

Leading the Way to a Diversity-Focused CLE Requirement

BY CHRISTINE HERNÁNDEZ AND ANNIE MARTÍNEZ

Introduction



I'm handing over this month's Message to fellow bar presidents Christine Hernández, immediate past president of the Colorado Hispanic Bar Association (CHBA), and Annie Martínez, CHBA's current president. These two leaders, along with the leadership of the Asian Pacific American Bar Association of Colorado, Colorado LGBT Bar Association, Colorado Women's Bar Association, Sam Cary Bar Association, South Asian Bar Association of Colorado, and Colorado and Denver Bar Associations, comprise the Presidents Diversity Council (the Council). Council members are among the many lawyers and judges in Colorado who have agreed that Colorado is ready for a diversity-focused CLE requirement.

I'm honored to be part of the Council and have been impressed by the creativity, passion, and work ethic of this dynamic group of leaders. The Council is the brainchild of past CBA Past Presidents Charley Garcia and Loren Brown. As Loren explained in his May 2016 President's Message, it was created with the goal of "bringing about actual diversity and inclusion within the CBA and the rest of the profession."¹ Since the Council first came together in November 2015, not surprisingly, it has evolved, and the collaboration among the participating bars and bar leaders has strengthened.

Particularly in light of the tragic deaths this summer of George Floyd, Breonna Taylor, Rayshard Brooks, and prior to that Ahmaud Arbery and countless other Black Americans, the Council convened in July with a mission to be change agents in our legal community on the topics of racial justice, equity, diversity, and inclusion. We also believe that Colorado and our nation are at a pivotal point in the discussions around these important issues, and perhaps for the first time, the demand for change and progress broadly spans race, gender, and generations.

As an outgrowth of this meeting, one of the questions the group agreed to examine was whether Colorado is ready to join the growing number of jurisdictions that have adopted a mandatory CLE requirement in the areas of equity, diversity, and inclusion (EDI). For the reasons described below, the Council concluded that Colorado is more than ready—or "REDI," which is EDI with an "R" for racial justice at the front—for such a requirement.

—Jessica Brown, CBA president

Colorado is poised to join the growing number of states that require attorneys to gain competence in the areas of diversity and inclusion. Much of the foundation-laying for this movement stems from a 2017 American Bar Association resolution that created a model CLE rule calling for separate EDI training for all attorneys.² If Colorado adopts the rule change currently being discussed, it will be the 11th state to implement such a requirement. The Council is currently working with the Colorado Supreme Court's CLE Advisory Committee to forward the proposal for a final vote by our Supreme Court justices. Of the 10 states that already have an EDI CLE requirement, three states (Arizona, Florida, and West Virginia) include it within the state's professionalism/ethics requirements. The accompanying table shows the breakdown for the seven states that have a standalone EDI CLE requirement.

Colorado currently requires attorneys to complete 45 CLE credits during a three-year reporting period, of which 7 CLEs are dedicated to ethics. The proposed rule change would create an EDI CLE requirement that would be *included in* (not in addition to) the 45 credits. Colorado already offers a wide variety of CLE programming on diversity-related topics, making it easy for attorneys to fulfill this requirement.

Colorado Courts' EDI Initiatives

Before the summer of 2020, the Colorado Supreme Court had already begun championing diversity in our legal system. Sumi Lee was named head of Judicial Diversity Outreach for the Colorado Judicial Department in May 2020, a position that was created by the Colorado

STATE	REPORTING PERIOD	TOTAL CLE HOURS REQUIRED	OTHER CLE REQUIRED	EDI CREDITS REQUIRED
California	3 years	25	-	2 elimination of bias
Illinois	2 years	30	6 professionalism	1 diversity
Maine	1 year	12	1 ethics/professionalism	1 avoidance of harassment and discriminatory communications and conduct
Minnesota	3 years	45	3 ethics	2 elimination of bias
Missouri	2 years	15	-	1 cultural competency/diversity/implicit bias
New York	2 years	24	4 ethics/professionalism	1 diversity/inclusion/elimination of bias
Oregon	3 years	45	-	3 access to justice

Legislature in 2019. The Colorado Judicial Institute (CJI) teamed up with the CBA to create the Diversity on the Bench Joint Initiative, which began meeting in December 2019 and is focused on improving the diversity pipeline throughout the state, increasing awareness among key decision makers regarding the need for diversity on the bench, and implementing changes to the existing procedures/mechanisms to ensure more diverse judicial applicants.

