

STATE BAR OF NEVADA

November 20, 2012

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

RE: ADKT 0478: Supplement to the Court

Dear Chief Justice Cherry:

Thank you for providing the State Bar of Nevada the opportunity to present ADKT 0478 to the Court and receive the Court's valuable insight during the public hearing on November 5, 2012. Per the Court's instruction, the bar is submitting the attached supplemental response.

The supplement is divided into six sections that address the concerns raised by the Court:

1. Standards for CLE/Learning Objectives
2. Efficacy/Use of Resources
3. Reporting/Immunity
4. Annual Credit
5. CLE Programs Available
6. CLE Requirements by State

On behalf of the Board of Governors, thank you again for your consideration. I am available to provide further information to the Court as requested.

Respectfully,



Kimberly K. Farmer
Executive Director

cc: Francis C. Flaherty, President
Tracie Lindeman

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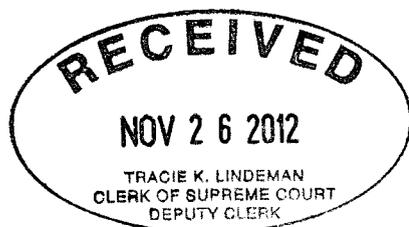
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BY *[Signature]*
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12-37227

Standards for CLE/Learning Objectives

Efficacy/Use of Resources

Reporting/Immunity

Annual Credit

CLE Programs Available

CLE Requirements by State

The State Bar of Nevada ("State Bar") recognizes that the ultimate authority for approving continuing legal education (CLE) courses for credit lies with the Nevada Board of Continuing Legal Education ("CLE Board") in accordance with the regulations set forth by the CLE Board. However, in keeping with the goals enumerated in ADKT 0478, the State Bar has developed specific standards related to the content that should be present in order for an individual CLE course to fulfill the one (1) hour of CLE required in substance abuse, addictive disorders and/or mental health issues that impair professional competence.

The State Bar will follow these guidelines when developing programs. Other CLE providers should use these guidelines when developing seminars that will fall under the substance abuse, addiction disorders and/or mental health issues CLE.

Standard Content:

Each CLE course offered should include the following elements:

- ✓ How to recognize the signs and symptoms of abuse, addiction and/or mental health issues;
- ✓ Where to refer a colleague in need of assistance;
- ✓ Resources available for evaluation, treatment and/or support; and
- ✓ How to make a good faith report to the Lawyers Concerned for Lawyers Program or to the State Bar of Nevada as defined in SCR 106.5, including immunity from civil liability for making a report.

Elective Content:

Additionally, the State Bar recommends that each CLE course offered include at least three of the elements listed below:

- ✓ Definition of abuse vs. addiction;
- ✓ Effects of abuse, addiction and/or mental health issues on the profession;
- ✓ Effects of abuse, addiction and/or mental health on an attorney's personal or family life;
- ✓ Demonstrated effects of abuse, addiction, and/or mental health disorders on decision-making;
- ✓ Examples of why an attorney may cross ethical lines in order to support and/or hide an abuse, addiction and/or mental health issue;
- ✓ Criminal and/or professional ramifications associated with abuse, addiction and/or mental health issues;
- ✓ Coping (preventative) mechanisms to deal with stress, anxiety and other factors leading or contributing to abuse, addiction and/or mental health disorders;
- ✓ The clinical effects of combining prescription drugs or mixing drugs and alcohol;
- ✓ Stigmas associated with abuse, addiction and/or mental health disorders;
- ✓ Self-reporting to enter a diversion program; and
- ✓ Confidentiality of reporting (self or colleague).

