadership Initiative (GBLI) relied in proposing the Petition to Amend Rule 45(a)(2) is ABA Model Rule 8.4(g). The State Bar states in its Petition that “**Looking to ABA Model Rule 8.4(g)**, the [GBLI] working group concluded

that mandatory diversity and inclusion education for Arizona attorneys will aid in the advancement of the fair administration of justice, enhance public confidence in the legal profession, and advance diversity in the legal profession” (our emphasis). However, ABA Model Rule 8.4(g) is not part of the Arizona Rules of Professional Conduct. In fact, on August 30, 2018, this Court expressly rejected a Petition to adopt ABA Model Rule 8.4(g) as a part of the Arizona Rules of Professional Conduct (Arizona Supreme Court No. R-17-0032).

Likewise, to the extent the State Bar relies in its Petition on Arizona Rule of Professional Conduct 8.4(d) – which prohibits attorneys from engaging in conduct prejudicial to the administration of justice, including (under Comment [2]) attorney conduct that knowingly manifests bias or prejudice – Rule 8.4(d) only applies to attorney conduct when the lawyer is representing a client. The proposed amendment, however, is much broader in scope than that, addressing discrimination generally and in many contexts other than in a lawyer’s representation of clients. Therefore, Rule 8.4(d), too, is an insufficient basis for the amendment.

2. Few jurisdictions have required attorneys to take diversity and inclusion courses.

According to the Petition, only six states require their attorneys to complete courses on diversity, inclusion, and elimination of bias. Hence, forty-four states and

D.C. do not. Therefore, the vast majority of jurisdictions have not seen fit to require their attorneys to complete such courses. Arizona shouldn't either.

3. The proposed amendment fails to define how or what courses will qualify as acceptable “diversity and inclusion” courses, which will lead to ideologically driven discrimination in qualifying and disqualifying courses.

The proposed amendment fails to define what will constitute acceptable subject-matter for the required diversity and inclusion courses. In fact, the Petition states that “*MCLE Regulations will have to be modified to determine qualifying diversity and inclusion training*” (our emphasis). This could easily lead to ideologically driven discrimination in deciding which courses will be approved and which will not, so that courses that further a particular side of a controversial subject will qualify as approved courses, while courses that address the same issues from an ideologically unacceptable perspective will not. For example, courses that promote what the accrediting authorities consider politically correct views on gender, sexual orientation, gender identity, immigration, homelessness, criminal justice, race relations, education, women's sports, parenting, and voting and election law – to name just a few – will undoubtedly qualify as “approved courses,” while courses addressing those same issues from what the CLE accrediting authorities consider a politically incorrect perspective will not.

Minnesota – which according to the Petition is one of only six states to adopt a compulsory diversity and inclusion CLE rule like the one being proposed here –

has already exhibited this sort of ideologically driven CLE discrimination. There, the Minnesota Lavender Bar Association attacked a CLE-approved seminar titled “Understanding and Responding to the Transgender Moment/St. Paul,” which addressed transgender issues from a Roman Catholic perspective, a CLE co-sponsored by the St. Thomas University School of Law, a Roman Catholic law school in Minneapolis. After the seminar was held, the Lavender Bar Association alleged that the CLE was “discriminatory and transphobic,” “encourages bias by arguing against the identities [of transgender people],” was contrary to the bar’s diversity efforts, and constituted “harassing behavior” under Rule 8.4(g) of the Model Rules of Professional Conduct. The Minnesota Lavender Bar Association went on to characterize the presentation as “transphobic rhetoric” and stated that “Discrimination is not legal education.” Minn. Lavender Bar Ass’n, <https://gumroad.com/mlba> (last visited Apr. 2, 2019). The body that accredits CLEs in Minnesota thereafter revoked its CLE accreditation of the presentation.

The lesson from Minnesota is that the approval or disapproval of CLE courses is being used as an ideological tool to advocate for certain positions and to exclude, marginalize, and even demonize attorneys who disagree. The amendment being proposed here – because it does not define what constitutes “diversity and inclusion” and leaves the approval or disapproval of qualifying CLE courses to an arbitrary

approval process – is ripe for the same sort of ideologically driven abuse that occurred in Minnesota.

4. The proposed amendment uses the State Bar for the illegitimate purpose of indoctrinating attorneys in “political correctness.”

The attorneys signing this Objection are concerned that, because compulsory “diversity and inclusion” CLE rules, such as the one being pursued here, are subject to ideologically discriminatory applications, they are really just an attempt to harness the regulatory powers of the State Bar in order to compel attorneys – at the attorneys’ own expense – to attend courses designed to indoctrinate them in “politically correct” thinking on contentious policy issues. That is not a legitimate function of the State Bar. The State Bar has no business acting as the political correctness police, let alone in compelling attorneys to subject themselves to political correctness training.

FOR ALL THE FOREGOING REASONS, the 71 undersigned attorneys **OBJECT** to the Petition to Amend Rule 45(a)(2) of the Arizona Rules of the Supreme Court.

Respectfully submitted,

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