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NEVADA BOARD OF CONTINUING LEGAL EDUCATION

DEC 07 2015

2015 Business Plan

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The Nevada Board of Continuing Legal Education ("NVCLE" or the "Board") thanks the State Bar for its many observations on the NVCLE 2015 Business Plan. In the pages that follow, the Board restates and addresses each such observation.

State Bar Observation

As a CLE provider, in 2014 the State Bar offered 59 live seminars to 2,548 attorneys (for 12,048 credit hours based on the State Bar's data in its Attachment A to its observations).

NVCLE

The State Bar's data provided in its Attachment A differs from NVCLE's, as summarized in the table below.

**Nevada Board of Continuing Legal Education**

**2014 Data Comparisons - Live Programs**

	<u>State Bar(a)</u>	<u>NVCLE</u>	<u>Difference</u>	
Programs	59	55	4	7.3%
Aggregate Credit Hours	12,048	10,415	1,633	15.7%

(a) As provided by State Bar in Attachment A to its observations.

Subsequent analyses that include this information utilize NVCLE data.

State Bar Observation

Providers of CLE will likely be able to absorb or incur the per credit hour expense and will pass through the \$5 per attorney per credit hour fee to the user (attorneys). For example, if the average attorney takes the mandatory 12 credit hours per year, with the increase of \$5 per credit hour, that same attorney will

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pay an additional \$60 per year to the CLE providers. The business plan sets forth 2016 as a transition year where effectively the attorneys will pay the \$40 per year fee and the per credit hour fee, thus for 2016 attorneys will be required to pay \$100 in fees.

### **NVCLE**

As in any economic model, it is to be expected that some providers will increase prices to pass through the per credit hour fee. Others will choose to maintain prices in order to gain market share, some will increase prices by just a portion of the fee, and for fee-exempt providers (non-profits and governmental agencies that do not charge attorneys for their programs) the topic is moot. How many will actually "unlikely be able to absorb or incur this expense" is unknown.

Overall, the Board expects no more than a modest effect on provider pricing, as anecdotal input suggests. In designing its new business model, NVCLE discussed this dynamic with PA CLE, which had not experienced program price increases in Pennsylvania nor heard of pass-throughs in other states using the PA CLE system.

Attorneys can check provider course prices to comparison shop, and in the new business model the Board is considering posting prices (to be submitted to NVCLE by providers) on its website to facilitate this process. Demand will flow to optimal mixes of program cost and quality (i.e. value) for each attorney. One may take all credit hours from fee-exempt providers and incur no additional cost, while another may choose to pay more for programs of value to them.

Without doubt, though, the average attorney will not incur \$100 in fees in the transition year. Not only will the factors described above average out to less than a \$5 pass-through, but also since it is the transition year, there will be no \$5 fee to pass through for credit hours earned in 2016 prior to the changeover.

### **State Bar Observation**

The State Bar recommends, prior to implementing the business plan, the NVCLE identify its projected financial results assumptions for provider credit hour and attendance filing fees.

### **NVCLE**

For credit hour fees, these assumptions are provided in the following table.

**Nevada Board of Continuing Legal Education**

**Credit Hour Fees Assumptions**

<u>Aggregate Credit Hours</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Accredited Providers	48.3%	50.0%	58.0%	63.0%	65.0%
Non-Accredited Providers	<u>51.7%</u>	<u>50.0%</u>	<u>42.0%</u>	<u>37.0%</u>	<u>35.0%</u>
	100.0%	100.0%	100.0%	100.0%	100.0%
<u>Accredited Provider Credit Hours</u>					
Fee-Exempt	15.9%	15.0%	14.0%	12.0%	10.0%
Fee Applies	<u>84.1%</u>	<u>85.0%</u>	<u>86.0%</u>	<u>88.0%</u>	<u>90.0%</u>
	100.0%	100.0%	100.0%	100.0%	100.0%
<u>Non-Accredited Provider Credit Hours</u>					
Fee-Exempt	12.3%	12.0%	14.0%	14.5%	15.0%
Fee Applies	<u>87.7%</u>	<u>88.0%</u>	<u>86.0%</u>	<u>85.5%</u>	<u>85.0%</u>
	100.0%	100.0%	100.0%	100.0%	100.0%
<u>Credit Hours Reported by Attorneys</u>					
Accredited Providers:					
Fee-Exempt	0.0%	0.0%	0.0%	0.0%	0.0%
Fee Applies	0.0%	0.0%	0.0%	0.0%	0.0%
Non-Accredited Providers:					
Fee-Exempt	5.1%	3.7%	1.8%	1.5%	1.2%
Fee Applies	35.9%	26.3%	13.2%	10.5%	8.8%
<u>Credit Hour Fees</u>					
Accredited Providers - Fees Apply	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00
Accredited Providers - Fee-Exempt	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Non-Accredited Providers - Fees Apply	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00
Non-Accredited Providers - Fee-Exempt	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Attorneys - from Accredited Providers - Fees Apply	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00
Attorneys - from Accredited Providers - Fee-Exempt	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Attorneys - from Non-Accredited Providers - Fees Apply	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00
Attorneys - from Non-Accredited Providers - Fee-Exempt	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

For application fees, these assumptions are shown below. Please note that the Board has changed its nomenclature from attendance filing fees to program application fees.

