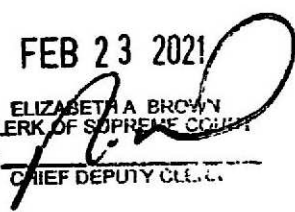


February 23, 2021

Elizabeth A. Brown
Clerk of the Supreme Court
201 South Carson Street
Carson City, Nevada 89701
via E-Mail to nvscclerk@nvcourts.nv.gov

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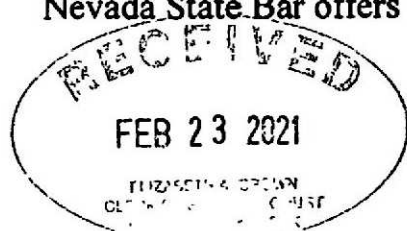
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

Re: Public Comment ADKT 0577

Dear Ms. Brown,

Pursuant to ADKT 0577, filed February 11, 2021, the Nevada Supreme Court (hereinafter "Court") invited written comment from the bench, bar and public regarding the proposed amendments contained in ADKT 0577. I submit this letter as my public comment in that regard. On February 11, 2021, with the filing of ADKT 0577 and its deletion of the provisions of former paragraph 9 of Rule 208 (Exhibit A) ["To maintain its own offices and employ an executive director and other such persons as the CLE Board (hereinafter "Board") deems necessary for the proper administration of these rules."] and addition of Rule 211 (Exhibit B) [". . . The board of governors, after consultation with the Board, shall provide offices and employ staff as the board of governors deems necessary. . ."], it appears the CLE office, its executive director and employees face not only cessation of its current operations but also the prospect of potential loss of employment. After what is a fairly eventful and consequential filing, the Nevada Supreme Court has scheduled a public hearing on March 3, 2021, with little time for many to read the decision much less put together any response or comment. My hope is that this is not a rush to judgment and that proper and ample considerations, both positive and negative, have been carefully reviewed and weighed by the Court as to all potential consequences of ADKT 0577.

I have always been a staunch supporter of the CLE office, its function and its independence from the Nevada State Bar, the single, largest provider of continuing legal education to Nevada Bar members. It appears pursuant to ADKT 0577, this will be significantly changed and the largest CLE provider will now also become the CLE regulator. The independent function of the CLE office as regulator has always made good sense and to now have this regulatory function subsumed by the Nevada State Bar creates what appears to be an inherent conflict situation. The Nevada State Bar offers its own CLE programs at a price (\$40-\$50 per credit hour)



and is the largest provider of CLE courses in Nevada. To now have the same Nevada State Bar provide CLE programs with costs and then regulate themselves creates not only an apparent conflict but also the potential for loss of many current CLE opportunities being offered to Nevada Bar members. Will the Nevada State Bar eliminate the many, very capable CLE providers that charge far less for CLE credits than the Nevada State Bar? Many of those CLE course providers offer substantial and diverse CLE opportunities for far less than what is being charged per credit by the Nevada State Bar. Will those opportunities for CLE education remain for Nevada Bar members or will the Nevada State Bar provider/regulator seek to eliminate other competing CLE providers? Has this possible consequence been considered as it is not detailed in the filed ADKT 0577? The Nevada State Bar providing CLE and regulating itself not only creates an apparent conflict situation but could potentially put those operations of the Nevada State Bar under scrutiny and in a negative light.

As the Court is aware, most State CLE functions come under the direct reporting, regulatory authority and supervision of the State Supreme Court. Much like it had been here in Nevada, but now pursuant to ADKT 0577 will now be subject to reporting and the supervision of the Nevada State Bar. Currently, there appears to be eleven states where the regulatory functions are performed by the State Bar. Those states include the States of California, Florida, Hawaii, Idaho, Missouri, New Mexico, North Carolina, Oklahoma, Oregon, Texas and Washington. Has any contact or review been made of any State that has their State Bar perform dual functions as both the largest CLE provider and CLE regulator? Has this potential and experiences learned in other States, been reviewed prior to implementation of ADKT 0577? Have the functions - any successes or failures - of any of these 11 States who operate with the dual functions of both largest provider/regulator been reviewed and considered? Has the combining of both functions under the State Bar been advantageous to the Bar members being served in those States?