On June 11, 2020, the Colorado Supreme Court issued a statement espousing its commitment to “Liberty and Justice for All,” in direct response to the public’s distrust in the country’s legal system due to racial strife.³ In July 2020, Colorado Court of Appeals Judges Gilbert Román and Lino Lipinsky de Orlov co-authored a *Colorado Lawyer* article describing affirmative steps the Colorado appellate courts are taking to support diversity.⁴ And on July 17, 2020, the Colorado Judicial Ethics Advisory Board issued Opinion 2020-02 in direct response to the police misconduct and racial bias within our legal system and questions arising from Court staff’s desire to participate in protests.⁵ The opinion allows judges and their staff to engage in activities that instill public confidence in the judiciary and promote access to justice for all.

In response to Opinion 2020-02, a number of judges have taken action. For example, Judge Don Toussaint in the 18th Judicial District created a multi-part program called “Initiative Criminal Justice Integrity,” which provides judges specific ways to engage with the public

SOLACE *is Here to Help*



CBA
Est. in 1897
Colorado Bar Association

SOLACE offers crisis support to judges, lawyers, paralegals, legal assistants, law firm and court employees and their family members. When a legal professional’s work is impacted by a potentially life-altering event such as serious illness or injury, SOLACE’s convenient and confidential system will match them with volunteers who can provide assistance.

Visit
cobar.org/SOLACE

Contact
solace@cobar.org

and rebuild confidence in Colorado’s judiciary. One component is a “think tank” in which undergrad and law students conduct research and draft white papers to foster interest in the

law in students of color. Other components include coordinating presentations with the *Our Courts* program, hosting live podcasts to engage judges and the public, and presenting judicial



CLEs that discuss EDI issues in the context of sentencing, bond, probation, and other areas. In addition, Judge Adam Espinosa of Denver County Court and Judge Paul Dunkelman of the 5th Judicial District created a four-part “Race and Justice” webinar series this year. The webinar was a safe place for judges to explore EDI issues and brainstorm solutions to problems the bench currently faces with regard to EDI but was uncertain how to address.

These are just a few of the programs that our bench has initiated, but there are many more across the state. An EDI requirement in Colorado is one way to support the courts’ important work in this area.

Building upon a Strong Foundation

Fortunately, an EDI CLE requirement would not be burdensome for Colorado and would fit easily within the plethora of existing offerings. Colorado already offers hundreds of CLE programs each year, many of them low cost or even free. And Colorado’s CLEs span a wide array of topics,

EDI programs in Colorado would address a wide array of topics related to gender, race, national origin, disability, sexual orientation, as well as anti-racism and elimination of bias.

from business support to practical law and interpersonal ethics. Expanding EDI offerings is a natural growth of this programming, and

there’s no shortage of organizations willing to present these programs.

Moreover, the options are only broadening for judicial CLE programs on this subject. As mentioned above, Judge Espinosa and Judge Dunkelman’s Race and Justice webinar series will be a six-part series in 2021, with CLE credit available for the bench, and Judge Toussaint’s Initiative will be offering judicial CLE programs. EDI-related CLEs have also been offered at Colorado’s Judicial Conference for the past few years.

