

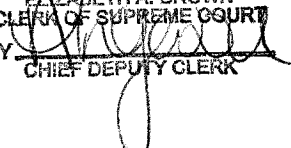
IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ADKT 0478

FILED

MAY 05 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER

WHEREAS, on February 2, 2016, the Board of Governors of the State Bar of Nevada filed a petition in this court seeking the amendment of Supreme Court Rule 210 to require continuing legal education (CLE) in the area of substance abuse, addictive disorders and/or mental health issues on an annual basis; and

WHEREAS, on June 6, 2016, this court held public hearing on the petition, after which this court entered an order on December 27, 2016, directing the CLE Committee of the State Bar and the Nevada CLE Board to formulate a curriculum specifically designed to assist attorneys in recognizing the symptoms of substance abuse, addictive disorders and/or mental health and the steps to be taken in reporting or assisting attorneys with those issues; and

WHEREAS, the Board of Governors filed an amended petition on June 21, 2016, seeking to amend Supreme Court Rule 210 to (1) increase the total number of CLE hours required annually from twelve to thirteen, to include ten hours of general education, two hours of ethics, and one hour in the area of substance abuse, addictive disorders and/or

mental health; (2) require any CLE obtained in the area of substance abuse, addictive disorders and/or mental health to be earned annually, with no carry forward provision; and (3) eliminate the current provision to apply excess substance abuse, addictive disorders and/or mental health credits to any attorney's annual ethics and professional conduct requirement; and

WHEREAS, as directed by this court's December 27, 2016, order, the State Bar, in cooperation with the CLE Board, submitted on March 1, 2017, a proposed CLE curriculum for instruction in the area of substance abuse, addictive disorders and/or mental health, a proposed core curriculum outline for that area of CLE instruction, and proposed amendments to the Nevada MCLE Board regulations; accordingly,

IT IS HEREBY ORDERED that the court approves the amendments proposed in the June 21, 2016, amended petition except the restriction against carry forward credits taken for the substance abuse, addictive disorders, and/or mental health requirement. Therefore, Supreme Court Rule 210 shall be amended and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that this court approves the proposed CLE curriculum for instruction in the area of substance abuse, addictive disorders and/or mental health and the proposed core curriculum outline for CLE instruction in those areas as set forth in Exhibit B and directs the State Bar and CLE Board to provide a CLE curriculum consistent with the programs and outline filed with this court on March 1, 2017.

IT IS FURTHER ORDERED that the CLE Board is directed to initiate regulations consistent with those set forth in Exhibit C.

IT IS FURTHER ORDERED that the amendments to the Supreme Court Rule 210 shall be effective on January 1, 2018. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rules.

Dated this 5th day of May, 2017

Cherry, C.J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

PICKERING, J., dissenting:

Studies suggest that 20% of lawyers suffer from alcoholism or other addiction. This quintile of the bar accounts for more than 50% of the

court's bar discipline docket. These numbers, and the human and professional cost they represent, led me four years ago to approve amending SCR 210 to require one hour of continuing legal education (CLE) every three years on addiction and mental health issues. Directing that one out of the total 36 CLE hours required over a three-year period address these subjects seemed a modest imposition on the members of the bar if doing so accomplished this: ensuring all lawyers know about the help available free of charge through the Nevada Lawyers' Assistance Program and the separate and entirely confidential Lawyers Concerned for Lawyers program.

Today's amendment to SCR 210 goes significantly further. It raises the number of mandatory CLE hours from 12 to 13 hours per year and specifies that the additional hour address addiction, substance abuse, or mental health.¹ The cost of this increase to the 5,083 bar members who are subject to Nevada's mandatory CLE requirements has not been calculated, or even acknowledged. Assuming a cost of \$175 per hour for time not working and \$25 per hour for tuition, both low estimates, we are looking at over \$1 million in added annual expense. For that, I would expect evidence showing the efficacy of mandatory annual CLE on these issues for 100% of the bar, as opposed to more intensive measures targeting the 20% of the bar that is afflicted with them. Yet, there appear to be no peer-reviewed studies that examine the impact of MCLE classes on attorney alcoholism or substance abuse rates. And, while 18 states allow CLE credit for education on substance abuse and mental health

¹I recognize the amendment allows the requirement to be satisfied by a three-hour class once every three years instead of one hour each year.

issues,² and three states have rules requiring an hour of substance abuse/mental health CLE once every three years,³ I have found none that have made it an annual requirement. As recognized by the states that make such education optional, not mandatory, there are other issues besides substance abuse and mental health on which CLE, chosen by the individual lawyer according to his or her interests and needs, is appropriate.

