

State of Nevada  
Board of Continuing Legal Education

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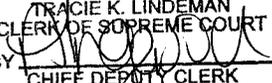
LAURA BOGDEN  
EXECUTIVE DIRECTOR

January 26, 2016

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

**FILED**

JAN 28 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

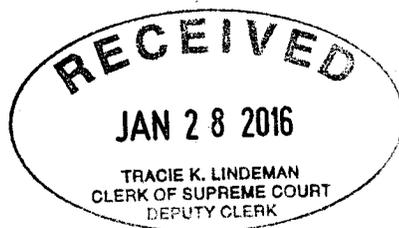
**Re: Nevada Board of Continuing Legal Education; ADKT 0499**

Dear Chief Justice Parraguirre:

This letter is written in response to the State Bar of Nevada's follow up response to the proposed NVCLE Board's Business Plan. On December 28, 2015, a joint meeting was conducted between the SBN CLE Taskforce, staff and the NVCLE Board (3 Board members and our Executive Director) and several issues were discussed. While some issues were tabled for further research and or discussion by both boards, a majority of the issues discussed were resolved with mutual agreement. Overall, it was a very productive meeting and those in attendance demonstrated a strong desire for the Boards to work together towards the mutual goal of increased CLE compliance and protection of the public.

The attached submission addresses several issues discussed and offers additional information where indicated. While the NVCLE Board had intended to provide additional comment and/or information to the SBN prior to the Board of Governors meeting on January 20, 2016, the information went out later than intended and was therefore not considered at the BOG meeting. That information has been provided to the SBN and is included in the following submission with our sincerest of apologies. I, as Chair, express my personal apologies to the Court and the SBN in my being unable to get all of the requested information gathered in time for the meeting.

While many items addressed in the attached submission are set for further discussion at our next full board meeting in March, any items this Court wishes for the Board to address in an expedited fashion can certainly be accomplished. We can move our meeting up should the Court wish for us to do so.



JENNY D. HUBACH - CHAIR

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16-03005

The NVCLE Board looks forward to the anticipated Court ruling on this matter so as to continue movement in a positive direction. As always, please do not hesitate to call upon me for further information as needed.

Respectfully,

A handwritten signature in black ink that reads "Jenny Diane Hubach". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Jenny Diane Hubach, Chair  
Nevada Board of Continuing Legal Education

cc: Laurence P. Digesti, President, State Bar of Nevada  
Kimberly Farmer, Executive Director, State Bar of Nevada

## NVCLE Board Response to SBN Response

### **1) CLE Exemption for Attorneys Over 70 Years Old**

The NVCLE Board favors removing this exemption and would point out that on a national level, there is movement towards removal. NVCLE Board is mindful of the potential impact on attorneys over 70 and would need to come up with a transition plan to minimize such an impact.

### **2) Alleged CLE Buyout**

There has never been an ability to "buy" out of CLE. Furthermore, while some attorneys have figured out how to work the system so as to delay completion of their CLE, the CLE requirements still remain. In addition, penalty fees must be paid together with total completion of CLE requirements (past and present for active practice years) prior to being suspended. So while these attorneys push the envelope to the brink of being placed on petition or being suspended, they still must complete all of their CLE and pay all fees including penalty fees.

An example of the process: If an attorney was CLE suspended in 2010 and then reinstated in 2015, he or she would not have to make up the 5 years of prior CLE; however, he or she would have to complete 27 hours (6 of which need to be in ethics) for the year in which he or she reinstates. Thus, while the attorney may not have completed CLE for that 5-year period, they also were not practicing law.

### **3) CLE Specialization**

The NVCLE Board members in attendance at the joint meeting on December 28, 2015, had no objection to this concept; however, expressed reservations regarding the details of implementation. The concept has been placed on the agenda for the full Board meeting in March.

### **4) Compliance with CLE Requirements**

The NVCLE Board is in the process of making recommendations for substantial changes regarding the penalties for noncompliance. As pointed out in the SBN response, this will require significant rule changes. Direction from the Court will be requested.

## **5) Exemptions for Non-Profit CLE Providers**

The NVCLE Board has placed this item on its agenda for the March, 2016 full Board meeting and is considering ways to alleviate the financial impact on non-profit agencies. However, it should be noted that if a non-profit provider (or for profit for that matter) charges a nominal fee to participants to cover the cost of a lunch, i.e. The Clark County Bar Association and The Washoe County Bar association put on CLE lunches and charge only a nominal fee to cover the cost of the actual lunch provided, then these providers would be exempt. At the joint meeting with the SBN the idea of considering exemptions based upon the course rather than the entity was considered together with the idea that the Board should tighten up the definitions for exemptions. The idea is that if no fee is charged for the course, then there would be no sponsor fee. Again, the Board has placed this item on its agenda for a full discussion.

## **6) Reserves**

The Board concurs with the State Bar's suggestion of maintaining a \$500,000 reserve during transition to the new business model. NVCLE believes this period will include 2016 and 2017, the former being the implementation year and the latter providing a full cycle of experience under the new model. Barring unforeseen circumstances, the Board expects operations will settle into steady state from 2018 onward.