**Nevada Board of Continuing Legal Education**

**Application Fees Assumptions**

	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Applications Growth Rate	4.0%	4.0%	4.0%	4.0%	4.0%
<u>Applications From</u>					
Accredited Providers	40.0%	41.7%	49.7%	54.9%	57.0%
Non-Accredited Providers	<u>60.0%</u>	<u>58.3%</u>	<u>50.3%</u>	<u>45.2%</u>	<u>43.1%</u>
	100.0%	100.0%	100.0%	100.0%	100.0%
<u>Accredited Providers</u>					
Fees Apply	84.1%	85.0%	86.0%	88.0%	90.0%
Fee-Exempt	<u>15.9%</u>	<u>15.0%</u>	<u>14.0%</u>	<u>12.0%</u>	<u>10.0%</u>
	100.0%	100.0%	100.0%	100.0%	100.0%
<u>Non-Accredited Providers</u>					
Fees Apply	87.7%	88.0%	86.0%	85.5%	85.0%
Fee-Exempt	<u>12.3%</u>	<u>12.0%</u>	<u>14.0%</u>	<u>14.5%</u>	<u>15.0%</u>
	100.0%	100.0%	100.0%	100.0%	100.0%
<u>Accredited Provider Applications - Fees Apply</u>					
Submitted Directly	100.0%	100.0%	100.0%	100.0%	100.0%
Submitted by Attorney	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>
	100.0%	100.0%	100.0%	100.0%	100.0%
<u>Accredited Provider Applications - Fee-Exempt</u>					
Submitted Directly	100.0%	100.0%	100.0%	100.0%	100.0%
Submitted by Attorney	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>	<u>0.0%</u>
	100.0%	100.0%	100.0%	100.0%	100.0%
<u>Non-Accredited Provider Applications - Fees Apply</u>					
Submitted Directly	64.1%	73.7%	86.8%	89.5%	91.2%
Submitted by Attorney	<u>35.9%</u>	<u>26.3%</u>	<u>13.2%</u>	<u>10.5%</u>	<u>8.8%</u>
	100.0%	100.0%	100.0%	100.0%	100.0%
<u>Non-Accredited Provider Applications - Fee-Exempt</u>					
Submitted Directly	94.9%	96.3%	98.2%	98.5%	98.8%
Submitted by Attorney	<u>5.1%</u>	<u>3.7%</u>	<u>1.8%</u>	<u>1.5%</u>	<u>1.2%</u>
	100.0%	100.0%	100.0%	100.0%	100.0%
<u>Application Fees</u>					
Accredited Providers - Fees Apply - Submitted Directly	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Accredited Providers - Fees Apply - Submitted by Attorneys	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Accredited Providers - Fee-Exempt - Submitted Directly	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Accredited Providers - Fee-Exempt - Submitted by Attorneys	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Non-Accredited Providers - Fees Apply - Submitted Directly	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00
Non-Accredited Providers - Fees Apply - Submitted by Attorneys	\$25.00	\$25.00	\$25.00	\$25.00	\$25.00
Non-Accredited Providers - Fee-Exempt - Submitted Directly	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Non-Accredited Providers - Fee-Exempt - Submitted by Attorneys	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

**State Bar Observation**

The last NVCLE Annual Report provided to the State Bar shows that NVCLE approved 8,528 courses. This is equal to about 23 course approvals per day, including weekends. What percentage of the anticipated

revenues that would come from these courses (8,528 x \$25 = \$213,200) would be subject to a course approval charge.

### **NVCLE**

The numbers cited by the State Bar above are for 2012. Using 2015 data, through November 20 NVCLE has approved 7,131 programs. This annualizes to 8,058, and averages to about 33 approvals per business day. The Board has the capacity to process this volume and is accustomed to it: with two staff members, NVCLE approved 7,694 programs in 2014, 9,027 in 2013, and 8,528 in 2012. Through its cross-training initiatives, the Board now has a third staff member assisting with approvals as well.

Of the 7,131 programs approved through November 20, 2,676 were for accredited providers and 4,455 for non-accredited providers. These numbers annualize to 3,024 and 5,034, respectively. The \$25 application fee does not apply to accredited providers, and about 12% of non-accredited providers are fee-exempt. As a result, an estimated 4,430 of the 8,058 approvals, or 55%, would be subject to a course approval charge.

### **State Bar Observation**

According to the 2013 NVCLE Annual Report, there were 39,735 attendees at approved MCLE courses in 2012. Of those, 6,434 were attributed to the State Bar's live and recorded programs (16% of the total attendees). As a CLE provider, in 2014 the State Bar offered 59 live seminars<sup>1</sup> to 2,548 attorneys. Using the formula provided in the business plan, the State Bar will pay the NVCLE \$60,240 per year (see Attachment A) for live seminars alone. If the State Bar's projected per attorney per credit hour fees for its live programs alone are \$60,240<sup>2</sup>, then the projected credit hour fees for the fiscal years 2016 through 2020 appear to be underrepresented.

<sup>1</sup>For the purpose of this example, the annual meeting and large multi-course conferences are counted as a single course. This example only references live courses, not those courses recorded and sold at a later date or self-study courses.

<sup>2</sup>Revenue received through State Bar recorded and alternative format CLEs account for nearly half of all CLE sales and are not noted here.

### **NVCLE**

With respect to the first part of this observation, that the State Bar accounted for 16% of attendees in 2012, the purpose of this observation is unclear to the Board. This data refers to attendees, but the fees in question are based on credit hours. If these attendees took one hour courses, the percentage of credit hour fees would be well below 16%, whereas if they attended 12 hour programs it would be considerably higher. In other words, accounting for 16% of attendees does not translate into credit hour fees.

For the rest of this observation, there are several aspects to discuss:

- The State Bar's \$60,240 in fees represents 12,048 credit hours at \$5 per hour. As noted previously, this is approximately 15% higher than NVCLE's records, which include 10,415 credit hours for live programs.
- Footnote 2 appears to imply that since alternative format programs account for "nearly half" of all CLE sales, the State Bar's credit hours for all programs would be about twice the live programs number in Attachment A.

