

**The Ohio State Bar Foundation
Past Presidents Advisory Council
CLE Guidelines for Anti-Racism Education Programs
April 2005**

These recommended guidelines have been developed under the auspices of the Ohio State Bar Foundation, as a project of its Past Presidents Advisory Council (PPAC). The goals of the Foundation and Council in promulgating these guidelines are: (1) to encourage the development of Continuing Legal and Judicial Education courses on issues regarding racism and race relations; (2) to enhance the quality of such Anti-Racism programs; and (3) to promote improvements in the justice system throughout the state of Ohio by directly addressing racism, a core impediment to equal systemic justice.

I. Background

In 1994, Ohio Chief Justice Thomas Moyer, in conjunction with the Ohio State Bar Association, appointed an Ohio Commission on Racial Fairness. The Ohio Bar Foundation served as the fiscal agent for the Commission, which performed research and conducted statewide hearings on the impact of race on the justice system in Ohio.

The Commission released its report in 1999 and in that report documented numerous examples where race has negatively affected access to justice and the actual outcome of criminal and civil matters. As the Commission noted:

Racism is real, and it is insidious. As shown by Andrew Hacker in his book, *Two Nations, Black and White, Separate, Hostile, Unequal*, the evil of racism goes far beyond prejudice and discrimination because it is often unconscious and destroys our institutions. Racism, moreover, can take over institutions, establishing enforced and legally structured barriers to fairness and sanctioning bias. Platitudes about freedom and equality are not enough; indeed, they can become excuses for hidden unfairness. Instead of a leap of faith, what is required is a leap of action to make bold changes to the status quo....

Ohio Commission on Racial Fairness, Report, 1999, at 81.

The Commission called for specialized legal education in matters of racial justice as an important component of addressing the problems cited in its report:

The implementation task force should develop an anti-racism workshop curriculum that would be implemented by the Ohio

Judicial College, OSBA and the Ohio Continuing Legal Education Institute as an annual workshop offered to judges, attorneys and courthouse personnel. This should be part of mandatory continuing legal education and for credit, just like substance abuse, ethics and substantive law.

Id., at 25 (emphasis added).

In 2000, Chief Justice Moyer appointed a smaller Task Force, headed by U.S. District Judge Algenon Marbley, to make specific recommendations regarding implementation of the Commission's report. The Implementation Task Force in 2002 recommended:

... that two hours of anti-racism/diversity training be added to the continuing legal education requirement for judges and attorneys for each biennial reporting cycle. The total number of hours would not be increased.

Implementation Task Force Report, 2002, at 14.

The Task Force explained further:

The Task Force clearly recognizes a need for increased education in this area, but also recognizes that members of the legal profession are already devoting considerable time and energy to continuing education. Therefore, it is the Task Force's recommendation to add a mandatory component of anti-racism/diversity training while maintaining the same number of total hours.

The Task Force recognizes racial issues – including race-based perceptions – among those factors seriously influencing the legal system's ability to guarantee justice for all people. As continuing legal education is a widely accepted and utilized resource for improving the system, it makes sense that race issues would be included among other mandatory topics addressed, such as ethics and substance abuse.

Id., at 14.

In 2003-2004, the Ohio State Bar Foundation's Past Presidents Advisory Council determined that it would make a priority of implementing these recommendations regarding anti-racism education for judges and lawyers. The PPAC determined that although mandates for such educational requirements have yet to be adopted, the Foundation might find ways to encourage the development of anti-racism education programs. After consulting with program experts from the YWCA Columbus Racial Justice Department and the University of Toledo Criminal Justice Program, the Council agreed to (1) develop standards and parameters for anti-racism education programs for

judges and lawyers; (2) develop a model curriculum for such a program; and (3) complete a pilot anti-racism education program to assess the standards and the model curriculum.

These guidelines focus on the first phase of the project: establishment of recommended standards, or guidelines, for anti-racism programs addressed to the judiciary and the bar. The Foundation and its consulting experts believe that these guidelines will encourage the development of such programs by offering parameters for their curricula.

Because of the importance and potential far-reaching impact of these programs, the Foundation also wishes to make certain that newly developed anti-racism education programs are of the highest quality and have the most meaningful impact on the profession and the public.