One major concern is the quality and availability of current services to be provided in the future by the Nevada State Bar pursuant to ADKT 0577 to the approximate 15,000 current Nevada Bar members, most of whom have annual CLE requirements. Will the day-to-day services, answers, knowledge and abilities of an independent, fully staffed CLE office be sacrificed by being combined and coming under the supervision of the Nevada State Bar? Have the prospects of how this will work, in the short and long term, been thoroughly considered and determined to be in the best interest of the approximate 15,000 current Nevada Bar members who rely on the CLE office for timely, knowledgeable and capable

assistance? Recent rule changes implemented by the Nevada State Bar and the Court have caused some concerns for members of the Nevada Bar. I know of two situations that have had a major impact on Bar members I have spoken with and both situations involve decisions made by the Nevada State Bar and the Court which are being implemented and regulated by the CLE office. The two requirements, 1) attorneys over the age of 70 now having a CLE requirement and 2) individual affirmation of CLE credits, are directives put into place by the Bar and Court for which implementation and regulation are the responsibility of the CLE office. As this Court is aware, the end of year rush by attorneys to meet their annual CLE requirements is overwhelming near year's end especially in the month of December. It has been that way for years now as most attorneys wait until year end to meet their CLE and Bar requirements. I am not sure of the exact numbers but would estimate by year's end they are in the thousands of attorneys who have not met their annual CLE requirements. The number of requests for information and assistance due to this annual overload would create a daunting task for any office. With ADKT 0577, what resources will be available to service those Bar members with questions who require timely response and assistance? If the CLE office and its employees are eliminated, who is going to assist our Nevada Bar members with these critical, time sensitive issues that affect their law licenses and ability to practice law?

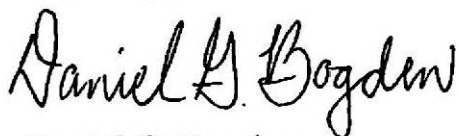
Finally, with the recent push to implement ADKT 0577, my concern goes with the employees currently under the employment of the CLE office. As this Court is aware, my wife has worked for the Board now for almost 27 years. My opinion is likely biased but I know she has always given 100% effort on behalf of and to her office and has always conducted herself with the utmost dedication and professionalism in her assistance of the Court, the Nevada State Bar, the Board and the many Nevada licensed attorneys in regulating and successfully fulfilling mandated CLE requirements and programs. That task has not always been easy but through her many years of hard work, the many extra hours and proven dedication throughout those 27 years, she has always met all job requirements and provided the kind of timely assistance, professionalism, helpfulness and courtesy required by her office and the job. She has always done her job, as most Bar members know and will tell you so.

I do not mean to sound in any way presumptuous but I think it is up to someone, this Court or the Nevada State Bar, to provide some guidance concerning the short and long-term future of the CLE program and its employees. As the Court should know, there are many positive comments from attorneys about the remarkable staff of the CLE office – hard-working and dedicated -- dedicated to

implementing the rules and directions of the Court, the Nevada State Bar and the Board on behalf of all licensed attorneys of the State of Nevada. It seems now, though, despite the dedicated service of these individuals their current jobs and future is in jeopardy. Each have major family and financial responsibilities that will be impacted by ADKT 0577 and what appears to be the future decision of the board of governors after consultation with the Board. Everyone should be knowledgeable of the five current CLE office employees which includes my wife. They are, Justin Williams, a 6 year employee of the office, who supports a family and two young children, as does Shannon Bacigalupi, a 5 1/2 year employee, with a family and two young children. Anne Barlow, a 6 year employee, is the sole support for her elderly 90 year old mother. Likewise, Tami Wittich, a 10 year employee, has her own family and financial responsibilities. As things currently stand, these individuals, like my wife, do not currently know what will occur concerning their employment be it in the short term or the long term. If decisions concerning their employment have been made and these individuals need to seek other employment then they need to know that fact as soon as possible so each can make their very best efforts during these difficult pandemic-fueled economic times to take care of their families and dependents.

None of these employees set any Board decisions in motion, yet each seems to be suffering the potential negative consequences of votes or decisions that were justifiably and appropriately made by the Board. I am certain they did not foresee that a reasonable pursuit of viable, potential options for the overall good of the CLE program would result in their current prospects of cessation of current operations and potential termination of employment of some or each of these dedicated employees. As requested, these are my thoughts and comments regarding the proposed amendments contained in ADKT 0577. I hope they are taken in the spirit in which they are being made, looking out for the best interests of all, the Court, the Nevada State Bar, the Board, the CLE office and its employees and the many Nevada licensed attorneys.

Sincerely,

A handwritten signature in cursive script that reads "Daniel G. Bogden". The signature is written in dark ink and is positioned above the printed name.

Daniel G. Bogden

Attorney at Law

Ohio State Bar, admitted 1982

Nevada State Bar, admitted 1985