However, multiple factors come into play. Sales are in dollars, not credit hours, and both pricing per program and the mix of programs sold may differ for live versus alternative format. Also, alternative format programs remain valid for three years from their production dates. Therefore, credit hours could have been earned in 2014 for alternative format programs sold as far back as 2011, meaning there is not a linear conversion from programs sold in 2014 to credit hours earned in 2014. NVCLE data is indicative, showing that in 2014 the ratio was approximately 60% live and 40% alternative format.

- The Board interprets the observation as suggesting that the State Bar's implied proportion of total credit hour fees is high so those from all accredited providers may be underrepresented.

Using NVCLE's data of 17,235 credit hours from State Bar programs in 2014 at \$5 per credit hour results in \$86,175 in fees under the new business model. Comparing this amount with accredited provider fees in 2016 is not applicable because the new business model is in effect for only a portion of the year. In 2017-2020, though, State Bar fees would account for approximately 57% to 39%. These measures are high, so the Board undertook an in-depth examination of the underlying dynamics.

This is a complex process due to the number of variables involved, which include:

- Credit hours earned from accredited versus non-accredited providers.
- Fee-exempt providers, both accredited and non-accredited.
- Attorneys who apply for programs not on the NVCLE approved list, who (once approved) take those courses, report the credit hours, and pay the fees.
- Among courses applied for directly from attorneys, those taken from providers subject to fees versus those that are fee-exempt.

This combination of variables results in eight categories of credit hours to which all, some, or no fees apply.

In the course of this process and from additional data gathered for addressing other observations, the Board has modified some assumptions. Total credit hour fees remain approximately the same, but shifts occurred among categories. The Board appreciates the State Bar's observation on this topic, and the table below presents the updated fees.

**Nevada Board of Continuing Legal Education**

**Credit Hour Fees from Accredited Providers**

	<b>For the Year Ended December 31,</b>				
<b><u>Modified Results</u></b>	<b><u>2016</u></b>	<b><u>2017</u></b>	<b><u>2018</u></b>	<b><u>2019</u></b>	<b><u>2020</u></b>
Accredited Providers	\$163,114	\$238,549	\$293,971	\$343,076	\$380,112
Non-Accredited Providers	\$116,294	\$182,007	\$184,879	\$175,168	\$176,356
Attorneys	<u>\$65,268</u>	<u>\$64,961</u>	<u>\$27,997</u>	<u>\$20,597</u>	<u>\$16,949</u>
Total Credit Hour Fees	\$344,675	\$485,517	\$506,846	\$538,841	\$573,418
State Bar(a)	\$86,175	\$86,175	\$86,175	\$86,175	\$86,175
Proportion(b)	NA	36.1%	29.3%	25.1%	22.7%
<b><u>Previous Results</u></b>					
Accredited Providers	\$97,825	\$150,987	\$173,271	\$197,405	\$223,519
Non-Accredited Providers	\$161,171	\$231,252	\$248,708	\$267,332	\$287,196
Attorneys	<u>\$93,816</u>	<u>\$111,697</u>	<u>\$96,654</u>	<u>\$79,828</u>	<u>\$61,078</u>
Total Credit Hour Fees	\$352,812	\$493,936	\$518,633	\$544,565	\$571,793
<b><u>Shifts by Category</u></b>					
Accredited Providers	\$65,289	\$87,562	\$120,700	\$145,671	\$156,593
Non-Accredited Providers	(\$44,877)	(\$49,245)	(\$63,829)	(\$92,164)	(\$110,840)
Attorneys	<u>(\$28,548)</u>	<u>(\$46,736)</u>	<u>(\$68,657)</u>	<u>(\$59,231)</u>	<u>(\$44,129)</u>
Total Credit Hour Fees	(\$8,137)	(\$8,419)	(\$11,787)	(\$5,724)	\$1,625

(a) Based on 2014 data as a proxy.

(b) Not applicable for 2016 since new fees only in effect for a portion of the year.

As can be seen, the predominant shift is into accredited providers from both non-accredited providers and attorneys. This is based on greater consideration for systemic market factors affecting both the change in provider mix and from which of the four types of providers attorneys seek their credit hours. These factors include:

- Continued proliferation of online services. NVCLE requires that all providers offering online programs be accredited.
- The growing population of younger attorneys who prefer to perform tasks online whenever available.
- Exit of low volume non-accredited providers.
- Large non-accredited providers becoming accredited such that program application fees do not apply.
- Attorneys shifting to courses where the provider pays the fees.

As shown in the table above, with the aforementioned modifications the State Bar accounts for approximately 36% of total credit hour fees from accredited providers in 2017, the first full year

under the new business model. As a cross-check, based on NVCLE data for 2014 adjusted for fee-exempt providers, the State Bar's portion would be in the same range at approximately 39%.

### **State Bar Observation**

For attorneys who take courses from non-accredited, out-of-state providers, the attorney will be responsible for paying the \$25 application fee, plus the per credit hour fee. This may cause some confusion among attorneys when transitioning to the provider-based model as they may not be aware of their continued responsibility to apply for out-of-state credit.

### **NVCLE**

It should be noted that most providers are out-of-state, and NVCLE's description was unclear. Rather than programs from out-of-state providers, these are courses outside the NVCLE system, in other words not on its list of approved programs. These credit hours are often earned by attorneys attending programs in other states.

As discussed elsewhere concerning another State Bar observation, the Board has budgeted for certified mailings to all attorneys and advertisements in multiple publications in the months surrounding the changeover. The purpose of these, supplemented by electronic communications and website reminders, is to maximize attorney awareness and minimize scenarios such as the one described above.

