

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 IN THE MATTER OF AMENDMENTS TO SCR 210
3 REGARDING MINIMUM CONTINUING LEGAL EDUCATION
4 REQUIREMENTS AND MAKING MANDATORY CONTINUING
5 LEGAL EDUCATION IN SUBSTANCE ABUSE, ADDICTIVE
6 DISORDERS AND/OR MENTAL HEALTH ISSUES.

ADKT No. 0478

FILED

AUG 29 2013

TRAVIS K. UNDERMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

7 **MOTION FOR CLARIFICATION**

8 The State of Nevada Board of Continuing Legal Education (CLE Board)
9 hereby seeks clarification from the Supreme Court of Nevada regarding the recent
10 amendment to SCR 210 enacted in ADKT 478. The amendment requires that, of the
11 mandatory CLE hours that attorneys are required to complete, at least 1 hour every 3
12 years shall be exclusively in the area of substance abuse, addictive disorders and/or
13 mental health issues that impair professional competence.¹ *In re: Amendments to*

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16 ¹Specifically, as a result of the amendment, SCR 210(2) now reads as follows:

17 **2. Credit hours.**

18 (a) Subject to the carry forward provisions of subparagraph (b), a minimum
19 of twelve (12) hours of accredited educational activity, as defined by the regulations
20 adopted by the board, must be completed by December 31 of each year. Of the
21 twelve (12) hours, at least two (2) shall be exclusively in the area of ethics and
22 professional conduct. At least one (1) hour every three (3) years shall be
23 exclusively in the area of substance abuse, addictive disorders and/or mental health
24 issues that impair professional competence.

25 (b) Any attorney subject to these rules who completes more than twelve (12)
26 hours of accredited educational activity in any calendar year may carry forward up
27 to two twenty (20) hours of excess credit and apply the same to the attorney's general
28 educational requirement for the next two (2) calendar years. Likewise, any attorney
29 subject to these rules who completes more than two (2) hours of ethics and
30 professional conduct credit in any calendar year may carry forward up to four (4)
31 hours of excess credit and apply the same to the attorney's ethics and professional
32 conduct educational requirement for the next two (2) calendar years.

33 SCR 210(2) (emphasis added). For ease of reference, this will be referred to as the
34 "substance abuse" CLE requirement.

13-25573

1 *SCR 210 re: CLE Requirements*, ADKT No. 478 (Order Amending Supreme Court
2 Rule 210, January 10, 2013). The amendment became effective 30 days from the
3 court's January 10, 2013, order amending the rule. *Id.*

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5 Implementation of the rule amendment has resulted in confusion, for several
6 reasons. One area of confusion has to do with the 1-hour-every-3-years
7 requirement. This is the first time Nevada has implemented a CLE requirement that
8 is not an annual requirement. Although some states have multi-year reporting
9 periods with multi-year CLE requirements,² and some states have annual reporting
10 periods with annual CLE requirements,³ because of this recent rule amendment
11 Nevada is now one of only two jurisdictions to intermingle a non-annual, multi-year
12 substance abuse CLE requirement against an annual reporting period.⁴ Attempting
13 to implement the new multi-year substance abuse CLE requirement against the
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18 ²These states are typically ones with large attorney populations, such as California, which
19 has 178,924 active bar members. <http://members.calbar.ca.gov/search/demographics.aspx>
20 (last visited August 1, 2013). California attorneys are required to complete a total of 25
21 hours of CLE every 3 years, and are divided into 3 compliance groups which report in
22 alternating years during the 3-year cycle. <http://mcle.calbar.ca.gov/MCLE.aspx> (last
23 visited Aug. 1, 2013). By contrast, Nevada has just 8,472 active members.
24 <https://www.nvbar.org/sites/default/files/Annual%20Report%202012.pdf> (last visited Aug.
25 1, 2013).

26 ³These states are typically ones with smaller attorney populations, such as Kansas, which
27 has 10,600 active members. https://www.clereg.org/MCLE_Book/ViewBook.asp (last
28 visited Aug. 7, 2013). Kansas attorneys are required to complete a total of 12 hours of
CLE annually. <http://www.ksbar.org/?cle> (last visited Aug. 7, 2013).

⁴The other jurisdiction is South Carolina. S.C.App.Ct.Rule 408(a)(2)(amended Jan. 1, 2013).

1 existing annual reporting period/annual CLE requirements has proven to be an
2 administrative headache for CLE Board staff.