CLE Tracks:

Courses may be offered in general tracks, more specifically by substance, addiction or disorder, or in combination as co-occurring disorders. Illustrative examples of how these tracks can be offered generally, specifically or in combination are as follows:

General Tracks (using the mandatory and elective elements defined above):

- (1) Substance Abuse/Addiction
- (2) Addictive Disorders
- (3) Mental Health

Specific Tracks (using the mandatory and elective elements defined above):

- (1) Substance Abuse/Addiction - Examples include, but are not limited to:
 - a. Alcohol
 - b. "Street" Drugs (i.e. methamphetamines, crack/cocaine, heroin, etc.)
 - c. Prescription drugs
- (2) Addictive Disorders - Examples include, but are not limited to:
 - a. Gambling
 - b. Sexual addictions
 - c. Compulsive eating
- (3) Mental Health - Examples include, but are not limited to:
 - a. Stress/Anxiety
 - b. Depression
 - c. Bi-polar disorder

Combination Tracks (using the mandatory and elective elements defined above) - Examples include, but are not limited to:

- (1) Relationship between alcohol use/abuse and gambling addiction.
- (2) Attempts to "treat" or self-medicate depression or bi-polar disorders with street drugs or alcohol.
- (3) How abuse can lead to addiction and why those with co-occurring mental health conditions need prompt intervention and treatment.

Multi-Dimensional Approach

The issues of abuse, addiction and mental health – and the consequences of those issues on the profession are outlined in ADKT 0478. Bringing these issues into focus requires a multi-dimensional approach, of which education is a major component.

For example, the State Bar of Nevada recognizes the need for change and is developing plans to:

- Devote additional resources to the diversion program outlined in SCR 105.5;
- Enhance the existing LCL program with additional funding, publicizing the program's existence and network of volunteers, and making more therapy resources available;
- Researching the possibility of offering a member benefit similar to the Employee Assistance Plan (EAP) currently available to State Bar staff, which provides limited therapy sessions at no cost; and
- Enhancing the Transitioning into Practice (TIP) program to provide additional mentor resources, such as online videos, about the importance of recognizing early the signs and symptoms of abuse, addiction and mental health disorders in the profession.

This is not a “chicken or the egg” situation, requiring one option to be implemented first, but rather a holistic and comprehensive approach from all sides of a complex issue. Mandated continuing legal education that specifically addresses the issue of abuse, addiction and mental health disorders is one of the simplest and most cost effective delivery mechanisms to reach a large audience at once.

Efficacy of CLE

There is also evidence to suggest a connection between education and lawyers seeking assistance for abuse, addiction and/or mental health issues. The attached study provided by the Pennsylvania State Bar suggests a direct correlation between the number of educational programs offered and the number of cases received by the Pennsylvania Helpline. This data, collected between 1990 and 2005, shows a steady upward trend in the number of educational courses offered each year and a corresponding steady upward trend in the Helpline activity, including access to self-help books.

Other states with required CLE in abuse, addiction and/or mental health have reported similar information. For example:

- Ohio receives 30% of its lawyer assistance program referrals from CLE presentations.
- Florida stated that adoption of the mandatory substance abuse/mental health CLE rule substantially raised its lawyer assistance program profile, sent the message that the Bar took these issues seriously, removed a great deal of the stigma associated with these conditions, and dramatically increased calls for presentations.
- Montana made a Substance Abuse/Mental Illness (SAMI) CLE mandatory at the same time it started its lawyer assistance program. In a recent survey conducted of state bar members, there was nearly 97% awareness among members of the program. Montana also estimates that 3% of its lawyer assistance program referrals come from CLEs on the subject. Some lawyers call

immediately following the CLE program and others have stated "I heard you speak a couple of years ago...."

Resources

Furthermore, the resources required to implement this Rule change are minimal. For years, the State Bar of Nevada, in addition to county bars, private CLE vendors and various legal organizations, have put on CLEs dedicated to this topic. However, as one justice and LCL Coordinator Coe Swobe stated during the public hearing period, those who need to take these courses typically pass on the opportunity. Simply put, past CLEs on substance abuse have "preached to the choir." The Rule amendment is intended reach beyond the "choir" and address an attorney who needs help and educate his or her colleagues about how to recognize that fact.