Since no rule change is involved, the Board expects most attorneys will continue to apply as before. Perhaps some would interpret provider funding model to mean providers take on all responsibilities, but this seems unlikely since funding and applications are different topics.

### **State Bar Observation**

The ABA does not typically apply for credit for its programs. Therefore, an attorney attending the ABA 2015 Class Actions National Institute, for example, would be responsible for paying the \$25 application fee, plus \$52.50 for the 10.5 hour course, for a total of \$77.50. This amount is \$37.50 more than the current \$40 annual fee.

### **NVCLE**

The ABA is an accredited provider, and would therefore pay the credit hour fees and not be subject to the \$25 application fee. The attorney would incur no fees.

### **State Bar Observation**



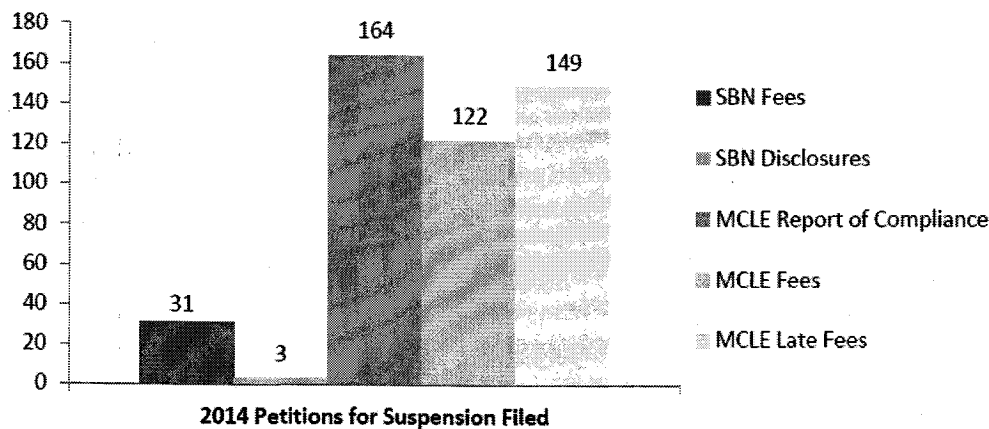
According to the NVCLE 2013 Annual Report, of the 8,528 courses approved in 2012, 932 (11%) were held in Nevada. The total credits offered by those courses were 31,097.5, with 4,837.5 occurring in Nevada. This would suggest a large number of attorneys obtaining CLE credit through out-of-state providers.

### **NVCLE**

The State Bar's observation is accurate since most program providers are out-of-state, with many of their programs offered in alternative format or online.

### **State Bar Observation**

The State Bar supports efforts to address attorney non-compliance and bring the number of attorney suspensions more in line with the State Bar's administrative suspensions for non-compliance with dues and mandatory disclosures. The chart below demonstrates the number of administrative suspensions conducted by both the State Bar and NVCLE in 2014<sup>4</sup>.



<sup>4</sup>The attorneys represented in the chart are not necessarily distinct (i.e. an attorney who is suspended for failure to submit his or her MCLE report may also be suspended to pay his or her fees. Likewise, an attorney suspended for failure to remit annual license fees may also be suspended for failure to provide mandatory disclosures.

### **NVCLE**

Compliance requirements are markedly different for the State Bar and NVCLE. Therefore, bringing the numbers more in line is suggesting an apples to oranges comparison.

State Bar compliance entails paying annual dues and signing and submitting a one-page disclosure form that takes only a few minutes to complete. NVCLE similarly requires an annual fee and one-page form attesting to credit hours earned. In addition, though, attorneys must complete 12 CLE credit hours. Hence, compliance with NVCLE demands far more time and effort from attorneys, so a higher number of petitions for suspension is to be expected.

**State Bar Observation**

Currently, the forecast for NVCLE attorney non-compliance fees does not represent a downward projection consistent with the projected compliance rates under the new model. Compliance levels are projected to increase from 79.6% to 90% during the fiscal years 2015 through 2020, while non-compliance fees remain relatively flat.

**NVCLE**

The principal dynamic at work is the interplay between the new, higher penalty fee structure and the declining number of non-compliant attorneys. In the aggregate, the effect of higher fees simply outweighs the decrease in non-compliant attorneys.

The table below summarizes the data that the State Bar cites:

<b>Nevada Board of Continuing Legal Education</b>						
<b><u>Non-Compliance Rates and Fees</u></b>						
<b>For the Year Ended December 31,</b>						
	<b><u>2015</u></b>	<b><u>2016</u></b>	<b><u>2017</u></b>	<b><u>2018</u></b>	<b><u>2019</u></b>	<b><u>2020</u></b>
Compliance Rate	79.6%	79.6%	82.5%	85.0%	87.5%	90.0%
Non-Compliance Rate	20.4%	20.4%	17.5%	15.0%	12.5%	10.0%
Non-Compliance Fees	\$316,037	\$336,482	\$531,562	\$468,352	\$427,196	\$351,757

As the State Bar observes, non-compliance fees of \$351,757 in 2020 appear relatively flat with \$316,037 in 2015. However, 2017 is the first year in which the new penalty fees apply for the full collection cycle (predominantly March through June). From that time forward, the results show a very consistent downward projection in non-compliance fees as compliance rates improve. These changes are shown in the table below.