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4 The CLE Board is currently in the process of replacing its antiquated
5 computer system. Major upgrades include replacing all hardware, as well as the old
6 database used for tracking attorneys' CLE compliance. Even with the new system,
7 however, staff has been informed by the vendor in charge of the computer/database
8 upgrade (whose specialty is setting up databases for CLE regulators) that even a
9 new, state-of-the-art computer system cannot readily accommodate a multi-year
10 substance abuse CLE requirement superimposed upon an annual reporting period.
11 The reason for this is that there is little precedent to follow, because a similar CLE
12 scheme is rare in other jurisdictions: as noted, most other states either have an
13 annual reporting period with annual CLE requirements, or a multi-year reporting
14 period with multi-year CLE requirements, not a combination. As a consequence,
15 even with the installation of the new computer system (anticipated to happen this
16 fall), CLE Board staff will be required to manually track attorney compliance with
17 the new rule. With approximately 8,500 active Nevada lawyers to keep track of,
18 this is a daunting task. Implementation of a manual tracking system is inefficient, as
19 it runs contrary to the purpose for purchasing a new computer system, which is to
20 streamline office operations in tracking attorneys' CLE compliance. It also will
21 require an inordinate number of staff hours, possibly requiring the CLE Board to
22 hire additional staff.
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1 Another area of confusion has to do with when the new 1-hour-every-3-years
2 substance abuse requirement becomes effective. Because the Court's January 10,
3 2013, order amending the rule stated that it became effective 30 days from the date
4 of the order, CLE Board staff has interpreted the rule to mean that currently active
5 attorneys must earn a substance abuse CLE credit in 2013, and again in 2016, 2019,
6 2022, etc. The reasoning is that any other interpretation would effectively make the
7 rule *not* effective in 2013, which arguably appears contrary to the Court's order. By
8 contrast, however, some currently active attorneys have interpreted the rule to mean
9 that they have *up to* 3 years, beginning in 2013, to earn their first substance abuse
10 credit, and thus object to staff's interpretation. By this reasoning, such attorneys
11 could earn their substance abuse CLE credit any time in the years 2013, 2014, or
12 2015, to be in compliance with the new rule. And if a currently active attorney
13 earns it in 2014, he or she would have until the end of 2017 to complete it the next
14 time; similarly, if earned in 2015, he or she would have until 2018 to complete it
15 again; etc. So essentially, the debate revolves around when the 3-year clock starts
16 ticking: is it in the year 2013, or is it in the three-year range of 2013 to 2015?⁵

17 Additionally, some attorneys who promptly complied with the substance
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23 ⁵As noted previously, compliance with the new substance abuse CLE requirement will
24 have to be tracked manually. How tracking will be accomplished, however, will depend
25 on when the clock for active attorneys starts. Completion of the new database has thus
26 been deferred pending the Court's resolution of this issue.
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1 abuse CLE requirement and already completed it in 2013 have expressed concern
2 that if the rule is interpreted to not be effective until later, whether they will be
3 denied credit for 2013. They fear that they will effectively be “punished” for having
4 promptly complied with the rule.⁶ Others have wondered if it is the Court’s
5 intention to divide attorneys into compliance groups (as California has done), such
6 that a third would have to comply in one year, a third the following year, and a third
7 the year after that.
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10 Another area of confusion is that the new rule amendment is silent as to the
11 carry-forward requirement. Prior to the amendment, when Nevada had both an
12 annual reporting period and annual CLE requirements for all CLEs, the rules
13 allowed attorneys to carry forward up to two years’ worth of excess CLE credits. In
14 its original petition to the court seeking addition of substance abuse to the CLE
15 requirements, the State Bar had requested not only that the court implement an
16 annual 1-credit substance abuse requirement, but also that the substance abuse credit
17 be exempt from the carry-forward provisions. The State Bar’s petition contemplated
18 that the requirement would be an annual requirement: and its proposed rule
19 amendment specifically excluded the requirement from the rule’s carry-forward
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24 ⁶Similarly, what would become of an attorney who completed 36 hours of CLE (30 general
25 and 6 ethics credits, which, pursuant to SCR 210(2)(b) can be carried forward up to 2
26 years) in 2013 prior to the effective date of the amendment: would the amendment apply
27 retroactively to them, such that they would have to complete a 37th credit to be in
28 compliance?

1 provisions.⁷ The State Bar's proposal was that, unlike general or ethics credits (for
2 which excess credits can be carried forward up to two years), a single substance
3 abuse CLE credit would be required every single year. Thus, under the State Bar's
4 original proposal, if an attorney earned more than one hour of substance abuse CLE
5 in a year, presumably it could have carried over as a general or ethics credit, but not
6 as a substance abuse CLE credit. In enacting the 1-hour-every-3-years requirement,
7 the court appears to have rejected the State Bar's proposed annual requirement.
8 What is not as clear, however, is what the court's intentions were vis-à-vis the carry-
9 forward requirement.
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13 ⁷The petition proposed to amend SCR 210(2) as follows:

14 **2. Credit hours.**

15 (a) Subject to the carry forward provisions of subparagraph (b), a
16 minimum of twelve (12) hours of accredited educational activity, as defined
17 by the regulations adopted by the board, must be completed by December 31
18 of each year. Of the twelve (12) hours, at least two (2) shall be exclusively
19 in the area of ethics and professional conduct and one (1) shall be
20 exclusively in the area of substance abuse, addictive disorders and/or mental
21 health issues that impair professional competence.

