

STATE BAR OF NEVADA

FILED

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ELIZABETH A. BROWN
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October 10, 2023

Chief Justice Lidia S. Stiglich
201 South Carson Street, Suite 201
Carson City, NV 89701-4702
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ADKT 608

Subject: Request to Fix an Inadvertent Mistake to the Recent Amendments to Attorney Discipline Rules Pertaining to the Nevada Lawyer's Assistance Program (NLAP)

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Honorable Justice Stiglich,

I hope this letter finds you well. I am writing on behalf of the State Bar of Nevada to bring to your attention an inadvertent omission in the recent petition we filed for amendments to the rules relating to attorney discipline. The Court graciously approved these changes, which are set to take effect at the end of this month.

Upon reviewing the approved amendments, the State Bar realized that a critical provision relating to the Nevada Lawyer's Assistance Program (NLAP) was inadvertently struck. After multiple revisions, the final draft mistakenly retained redlines striking the NLAP program from SCR 106.5. The provision in question grants participants in the NLAP privilege and immunity, a safeguard that is crucial for the effectiveness and integrity of the program. The State Bar's intent was to add the NLAP program to our diversionary programs in SCR 105.5—not to remove the privilege and immunity in SCR 106.5.

The absence of this privilege and immunity could undermine the NLAP's ability to provide confidential assistance to attorneys facing mental health or substance abuse issues. This, in turn, could have a detrimental impact on the legal community and the public it serves.

Given the importance of this provision, I respectfully request that the Court consider retaining the original language in SCR 106.5 relating to the NLAP before the approved changes take effect. I have attached a copy of the original rule for your convenience. I understand that the Court's time is valuable, and I apologize for any inconvenience this oversight may cause. However, given the significance of the NLAP provision for the well-being of our legal community, I believe it would be a universally welcomed correction.

23-36/20

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Thank you for your attention to this matter. I am available to discuss this further should the Court require additional information or clarification.

Sincerely,



Daniel Hooge (Oct 10, 2023 11:00 PDT)

Daniel M. Hooge

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2023.10.10 Supreme Court re NLAP

Final Audit Report

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(a) Hearing. If the notice is not withdrawn, bar counsel shall request the ~~[chair or vice chair of the appropriate disciplinary board to assign a]~~ hearing panel ~~[to hear]~~ that imposed the probation, diversion, or mentoring program reconvene to determine if the ~~[matter and issue an order.]~~ respondent has breached the terms of the agreement. Bar counsel shall notify the ~~[attorney]~~ respondent of such request by serving the notice of hearing on the ~~[attorney.]~~ respondent. The hearing panel shall convene within 30 days of the request. In proceedings brought under this rule, bar counsel shall have the burden by a preponderance of the evidence to establish any breach of the ~~[contract or]~~ agreement, and ~~[an attorney]~~ a respondent shall have the burden by a preponderance of the evidence to establish justification for any such breach. Where there is an alleged breach of ~~[a contract or]~~ an agreement executed pursuant to an order of the supreme court, bar counsel may move the court directly for any relief deemed appropriate.

(b) If a hearing panel finds a breach to be material and without justification, the panel shall terminate the ~~[contract or]~~ agreement and reactivate any underlying grievance(s) to be processed through any course deemed appropriate under ~~[Rule]~~ SCR 105. If the ~~[contract]~~ respondent received a stayed sanction or ~~[agreement was effectuated as]~~ an alternative ~~[to disciplinary sanctions,]~~ sanction, then the panel shall terminate the ~~[contract or]~~ agreement and impose the ~~[applicable]~~ stayed sanction or alternative ~~[sanctions.]~~ sanction.

(c) If the hearing panel finds that no breach occurred, or that the breach was immaterial or with justification, the panel may modify the existing ~~[contract or]~~ agreement or direct the parties to proceed in accordance with it.

~~[7.]~~ 5. Costs. The ~~[attorney]~~ respondent shall pay any costs associated with participation in a diversion or mentoring program, including but not

limited to laboratory testing, professional accounting or evaluation, treatment, and the costs of any hearing under this rule. The ~~[attorney]~~ respondent shall not be assessed any fees or costs for a mentor's or bar counsel's services.

[8.] 6. Completion and expungement. After the term of ~~[a contract or]~~ an agreement for diversion or mentoring under this rule has concluded, bar counsel shall notify the ~~[attorney]~~ respondent of such completion and, when applicable, any underlying grievance(s) and related records shall be dismissed and processed in accordance with ~~[Rule]~~ SCR 121. After a grievance file has been dismissed under this rule, bar counsel shall respond to any related inquiries by stating that there is no record of such a matter, unless otherwise directed by the ~~[attorney.]~~ respondent. Likewise, the ~~[attorney]~~ respondent may respond to such an inquiry by stating that any allegations or complaints that may have been filed with bar counsel's office were dismissed. However, this rule does not supersede the provisions of ~~[Rule]~~ SCR 121 and does not apply to successful completion of a program ordered in conjunction with disciplinary sanctions or ordered in lieu of more severe disciplinary sanctions, unless otherwise noted in the ~~[contract or]~~ agreement. Probation is a disciplinary sanction and not subject to expungement.

Rule 106. Privilege and limitation.

1. **Privilege.** All participants in the discipline process, including grievants, bar counsel staff, members of disciplinary panels, diversion and mentoring participants, and witnesses, shall be absolutely immune from civil liability. No action may be predicated upon the filing of a disciplinary complaint or grievance or any action taken in connection with such a filing by any of the participants~~[-]~~, ~~[Except]~~ except that any disclosures made pursuant to ~~[Rule]~~ SCR 121(16) shall not be immune under this rule.

Rule 106.5. Lawyer wellness programs: privilege and limitation.

1. **Purpose.** The board of governors may establish lawyer wellness programs to assist lawyers who are suffering from a psychological disorder or impairment; a drug, alcohol, gambling, or other addictive or compulsive disorder; or issues related to mental health.

2. **Definitions.**

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

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

3. **Privilege.** Individuals who make a good faith report to LCL or NLAP; the board of governors and its members, bar counsel, and staff; and the coordinator, agents, or employees of the LCL or NLAP program shall be absolutely immune from civil liability for any activities related to the LCL or NLAP program, including, but not limited to, making referrals to a counselor, therapist, medical, psychological, or behavior health care provider. No action may be predicated upon the filing of a good faith report with the LCL or NLAP program or any action taken in connection with such a filing by the coordinator, agents, or employees of the LCL or NLAP program.

4. **Limited use policy.** All information obtained by the LCL program or as a result of voluntary services sought from NLAP, including the initial report and any subsequent information provided to the program thereafter, shall be confidential and shall not be admissible in any 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 that is independently discovered from a source separate from the 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.

[Added; effective April 8, 2002; amended effective April 22, 2019.]