Nevada Board of Continuing Legal Education

Non-Compliance Rates and Fee Comparisons under New Business Model

	For the Year Ended December 31,					
	2015	2016	2017	2018	2019	2020
Attorneys	8,500	8,925	9,371	9,840	10,332	10,848
Non-Compliant Attorneys	1,737	1,824	1,640	1,476	1,291	1,085
Decrease under New Model*	NA	NA	-10.1%	-10.0%	-12.5%	-16.0%
Non-Compliance Fees	\$316,037	\$336,482	\$531,562	\$468,352	\$427,196	\$351,757
Change under New Model*	NA	NA	58.0%	-11.9%	-8.8%	-17.7%

\*New business model takes full effect in 2017.

Clearly, non-compliance fees increase substantially in 2017 even though compliance has begun to improve. This spike results from the fee increases taking effect under the new model, much as was seen in 2010 following the Supreme Court's fee increases in 2009. Although the new fee structure is applied to fewer non-compliant attorneys, the increase in the former overwhelms the decrease in the latter when compliance is in its early stages of improvement.

Nevada Board of Continuing Legal Education

Fee Increases for Non-Compliance

	2016	2017	Increase
Non-Compliance Fees			
Extension	\$50	\$100	100.0%
Late	\$100	\$250	150.0%
Dismissal	\$750	\$1,000	33.3%
Reinstatement	\$500	\$2,500	400.0%
Non-Compliant Attorneys	1,824	1,640	-10.1%

Another way to depict the consistency between the downward projection in non-compliance fees with improving compliance rates is to compare the differences between what non-compliance fees would have

been if the existing business model remained in effect with those generated under the new model. These are shown for each component of non-compliance fees in the following table.

<b>Nevada Board of Continuing Legal Education</b>						
<b><u>Non-Compliance Fees in New versus Existing Business Models</u></b>						
<b>For the Year Ended December 31,</b>						
<b><u>New Model</u></b>	<b><u>2015</u></b>	<b><u>2016</u></b>	<b><u>2017</u></b>	<b><u>2018</u></b>	<b><u>2019</u></b>	<b><u>2020</u></b>
Extension		\$40,821	\$79,656	\$79,998	\$73,666	\$70,515
Late		\$81,756	\$178,054	\$137,757	\$105,901	\$62,649
Dismissal		\$105,601	\$105,895	\$98,398	\$103,318	\$108,484
Reinstatement		\$7,381	\$38,749	\$40,686	\$42,721	\$30,571
Fees in Arrears		<u>\$100,923</u>	<u>\$129,209</u>	<u>\$111,513</u>	<u>\$101,591</u>	<u>\$79,538</u>
Non-Compliance Fees	NA*	\$336,482	\$531,562	\$468,352	\$427,196	\$351,757
Compliance Rate		79.6%	82.5%	85.0%	87.5%	90.0%
<b><u>Existing Model</u></b>		<b><u>2016</u></b>	<b><u>2017</u></b>	<b><u>2018</u></b>	<b><u>2019</u></b>	<b><u>2020</u></b>
Extension		\$40,821	\$42,862	\$45,005	\$47,256	\$49,618
Late		\$81,756	\$85,844	\$90,136	\$94,642	\$99,375
Dismissal		\$105,601	\$110,881	\$116,425	\$122,247	\$128,359
Reinstatement		\$7,381	\$7,750	\$8,137	\$8,544	\$8,971
Fees in Arrears		<u>\$100,923</u>	<u>\$105,969</u>	<u>\$111,267</u>	<u>\$116,831</u>	<u>\$122,672</u>
Non-Compliance Fees		\$336,482	\$353,306	\$370,971	\$389,519	\$408,995
Compliance Rate		79.6%	79.6%	79.6%	79.6%	79.6%
<b><i>Difference due to New Fee Structure</i></b>		<b>\$0</b>	<b>\$178,257</b>	<b>\$97,381</b>	<b>\$37,677</b>	<b>(\$57,238)</b>
<b><u>Line-Item Differences</u></b>		<b><u>2016</u></b>	<b><u>2017</u></b>	<b><u>2018</u></b>	<b><u>2019</u></b>	<b><u>2020</u></b>
Extension		\$0	\$36,793	\$34,992	\$26,410	\$20,896
Late		\$0	\$92,210	\$47,622	\$11,259	(\$36,725)
Dismissal		\$0	(\$4,986)	(\$18,027)	(\$18,928)	(\$19,875)
Reinstatement		\$0	\$30,999	\$32,549	\$34,176	\$21,600
Fees in Arrears		<u>\$0</u>	<u>\$23,240</u>	<u>\$245</u>	<u>(\$15,240)</u>	<u>(\$43,135)</u>
Total		\$0	\$178,257	\$97,381	\$37,677	(\$57,238)
<b>*New business model not in effect.</b>						

As expected, the differences again illustrate the initial spike mentioned above, when significantly higher fees go into effect but compliance has improved only modestly. These differences then decrease each year, and cross over between 2019 and 2020. At this point, the number of non-compliant attorneys has

declined to a level that the higher fee structure in the new model generates lower non-compliance fees than would have occurred under the current model.

The line-item differences underscore these dynamics. Note that these decline in *all* categories. In particular, the differences for dismissal fees are negative from the beginning, indicating that the improvement in compliance by the dismissal stage has more than offset the fee increase. Late fees make this crossover in 2020 and fees in arrears essentially in 2018. The slight increases for reinstatement fees in the middle years, followed by a substantial drop, provides another example of how improving compliance in a particular category and the fee increase for that category can interact differently year to year. But in the aggregate, better compliance ultimately dominates.

### **State Bar Observation**

Payroll and Benefits is expected to increase from \$397,134 in 2015 to \$652,388 in 2020 – resulting in a 64% increase in this line item. More information is required to explain the anticipated increase in payroll and benefits absent any plans to hire additional people.