EDI Training Makes You a Better Attorney

Though some may be hesitant or resistant to taking yet another “implicit bias” training, EDI CLEs encompass so much more. EDI programs in Colorado would address a wide array of topics related to gender, race, national origin, disability, sexual orientation, as well as anti-racism and elimination of bias. Specifically, anti-racism programming would touch on topics related



to systematic racism in our legal system and how to dismantle it, while elimination of bias programming would touch on topics such as reevaluating your organization's hiring, retention, and advancement practices to ensure greater diversity.

EDI CLE's are designed to educate as well as to promote healthy discussion and reflection. For example, a program on cultural competency could help you better connect and communicate with clients from different backgrounds so you can elicit the information you need to defend their case. An LGBTQ program might address such questions as, "What is the significance of identifying one's pronouns?" and "How should I address my staff/associate if I am not sure the proper pronoun to use?"

An important goal of EDI programming is to help us foster better relationships with our staff, our clients, our associates, opposing counsel, and the bench. When you have better relationships with your clients and coworkers, you are a better advocate and a better boss.

Open communication lends itself to happier staff and better retention of diverse attorneys. And this leads to higher profits and happier clients.

Join the EDI Movement

We know the responsibility and privilege our law license bestows upon us. The Oath we recite upon admission to practice states in part:

I will employ such means as are consistent with truth and honor; I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect and honesty; I will use my knowledge of the law for the betterment of society and the improvement of the legal system . . .⁶

EDI programming is in line with this oath: It works for the betterment of society and the improvement of the legal system—and it teaches us *how* to treat others with fairness, courtesy, respect, and honesty.

The escalation of violence and greater access to information regarding racial injustice has left attorneys seeking ways to dismantle systemic racism in our society. We can start by becoming better educated and more understanding of racial injustice and implicit bias in the world and in our systems, so we may become better advocates for justice *for all in all circumstances*.

Individuals of all backgrounds deserve access to attorneys who can represent them effectively and appropriately.

The law is not the only profession taking these steps. Licensing bodies for physicians, social workers, and other professionals have been including requirements similar to the one we propose. Across the country, there is a movement to deliberately and explicitly state these types of expectations and include them in the profession's education.

Attorneys, perhaps more than anyone, understand the weight that words carry—their importance is reflected in how we craft our arguments, advise clients, and interpret the law. Embracing EDI education sends a message to our colleagues who experience racism and bias in their work: We hear you, we know it happens, and we as a bar will not tolerate it. It tells Coloradans that our legal profession and courts are serious about taking steps to effect lasting change. It recognizes the dignity of disenfranchised communities. And it's a concrete action that will promote cultural competency and public confidence in our legal system.

Colorado's courts are already part of the movement, and it is time for us, as a bar, to join them. 



Christine M. Hernández is a shareholder at Hernandez & Associates, PC, the largest immigration defense firm in the state. Her practice focuses on removal defense and federal immigration appeals. **Annie Martínez** is the owner of Bridge Legal Solutions, LLC, an indigent criminal and family defense firm.

NOTES

1. Brown, "Diversity and Inclusion Within the Bar and Our Profession," 45 *Co/o. Law.* 5 (May 2016).
2. ABA Resolution, Model Rule for Minimum Continuing Legal Education and accompanying report (Feb. 2017), https://www.americanbar.org/content/dam/aba/directories/policy/2017_hod_midyear_106.pdf.
3. Supreme Court of Colorado (June 11, 2020), https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/6_11_20_Letter.pdf.
4. Román and Lipinsky de Orlov, "The Colorado Appellate Court's Commitment to Diversity and Inclusion" 49 *Co/o. Law.* 3 (July 2020), <https://cl.cobar.org/departments/the-colorado-appellate-courts-commitment-to-diversity-and-inclusion>.
5. C.J.E.A.B. Advisory Opinion 2020-02, https://www.courts.state.co.us/userfiles/file/Court_Probation/O1st_Judicial_District/C_J_E_A_B_%20Ad_%20Op_%202020-02.pdf.
6. Colorado Attorney Oath of Admission, <https://www.cobar.org/For-Members/Committees/Professionalism-Coordinating-Council>.