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ELIZABETH A. BROWN  
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BY *[Signature]*  
DEPUTY CLERK

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November 13, 2018

Chief Justice Michael Douglas  
Supreme Court of Nevada  
201 S. Carson Street, Ste. 250  
Carson City, NV 89701-4702

Re: ADKT 499 (SCR 207-215 CLE Structure)

Dear Chief Justice Douglas:

Pursuant to your order inviting additional comments issued November 6, this letter follows up on and incorporates my earlier submission of August 22, given the changed proposals.

Respectfully, the entities submitting comments remain, understandably, fixated on their individual self-interest, while the Bar and the CLE Board have essentially renewed their turf battle, and *no one* has stepped back to address the big picture of why we are doing this at all.

A number of attorneys wrote to me after reading my prior submission with similar questions. One senior member of the Bar asked whether "mandatory CLE has caused the delivery of legal services to the public which are better than those which would have been delivered without it" – a fundamental question that neither the Bar nor the Board ever address. His point was summarized in the unanswered question of whether "the gross revenues extracted from the members of the Bar are actually doing anyone any good."

Another noted that many members of the Bar are admitted in more than one state, and the Board seeks to essentially double charge all such lawyers who attend CLE in those other states – without any kind of objectively valid reason other than the extraction of money. That same lawyer noted that in Arizona there is no such organization or expense – Bar members are simply required to obtain education, and to individually keep track of it, submitting an annual affidavit that they have done so.

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Two items of my personal experience illustrate the issues facing members of the Bar.

First, I just returned from the annual meeting of the American Academy of Matrimonial Lawyers in Chicago, where nine Nevada Academy Fellows attended two days of intense instruction on Artificial Reproductive Technologies (“ART”) – matters which already have started appearing in cases before the Nevada Supreme Court. That level and quality of instruction is unavailable in Nevada. The cost was considerable – about \$1,000 per person. The Nevada CLE Board, while doing nothing to facilitate that education, wants to charge each Fellow more money to “recognize” that instruction.

To “double-tax” attorneys who seek out the highest quality instruction in specialty areas is directly contrary to the stated rationale for the CLE Board’s existence.

Second, I am leaving Thursday to teach a retirement benefits CLE in Arizona – this is my fourth such out of state trip this year. There is typically no compensation paid to speakers. The point is that the Nevada CLE Board has made it effectively impossible for me to offer to attorneys in *Nevada* the education that I am providing to lawyers in California, Arizona, and elsewhere, because it has chosen to make me pay the Board for the privilege of providing that education if I do it here.<sup>1</sup>

That result is absurd, and directly contradicts the entire premise of “encouraging” the education of Nevada lawyers – the CLE Board is *preventing* quality education from being presented to Nevada lawyers. As the Special Public Defender noted in its submission, “Specialized CLEs from local practitioners are often the highest quality and they do not become better when there is a price tag attached to them.” The CLE Board studiously avoided even addressing the fact that its proposed policies are designed to prevent lawyers from teaching other lawyers for free.

Notably, the CLE Board will also not “grant” credit for *teaching* courses out of state at *all*, whether for a for-profit or non-profit organization – its Regulation 9 effectively states that teaching out of Nevada is worthless to the Board because other states will not pay the Nevada CLE Board to have their programs “approved.” This too is directly antithetical to any concept of encouraging scholarship by Nevada lawyers, and makes it that much more difficult for Nevada experts in legal subjects to maintain reputations for scholarship and leadership in academic organizations.

In short, every action and proposal by the CLE Board is counterproductive to the concept of encouraging scholarship and quality education of Bar members – it remains *solely* concerned with acquiring money to sustain its bureaucracy.

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<sup>1</sup> From page 4 of the new proposal, an “exemption” requires *both* that no fee is charged and every attendee agrees to take a *pro bono* case – it remains impossible in Nevada for experts to offer CLE for free as they have done.

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The themes of my earlier submission are, if anything, highlighted by the amended proposal. It is well past time, 36 years on, to evaluate why this enormous expense of time and money is being incurred, and whether anything of any value is resulting from it.

The first priority – entirely ignored by both the Board and Bar – is to conduct a meaningful outside study and obtain a report of whether mandatory CLE actually accomplishes its intended purpose (or any purpose at all). Whatever benefits are found to exist must be weighed against the impact on lawyers' health, wealth, and time, including impacts on *pro bono* and other policy objectives identified as worthwhile. The resulting metrics will provide the guidance as to whether mandatory CLE should be abolished, made self-reporting, or otherwise enormously curtailed.

If mandatory CLE is to be retained at all, it should be rendered *meaningful* – at minimum, the Bar should be compelled to post each lawyer's CLE record as part of that lawyer's on-line biography, so that the public will get the benefit of being better informed about the education of the lawyers they are considering. There should also be a requirement for testing at CLEs to see if any "education" is actually being imparted.

In any event, if CLE is being provided for free, there should be no charge whatsoever to either the provider *or* the attendees for that CLE, to encourage the most experienced and recognized experts in our legal community to give back in the form of sharing their knowledge and experience with younger lawyers.

Sincerely yours,  
WILLICK LAW GROUP



Marshal S. Willick, Esq.