### **NVCLE**

From 2016 onward, payroll and benefits grows at a steady, modest rate, and benefits as a percentage of compensation remains very stable throughout. The exception occurs from 2015 to 2016, the latter being the changeover year, and is attributable to three factors:

- Equalization in staff compensation with similar positions based on market surveys by the Board, which results in higher salaries and bonuses, SEP IRA contributions, and associated payroll costs beginning in 2016.
- Two new staff hired during 2015. Payroll and benefits for these individuals occur for just a portion of 2015 versus the full year in 2016.
- Timing of SEP IRA contributions. These payments are made in January for the previous year, but are expensed in December. Reflecting the January payments resulted in a shift of 2015 expenses into 2016, and thus the large increase in payroll in benefits from one year to the next. The Board has adjusted the expensing to 2015 (funding remains in January), which removes this anomaly.
- Cushion on payroll costs. The Board sought a cautionary buffer, which resulted in excess burden on compensation and has been adjusted.

The updated results are shown in the table below.

**Nevada Board of Continuing Legal Education**

**Payroll and Benefits**

	For the Year Ended December 31,					
	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Payroll and Benefits	\$432,415	\$488,771	\$511,265	\$536,780	\$563,452	\$591,336
Annual Growth Rates	NA	13.0%	4.6%	5.0%	5.0%	4.9%
2015-2020 Increase(a)						6.5%
Benefits/Compensation	34.6%	34.9%	35.1%	35.1%	35.1%	35.0%

(a) Compound annual growth rate.

The State Bar noted that historically, from 2010 to 2014, payroll and benefits increased from \$301,058 to \$402,859. This reflects a compound annual growth rate of 7.6%. At 6.5%, the projected growth rate for 2015 to 2020 is lower.

The increases in compensation and SEP IRA contributions are scheduled for consideration by NVCLE's Board of Directors in December. Hence the level at which they are implemented going forward is presently unknown, so NVCLE incorporated them as proposed to assure that such expenses are not understated in the business model.

**State Bar Observation**

The State Bar recognizes that the NVCLE has CLE approval responsibilities, but is unaware of how those responsibilities are split between NVCLE staff and the NVCLE Board.

The State Bar's observations to the NVCLE business plan do not address the NVCLE course approval process and procedures as there is not enough information provided in the business plan to make an informed analysis.

**NVCLE**

Substantially all program approvals are handled by staff. The Board typically receives in the range of 8,500 program applications per year. These are reviewed daily by the Executive Director or Assistant Executive Director for quality and content. If acceptable, staff determines the number of credit hours to be awarded and enters the program into NVCLE's system. NVCLE then generates and sends an approval letter to the applicant (provider or attorney).

When content is questionable or staff recommends denying a program, the file is sent to member of NVCLE's Board of Directors for review. If he or she reverses staff's determination to deny, then the course is considered approved to the extent instructed by the Board member. However, if the staff member is concerned about this reversal, he or she may contact the chairperson who will then involve the entire Board to arrive at a final decision. During the process, the reviewing Board member may also take the application to the full Board for additional input if desired.

When the reviewing Board member concurs with the recommendation to deny, staff generates and sends the applicant a letter to this effect. Applicants have the right to request reconsideration for approval, with such requests reviewed by the full Board.

In 2015 to date, NVCLE has referred 36 program applications to Board members with recommendations to deny. Of these, Board members concurred to deny 35 and overruled staff on one. Among the 35 denied, one requested reconsideration. In this case, the Board approved most subparts of the program and sustained denial for the remainder.

### **State Bar Observation**

The State Bar has historically notified attorneys of their Bar dues and mandatory disclosure obligations through written notices, four times per dues cycle. The related expense for these mailings is approximately \$25,700 per year. The NVCLE business plan designates \$20,000 to \$30,000 each year for printing and postage expenses. In 2016, an additional \$95,400 is designated for attorney announcements, which is related to certified mailings to each licensee, and \$24,000 is designated for advertising informing attorneys of the transition. The State Bar recommends implementing electronic notifications as an alternative.

### **NVCLE**

Printing and postage expenses are based on historical experience with minor annual increases, including certified mailings noticing non-compliant attorneys as required by Supreme Court Rule 212. (A rule change would reduce this expense, of course, but NVCLE assumed past practices so as to not understate expenses.) The Board believes its mailing requirements differ from the State Bar's, but nonetheless NVCLE's \$20,000 to \$30,000 is in line with the State Bar's \$25,700.

The Board deemed certified mail as appropriate for attorney announcements in order to avert "you never told me" conflicts when attorneys incur penalties coming into effect under the new business model. While attorneys need to be informed of such policies, the Board needs written certification that it has fulfilled this obligation. The business model therefore provides for one certified mailing to 9,000 attorneys, with materials, printing, and postage expense of \$10.60 per piece based on NVCLE's long-time experience with certified mail.

Advertising occurs for six consecutive months, three before and three after the changeover to the provider funding model, at a cost of \$4,000 per month. Its purpose is to further inform attorneys of the transition, provide general information on their responsibilities, and point them to the NVCLE website for specifics. The Board plans to run these ads in a number of publications including the Nevada Lawyer.

Notably, the expenditures of \$95,400 for attorney announcements and \$24,000 in advertising are one-time, occurring only in 2016. In its business plan, the Board has described several ways in which it will utilize electronic communications, and with Supreme Court rule changes potentially reduce the \$20,000 to \$30,000 annual expense.

### **State Bar Observation**

Absent development expenses associated with the transition to a provider-based model and accounting for associated financial uncertainties likely to occur within the first year of the transition, the NVCLE business plan does not set forth specific measures for how reserves will be drawn down and leaves reserve distribution at the discretion of the NVCLE Board, the Court, the Blue Ribbon Commission and the State Bar. The State Bar suggests the NVCLE set as a priority the intended purpose for its reserves, including establishing an operating reserve set at ten percent of annual operating expenses and setting a restricted reserve of \$500,000 during this transition period, as well as developing a plan for any anticipated reserve draw down. The State Bar supports the use of excess reserves to fund legal aid services in Nevada using a formula for distribution adopted by the Access to Justice Commission.

