

UNLV | WILLIAM S. BOYD SCHOOL OF LAW

UNIVERSITY OF NEVADA, LAS VEGAS

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
CHIEF DEPUTY CLERK

Dear Chief Justice Gibbons and Members of the Nevada Supreme Court:

Thank you for the opportunity to comment on ADKT 538, which contains two significant changes to limited practice rules by law school faculty. ADKT 538 repeals current Supreme Court Rule (SCR) 72.3, eliminating the limited practice rule for general law faculty, and adds significant new requirements for limited clinical practice, namely, a \$1,200 application fee, a full character and fitness review, and a recent score of 85 or higher on the Multistate Professional Responsibility Examination (MPRE). ADKT 538 waives these same fee and MPRE requirements for legal aid providers. The law school requests this waiver also be applied to law school faculty who teach in the clinical law program or provide pro bono or court-appointed assistance to clients. The law school believes that the current rules, SCR 49.1 and 72.3, work well and need not be revised. Given the goal of consolidating these rules in the revised SCR 49.1, however, the law school believes that the minor changes suggested will ensure that ADKT 538 does not disrupt to the law school's service and education missions.

The proposed amendments reflect the law school's deep commitment to community service and clinical law training for our students. ADKT 538 in its current form threatens to disrupt three core interests: ensuring the best educational programs for our students, serving the community, and contributing to the sound development of the law.

Law school proposal:

SCR 49.1(1) and SCR 49.1(4) should include faculty who teach on the clinical program or provide pro bono or court-appointed legal assistance. This captures the service component of current SCR 72.3, which is slated for repeal. One faculty member, Dr. David Orentlicher, has applied for admission under SCR 72.3 in order to do service beneficial to his teaching and scholarship. Importantly, no other portion of the limited practice rule allows court-appointed work, which occurs in criminal cases, or pro bono service that is unaffiliated with a legal services provider. This proposal would allow law faculty to provide pro bono assistance for cases that a legal services provider would not take, for example, in environmental, health law, or securities cases.

Suggested text:

1. *Eligibility*
 - (a) Employed by the William S. Boyd School of Law and teaches in the clinical law program **or provides pro bono or court-appointed assistance to clients;**

4. *Limited Practice*

- (e) ... All pleadings signed by an attorney admitted to practice under this rule, except those certified to practice under Rule 49.1(1)(h), shall bear the name and address of the employer **or if teaching in a clinical law program at the William S. Boyd School of Law, the name of clinical law program.**

Law school proposal:

The MPRE and fee waivers granted to legal services providers and emeritus pro bono lawyers should also apply to law school faculty providing pro bono or court-appointed legal assistance.

Suggested text:

Add "(a)" to the following portion of SCR 49.1(2)(e) and (3)(c):

2. *Requirements* (e) Have taken the Multi-state Professional Responsibility Exam and obtained a scaled score of at least 85 on the exam not earlier than three years preceding the filing of an application under this Rule, excepting those applying for certification under Rule 49.1(a), (e) and (f): and
3. *Application*.
(c) A non-refundable application fee, equivalent to the fee charged pursuant to Rule 54(2).....There shall be no application fee for attorneys admitted under Rule 49.1(1)(a), (e) and (f).

Granting the fee and MPRE waiver to law school faculty engaged in service work is consistent with the waivers granted to legal services providers and will support access to justice. The legal services the law school provides in Nevada are critical. Nevada, like the rest of the United States, has an acute "justice gap": a recent study commissioned by this Court's Access to Justice Commission reported that 76% of Nevadans' legal needs are unmet. The law school is committed to improving access to counsel in civil and criminal matters and participates in numerous related efforts, including our clinical work, Community Service Program, representation in the Nevada Right to Counsel Commission and this Court's Access to Justice Commission.

Both these proposed amendments also support the law school's ability to create, sustain, and staff clinical opportunities for law students that are essential to the law school's educational mission. Clinical educational offerings are one of the many ways in which the law school serves our community, attracts top students, trains them for practice, and recruits faculty. In the Thomas & Mack Legal Clinic, faculty members supervise law students in practicing law through live client representation, for example, in the Appellate, Federal Income Tax, Immigration, Investor Protection, and Misdemeanor Clinics, and mediation, in the Mediation Clinic. "Directed Clinical Practice" also affords students opportunities to engage in law practice projects under faculty supervision.

