

From Our Readers

Comments on *Colorado Lawyer*, Mandatory CLE Requirement, December 2020, page 4

Although I am elder exempt from CLE, I still feel obliged to comment on the recent article proposal. The article promotes a mandatory CLE requirement for racial justice, equity, diversity, and inclusion, with the catchy acronyms of “REDI” or a shortened “EDI.” The number of hours is not specified. The purposes of CLE, according to the website, are “to promote competence and professionalism and to remain current on the law in our rapidly changing society.” The proposal doesn’t promote competence or touch upon current law. That only leaves professionalism, which is defined, at great length, in the Rules of Professional Conduct. Those are the duties and responsibilities that are generally referred to as ethics. We already have mandatory CLE for ethics, and there is no pretense in the proposal that it relates to the rules. Indeed, a headline in the proposal is “Join the EDI Movement,” a slogan reserved for political campaigns or social protest. If EDI training, which may be commonly referred to as cultural reeducation or social engineering, is deemed suitable for CLE, the Board of Continuing Legal Education should be prepared for pleas from various other groups that deem themselves underappreciated and want the pulpit.

The proposal envisions training us in “topics related to gender, race, national origin, disability, sexual orientation, as well as anti-racism and elimination of bias.” Implicit bias (perhaps a pejorative term for simple intuition) is mentioned in the article. We will be taught that hidden and unconscious biases cause us to act in discriminatory ways toward others, even though we do not consciously intend to do so. We will certainly hear about critical race theory: that the law and legal institutions are racist and

that race is a construct of white people to keep everyone else broke and powerless. I don’t accept these theories.

EDI training and the theories propelling it are highly controversial. Almost every lawyer would agree that the ethical responsibilities of the Rules of Professional Conduct are properly stated and should be followed, but I’ll wager that many lawyers would think EDI is a load of bricks.

Should the theories be sound, there is no evidence that mandatory EDI training is effective. Such training will insult and anger a great many who will resent the compulsion and don’t accept the theories. This would be an uncommon reaction to a CLE course and would do no credit to the board.

EDI training is widely available to believers in other venues. Diversity and division are first cousins. We should not parse each other into the oppressors and the oppressed. The political parties and the media do that well enough. We are the fortunate few who practice a great and honorable profession. Let us continue to treat each other with respect, celebrate our shared bond and common humanity, and resist all efforts to rent that asunder. I urge the Board of Continuing Legal Education to give this proposal a prompt burial.

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Thank you for your letter. We very much welcome civil discourse and diverse perspectives within the Bar and recognize that not everyone will agree with this proposal. That said, we continue to think the proposal makes good sense for Colorado and is in line with what other states are doing around the nation.

To start, we’d like to clarify the terms of the proposal itself. The new rule will phase in a two-hour EDI CLE requirement starting in 2023 as part of a broader modernization of the legal ethics and professionalism requirements. The Attorney Regulation Advisory Committee unanimously approved the proposed rule and regulation with the full support of the CBA, the DBA, and all of our diversity bar partners: APABA, CHBA, CWBA, SABA, SCBA, and LGBT. Our Supreme Court justices are now considering this proposal and whether to hold public hearings on its adoption.

We, of course, do not believe that “EDI is a load of bricks.” Moreover, EDI and implicit bias education is not about divisiveness, but instead is intended to help people recognize that their own experiences influence how they see the world. It is neither “highly controversial” nor ineffective. *See, e.g.,* Donald et al., “Getting Explicit about Implicit Bias,” Vol. 104, No. 3 *Judicature* (Duke Law School Fall/Winter 2020–21). The goal of this type of education is to make attorneys and judges better able to empathize with people from different backgrounds and to keep themselves from being influenced by factors such as race and gender. *Id.*

As you may know, Justice Sandra Day O’Connor graduated third in her class at Stanford, yet law firms only offered her work as a legal secretary. Was this the result of “simple intuition”? While Justice O’Connor overcame these biases and structural barriers, how many other women did not? How different would our profession look today if EDI training had been an integral part of our professional education from the beginning? Could our profession actually reflect our society as a whole if we embrace EDI education along with other structural reforms now?

Because progress means making the profession better even if it isn’t easy or comfortable, we continue to support this important advancement in attorney education.

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