### **NVCLE**

The Board's objective is to maintain a responsible operating reserve, and is receptive to input from the State Bar and Supreme Court regarding an appropriate percentage of NVCLE's operating budget. However, the Board wishes to err on the side of caution during transition to steady-state operations under the new business model. Once this process has been completed, NVCLE will likewise take direction from the Supreme Court concerning the disposition of excess reserves going forward.

### **State Bar Observation**

The State Bar suggests NVCLE hold off on entering into contracts/agreements and hiring additional staff to implement a provider-based model prior to approval by the Court and until the plan is further vetted.

### **NVCLE**

The Board has no intention of embarking on implementation, contractually or internally, prior to Supreme Court approval. NVCLE anticipates no additional staffing requirements whether the provider-based model is implemented or not.

### **State Bar Observation**

The State Bar supports the approach outlined by the Blue Ribbon Commission for appointment of CLE Board members. The recommendation is to have three active members appointed by the State Bar Board of Governors, three active members appointed by the Supreme Court and one member of the judiciary



appointed by the Supreme Court. The State Bar takes this recommendation a step further and suggests term limits for CLE Board members be implemented.

### **NVCLE**

It is NVCLE's understanding that a hybrid methodology is being contemplated by the Supreme Court, and while the Board would welcome the opportunity to provide input, it would certainly defer to the Supreme Court's discretion. At the conceptual level, attributes NVCLE was suggesting include a manageable size, regional representation around the State, information flow among constituencies, and minimizing potential conflicts of interest.

NVCLE is receptive to discussing term limits, but observes that the learning curve for Board members is long, and therefore would recommend lengthy terms so as to more effectively utilize the Directors' collective expertise over time. Similarly, relatively short terms may increase the Board's dependence on staff and thereby limit the "big picture" perspective customary for boards of directors. If adopted, NVCLE would also suggest the terms be phased in on a staggered basis to avoid simultaneous turnover of the entire Board in the future.

### **Updates**

NVCLE's projected financial results are provided on the pages that follow. These reflect updates as described in the foregoing, as well as some clarifying changes in nomenclature:

- Attorney Non-Compliance Fees are comprised of Extension Fees, Penalty Fees, and Fees in Arrears. Penalty Fees refer to Late, Dismissal, and Reinstatement Fees.
- Program Application Fees replaces what was previously called Attendance Filing Fees.
- Provider Accreditation Fees replaces the former Accredited Provider Application Fees.

In addition, since most infractions in 2016 would occur before changeover to the new business model, the current pre-changeover penalty fee structure is left in place for this transition year.

Recent NVCLE website updates include a link to the State Bar website:

Looking for the State Bar of Nevada? Click Here:



And the online payment option:

**NEVADA BOARD of CONTINUING LEGAL EDUCATION**

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**Profile Information** PRINT FRIENDLY

Name: \_\_\_\_\_

Bar #: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**CLE Compliance Information** Updated November 3, 2015

Status for Compliance Period Ending December 31, 2014:	Inactive - SCR 214(1)(c)
Status for Compliance Period Ending December 31, 2015:	REQUIREMENTS NOT YET COMPLETED
Compliance Group: 1   Reporting Deadline: December 31	FEES OWED: YES <span style="float: right;">pay now</span>

License Status: Active

Each active lawyer must complete a total of twelve (12) credits with a minimum of two (2) ethics credits and ten (10) general credits each reporting year. credits are taken every third year beginning 2014. Ethics credits in excess of your ethics requirement may be used to meet the general requirement. Substance Abuse credits in excess may be used to meet the ethics and/or general requirements.

**12/31/2015 Credit Summary**

Annual Requirement	General	10	Ethics	2
Credits Completed	General	0	Ethics	0
<b>Credits Required by December 31, 2015:</b>	<b>General</b>	<b>10</b>	<b>Ethics</b>	<b>2</b>

**Recently Posted Credits**

Title	Date	General	Ethics	Substance Abuse
* No Courses were found *				

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Nevada Board of Continuing Legal Education

Projected Financial Results

<u>Income</u>	<u>For the Year Ended December 31,</u>					
	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
<u>Attorneys</u>						
Annual Fees	\$304,705	\$316,713	\$0	\$0	\$0	\$0
Extension Fees	\$71,840	\$40,821	\$79,656	\$79,998	\$73,666	\$70,515
Penalty Fees	\$197,412	\$194,738	\$322,698	\$276,842	\$251,940	\$201,705
Fees in Arrears	\$46,786	\$100,923	\$129,209	\$111,513	\$101,591	\$79,538
Credit Hour Fees	\$0	\$65,268	\$64,961	\$27,997	\$20,597	\$16,949
Program Application Fees	\$0	\$29,715	\$29,428	\$12,895	\$9,573	\$7,865
Total Income from Attorneys	\$620,742	\$748,177	\$625,952	\$509,244	\$457,367	\$376,570
<u>Providers</u>						
Annual Renewal Fees	\$13,200	\$24,952	\$36,840	\$41,261	\$44,687	\$46,463
Non-Compliance Fees	\$0	\$0	\$6,973	\$7,809	\$8,413	\$8,733
Fees in Arrears	\$0	\$0	\$0	\$0	\$0	\$0
Credit Hour Fees - Accredited Providers	\$0	\$163,114	\$238,549	\$293,971	\$343,076	\$380,112
Credit Hour Fees - Non-Accredited Providers	\$0	\$116,294	\$182,007	\$184,879	\$175,168	\$176,356
Program Application Fees - Accredited Providers	\$0	\$0	\$0	\$0	\$0	\$0
Program Application Fees - Non-Accredited Providers	\$0	\$52,946	\$82,452	\$85,154	\$81,416	\$81,833
Provider Accreditation Fees	\$0	\$776	\$4,692	\$5,255	\$2,452	\$1,545
Total Income from Providers	\$13,200	\$358,082	\$551,513	\$618,329	\$655,211	\$695,044
Fee Income	\$633,942	\$1,106,259	\$1,177,465	\$1,127,573	\$1,112,578	\$1,071,614
Interest Income	\$3,000	\$2,828	\$3,352	\$5,005	\$6,271	\$7,329
Total Income	\$636,942	\$1,109,086	\$1,180,818	\$1,132,579	\$1,118,849	\$1,078,943

