

# Office of the Public Defender

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October 24, 2018

Chief Justice Michael Douglas  
Associate Chief Justice Mark Gibbons  
Justice Michael Cherry  
Justice Ron D. Parraguire  
Justice Kristina Pickering  
Justice Lidia S. Stiglich  
Justice James W. Hardesty

Supreme Court of Nevada  
201 South Carson Street  
Carson City, NV 89701-4702

**FILED**

NOV 01 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

**Re: Renewed Request for Amendment to ADKT 0499**

Dear Chief Justice Douglas & Justices of the Supreme Court of Nevada:

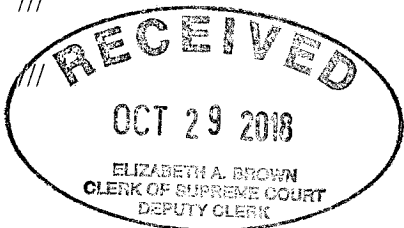
I am writing on behalf of the Clark County Office of the Public Defender (“CCPD”). The Clark County Office of the Public Defender is the government agency responsible for representing indigent individuals who have been accused of crime in Clark County. Currently with over 120 attorneys we are the largest criminal defense law firm in the state of Nevada. CCPD has reviewed the Renewed Request for Amendment to ADKT 0499 and has several concerns regarding the revised proposal’s consequences that will result in treating for-profit CLE providers the same as individual attorneys, government entities, and pro bono organizations.

This response outlines CCPD’s concerns, which are similar to the concerns outlined by the State Bar of Nevada in its response.

1. CCPD Objects to Changing the Exemption Rule Regarding Government and Non-Profit Agencies.

CCPD objects to changing the exemption rule regarding government and non-profit agencies because government entities and non-profit organizations should not be treated the same as for-profit CLE providers.

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The CCPD, in conjunction with the Nevada Office of the Federal Public Defender (“FPD”), the Special Public Defenders Office (“SPD”), the Office for Appointed Counsel and Nevada Attorneys for Criminal Justice (“NACJ”), have worked together for years to host free CLEs for criminal law practitioners in both the government sector and the private sector. The stated aim of the CLEs provided is to enhance lawyer education for the criminal defense practitioner. As an agency, we do not generate revenue. Rather, CCPD partners with the entities above in order to live up to the goal outlined in Supreme Court Rule 86(9)—“to encourage higher and better education for membership in the profession” and to adhere to the standards mandated by ADKT 411.

The CLEs provided by CCPD cover all aspects of criminal defense in Nevada, and generally are of higher quality with more jurisdictionally relevant educational material provided to local practitioners than the CLEs provided by for-profit entities and other organizations.

The CCPD is a currently accredited CLE provider. Including in-house, new lawyer training, CCPD provides around 60-80 hours of free CLE education to our Deputy Public Defenders annually. By removing the exemption currently in place, the MCLE board will be creating an enormous cost increase to our budget which will have a crippling effect on our ability to host free CLEs, which runs counter to the goals stated by this Court and Clark County for effective indigent defense.

Additionally, Exhibit 3 to the Renewed Request for Amendment to ADKT 0499 lists states which provide for exemptions to non-profit providers and the MCLE Board has provided no solid reason to change its exemption rule when other states such as Alaska and Iowa provide for exemptions, and some jurisdictions—Arizona, Arkansas, Georgia, Mississippi, Missouri, New Hampshire, North Carolina, Tennessee, and Vermont—charge no fee at all.

If the true purposes of CLEs are to provide education for Nevada lawyers, then publically funded government agencies like CCPD should be supported in providing as many educational opportunities as possible to our own attorneys and the local bar. The exemption currently in place allows us to do this. Removing the exemption will cause us to offer fewer courses; thereby reducing the amount of information and education our criminal defense bar receives because we will be forced into making choices based on cost rather than providing as many broad educational opportunities as possible, which is an untenable consequence of ADKT 0499’s proposed amendment.

Accordingly, CCPD objects to changing the exemption rule regarding government and non-profit agencies because government entities and non-profit organizations should not be treated the same as for-profit CLE providers. Thus, CCPD asks this Court to deny the amendment request in ADKT 0499 seeking to remove the current exemption, and leave the exemption in place so that the CCPD can continue to provide numerous high quality educational opportunities to our members and the criminal defense bar at large.

2. CCPD Objects to Increasing Provider Application Fees for Recorded Programs.

In order to provide quality CLE programming to rural criminal defense attorneys and address concerns brought up by the Indigent Defense Commission regarding training availability in rural Nevada, CCPD in conjunction with the FPD, SPD and NACJ are currently working to establish free internet based video recordings of CLEs. ADKT 0499's unexplained proposal of increased fees that are double that of live programs along with removal of the exemption for non-profits and government entities will have a chilling effect on CCPD's ability to create this free programming due to cost concerns. Thus, CCPD objects to doubling provider application fees for previously recorded programs and asks this Court to deny that request.

3. Expensive Attorney Application Fees When the Provider Does Not Apply and Pay the Fee.

CCPD objects to the expensive attorney application fees charged when an attorney attends a program where the CLE provider does not apply and pay the application fees.

Our Deputy Public Defenders, usually at great personal cost to themselves, pay to attend some out of state programming such as the trial college put on by the National Criminal Defense College, Gideon's Promise, Bryan R. Shechmeister Death Penalty College and several other nationally recognized defense seminars. When attending these programs, the attorney often has to pay for their own airfare, their own hotel room, the seminar itself, and whatever other expenses come up during travel only then to be charged additional fees by the MCLE Board.

It appears that the current function of the MCLE Board is largely ministerial in nature, keeping track of CLE credits. We live in the internet age, and it is no longer hard to research programming online. Thus, these increased costs proposed by the MCLE Board are both unexplained and unjustifiable. Moreover, it reduces the incentive for attorneys to attend specialized CLEs that may not be provided locally.

The MCLE Board's proposal seems more concerned with revenue generation rather than attorney education. Thus, CCPD objects to the request for increased attorney application fees, and asks this Court to deny that request.

Conclusion

CCPD files this response with great concern. The MCLE Board's request to remove the exemption currently in place would severely handicap all of the educational benefits provided to the criminal defense bar through our organization and the institutional defender offices in the state of Nevada.

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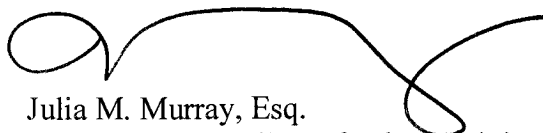
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Moreover, the MCLE Board's proposal not only will take away several educational opportunities from the criminal defense bar, it will also take more money from indigent defense. If the stated goal is to use CLEs to promote attorney education, the MCLE Board's requests for additional fees, with the potential to keep increasing fees creates a disincentive for attorneys to take advantage of as many educational opportunities due to the price tag proposed by the MCLE Board.

Additionally, with Nevada having significantly less attorneys than Texas, CCPD finds it troubling that the MCLE's staff is nearly similar in size to Texas's. Accordingly, CCPD requests that this Court consider the State Bar of Nevada's alternative governance structure, which seems better suited to serving the needs of Nevada attorneys in comparison to the current plans proposed by the MCLE Board under the Amendment to ADKT 0499.

In sum, CCPD requests that this Court deny the requests sought by the Renewed Request for Amendment to ADKT 0499 and allow non-profit and government agencies to continue to provide quality free educational programming to our members.

Best Regards,



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