

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

IN THE MATTER OF THE)
AMENDMENT OF SUPREME COURT)
RULE 111)

ADKT No. 444

JAN 13 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
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**BAR COUNSEL'S WRITTEN COMMENTS TO THE PROPOSED
AMENDMENT TO SUPREME COURT RULE 111**

Rob W. Bare, Bar Counsel for the State Bar of Nevada ("State Bar"), hereby provides his Response and Recommendation on behalf of the Office of Bar Counsel in the above matter pursuant to the Nevada Supreme Court Order Scheduling Public Hearing and Allowing Public Comment entered December 8, 2009.

BACKGROUND

Justice Nancy Saitta filed the instant petition to amend Supreme Court Rule ("SCR") 111 (Attorneys Convicted of Crimes) with respect to attorneys who have been convicted of second offense misdemeanors involving the use of alcohol or a controlled substance.

As spelled out in Justice Saitta's petition:

Under the current version of the disciplinary rules, if an attorney is convicted of a misdemeanor involving the use of alcohol or a controlled substance, bar counsel simply files a petition with the supreme court, attaching a certified copy of the conviction. See SCR 111(4). No investigation or recommendation regarding discipline is required. The supreme court is then given the discretion to refer the matter to the appropriate disciplinary board for any action it deems warranted. See SCR 111(9).

The petition then goes on to state that:

The Supreme Court has recently been presented with a number of petitions advising the court that the subject attorneys have convictions for second offense misdemeanors involving the use of alcohol or a controlled substance. In each instance, the supreme court has elected to refer the matter to the appropriate disciplinary board pursuant to its authority under SCR 111(9). This process, however, is inefficient. A more streamlined procedure is needed, one which requires bar counsel, prior to submitting the petition

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1 required under SCR 111(4), to investigate and present the matter to
2 the appropriate disciplinary board for a recommendation regarding
3 the appropriate disciplinary action, if any, to be imposed.

4 Attached to the petition as Exhibit A, is the relevant proposed rule change. As shown
5 in that Exhibit A, Justice Saitta proposed that SCR 111(4) be amended to include the following
6 language:

7 Upon being advised that an attorney subject to the disciplinary
8 jurisdiction of the supreme court has been convicted of a
9 misdemeanor involving the use of alcohol or a controlled substance
10 and the offense is not the attorney's first such offense, bar counsel
11 shall investigate and present the matter to the appropriate panel of
12 the disciplinary board prior to the filing of the petition. The petition
13 shall be accompanied by the panel's recommendation regarding
14 the appropriate disciplinary action, if any, to be imposed under
15 these or any other rules of the supreme court that pertain to the
16 conduct of attorneys.

17 DISCUSSION

18 There appear to be two (2) matters that may have been relevant in generating the
19 instant petition to amend SCR 111(4). In the first petition that was filed on March 31, 2009,
20 Respondent was charged with second offense DUI following a traffic stop after Respondent
21 failed to maintain his lane of travel. In its order filed November 18, 2009, this Court referred
22 the matter to the appropriate disciplinary board for determination of discipline, if any, to
23 impose.

24 The other petition was filed on May 11, 2009. In that matter, Respondent pled no
25 contest to one count of driving under the influence, a misdemeanor. Respondent had a prior
conviction of reckless driving, or a "wet reckless" as it is termed in California, and the instant
DUI was treated as a second offense. In its order entered October 21, 2009, this Court, as it
did in the above case, referred the matter to the appropriate disciplinary board for
determination of discipline, if any, to impose.

1 Under the proposed Rule change, these matters would have been presented to a
2 Screening Panel of the appropriate disciplinary board pursuant to SCR 105(1)(a) (Procedure
3 on receipt of complaint: Investigation and screening panel review) and in the interest of
4 judicial economy, it would have saved time and resources in having the matter reviewed first
5 before presentation to this Court. Also, under this scenario, this Court would have input from
6 the Screening Panel which might have been helpful. In addition, the subject Respondent
7 attorney would have the benefit of a Screening Panel's review prior to submission to this
8 Court.

9 **CONCLUSION**

10 Bar Counsel supports Justice Saitta's proposed changes to SCR 111(4) and
11 appreciates that she has proposed the modification of this rule.

12 Bar Counsel is submitting these written comments and does not intend to supplement
13 the written comments with live testimony at the hearing on January 19, 2010. However, Bar
14 Counsel does intend to be present in the Las Vegas courtroom and will provide supplemental
15 comments should this Court so desire.

16 Respectfully submitted this 13th day of January, 2010.

17 STATE BAR OF NEVADA

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