While I share my colleagues' concern with substance abuse and addiction in our society, generally, and in the legal community, in particular, I have true reservations about the wisdom and efficacy of today's rule amendment. I therefore respectfully dissent.

Pickering

Pickering J.

²Arizona (Ariz. R. Sup. Ct. 45(a)(2)), Florida (Fl. Bar R. 6-10.3(b)), Hawaii (Haw. Sup. Ct. R. 22(a)-(b)), Illinois (Ill. SCR 793(c)(1), 794(d)(1)), Iowa (Iowa Court R. 42.2(1)-(2)), Maine (Maine Bar R. 5(a)(1)), Mississippi (Miss. R. and Regulations for Mandatory Cont. Legal Ed., R. 3(a)), Missouri (Rule 15.05(a)-(f)), Montana (Mont. R. for Cont. Legal Ed., Rule 4(A)), Nebraska (Neb. SCR 3-401.4(A)), New Hampshire (N.H. Sup. Ct. R. 53.1(B)(1)), New Jersey (N.J. Bd. on Cont. Legal Ed. Regulation 201:1-201.2), New York (N.Y. Codes, Rules, and Reg. §§1500.2, 1500.12(a)(1)-(3)), Ohio (Ohio Sup. Ct. R. for Gov't of the Bar of Ohio, R. X, § 3(B)(3)), Pennsylvania (Pa. R. C.L.E. Regulation § 3(d)-(e)), Tennessee (Tenn. Sup. Ct. R. 21-3.01), West Virginia (Mandatory CLE in W. Va., R. and State Bar By-Law Amendments R. 5.2), and Wyoming (R. of the Wy. State Bd. of Cont. Legal Ed., R. 4(a)(1)-(3)).

³California (R. of the State Bar of Cal., Title 2, Division 4, Rule 2.72(A)(3)), North Carolina (27 N.C. Admin. Code 01D.1518(a)(2)), and South Carolina (S.C. SCR 408(a)(2)).

cc: Bryan K. Scott, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
Nevada CLE Board
Administrative Office of the Courts

EXHIBIT A

Rule 210. Minimum continuing legal education requirements. To meet the annual minimum continuing legal education requirements imposed by these rules, each attorney subject to these rules must timely: submit an annual fee, complete the requisite number of credit hours, and submit an annual compliance report.

1. Annual Fee. The amount of the annual fee is \$40, made payable to the Nevada Board of Continuing Legal Education, and must be postmarked on or before March 1 of the year for which the fee is required to be paid.

2. Credit hours.

(a) Subject to the carry forward provisions of subparagraph ~~[(e)]~~ (b), a minimum of ~~[twelve (12)]~~ thirteen (13) hours of accredited educational activity, as defined by the regulations adopted by the board, must be completed by December 31 of each year. Of the ~~[twelve (12)]~~ thirteen (13) hours, at least two (2) shall be exclusively in the area of ethics and professional conduct ~~[. At least]~~ and one (1) ~~[hour every three (3) years]~~ shall be exclusively in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence. ~~[In a year in which the attorney is subject to the requirement in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence, the attorney shall complete at least nine (9) hours of general continuing legal education, at least two (2) hours exclusively in the area of ethics and professional conduct, and at least one (1) hour exclusively in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence; in the remaining two years of the three year cycle, the attorney shall complete at least ten (10) hours of general continuing legal education and at least two (2) hours exclusively in the area of ethics and professional conduct. Credit hours in the area of ethics and professional conduct, and credit hours in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence, shall be tracked separately from general educational credit hours.]~~

~~_____ (b) The three year cycle for completion of the requirement regarding substance abuse, addictive disorders and/or mental health issues that impair professional competence shall be determined as follows:~~

~~_____ (1) Attorneys subject to these rules must complete the requirement within the same calendar year that this amendment~~

~~becomes effective; except that attorneys who completed the requirement in the calendar year preceding this amendment shall receive credit as though they completed it within the same calendar year that this amendment becomes effective.]~~

~~[(2)]~~ (1) Attorneys entitled to an exemption pursuant to Rule 214(1)(a) must complete the requirement within the same calendar year in which they are first subject to continuing legal education requirements.