Representatives from the LCL Program have attended Bar (and other entity) sponsored CLEs in the past and have committed to doing so in the future. These representatives make a point of staying after the CLE is over to address questions and discretely assist attorneys who approach them for help.

The Connection Between Education and Helpline Activity

Education

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Programs	4	9	114	150	75	105	113	165	170	238	180	194	182	216	234	261
Attendance	100	315	9018	11996	2621	4193	4724	4729	5290	8446	6047	6736	5779	7322	8824	7328

Helpline Cases

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
New Cases	33	46	91	70	161	160	164	218	165	185	252	272	212	243	240	230
Self-help Books	-	-	-	-	-	-	-	-	176	350	113	151	158	115	86	73
Total	33	46	91	70	161	160	164	218	341	535	365	423	370	358	326	303

Study provided by the Pennsylvania Bar Association Lawyers Concerned for Lawyers Program

Supreme Court Rule 106.5 establishes the Lawyers Concerned for Lawyers program and sets forth provisions to hold attorneys immune from civil liability for making a good faith report to the program. Specifically, SCR 106.5(2) states:

Individuals who make a good faith report to the Lawyers Concerned for Lawyers program, the Board of Governors and its members, bar counsel, and staff, and the coordinator, agents, or employees of the Lawyers Concerned for Lawyers program, shall be absolutely immune from civil liability for any activities related to the Lawyers Concerned for Lawyers program, including, but not limited to, making referrals to a counselor, therapist, medical, psychological or behavioral health care provider. No action may be predicated upon the filing of a good faith report with the Lawyers Concerned for Lawyers program or any action taken in connection with such a filing by the coordinator, agents, or employees of the Lawyers Concerned for Lawyers program.

Supreme Court Rule 106.5(3) goes on to provide confidentiality to the program, including the initial report and any subsequent information provided to the program thereafter.

Furthermore, SCR 106 also provides privilege to all persons in the discipline process in the event that a report to bar counsel is made in connection to an ethical violation. Supreme Court Rule 106 states:

All participants in the discipline process, including grievants, bar counsel staff, members of disciplinary panels, diversion and mentoring participants, and witnesses, shall be absolutely immune from civil liability. No action may be predicated upon the filing of a disciplinary complaint or grievance or any action taken in connection with such a filing by any of the participants. Except than any disclosures made pursuant to Rule 121(16) shall not be immune under this rule.

The State Bar of Nevada is not aware of attorneys who have attempted (or threatened) to sue another attorney or client for making a report to bar counsel related to an allegation of abuse, addiction or mental health disorder.

The Bar understands that there may be a perception in the legal community about the consequences of reporting a fellow attorney to the program. Additionally, as stated in the ADKT, awareness about the Lawyers Concerned for Lawyers program is lacking. To address those issues, the Bar has made discussion of immunity for making a good faith report as one of the required elements for CLE credit that meets the amended Rule requirements (see Standards for CLE/Learning Objectives). Going forward, the State Bar of Nevada and the Board of Governors will continue to evaluate whether the current Rules adequately address whether the immunity rules should be expanded.

Pursuant to Supreme Court Rule 210(2)(b), attorneys may carry forward CLE credits that apply to their general and ethics credit requirements. However, as noted during the Court's public comment hearing on ADKT 0478, the Rule amendment calls for one CLE each year in abuse, addiction and mental health issues with no carry forward provision. The reasoning behind the proposed amendment is simple: this is a complex, ever-evolving and multifaceted issue that cannot be addressed during a single hour of CLE.

Furthermore, there is precedent for requiring CLE in abuse, addiction and mental health issues on an annual basis. Twelve states have specific substance abuse requirements related to abuse, addiction and/or mental health issues. Of those twelve states, only New Hampshire and Ohio provide for carryover of excess credits.

