

STATE BAR OF NEVADA

January 25, 2016

Chief Justice Ronald Parraguirre
Nevada Supreme Court
201 South Carson Street
Carson City, NV 89701-4702

Re: Nevada Board of Continuing Legal Education; ADKT 0499

Dear Chief Justice Parraguirre:

Thank you for the opportunity to provide comment at the December 8, 2015 public hearing regarding the Nevada Board of Continuing Legal Education (NVCLE), specifically, the business plan to transition to a provider-based system. The State Bar of Nevada also appreciates the Court's latitude in providing additional time to comment on the NVCLE response, received by this office on December 7, 2015.

Following the public hearing, representatives from the state bar's CLE Taskforce met with members of the NVCLE Board and staff with a goal of finding common ground regarding the NVCLE proposed business plan, in addition to further topics identified by the Court. The meeting with NVCLE representatives occurred in Reno on December 28, 2015 and although NVCLE Board representatives provided tentative agreement on some issues, they requested an opportunity to provide formal feedback from the NVCLE Board prior to the state bar's Board of Governors meeting on January 20, 2016. This feedback was not provided prior to the January 20 meeting.

The enclosed response is provided in accordance with the January 30, 2016 deadline set by the Court and represents the position of the State Bar of Nevada's Board of Governors. As always, if I can provide further information, please do not hesitate to contact me.

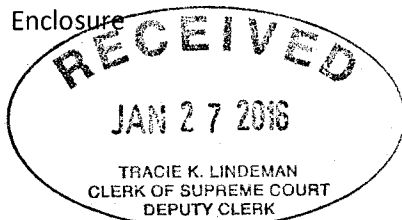
Sincerely,



Kimberly K. Farmer
Executive Director

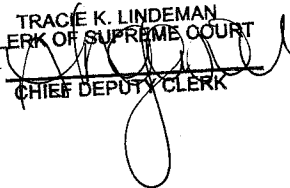
cc: Laurence P. Digesti, President, State Bar of Nevada
Jenny Hubach, President, Nevada Board of Continuing Legal Education

Enclosure



FILED

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State Bar of Nevada Response to the NVCLE Business Plan and Additional Information as Requested by the Court

On October 28, 2015 the State Bar of Nevada provided to the Court its Observations to the NVCLE Business Plan. At its December 8, 2015 public hearing regarding ADKT 0499, the Court provided the State Bar of Nevada an additional opportunity to provide comment on the Business Plan. The Court also requested the state bar provide feedback on three topics: (1) CLE exemption for attorneys over 70 years old; (2) the perception that there is a “buyout” provision for attorneys who do not take required CLE credits; and (3) a requirement that attorneys take specialized CLE courses in their area(s) of practice.

The report that follows will address the Court’s identified topics and the state bar’s continuing concerns regarding implementation of the NVCLE transition to a provider funded model.

Additional Information as Requested by the Court

(1) CLE Exemption for Attorneys Over 70 Years Old

The Court asked the state bar to provide input on whether active status attorneys who reach the age of 70 should be exempted from CLE requirements, as permitted under current Court Rule. There are 19 states which currently provide for such an exemption, although the age for exemption and restrictions on practice vary from state to state. In Nevada, more than 500 attorneys aged 70 or more maintain an active status.

The Board of Governors engaged in a thoughtful discussion about this issue, especially as it pertains to protection of the public. For example, attorneys who are actively engaged in the practice of law, though versed in a particular area, are destined to face issues that may not have been prevalent a decade—or even a year—ago. In order to effectively represent clients, an attorney must be familiar with the issue, its nuances, and the tools and procedures that would prepare one to adequately address it. Continuing legal education provides a foundation for addressing new and innovative areas of law. It also provides a refresher on legal fundamentals, beneficial to attorneys in all stages of practice.

The Board of Governors recognizes the impact an amendment to this exemption would have and respectfully requests additional opportunity to further explore the issue. This includes soliciting input from members of the bar through surveys and discussions with state bar sections and members of the judiciary.



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(2) CLE Buyout

There is an impression that some lawyers can “buy” their way out of the CLE requirement. There is no provision in Court Rule which provides for a “buyout,” however, one of the reasons for this perception is the time consuming process for implementing attorney fines and CLE suspension. Additionally, this process has some loop holes, thus some attorneys (albeit a very small percentage) know how to work the system to avoid the CLE requirement.