~~[(3)]~~ (2) Attorneys who, for reasons other than an exemption pursuant to Rule 214(1)(a), become subject to these rules subsequent to or in the same calendar year that this amendment becomes effective, must complete the requirement within the same calendar year in which they become subject to these rules.

~~[(e)]~~ (b) Any attorney subject to these rules who completes more than ~~[twelve (12)]~~ thirteen (13) hours of accredited educational activity in any calendar year may carry forward up to twenty (20) hours of excess credit and apply the same to the attorney's general educational requirement for the next two (2) calendar years. Likewise, any attorney subject to these rules who completes more than two (2) hours of ethics and professional conduct credit in any calendar 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

~~[(d)]~~ (c) Any attorney subject to these rules who completes more than one (1) hour in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence ~~[in a three-year cycle]~~ may carry forward up to two (2) hours of excess credit and apply the same to the attorney's substance abuse, addictive disorders and/or mental health issues requirement for the next two (2) calendar years. ~~[three-year cycle, but may have the excess hour(s) credited toward the attorney's ethics and professional conduct requirement, subject to the carry forward provisions set forth in subparagraph (e) above. Excess hour(s) in the area of ethics and professional conduct may be credited toward the attorney's general educational requirement, subject to the carry forward provisions set forth in subparagraph (e) above.]~~

3. Annual compliance report. A properly completed and verified written compliance report must be submitted to the board, and must be postmarked on or before March 1 each year. The report must be submitted on a form to be provided by the board. The board shall, no later than six (6) weeks prior to the due date, send a compliance report form to each attorney subject to these rules. The report shall include the attorney's mailing address and shall state the attorney's compliance with the credit hour requirements

during the preceding calendar year. It shall not be a defense to noncompliance that the attorney did not receive the compliance report form.

EXHIBIT B

CLE CURRICULUM

Subjects: Substance Abuse, Addiction and Mental Health

Title: **The Broad Reaching Effects of Attorney Substance Abuse and Addiction**
RE: Economic Impact
Core Curriculum: (I) Recognize and (II) Resources
Speaker: Attorney member(s) from varying sized firms with firsthand experience.

Description: We've all heard the stories of the harmful effects of substance abuse and addiction disorders on an individual and those closest to the addicted person. However, the economic consequences of addiction can be much more pervasive on law practices than perhaps imagined. During this seminar, you will hear firsthand about the harmful effect of addictive behaviors to a practice – ranging from poor client communication to defending against claims of client theft – and the steps you can take to protect your practice and get help for those in need.

Objectives:

1. Understand why it is important that attorneys look out for one another and seek help for those suffering with substance abuse and addiction.
2. Realize the relationship between a few attorneys with a problem and the impact on the legal community.
3. Motivate attorneys to act to halt the epidemic.

Title: **Functionality of the Addicted Brain**
RE: Science of Addiction
Core Curriculum: (I) Recognize and (III) Recovery
Speaker: Clinical experts, including M.D., Ph.D. and Master's Level therapists

Description: Regardless of type of addiction – alcohol, prescription medication, or illicit/illegal drugs – there is a direct and long lasting effect on a person's brain that can alter cognitive processes and decision making skills necessary to the practice of law. Recent studies have confirmed a prevalence of addiction in the legal profession, which necessitates increased awareness of the issue, education about how to recognize addiction in our colleagues, and eliminate the stigma often associated with this serious disease. This seminar provides a window inside the addicted brain and provides the tools necessary to recognize the signs in yourself or of a fellow lawyer who may be suffering.

Objectives:

1. Gain an understanding of what the addicted brain looks like and how it effects lawyers.
2. Be more confident in personal ability to identify your issue or that of a fellow attorney suffering from addiction.
3. Realize how recovery helps those with addiction and the legal community.

Title: **Nip it in the Bud**
RE: Prevention
Core Curriculum: (II) Resources and (III) Recovery
Speaker: Mindfulness expert and NLAP representative

Description: Beginning January 1, 2017, Nevadans adopted a ballot measure legalizing recreational marijuana use, making the availability of mind-altering substances more prevalent than ever. This program explores alternatives to legal substances for coping with the inherent stress in the profession, including preventative measures such as mindfulness, meditation and exercise. We will also explore resources available to those in need of professional assistance.

Objectives:

1. Understand the importance of taking preventative measures in warding off addiction and mental health disorders.
2. Gain and practice some techniques to manage stress and promote a healthy mental outlook.
3. Learn about the professional and confidential resources available to members of the bar.