The State Bar recognizes the scope of the issue and has proposed a solution which, combined with the Bar's other efforts, seeks to comprehensively address the problem. The tracks outlined in the Standards for CLE/Learning Objectives document, show how CLEs in these issues can be presented in general, specific and combination. Also, allowing an attorney to complete, for example, three years' worth of CLE in this topic during a single three-hour CLE course could result in a lack of retention.

Continuing legal education pertaining to the issue of abuse, addiction and mental health is made available every year to State Bar members. In Nevada, CLE courses are provided by the State Bar, and by county and specialty bars, law firms, and private vendors.

Between 2011 and 2012, the Nevada Board of Continuing Education approved for credit at least 88 courses specifically related to abuse, addition and mental health for a total of 128 credits. The State Bar currently has three CLE seminars available in its catalog including:

- *Attorney, Heal Thyself 2011*
- *Prescription Drug Abuse in the Profession 2012*
- *Your Brain on Prescription Drugs 2011*

Furthermore, the State Bar plans to present at least seven such CLE seminars in 2013 (see page 3 below).

In addition to the courses offered by the State Bar and other CLE providers in Nevada, there is a wealth of CLE content that we can draw from other states. Examples of CLEs offered in other states, including the objectives of the CLEs include:

You are not alone! Substance Abuse, Addiction, and Mental Health Issues in the Legal Profession (North Carolina)

Substance abuse and debilitating mental health conditions are the most troubling and sensitive problems in the legal profession today. The daily stressors and challenges of practicing law can trigger mental health disease, including depression and alcoholism. Join us for an hour-long presentation by two lawyers who have successfully dealt with these challenges. They will share their stories and identify the warning signs of these conditions and the resources that are available for intervention and treatment. This seminar promises to arm you with the information you need to help yourself or a friend and possibly save a career, or more importantly, a life.

Stress, Mental Health and Addiction in the Legal Community (California)

Most lawyers know that hard work is an essential ingredient to success and that stress is a prime motivator to work hard. However, it is generally accepted that too much stress over too long a period of time leads to job dissatisfaction and burnout. Chronic stress can also open the door to depression, substance abuse, and other illnesses. These illnesses contribute to legal malpractice, professional misconduct and attorney discipline. The good news is that stress can be managed and, in doing so, improve the quality of life of a lawyer. Learn:

- *The causal factors of stress and the warning signs of distress;*
- *The emotional and cognitive booby traps that trigger stress and anxiety;*
- *Long term strategies to reduce stress and anxiety; and*
- *Basic tips and quick fixes to address stressful situations.*

The Ethics of Mental Health (Michigan)

In The Ethics of Mental Health, Southlake lawyer Michael Eaton, a longtime volunteer with the Texas Lawyer's Assistance Program and Lawyers Concerned for Lawyers, describes a number of common mental health issues that give rise to ethics issues and how to address them.

In addition to the courses listed above, other local and state bars throughout the country have additional CLEs addressing abuse, addiction and mental health issues including:

- Legal Ethics and Substance Abuse for the Iowa Practitioner (Iowa)
- Jerry Braun: A Definition of Alcoholism (California)
- Substance Abuse - Detection and Prevention (California)
- Discussion on Substance Abuse with Orndoff, Heiting and Dorst (California)
- Substance Abuse in the Legal Profession: Prevention, Detection, and Treatment by David Mann (California)
- Substance Abuse Detection and Prevention, A Latino Perspective (California)
- Prevention Detection and Treatment of Substance Abuse: Eli G. (California)
- Prevention Detection and Treatment of Substance Abuse: The Beginning of the Other Bar by Ted C. and Eli G. (California)
- The Addiction Process – Recognizing the Signs and Symptoms in the Workplace (Arizona)
- Substance Abuse & Attorneys: Recognition, Understanding, and Intervention (Illinois)
- Chronic Stress, Mental Health and Addiction (Minnesota)
- Substance Abuse and Other Addictions in the Legal Profession (New Mexico)
- "I'm Not an Alcoholic – Why am I Here?" (Ohio)
- Anxiety, Depression & Addiction – the Unholy Trinity for Lawyers (Kentucky)
- Beating the Odds: Substance Abuse and Mental Health Awareness for Lawyers (North Carolina)
- Getting a Winning Verdict in Your Personal Life (North Carolina)
- Why I Do Me Like I Do (North Carolina)