II. The Importance of Anti-Racism Education for the Bar and Judiciary

As legal advocates, legal interpreters and decision makers – true guardians of the law – lawyers and judges play a critical role in the development of societal institutions. Because these institutions have historically contributed to the perpetuation of racism in the United States, judges and lawyers hold the key to unlocking and rebuilding those racist structures.

Legislation, litigation, and judicial interpretation, however, are not the only points of impact lawyers have in shaping society. Lawyers and judges are leaders. Some create and head corporations; others play significant roles in the not-for-profit sector; many lead political parties; and still others manage educational institutions. Their ability to understand structural rules and hierarchies, advocate with passion, thoughtfully analyze problems, and creatively find solutions make lawyers essential to eliminating racism, particularly in societal institutions which often – knowingly or not – perpetuate that racism.

Furthermore, racism directly impacts our legal system, the legal profession, the service sector supporting the legal system (such as jury managers and clerks of court), and areas in which members of the citizenry interact with the legal system (such as jurors). For example, a great deal of recent attention has been given to studies that document racially disparate verdicts and sentencing in criminal matters; even more attention has been given to the overwhelmingly disproportionate number of persons of color sitting on Death Rows across the country. National and statewide studies indicate that the partnership ranks of leading law firms include relatively few persons of color.

Of course, diversifying law firms, the judiciary, and juries are meaningless unless the lawyers, judges, and jurors are given tools with which they can comprehend the impact of racism in their work and implement systemic, long-term changes. Even the American Bar Association has recently learned this lesson: when its staff and commissions became more racially diverse, racial conflicts rose, largely because staff and commission members were not given sufficient training to overcome racist barriers and

work together. See Bean, “Lawyers Miss Crucial Diversity Lesson: Racial Representation Isn’t Enough,” *Diversity, Inc., Newsletter*, August 23, 2004.

III. Recommended Guidelines for Continuing Legal and Judicial Education Courses on Anti-Racism and Race Relations

Following are the Ohio State Bar Foundation’s proposed guidelines for any developer of Anti-Racism or Race Relations continuing education programs. The Foundation encourages both developers and regulators of educational programs for lawyers and judges to adhere to these guidelines. Furthermore, the Foundation recommends that the Ohio Supreme Court, its Commission on Professionalism, and its Commission on Continuing Legal Education adopt these guidelines for use when considering approval of continuing education courses for lawyers and judges.

A. General Guidelines

Any CLE and Judicial education program in this area should in general:

1. *Focus on Race, Racism, and Race Relations as the sole subject of the program.*

Outside the legal community, there are many courses that address “diversity,” a purportedly all-inclusive umbrella. These courses have the admirable goal of embracing the diversity of American society; they often mention race, along with gender, national origin, religion, sexual orientation, disability, and others.

Unfortunately, the wide scope of these courses often dilutes discussion of important issues. Lecturers tend to gloss over many subjects – particularly issues, such as racism, that are often difficult to discuss.

Of course, designing CLE courses on diversity, especially concerning relationship diversity and professionalism, is laudable. In this case, however, both the Commission on Racial Fairness and the Implementation Task Force made clear recommendations that continuing education courses be held on matters concerning race and racism. Therefore, it is also strongly recommended that CLE courses on this subject should be approved as discrete courses, and not as mere components of larger “diversity education” programs.

2. *Use one of the following terms in the title of the course: **Anti-Racism; Race Relations; Racial Fairness; or Racial Justice.***

In dealing with the difficult topic of racism, consistency of language helps eliminate confusion and keep focus on the matters at hand. Using one of these four terms makes clear the purpose of the course.

3. *Last for a minimum of two (2) hours.*

Experience among persons who facilitate anti-racism programs suggests that because discussions of matters concerning race are often difficult and uncomfortable, at least two hours are needed in order to create an environment for honest and open discussion and for a substantive look at the specific course topic.

4. *Include as the major format of the program some form of participant interaction.*

Actual discussion and dialogue among the participants is a crucial element of any racial justice program. Depending on the course topic, some lecture or presentation may be acceptable or even desirable. For example, a review of the case law regarding school segregation might be an important precursor to a discussion on current racial issues in education. However, much about the lack of racial fairness in our justice system is often the result of misunderstanding, miscommunication, and ignorance of cultural cues. Only through actual participation will lawyers and judges reach some understanding regarding matters of racial fairness.