Nevada Board of Continuing Legal Education

**Projected Financial Results**

(Continued)

<b>Expenses</b>	<b>For the Year Ended December 31,</b>					
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
<b>PA CLE Development Expenses</b>						
CLECTS Upgrades	\$0	(\$1,100)	\$0	\$0	\$0	\$0
Website Upgrades*	\$0	\$30,000	\$0	\$0	\$0	\$0
EXPRESS**	\$0	\$8,400	\$0	\$0	\$0	\$0
Provider Credit Card Processing	\$0	\$9,300	\$0	\$0	\$0	\$0
Attorney Online Payment	\$10,500	\$0	\$0	\$0	\$0	\$0
Phone App	\$0	\$21,000	\$0	\$0	\$0	\$0
Provider Training Manual	\$0	\$2,500	\$0	\$0	\$0	\$0
Out-of-Pocket Expenses	<u>\$2,100</u>	<u>\$13,520</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total PA CLE Development Costs	\$12,600	\$83,620	\$0	\$0	\$0	\$0
<b>PA CLE Recurring Expenses</b>						
Annual License Fee - Existing Software	\$0	\$18,000	\$18,743	\$20,270	\$21,922	\$23,709
Support Fees - Existing Software	\$7,950	\$1,950	\$1,950	\$1,950	\$1,950	\$1,950
Annual License Fee - New Modules	\$0	\$8,367	\$21,085	\$22,804	\$24,662	\$26,672
Support Fees - New Modules	\$0	\$6,420	\$15,750	\$8,200	\$2,250	\$2,250
Transaction Processing Fees	\$0	\$17,935	\$36,134	\$34,524	\$33,916	\$32,571
Total Recurring PA CLE Expenses	\$7,950	\$52,672	\$93,662	\$87,748	\$84,700	\$87,152
<b>NVCLE Implementation Expenses</b>						
Contracting with PA CLE	\$0	\$0	\$0	\$0	\$0	\$0
Travel	\$2,300	\$4,600	\$0	\$0	\$0	\$0
Provider Announcements	\$0	\$10,900	\$0	\$0	\$0	\$0
Attorney Announcements	\$0	\$95,400	\$0	\$0	\$0	\$0
Other Announcements	\$0	\$0	\$0	\$0	\$0	\$0
Advertising	<u>\$0</u>	<u>\$24,000</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Implementation Expenses	\$2,300	\$134,900	\$0	\$0	\$0	\$0

Nevada Board of Continuing Legal Education

**Projected Financial Results**

(Continued)

	For the Year Ended December 31,					
<u>Operating Expenses</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Supplies	\$9,374	\$4,800	\$5,100	\$5,400	\$5,700	\$6,000
Office Expenses	\$3,098	\$6,600	\$7,200	\$7,800	\$8,400	\$9,000
Computers	\$21,847	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Internet	\$953	\$1,200	\$1,350	\$1,500	\$1,650	\$1,800
Equipment Maintenance	\$6,762	\$13,200	\$14,400	\$15,600	\$16,800	\$18,000
Telephone	\$5,100	\$3,600	\$3,600	\$3,600	\$4,500	\$4,500
Postage	\$12,240	\$19,243	\$19,458	\$19,653	\$20,126	\$20,280
Printing/Bulk Mail Supplies	\$10,272	\$10,000	\$10,000	\$7,500	\$7,500	\$7,500
Travel	\$28,600	\$59,050	\$59,050	\$59,050	\$59,050	\$59,050
Furniture & Equipment	\$8,333	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Rent	\$48,120	\$57,120	\$57,120	\$58,620	\$60,720	\$60,720
Payroll & Benefits	\$432,415	\$488,771	\$511,265	\$536,780	\$563,452	\$591,336
Professional Services	\$48,564	\$50,300	\$48,300	\$55,800	\$53,800	\$51,300
Other Expenses	<u>\$12,903</u>	<u>\$11,050</u>	<u>\$11,700</u>	<u>\$12,350</u>	<u>\$13,000</u>	<u>\$13,650</u>
Total Operating Expenses	\$648,580	\$732,934	\$756,543	\$791,654	\$822,698	\$851,136
Total Expenses	\$671,430	\$1,004,126	\$850,205	\$879,401	\$907,398	\$938,288
Net Income	<u>(\$34,488)</u>	<u>\$104,960</u>	<u>\$330,613</u>	<u>\$253,178</u>	<u>\$211,452</u>	<u>\$140,655</u>
Beginning Reserves	\$600,000	\$565,512	\$670,473	\$1,001,085	\$1,254,263	\$1,465,715
Ending Reserves	\$565,512	\$670,473	\$1,001,085	\$1,254,263	\$1,465,715	\$1,606,370