As presented to the Supreme Court at its December 8 hearing, the Board recommends establishing a steady state reserve policy once that period is reached. Doing so will provide more than a year of actual operating data to work with, resulting in much greater specificity for the 2018 operating budget. Based on then-actual experience, this budget may have changed from current expectations. (For example, actual compliance levels achieved and trending will be important determinants.) In other words, a steady state reserve policy set today for events at least two years out may be sub-optimal by then.

Therefore, the NVCLE's plan is to establish the policy with the most current information available when steady state is reached. The Board wishes to emphasize that it fully endorses the concept of a dedicated reserves policy, with the objective of precision based on actual circumstances at the time.

## **7) Administrative Expenses**

While the NVCLE Board will be discussing the administrative expenses at the March Board meeting, in the interim, some adjustments have already been made as noted below:

## Travel:

NVCLE reexamined the personnel and cost assumptions for its projected travel budget, and has made adjustments accordingly. While the number of "people-trips" remains about the same, with a correction in that we do not send the entire Board to every CLEReg meeting, the Board reduced the costs per person based on advanced purchase airfares, more day rather than overnight trips, selective attendance at meetings in distant/expensive locations, and other miscellaneous considerations. The Board's adjusted travel budget allows for two NVCLE board meetings in Las Vegas and two in Reno per year, the annual State Bar meeting, and two CLEReg meetings per year.

Travel to the Las Vegas board meetings entails four Board members and two staff, while three Board members travel to Reno for meetings there, at an assumed cost of \$300 per person. Meetings will be timed such that day trips are feasible, but the average cost could increase depending on the frequency with which Board members stay overnight. Based on these assumptions, NVCLE's budgeted annual travel expense for board meetings is \$5,400.

All seven Board members plus two staff travel to the State Bar annual meeting. Since the location varies year to year, NVCLE based its cost estimates on an "average" location. This has always been considered a great opportunity for the BOG and CLE Board to interact and for the Board to attend SBN CLE courses. As a result, NVCLE derived a cost estimate of \$1,500 per person, or \$13,500 in the aggregate. Again, subject to change based upon the location of the meetings.

CLEReg (National Association) meets twice per year. The CLE Board typically sends two Board members and one staff to each meeting to maintain our presence and continue learning of national trends. (Sometimes more than one staff is included depending upon the nature of the meeting, as one year when Nevada was a presenter, two staff and one Board member presented on the topic of transitioning into the 21<sup>st</sup> century, and one year Nevada hosted so the entire Board and majority of staff attended.) Currently, our Chair is a member of the national planning committee and the newly formed bylaws and regulations review committee for the CLEReg Association thereby maintaining active involvement by Nevada. The locations for these meetings vary from year to year as well, so the Board used a similar methodology as described above for the annual meeting, and estimates the cost at \$1,500 per person, or \$9,000 total.

Summing these categories, NVCLE's adjusted annual projected travel budget is \$27,900. As noted previously, actual costs may vary due to factors such as overnight stays and meeting locations.

## Staffing

The NVCLE Board addressed the increase in staff costs during our joint meeting and believes this is no longer a concern. The apparent "spike" in personnel costs was the result of staff that were added mid to late year being shown at a full yearly cost in the subsequent year.

### **Alternatives for method of communication**

During this transition time, and until an ADKT is approved to change the requirement of attorneys having to sign and physically return their compliance reports, the projected budget for printing and mailing the compliance reports must remain. In addition, SCR212(2) requires that the NVCLE Board send a copy of the Petition for Suspension to the delinquent attorneys via certified mail. The Board believes that rule changes are needed in order to reduce such costs and will be putting forth an ADKT. The goal is to eliminate as much paper as possible by moving towards more electronic communication, thereby reducing costs.

### **PACLE Costs (Pennsylvania Continuing Legal Education)**

The Board reached out to PACLE two years ago as PACLE had designed specific cutting edge programming that converted antiquated CLE systems into the 21<sup>st</sup> Century. As a result, NVCLE is now online. Attorneys can review their compliance reports online, pay annual fees online and view available CLE courses. In addition, there is a link on the NVCLE website allowing direct access to the SBN. Rather than reinvent the wheel, NVCLE opted to continue its relationship with PACLE for the transition to a sponsor fee based business plan. PACLE has already assisted 4 other states in making this same transition and will be assisting additional states in the future.

### **Advertising**

The NVCLE Board began advertising last year to educate attorneys about the difference between the SBN and the NVCLE Board and to also educate attorneys regarding the new online system with the goal of increased CLE compliance. The NVCLE Board anticipates and agrees with the SBN in that the Board will begin to shift over to attempting to educate attorneys concerning CLE compliance, methods, and rule changes by writing periodic columns and publishing in various legal publications. It is anticipated that this method will reduce advertising costs.

### **8) Governance**

The NVCLE Board agreed to put forth the ADKT as presented by Judge Brent Adams, requesting that the Supreme Court be its overseer and maintains that position including the appointment of its Board members. In addition, the NVCLE Board has no objection to term limits and will be discussing a recommendation at our March

meeting. The best way to summarize it is that while the Board will not actively oppose the BRC recommendation and is prepared to proceed forward in whatever manner the Court directs, it is not withdrawing from its prior position as expressed in the ADKT filed by Judge Adams.