B. Outcome Objectives (Core Competencies):

In any continuing legal or judicial education course – from bankruptcy law to labor law – the objective is usually to develop or improve the lawyers’ and judges’ core competencies in the subject matter. The objective of any anti-racism program is the same: to develop core competencies in lawyers and judges in understanding, addressing, and eliminating racism. Therefore, any CLE and Judicial education curriculum focusing on Anti-Racism, Race Relations, or Racial Justice should contain a set of outcome objectives that address and develop two or more of the following core competencies for lawyers and judges:

1. *Participants should be able to identify obvious and subtle forms of racism, with special attention to the role of the law and legal institutions in the formation, perpetuation, and elimination of racism.*

Racism is a sociological phenomenon that has been institutionalized in society and socialized into individuals. Its existence and implications are often nuanced. Building heightened awareness of the forms of racism, particularly as it exists in the legal system, is essential to fully addressing this issue.

2. *Participants, through dialogue and interaction, should have the opportunity to explore thoughts, feelings, and perceptions of individuals on the issue of racism, in order to reach common ground on that issue.*

The existence and effects of racism can best be scrutinized by a full understanding of how persons of different races perceive themselves and others with respect to the institutions of law and justice. Dialogue and participant interaction – where learning comes from the participants, as

opposed to a lecturer – is an extremely effective means of developing this competency.

3. *Participants should learn strategies to eliminate racial prejudice and racism, within and without their profession.*

Without gaining some strategic tools to address racism, continuing education courses would fail to comply with the spirit and intent of the recommendations of the Commission on Racial Fairness. Lawyers and judges have the opportunity to effect change not only within their own legal institutions, but in their other organizations or spheres of influence.

The above recommendations suggest general competencies that should come from CLE courses in this area. In addition, successful courses might develop some more specific competencies and outcomes. Therefore, it is recommended that at the conclusion of any CLE program in this subject area, **all** participants should be better able to:

- a. *Discuss racial issues in a variety of settings (e.g., law firms, courts, bar associations, community organizations);*
- b. *Have a heightened awareness of racism and its impact on society, as well as their personal and professional lives;*
- c. *Use the tools learned to follow through on action steps to eliminate racism;*
- d. *Participate in community activities that embrace inclusion; and*
- e. *Commit to lifelong learning on racial issues.*

C. Faculty and Facilitators

The quality of any CLE program is often directly tied to the quality of the faculty. The faculty (and/or facilitators, as the case may be) for any continuing education program in this area should have all of the following qualifications:

1. *Appropriate academic and/or professional credentials.*

The most effective faculty members or facilitators are the peers of the participants. Peers lend credibility to a program and also make the participants more comfortable in knowing that the facilitator already has something in common with those assembled. Therefore, status as a lawyer or judge is probably the most important credential a faculty member can have. If a properly trained lawyer or judge is unavailable to lead a program, then the faculty member or facilitator should be prepared to establish his or her other credentials (degree, experience) with the participants.

2. *Specialized training and/or experience regarding race, racism, and racial justice.*

Obviously, it would be nearly impossible to lead a discussion regarding racism without some training and experience in the subject matter. Special facilitator training, course work in human relations and diversity management, or experience in Equal Employment Opportunity or other related subjects would well serve a group leader and the participants.

3. *Training and experience in group facilitation.*

Racism and race relations, even in today's society, often remain taboo subjects for discussion. It is therefore very difficult to engage course participants in a substantive discussion on the issue without bringing up deep emotions and potential conflict among participants. Therefore, it is strongly recommended that faculty members have some training in group facilitation. Mediation training or other facilitator training can serve this purpose.

D. Curricula

There is no perfect curriculum in this arena. The writers of these guidelines want to encourage the widest range of thoughtfulness and creativity in persons who develop anti-racism curricula for lawyers and judges. The following guidelines are offered as a way of stimulating such thoughtfulness and creativity.

