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NACJ

Nevada Attorneys for Criminal Justice

October 24, 2018

Chief Justice Michael Douglas
Associate Chief Justice Mark Gibbons
Justice Michael Cherry
Justice Ron D. Parraguire
Justice Kristina Pickering
Justice Lidia S. Stiglich
Justice James W. Hardesty

Supreme Court of Nevada
201 South Carson Street
Carson City, NV 89701-4702

Re: Renewed Request for Amendment to ADKT 0499

Dear Chief Justice Douglas & Justices of the Supreme Court of Nevada:

Nevada Attorneys for Criminal Justice (“NACJ”) is a non-profit organization representing criminal defense attorneys throughout the state of Nevada. NACJ has reviewed the Renewed Request for Amendment to ADKT 0499 and has several concerns regarding the revised proposal’s consequences that will result in treating for-profit CLE providers the same as individual attorneys, government entities, and pro bono organizations.

This response outlines NACJ’s concerns, which are similar to the concerns outlined by the State Bar of Nevada in its response.

1. NACJ Objects to Changing the Exemption Rule Regarding Government and Non-Profit Agencies.

NACJ objects to changing the exemption rule regarding government and non-profit agencies because government entities and non-profit organizations should not be treated the same as for-profit CLE providers.

NACJ, in conjunction with the Nevada Office of the Federal Public Defender (“FPD”), the Clark County Public Defenders Office (“CCPD”), and the Special Public Defenders Office (“SPD”) have worked together for years to host free CLEs for criminal law practitioners in both the government sector and the private sector. The stated aim of the CLEs provided is to enhance lawyer education for the criminal defense practitioner. Neither NACJ, FPD, CCPD or SPD operate with the sole purpose of revenue generation. Quite the contrary, NACJ partners with these government entities in order to live up to the goal outlined in Supreme Court Rule 86(9)—“to encourage higher and better education for membership in the profession.”

FILED

OCT 24 2018

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

RECEIVED

OCT 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
CLARK COUNTY, NEVADA

18-418705

The CLEs provided by NACJ and the government entities cover all aspects of criminal defense in Nevada, and generally are of higher quality with more jurisdictionally relevant educational material provided to local practitioners than the CLEs provided by for-profit entities and other organizations.

The FPD, SPD, and CCPD are currently accredited CLE providers. In partnership with NACJ these entities provide around 20-30 hours of free CLE education to our membership. By removing the exemption currently in place, the MCLE board will be creating an enormous cost increase to our organization and its members and will cripple NACJ's, the FPD's, CCPD's, and the SPD's ability to host free CLEs, which runs counter to the goal of providing "higher and better education for membership in the profession."

Additionally, Exhibit 3 to the Renewed Request for Amendment to ADKT 0499 lists states which provide for exemptions to non-profit providers and the MCLE Board has provided no solid reason to change its exemption rule when other states such as Alaska and Iowa provide for exemptions, and some jurisdictions—Arizona, Arkansas, Ontario, Georgia, Mississippi, Missouri, New Hampshire, North Carolina, Tennessee, and Vermont—charge no fee at all.

If the true purpose of CLEs are to provide education for Nevada lawyers, then organizations like NACJ should be supported in providing as many educational opportunities as possible to our local bar. The exemption currently in place allows us to do this. Removing the exemption will cause NACJ, the FPD, CCPD, and the SPD to offer fewer courses; thereby reducing the amount of information and education our criminal defense bar receives because we will be forced into making choices based on cost rather than providing as many broad educational opportunities as possible, which is an untenable consequence of ADKT 0499's proposed amendment.

Accordingly, NACJ objects to changing the exemption rule regarding government and non-profit agencies because government entities and non-profit organizations should not be treated the same as for-profit CLE providers. Thus, NACJ asks this Court to Deny the amendment request in ADKT 0499 seeking to remove the current exemption, and leave the exemption in place so that NACJ can continue to provide numerous high quality educational opportunities to our members and the criminal defense bar at large.