Absent the fee and MPRE waivers for law faculty, the proposed rule would impede the law school's ability to offer timely and important clinical practice opportunities for students. For example, in fall 2018, Professor Bret Birdsong, a natural resources and water law expert, worked with law students on an amicus brief to the Nevada Supreme Court on the public trust doctrine, a first impression issue of statewide and national importance. Within the fall semester, Professor Birdsong gained certification under current SCR 49.1, enrolled four students in his Directed Clinical Practice course, and submitted the amicus brief. Under the proposed SCR 49.1, this opportunity would have been impossible because Professor Birdsong would have been required to retake the MPRE, which is only offered three times annually. Being able to offer such timely opportunities to students to address legal issues as they arise is essential to the law school's educational and service missions.

Without the fee and MPRE waivers, the proposed rule will make it more difficult to recruit top candidates to lead and teach in our clinics. As a rule, faculty and even short-term legal fellows are recruited through national searches. Currently, three attorneys who teach in the clinic are fully barred and seven attorneys are admitted to limited clinical practice under Rule 49.1. Requiring faculty to take the MPRE will impede clinic hiring, limit clinical opportunities for students, and hurt clinic clients. Because these requirements are not imposed on law faculty in most other states, they may cause us to lose out on top talent. And because the MPRE testing takes time, the delays may impair our ability to efficiently replace faculty and fellows and may lead to students losing opportunities if a clinic cannot be offered for a semester or year while newly hired faculty are obtaining certification. Finally, it will impair our ability to respond rapidly to changing community needs by quickly hiring specialists and may result in a gap in representation to clients during a prolonged staff vacancy.

Two recent examples help illustrate these points. In 2016 Professor Ben Edwards was recruited to teach business and securities courses and to start an Investor Protection Clinic. Because he was certified under current SCR 49.1, Professor Edwards was able to get his clinic up and running in his first year of teaching. Attorney Laura Barrera, a fellow in the Immigration Clinic, was hired in a national search to fill a grant-funded vacancy in the Immigration Clinic that occurred in the middle of the academic year. It was critical for this position that the new attorney had the requisite immigration expertise and could begin practicing immediately in order to serve existing clients. Under the current rule, Ms. Barrera was able to begin practicing on her first day. After serving for two years, Ms. Barrera recently announced her departure this month, which means that the clinic may face the same situation in hiring her replacement. The fee and MPRE waivers, plus the temporary character and fitness certification under SCR 49.1(6), will ensure that our legal clinics can recruit staff and faculty with minimal disruption to our students and clients.

Finally, the inclusion of non-clinical law school faculty in SCR49.1(1) and (4) are essential to ensuring that law faculty can serve the community and advance the law in Nevada. The repeal of SCR 72.3 may appear to be an insignificant change because no faculty are currently licensed under this rule, but the law school is aware that one faculty member, Dr. David Orentlicher, J.D./M.D., who directs the UNLV Health Law Program, is currently applying for admission under SCR 72.3. Dr. Orentlicher believes that limited practice will enhance his service, teaching and scholarship without requiring him to teach a law clinic.

The suggested amendment to SCR 49.1(1), contained in ADKT 538, preserves the portion of SCR 72.3 that allows faculty to engage limited practice, including unlimited pro bono or court-appointed work. Only some of this work would be covered under the proposed 49.1. Proposed SCR 49.1(1)(a) restricts practice to clinical teaching. Rule 49.1(1)(f) only permits pro bono civil work for attorneys "associated with an organized legal services provider ... [that] provides legal assistance to indigents in civil matters." Proposed 49.1 does not allow limited practice for court-appointed work, for pro bono civil matters not "associated" with a legal aid provider, such as environmental, securities, or health law matters, or in criminal matters. All of these are areas of unmet need in this community. Proposed Rule 49.1(1)(a) also is limited to clinical teaching, which is not always feasible or desirable. If adopted, the proposed rule may eliminate valuable service by faculty who are neither fully barred nor teaching in a clinical setting.

The law school is deeply committed to educating its students, improving the law, and serving the legal needs of this community. Waiving the application fee and MPRE requirement for law school faculty will encourage faculty to provide pro bono and court-appointed legal assistance, whether with students or on their own. Encouraging pro bono work has been a core goal of this Court and its Access to Justice Commission. For the reasons explained, the law school urges this Court to adopt the suggested amendments to SCR 49.1 contained in ADKT 538.

Sincerely,



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