

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 In the matter of Amendments to SCR
3 106.5 regarding lawyer wellness
4 programs; privilege and limitation.

ADKT NO.: 0540

FILED

FEB 04 2019

6
7 **PETITION**

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

8 The Board of Governors of the State Bar of Nevada ("State Bar") hereby
9 petitions this Court to amend Supreme Court Rule ("SCR") 106.5 regarding State
10 Bar lawyer wellness programs. The proposed amendments set forth in Exhibit A
11 define the Lawyers Concerned for Lawyers (LCL) program and the Nevada Lawyer
12 Assistance Program (NLAP), expand the confidentiality and privilege provisions in
13 SCR 106.5 to include the voluntary services sought through the Nevada Lawyer
14 Assistance Program, and clarify when participation in NLAP may be required.

15 The State Bar established NLAP in 2013 to provide clinical assessment and
16 treatment services for attorneys suffering from addiction disorders and mental
17 health issues. These services were expanded in 2017 to include up to three
18 confidential mental health counseling sessions at no charge for attorneys seeking
19 therapy for depression, stress or other difficult life situations affecting their ability
20 to practice.

21 The clinical services offered through NLAP compliment the peer-to-peer
22 support offered through the Lawyers Concerned for Lawyers (LCL) program. State
23 Bar policy makes the services provided through NLAP confidential if sought on a
24 voluntary basis; the proposed amendment codifies this policy.

1 The Nevada Lawyer Assistance Program can be used as a tool to the State Bar
2 when dealing with allegations of attorney misconduct related to substance use or
3 mental health issues. In this instance, Bar Counsel may order participation in NLAP
4 as part of a diversion program agreement. Supreme Court Rule 106.5(3) clarifies
5 that in this instance, SCR 105.5 applies.

6 The State Bar has committed its resources to building wellness programs that
7 proactively promote lawyer wellbeing. This petition formalizes the Nevada Lawyer
8 Assistance Program in Court Rule and ensures the confidentiality provisions
9 necessary to the program's continued operation.

10
11 Respectfully submitted this 1st day of February 2019.

12 STATE BAR OF NEVADA
13 BOARD OF GOVERNORS

14 
15 RICHARD J. POCKER, President

16 Nevada Bar No. 3568

17 State Bar of Nevada

18 3100 W. Charleston Boulevard, Ste. 100

19 Las Vegas, NV 89102

20 (702) 382-2200
21
22
23
24
25

EXHIBIT A

1 **Rule 106.5. [~~Lawyers Concerned for Lawyers~~] Lawyer wellness programs:**
2 **privilege and limitation.**

3 1. [~~Definition~~] Purpose. The board of governors may establish lawyer
4 wellness programs [~~Lawyers Concerned for Lawyers program is a voluntary~~
5 program created by the board of governors] to assist lawyers who are suffering
6 from a psychological disorder or impairment, [ø] a drug, alcohol, gambling, or
7 other addictive or compulsive disorder, or issues related to mental health.

8 2. Definitions.

9 (a) The Lawyers Concerned for Lawyers (LCL) program provides confidential
10 peer-to-peer support. A lawyer's participation in LCL is voluntary.

11 (b) The Nevada Lawyer Assistance Program (NLAP) provides clinical
12 assessment, treatment or therapy services. Services provided through NLAP may
13 be sought on a voluntary basis or may be ordered on condition of a diversion
14 agreement under SCR 105.5 or may be Court ordered.

15 [2] 3. Privilege. Individuals who make a good faith report to [~~the Lawyers~~
16 Concerned for Lawyers program] LCL or NLAP, the board of governors and its
17 members, bar counsel, and staff, and the coordinator, agents, or employees of the
18 [~~Lawyers Concerned for Lawyers~~] LCL or NLAP program, shall be absolutely
19 immune from civil liability for any activities related to the [~~Lawyers Concerned for~~
20 Lawyers] LCL or NLAP program, including, but not limited to, making referrals to
21 a counselor, therapist, medical, psychological or behavior health care provider. No
22 action may be predicated upon the filing of a good faith report with the [~~Lawyers~~
23 Concerned for Lawyers] LCL or NLAP program or any action taken in connection
24 with such a filing by the coordinator, agents, or employees of the [~~Lawyers~~
25 Concerned for Lawyers] LCL or NLAP program.

[3] 4. Limited use policy. All information obtained by the [~~Lawyers~~
1 Concerned for Lawyers] LCL program or as a result of voluntary services sought
2 from NLAP, including the initial report and any subsequent information provided
3 to the program thereafter, shall be confidential and shall not be admissible in any
4 state bar disciplinary, admission, administrative or other state bar proceeding.

(a) This rule is not meant to preclude the state bar from using evidence or
information which is independently discovered from a source separate from the
[~~Lawyers Concerned for Lawyers~~] LCL or NLAP program.

(b) This rule is not meant to preclude the state bar from requiring participation
in NLAP as part of a diversion program under SCR 105.5, in which case, the
attorney is subject to the rules under SCR 105.5.

STATE BAR OF NEVADA



February 1, 2019

Chief Justice Mark Gibbons
Nevada Supreme Court
201 South Carson Street
Carson City, NV 89701-4702

3100 W. Charleston Blvd.
Suite 100
Las Vegas, NV 89102
phone 702.382.2200
toll free 800.254.2797
fax 702.385.2878

9456 Double R Blvd., Ste. B
Reno, NV 89521-5977
phone 775.329.4100
fax 775.329.0522

www.nvbar.org

RE: Proposed ADKT Amending SCR 106.5

Dear Chief Justice Gibbons:

On behalf of the State Bar of Nevada Board of Governors, please find enclosed a petition to amend the Court Rules regarding lawyer wellness programs; privilege and limitation.

The proposed amendment seeks to expand SCR 106.5 to include the Nevada Lawyer Assistance Program as a recognized state bar program under which reports made in good faith are immune from civil liability and for which information obtained as a result of voluntary services sought are confidential.

We thank the Court for its consideration of this important matter. Please do not hesitate to contact me with any questions.

Respectfully,

A handwritten signature in cursive script, appearing to read "Kimberly K. Farmer".

Kimberly K. Farmer
Executive Director

cc: Elizabeth Brown