2. NACJ Objects to Increasing Provider Application Fees for Recorded Programs.

In order to provide quality CLE programming to rural criminal defense attorneys and address concerns brought up by the Indigent Defense Commission regarding training availability in rural Nevada, NACJ in conjunction with the FPD, CCPD, and SPD are currently working to establish free internet based video recordings of CLEs. ADKT 0499's unexplained proposal of increased fees that are double that of live programs along with removal of the exemption for non-profits and

government entities will have a chilling effect on NACJ's ability to create this free programming due to cost concerns. Thus, NACJ objects to doubling provider application fees for previously recorded programs and asks this Court to deny that request.

3. Expensive Attorney Application Fees When the Provider Does Not Apply and Pay the Fee.

NACJ objects to the expensive attorney application fees charged when an attorney attends a program where the CLE provider does not apply and pay the application fees.

Our members, usually at great personal cost to themselves, pay to attend some out of state programming such as the trial college put on by the National Criminal Defense College, Gerry Spence's Trial Lawyers College, Gideon's Promise, and several other nationally recognized capital defense seminars. When attending these programs, the attorney has to pay for their own airfare, their own hotel room, the seminar itself, and whatever other expenses come up during travel only then to be charged additional fees by the MCLE Board to have their educational credits recognized.

It appears that the current function of the MCLE Board is largely ministerial in nature, keeping track of CLE credits. We live in the internet age, and it is no longer hard to research programming online. Thus, these increased costs proposed by the MCLE Board are both unexplained and unjustifiable. Moreover, it reduces the incentive for attorneys to attend specialized CLEs that may not be provided locally.

The MCLE Board's proposal seems more concerned with revenue generation rather than attorney education. Thus, NACJ objects to the request for increased attorney application fees, and asks this Court to deny that request.

Conclusion

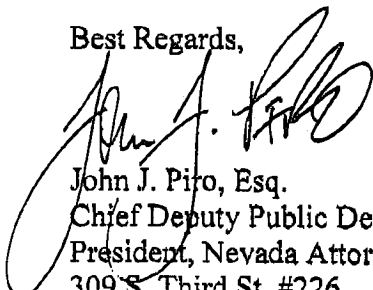
NACJ files this response with great concern. The MCLE Board's request to remove the exemption currently in place would severely handicap all of the educational benefits provided to the criminal defense bar through our organization and the institutional defender offices in the state of Nevada.

Moreover, the MCLE Board's proposal not only will take away several educational opportunities from the criminal defense bar, it will also take more money from attorneys. If the stated goal is to use CLEs to promote attorney education, the MCLE Board's requests for additional fees, with the potential to keep increasing these fees creates a disincentive for attorneys to take advantage of as many educational opportunities possible due to the price tag proposed by the MCLE Board.

Additionally, with Nevada having significantly less attorneys than Texas¹, NACJ finds it troubling that the MCLE's staff is nearly similar in size to Texas's. Accordingly, NACJ requests that this Court consider the State Bar of Nevada's alternative governance structure, which seems better suited to serving the needs of Nevada attorneys in comparison to the current plans proposed by the MCLE Board under the Amendment to ADKT 0499.

In sum, NACJ requests that this Court deny the requests sought by the Renewed Request for Amendment to ADKT 0499, and allow NACJ, CCPD, SPD, and FPD to continue to provide quality free educational programming to our members.

Best Regards,



John J. Piro, Esq.
Chief Deputy Public Defender
President, Nevada Attorneys for Criminal Justice
309 S. Third St. #226
Box 552610
Las Vegas, Nevada 89155-2610
T: 702.455.4239 | F: 702.384.1969
E: John.Piro@clarkcountynv.gov

¹ The State Bar of Nevada points out in its response that Texas has 90,000+ attorneys and has seven full time MCLE staff, whereas Nevada has six full time staff with significantly less attorneys.