

STATE BAR OF NEVADA



November 17, 2017

FILED

NOV 20 2017

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

Re: Supplemental Amendment to ADKT 0444

Dear Chief Justice Cherry:

The public hearing regarding ADKT 444 (SCR111 Criminal Conviction) was held on Monday, November 6, 2017. As a result of questions and comments from the Court, and at the Court's request, we have rewritten parts of our proposed changes.

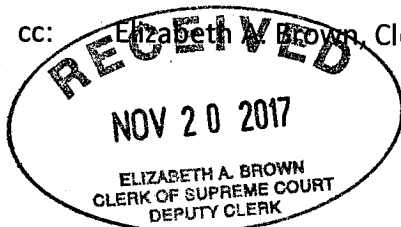
The Court expressed concern that the proposed changes went too far and substituted the State Bar's judgment for the Court's regarding whether a misdemeanor represented a crime which reflects adversely upon the attorney's fitness to practice law. Since the original intent of the changes was to eliminate the automatic reporting of first time DUI offenses (which were repeatedly declined for discipline by the Court) the rule was rewritten to remove that specific offense from the reporting requirement, but retained discretion regarding all other misdemeanors to the Court by not removing paragraph nine (9) as previously proposed. The changes to paragraph six (6) remain in place as originally recommended based on positive feed-back from the Court. These changes are reflected in the attached SCR 111 amendment.

On behalf of the Board of Governors, I thank the Court for the opportunity to bring these petitions forward for your consideration. I am available to provide further information to the Court as requested.

Respectfully,

Kimberly K. Farmer
Executive Director

cc: Elizabeth A. Brown, Clerk of Court, Nevada Supreme Court



17-40009

Proposed Amendment to Supreme Court Rule 111

Rule 111. Attorneys convicted of crimes.

1. **"Conviction" defined.** For purposes of this rule, in addition to a final judgment of conviction, a "conviction" shall include a plea of guilty or nolo contendere, a plea under *North Carolina v. Alford*, 400 U.S. 25 (1970), or a guilty verdict following either a bench or a jury trial, regardless of whether a sentence is suspended or deferred or whether a final judgment of conviction has been entered, and regardless of any pending appeals.

2. **Duty to inform bar counsel.** Upon being convicted of a crime by a court of competent jurisdiction, other than a misdemeanor traffic violation not involving the use of alcohol or a controlled substance, an attorney subject to these rules shall inform bar counsel within 30 days.

3. **Court clerks to transmit proof of conviction.** The clerk of any court in this state in which an attorney is convicted of a crime, other than a misdemeanor traffic violation not involving the use of alcohol or a controlled substance, shall transmit a certified copy of proof of the conviction to the supreme court and bar counsel within 10 days after its entry.

4. **Bar counsel's responsibility.** Upon being advised that an attorney subject to the disciplinary jurisdiction of the supreme court has been convicted of a crime, other than a misdemeanor traffic violation ~~[not involving the use of alcohol or a controlled substance]~~ or a first time conviction for a misdemeanor traffic violation involving alcohol or controlled substances, bar counsel shall obtain a certified copy of proof of the conviction and shall file a petition with the supreme court, attaching the certified copy. Upon being advised that an attorney subject to the disciplinary jurisdiction of the supreme court has been convicted of a misdemeanor involving the use of alcohol or a controlled substance and the offense is not the attorney's first such offense, bar counsel shall investigate and present the matter to the appropriate panel of the disciplinary board prior to the filing of the petition. The petition shall be accompanied by the panel's recommendation regarding the appropriate disciplinary action, if any, to be imposed under these or any other rules of the supreme court that pertain to the conduct of attorneys.

5. **Certified document conclusive.** A certified copy of proof of a conviction is conclusive evidence of the commission of the crime stated in it in any disciplinary proceeding instituted against an attorney based on the conviction.

6. **Definition of "serious crime."** The term "serious crime" means (1) a felony and (2) any crime less than a felony ~~[a necessary element of which is, as determined by the statutory or common law definition of the crime,]~~ which adversely reflects on the attorney's fitness to practice law, or involves ~~[involving]~~ improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file an income tax return, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

7. **Suspension on certification.** Upon the filing with the supreme court of a petition with a certified copy of proof of the conviction, demonstrating that an attorney has been convicted of a serious crime, the court shall enter an order suspending the attorney, regardless of the pendency of an appeal, pending final disposition of a disciplinary proceeding, which shall be commenced by the appropriate disciplinary board upon referral by the supreme court. For good cause, the court may set aside its order suspending the attorney from the practice of law.

8. **Referral to disciplinary board.** Upon receipt of a petition filed under subsection 4 of this rule, demonstrating that an attorney has been convicted of a serious crime, the supreme court shall, in addition to suspending the attorney in accordance with the provisions of subsection 7 of this rule, refer the matter to the appropriate disciplinary board for the institution of a formal hearing before a hearing panel in which the sole issue to be determined shall be the extent of the discipline to be imposed. The panel may, for good cause, postpone the proceeding until all appeals from the conviction have been concluded.

9. **Conviction for other than a serious crime.** Upon receipt of a petition demonstrating that an attorney has been convicted of a crime which is not a serious crime, the supreme court may refer the matter to the appropriate disciplinary board for any action it may deem warranted under these or any other rules of the supreme court that pertain to the conduct of attorneys, provided, however, that the supreme court may decline to refer a conviction for a minor offense to the board. If the conviction adversely reflects on the attorney's fitness to practice law, the supreme court may issue an order to show cause, requiring the attorney to demonstrate why an immediate temporary suspension should not be imposed.

10. **Reinstatement.** An attorney suspended under the provisions of subsection 7 or 9 of this rule may be reinstated by filing a certificate with the supreme court demonstrating that the underlying conviction has been reversed, but reinstatement will not terminate any formal proceeding pending against the attorney, the disposition of which shall be determined by the hearing panel on the basis of the available evidence.

11. **Conviction of attorney who is prohibited from practicing.** If an attorney convicted of a crime is at that time prohibited from practicing due to a disciplinary suspension or transfer to disability inactive status under Rule 117, then the petition filed under subsection 7 or 9 of this rule shall state that the attorney is prohibited from practicing and under what provision. If the attorney has been suspended as discipline, then the petition shall indicate the suspension's length and whether the attorney must file a reinstatement petition under Rule 116 to regain active status. The supreme court shall then enter an appropriate order directing how the conviction shall be addressed.