The State Bar of Nevada has suggested to the NVCLE a Rule amendment that would streamline the process for CLE suspensions, such as setting one date for extensions (March 1), setting the fee for extensions much higher, and making suspension automatic on the March 1 deadline. Representatives from the NVCLE agreed to bring suggestions to their full Board for approval. The state bar will provide assistance in developing a new process and writing the ADKT for a rule change as requested by the NVCLE Board.

(3) CLE Specialization

The Court asked the state bar to explore a CLE specialization requirement, or primary practice area requirement. The state bar recognizes the goal of this concept—to improve the quality of practice in the state—and considered the impact of such a requirement, including how to address instances in which an attorney seeks to expand his or her area of practice, attorneys who practice in multiple fields, and the limited availability of CLE courses for specialized practice areas. The state bar suggests, as one option, that programs which require expertise in a limited area, such as representation on behalf of the Nevada Juvenile Justice System, require specialized CLE as a prerequisite to service.

The NVCLE Board has also agreed to consider this issue at its board meeting in March 2016.

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(4) Compliance with CLE Requirements

The State Bar of Nevada supports the NVCLE plan to increase compliance with CLE requirements. In the past, the NVCLE Board increased its penalty fees for attorneys who failed to timely complete their MCLE hours or failed to file their compliance report. These efforts to improve compliance through increased penalty fees did not have the intended effect. The state bar suggests alternative options, including setting a process in place so that the attorney cannot return to practice within a set number of days after removal from the CLE suspension list. Representatives from the NVCLE Board have



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indicated that this idea will be considered at their March 2016 meeting as it will require a Rule amendment.

The state bar will explore placing CLE suspension orders on attorney profiles (Find a Lawyer). Additionally, when provided by the NVCLE, the state bar will publish a list of CLE suspended lawyers in *Nevada Lawyer*.

(5) Exemptions for CLE Providers

The state bar, in its Observations to the NVCLE Business Plan, identified the impact of per attorney, per credit hour CLE provider fees, namely how providers may elect to pass through those fees to attendees. A representative from the Clark County Bar Association (CCBA) also expressed concern about provider fees at the December 8, 2015 public hearing, as CCBA and other local non-profit bar associations offer low cost CLE programming to their members.

The NVCLE Board staff clarified the exemptions for providers. Accredited providers who are nonprofit, and do not charge CLE fees will be exempt from paying the \$5 per credit hour, per person fee. NVCLE Board staff confirmed the state bar and other bar associations would not be exempt from the provider fee unless the course was offered at no charge. They also indicated that feedback from other CLE providers using this model saw a significant increase in revenue using the provider model and eventually decreased the per credit hour fee.

The state bar provided in its October 28, 2015 Observations to the NVCLE Business Plan, estimates for the financial impact of the \$5 per credit, per person fee—more than \$60,000 per year in live seminars alone. This impact is significant as revenue received from CLE is used to offset state bar expenditures and maintain bar dues at their current rate. Absent an exemption from the NVCLE Business Plan, the state bar will need to consider alternatives, including passing the cost on to attorneys through an increase in per credit hour CLE program pricing.

(6) NVCLE Board Reserves

The state bar has expressed concern about the lack of a specific policy for the draw-down of its reserves and suggested a \$500,000 restricted reserve during the transition period. The NVCLE Board has indicated that it is waiting to complete the transition to the provider model before determining the amount to be held in reserve. The state bar's concern regarding the lack of designated reserves remains and the state bar suggests setting a short term reserve policy with designated reserve funds.



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The NVCLE Board indicated that it would confer with their consultant and discuss with their full board in March 2016.

(7) Administrative Expenses

The state bar's Board of Governors has expressed concern regarding the administrative expenses to transition to a provider-based model, specifically, the costs related to provider/attorney announcements, advertising, travel costs, software license and support, and PA CLE fees.

Representatives from the NVCLE Board explained the increase in staffing costs shown in the budget is due to a partial year of added staff positions showing in year one, with a full year of new staff showing in subsequent years. The NVCLE Board staff indicated the announcement expenses were high due to certified mailing costs. The state bar has suggested alternatives to this process and NVCLE Board staff will review their communications plan to see if expenses can be reduced. The state bar has also requested, but not received, more detail to line items noted in the projected budget (pages 20-21 of the Business Plan).

(8) Governance

The state bar agrees with the recommendations from the Blue Ribbon Commission for NVCLE Board appointments (appointments to the Board made by the Supreme Court and the state bar's Board of Governors). The state bar also suggests adding term limits. The NVCLE Board plans to discuss the issue of term limits, staggered appointments, and implementation of a new appointment process at their March meeting.