2013 State Bar of Nevada CLE Calendar**Abuse, Addiction & Mental Health**

- January 2013:** *Nevada Lawyer* article for credit
Dr. Levy - CONFIRMED
- Women in the Law Conference - How to Recognize and Assist Lawyers Suffering from Substance Abuse, Addiction & Depression*
Kristine Kuzemka & Janet Pancoast - CONFIRMED
Live (Las Vegas)
- February 2013:** *The Disease of Addiction*
Dr. Mel Pohl - CONFIRMED
Live (Las Vegas & Reno)
- July 2013:** *Addiction in the Profession*
Dr. Michel Sucher - CONFIRMED
General Session – Annual Meeting (Lake Tahoe)
- October 2013:** *Lawyers Concerned for Lawyers – Real Life Stories of Abuse & Addiction*
Coe Swobe
Live (Las Vegas & Reno)
- November 2013:** *Gambling Addiction Issues*
TBD
- December 2013:** *Dangerous Pitfalls of the Profession – Recognizing the signs of addiction*
Webinar - TBD

On November 6, 2012, the State of Nevada Board of Continuing Legal Education (“CLE Board”) provided the Court with a report on MCLE requirements by state. The following chart supplements the CLE Board report by providing an overview of states with abuse, addiction and/or mental health issues as a part of required CLE topics and whether or not excess CLE in this topic can be carried forward to subsequent years.

Please note that ADKT 0478 identifies eight states with MCLE requirements related to abuse, addiction and/or mental health issues. The chart below identifies an additional four states, for a total of 12 jurisdictions which require CLE in abuse, addiction and/or mental health issues.

Jurisdiction	Credits Required (Annual Basis)	Abuse, addiction and/or mental health as part of CLE Rules	Carryover of CLE in abuse, addiction and/or mental health allowed?
Alabama	12		
Alaska	3		
Arizona	15	Yes	No
Arkansas	12		
California	8.3	Yes	No
Colorado	15		
Connecticut	0		
Delaware	24		
Florida	10	Yes	No
Georgia	12		
Hawaii	3		
Idaho	10		
Illinois	10	Yes	No
Indiana	36		
Iowa	15	Yes	No
Kansas	12		
Kentucky	12.5		
Louisiana	12.5		
Maine	11		
Maryland	0		
Massachusetts	0		
Michigan	0		
Minnesota	15		
Mississippi	12	Yes	No
Missouri	15		
Montana	15	Yes	No
Nebraska	10		
Nevada	12		
New Hampshire	12	Yes	Yes
New Jersey	12		
New Mexico	12		
New York	12		

Jurisdiction	Credits Required (Annual Basis)	Abuse, addiction and/or mental health as part of CLE Rules	Carryover of CLE in abuse, addiction and/or mental health allowed?
North Carolina	12	Yes	No
North Dakota	15		
Ohio	12	Yes	Yes
Oklahoma	12		
Oregon	15		
Pennsylvania	12		
Rhode Island	10		
South Carolina	14	Yes	No
South Dakota	0		
Tennessee	15		
Texas	15		
Utah	12		
Vermont	10		
Virginia	12		
Washington	15		
West Virginia	24	Yes	No
Wisconsin	15		
Wyoming	15		

The average number of MCLE requirements by state is 11.9, which places Nevada's 12 MCLE credits per year on par with the national average. However, it should be noted that five states have no MCLE credit requirements, which brings the overall average slightly down (the average number of MCLE credits per state, not including the five states without MCLE requirements, is 13.2 hours per year).