1. *General Components:* It is recommended that the following components be considered when developing any anti-racism curriculum:
 - a. **Eurocentric thinking and perception (*i.e.*, challenging participants to move away from socialized Eurocentric perceptions of society);**
Eurocentrism – essentially a belief that all of society operates or should operate in the same manner as Europe and the United States – is often at the heart of racism. In both cases, persons are socialized to believe that their way of thinking or their race is superior to others. Challenging these core beliefs will directly address the complexities of racism and race relations and should lead to a discussion of white privilege and its implications in American society. Recent immigrations into Ohio of persons from non-Europeanized continents further underscore the importance of this component.
 - b. **Understanding the oppressed/oppressor dichotomy;**

The dichotomy between persons who are oppressed and those who are oppressors (whether or not those persons perceive themselves as oppressors or oppressed) is an essential component of sociological racism. Understanding this dichotomy is crucial to an understanding of how racism continues to be promulgated through individuals and institutions.

c. Comprehending the perceptions of both the oppressed and the oppressor of each other;

“Majority” participants in any discussion regarding racism often do not see themselves as oppressors, nor do they see “minority” participants as oppressed persons. Learning how others perceive their own interaction with society is another important element of developing an understanding of race relations.

d. The role of the law, both in maintaining these dichotomies and in breaking them down;

Developing an understanding of how the law and legal institutions have perpetuated racial dichotomies is critical to the development of strategies to undoing them. This is an important component of any program for lawyers and judges.

e. Understanding the political movements that affect the development, maintenance, and undoing of racist institutions.

Laws, legal procedures, and legal institutions are not created or maintained in a vacuum. Understanding the political (in the non-partisan sense) history of racial separation and the political forces and environments that surround racism may be a useful means of developing legal strategies to address and eliminate racism.

f. Action Planning

The effectiveness of CLE curricula on the subject of race relations will best be measured by how much the participants in those programs take steps to address racism in their own lives and professional environments. It is highly recommended that any course in this area contain a component that allows participants to develop their own plans of action to address racism and race relations.

2. *Suggested Issues:* Following is a partial listing of the issues that may be appropriate for anti-racism continuing education programs:

- a. *Communicating across cultural differences among races (White/African American/Asian/Native American/Latino);*
- b. *Institutional racism in the criminal justice system*
- c. *Institutional racism in the civil justice system*

- d. *Institutional racism in business*
 - e. *Institutional racism in government*
 - f. *Institutional racism in education*
 - g. *Institutional racism in not-for-profit service providers*
 - h. *Race relations among legal professionals*
 - i. *Impact of race on lawyers and judges as employers*
 - j. *Power and prevalence of racism*
 - k. *Strategies to combat racism*
 - l. *Action planning to eliminate racism*
 - m. *Understanding “white” or majority privilege*
 - n. *Forms of racism*
 - o. *Historical/sociological development of racism*
3. *Suggested Topics:* With the above issues in mind, the following are the types of specific topics that are appropriate for anti-racism continuing education programs:
- a. *Racism Dialogues (facilitated dialogues designed to intentionally and specifically discuss racism and race relations, specifically geared to lawyers or judges)*
 - b. *Race and jury selection*
 - c. *Race and civil case verdicts*
 - d. *Racism in discovery techniques*
 - e. *Race and court administration*
 - f. *Race and hiring practices*
 - g. *Race and the lawyer’s role in business*
 - h. *Race and law firm administration*
 - i. *Race and the lawyer’s role in not-for-profit and educational organizations*
 - j. *Racial issues for government lawyers*
 - k. *Representing racially diverse clients*
 - l. *Race and criminal sentencing*
 - m. *Racism in employment*
 - n. *Racism in housing/lending/credit extension*

E. Evaluation

Because this type of programming for continuing education is new, continuing evaluation of each program will assist further curriculum development. The following components for evaluation are highly recommended:

1. *Pre-course assessment:* a simple survey to determine participants’ knowledge of the subject matter before the educational program commences;
2. *Post-course assessment:* a survey similar to the pre-course assessment, to measure changes in participants’ knowledge or skill level regarding the topics and issues of the program;

3. *Program Review*: a survey, with opportunity for written statements, in which the participants can evaluate their perceptions of the quality and usefulness of the program, faculty, and facilitators.

In addition, to the extent possible, program developers are requested to conduct **longitudinal evaluations** of their programs. Such evaluations should

1. Be conducted six months to a year after the program;
2. Invite participants to assess changes in their own attitudes, perceptions, and actions concerning race relations;
3. Attempt to measure program impact beyond the participants; *i.e.*, those persons, institutions, and organizations with whom the participant had contact in the time after the program.