22 (b) Any attorney subject to these rules who completes more than
23 twelve (12) hours of accredited educational activity in any calendar year may
24 carry forward up to twenty (20) hours of excess credit and apply the same to
25 the attorney's general educational requirement for the next two (2) calendar
26 years. Likewise, any attorney subject to these rules who completes more
27 than two (2) hours of ethics and professional conduct credit in any calendar
28 year may carry forward up to four (4) hours of excess credit and apply the
same to the attorney's ethics and professional conduct educational
requirement for the next two (2) calendar years. An attorney subject to these
rules may not carry forward excess credits which fulfill the one (1) credit
hour required in the area of substance abuse, addictive disorders and/or
mental health issues that impair professional competence.

In re: Amendments to SCR 210 re: CLE Requirements, ADKT No. 478 (Petition filed
Aug. 29, 2012) at 2.

1 A further area of confusion has to do with what type of credit the substance
2 abuse requirement qualifies for, general or ethics, because the amendment is silent
3 in this regard. However, under existing CLE Board Regulations, “[t]he prevention,
4 detection, and treatment of substance abuse” qualifies as ethics and professional
5 conduct under SCR 210(2)(a). CLE Board Regulation 19(1)(j). Some have
6 questioned whether the Court intended the new substance abuse CLE requirement to
7 be (1) a substitute for, or (2) in addition to, the existing requirement that attorneys
8 complete 2 hours of ethics annually.
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12 Another area in need of clarification is how the new substance abuse rule
13 applies to new admittees. Currently, new admittees are exempt from CLE
14 requirements in the year they are admitted, plus the first full calendar year
15 thereafter. SCR 214(1)(a). Thus, a question has arisen, does the 3-year period begin
16 to run at the time of their admission? Or at the time their exemption from CLE
17 expires? Depending on their date of admission and the court’s interpretation of the
18 effective-date issue, new admittees could be given from as little as just over 1 year,
19 to nearly 5 years, from the time of their admission to complete their first substance
20 abuse CLE requirement. Thus, the Court’s intention regarding new admittees needs
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1 to be made clearer.⁸

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3 Because of the confusion involved, CLE Board staff had suggested allowing
4 attorneys until the end of 2014 to earn their first substance abuse CLE without
5 penalty. Such a "soft" start would also permit the CLE Board additional time to
6 implement a tracking system, because with the existing computer system it is not
7 possible to differentiate the substance abuse CLE requirement. It is anticipated that
8 the new database will be in place by 2014 and, pending the Court's response to this
9 motion, fully operational prior to the 2015 compliance year. This means that while
10 the new substance abuse requirement would be given a "soft" start initially, as of
11 2016 it could be tracked as a separate requirement.

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13 However, it is not clear whether, or which of, the interpretations stated above
14 are consistent with (or a correct interpretation of) the new rule. Clarification is
15 therefore needed, to understand the Court's intentions and to confirm which of the
16 various interpretations are correct.

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20 CONCLUSION:

21 The CLE Board is tasked with facilitating compliance with and making
22 recommendations to the Nevada Supreme Court concerning the Court's rules
23 pertaining to CLE. SCR 208(6), (8). However, additional guidance is needed in
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25 ⁸Similarly, a question arises as to when the clock starts running to complete the new
26 substance abuse CLE requirement for attorneys who transfer from inactive to active status:
27 date of transfer, calendar year of transfer, or first full calendar year following transfer?
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1 order to carry out the task of facilitating compliance with the new substance abuse
2 CLE requirement.
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4 The intent and purpose of the rule amendment are laudable, as there is
5 evidently a need for attorney education and awareness surrounding issues pertaining
6 to substance abuse, addictive disorders, and mental health issues that impair
7 professional competence. However, administration and enforcement of the new rule
8 have proven to be a difficult task.
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10 As can be seen from the above discussion, the CLE Board and staff are in
11 need of clarification and guidance in completing their charged task of enforcement
12 and administration of the new substance abuse CLE requirement. Imposition of a
13 multi-year substance abuse CLE requirement against an otherwise annual CLE
14 earning-and-reporting scheme has led to multiple aspects of confusion and conflict
15 regarding its interpretation and implementation. It is therefore requested that the
16 court advise the CLE Board as to the correct interpretation of the new rule and to
17 provide clarification and guidance regarding the correct implementation and
18 administration of the new rule.
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23 Respectfully submitted this 22nd day of August, 2013.

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CERTIFICATE OF MAILING

I hereby certify that I deposited for mailing a true and correct copy of
the attached Motion for Clarification, postage pre-paid, addressed to:

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Dated this 27 day of August, 2013.

Signed:



Laura Bogden, Employee of the CLE Board