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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

October 23, 2018

Chief Justice Michael Douglas
Nevada Supreme Court
201 South Carson Street
Carson City, NV 89701-4702

Re: Response to October 1, 2018 Renewed Request for Amendment to ADKT 0499

Dear Chief Justice Douglas:

The Federal Public Defender Office appreciates the ability to express its concern regarding the proposed amendments the Nevada Board of Continuing Legal Education (NVCLE) is seeking to implement. As explained in more detail below, the amendment's failure to exempt or to distinguish between for-profit and not-for-profit CLE providers impacts the Federal Public Defender Office's ability to discharge its statutory mandate pursuant to the Criminal Justice Act, 18 U.S.C. Section 3006A.

The Criminal Justice Act requires the Federal Public Defender Office to provide training to attorneys appointed to represent indigent defendants ("CJA panel attorneys"). This office's commitment to ensuring CJA panel attorneys are properly trained is evidenced by the number and types of CLE courses we offer in both Reno and Las Vegas. This office is committed to training and its training substantially exceeds the NVCLE annual requirements. Further, we carefully consider the types of CLEs offered to ensure they are relevant to the current practices and patterns of this jurisdiction. To that end, the FPD communicates regularly with the CJA panel in Las Vegas and Reno, as well as the federal courts, to verify that the training provided meets the practitioners' needs.

An important part of our mission is to not only raise the quality of representation with the federal panel but the entire district. It is not uncommon for our office to invite Nevada Attorneys for Criminal Justice (NACJ) and the Clark County Public Defender Office to its CLE programs when the topics are relevant to,

or intersect with, state court criminal practice, or when our CLEs involve nationally renowned speakers.

Prior to this proposal, the MCLE Board acknowledged federal agencies and non-profit organizations (among others) should be exempt from fees. See *ADKT No. 499 In The Matter Of Amendments To Supreme Court Rule 207: Creation Of The Board Of Continuing Legal Education*, No. 18-25171, Regulation 7 (filed July 3, 2018) and No. 18-28285, Regulation 7 (filed July 24, 2018 and later withdrawn August 31, 2018). The current proposed amendment does not offer any exemptions from which this office could benefit. The only current exemptions include (1) providers who donate 100% of their profits to the Nevada Bar Foundation or (2) providers who do not charge and whose participants agree to take a pro bono case or engage in another pro bono activity sponsored by a pro bono provider recognized by the Nevada Bar Foundation. *Id.* No. 18-38288, Regulation 6.

As currently proposed, this Office would be substantially impacted by the fee structure contemplated by this amendment. The result would necessarily be a reduction in courses offered, and/or a reduced ability to bring in national speakers.¹ Further, as a federal agency we cannot take advantage of the financial “opt-out” by charging admission fees to be forwarded the Nevada Bar Foundation, nor may our attorneys accept pro bono cases.

As this Court considers the proposed amendments, it is important to remember the Study Committee’s mission statement for the NVCLE as it unveiled its new proposed model, later adopted on November 16, 2016. *Id.* No. 16-35595. According to the Study Committee, the mission underlying the proposed changes took into account the need for continued education of lawyers “through a wide range of quality educational programs” and to “maintain the requisite knowledge and skills to fulfill their professional responsibilities.” *Id.* No. 15-27965, Attachment 1. The failure to distinguish between providers who stand to profit from those who do not runs counter to the Study Committee’s stated mission as this will limit access to high quality education to a large number in the criminal defense bar. In hopes that this Office will be able to continue to fulfill its mission and statutory mandate, and by extension continue to provide high quality CLE programs to other portions of the criminal defense bar in this state, we respectfully request this Court to consider exempting

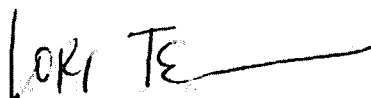
¹ This office is committed to bringing national speakers to Nevada as we recognize that criminal defense practitioners are most often solo or small office practitioners who are financially unable to close their office to travel out of state for CLE. Attendance at out-of-town regional or national trainings often cost more than \$1,000, plus the inability to practice while traveling and attending seminars. We work extremely hard to convince national, highly qualified speakers to travel to Nevada to present to the Panel and not require an honorarium, as statutorily we cannot provide it. For many practitioners, our CLE program is their only way to attend this caliber of training.

government entities, and participants attending those programs, from any proposed fees.

Sincerely,

A handwritten signature in black ink, appearing to read "RJ", followed by a horizontal line extending to the right.

RENE L. VALLADARES
Federal Public Defender

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LORI TEICHER
First Assistant