Title: **Maxed Out Mental Health**
RE: Depression/Mental Health
Core Curriculum: (I) Recognize, (II) Resources and (III) Recovery
Speaker: Attorney with firsthand experience

Description: The legal profession is not the only high stress profession; however, it is one of the few where adversity is a core tenant. On a regular basis, attorneys deal with conflicts with opposing counsel, the court, and clients. During this seminar, attorneys will gain insight into the effects of stress and how it can manifest into depression, addiction and other co-occurring mental health problems. This program will also provide techniques to manage stress and adversity in an attorney's professional life.

Objectives:

1. Realize how personal stress and mental health issues can take a toll on a lawyer's career.
2. Identify the impact on the law firm when a lawyer has poor mental health.
3. Ability to help yourself or fellow attorney get the help they need.

Title: **Overcoming Addiction and Mental Health Disorders**
RE: Personal stories
Core Curriculum: (I) Recognize and (II) Resources
Speaker: Attorney who suffers from addiction/mental health disorder and NLAP representative

Description: "It can't happen to me." For most attorneys, the concept of developing an addictive behavior or enduring mental health problems that tear apart a successful law practice or result in a loss of license is unfathomable. This seminar will explore that concept and the personal stories of attorneys who thought the same thing – and lost it all.

Objectives:

1. Discover the astonishing statistics in the legal field.
2. Understand that the disease/disorder can get a hold of your lawyer friends and even you.
3. Become committed to doing your part to help.

Core Curriculum Outline ("Backbone")

This outline provides the backbone to any CLE in abuse, addiction and/or mental health issues and frames the 3R's to be discussed.

- I. RECOGNIZE
 - a. Definitions
 - i. Disorder
 - ii. Substance Abuse
 - iii. Addiction
 - b. Lawyers at risk
 - i. Background and susceptibility
 - ii. Stats
 - iii. Nevada attorney discipline
 - c. Clinical insights
 - i. Signs, symptoms, indications
 - ii. Diagnosis
 - iii. The Brain

- II. RESOURCES
 - a. Duty to report
 - i. NRPC 8.3
 - ii. Responsibility to legal community
 - b. Lawyers Concerned for Lawyers (LCL)
 - i. Peer to peer, confidential
 - ii. Reporter's identity is never revealed
 - iii. Lawyer in trouble can choose to accept help or not
 - iv. Bar is not involved
 - v. Help is offered in the attorney's community
 - c. Nevada Lawyer Assistance Program (NLAP)
 - i. Clinical provider, confidential
 - ii. Mandatory: Bar Counsel can refer attorney through court rule
 - iii. Volunteer: Attorneys self-report
 - iv. Free assessment: bar covers costs but does not know identity
 - v. Help is offered in the attorney's community
 - vi. Handles mental health concerns too

- III. RECOVERY
 - a. LCL: Peer to peer community support
 - b. NLAP
 - i. Clinical support
 - ii. Personalized plan
 - iii. 12-step program
 - iv. Counseling
 - v. Screening
 - vi. Monitoring
 - vii. Advocacy

EXHIBIT C

PROPOSED AMENDMENTS TO NEVADA MCLE BOARD REGULATIONS

Regulation 3: Academic Standards; Section 6

(6) Substance abuse/ addiction/mental health credits may be approved for courses which focus on developing awareness of substance abuse or mental health issues and related problems in the practice of law. This includes, but is not limited to: recognizing the signs of substance abuse, addiction and mental health disorders in oneself or one's colleagues, impairment, intervention, treatment and available lawyer assistance programs. This also includes steps to be taken in reporting an affected attorney and in assisting the affected attorney.

Stress management courses as they relate to the practice of law are also eligible for credit if they focus on developing awareness of stress-related problems in the practice of law, including programs that focus on personality traits susceptible to stress, work/life balance, recognizing signs of stress in oneself or one's colleagues, instituting preventative measures individually, and the development of policies with the law firm or legal department for dealing with stress-impaired attorneys.

Credit will not be given to courses in which the sole focus is personal stress reduction techniques such as breathing exercises, meditation and yoga.

Regulation 19: Ethics and Professional Conduct; Section (1)(j)

1. Ethics and Professional Conduct as specified in SCR 210(2), includes but is not limited to instruction in any of the following areas:

...

(j) The prevention, detection, reporting and treatment of substance abuse, addictive disorders and/or mental health issues and the available assistance for impaired attorneys.