

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

2 In the Matter of Amendments to SCR 210)
3 regarding minimum continuing legal education)
4 requirements and making mandatory continuing)
5 legal education in substance abuse, addictive)
6 disorders and/or mental health issues)

ADKT NO. 0478

FILED

AUG 29 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

6 **PETITION**

7 The Board of Governors of the State Bar of Nevada (State Bar) hereby
8 petitions this Court to amend SCR 210 regarding minimum continuing legal
9 education (CLE) requirements. The State Bar petitions this Court to make
10 mandatory one CLE credit each year, as part of the twelve (12) credit hours
11 required by attorneys subject to this Rule, in substance abuse, addictive
12 disorders and/or mental health issues that impair professional competence.

13 The proposed rule, as amended, is attached hereto in its entirety as
14 Exhibit A.

14 **DISCUSSION**

15 The proposal would amend SCR 210(2) in relevant part to read:

16 To meet the annual minimum continuing legal education requirements
17 imposed by these rules, each attorney subject to these rules must timely: submit
18 an annual fee, complete the requisite number of credit hours, and submit an
19 annual compliance report.

20 ...

1 2. *Credit hours.*

2 a. Subject to the carry forward provisions of subparagraph (b), a
3 minimum of twelve (12) hours of accredited educational activity, as defined by
4 the regulations adopted by the board, must be completed by December 31 of
5 each year. Of the twelve (12) hours, at least two (2) shall be exclusively in the
6 area of ethics and professional conduct and one (1) shall be exclusively in the
7 area of substance abuse, addictive disorders and/or mental health issues that
8 impair professional competence.

9 b. Any attorney subject to these rules who completes more than
10 twelve (12) hours of accredited educational activity in any calendar year may
11 carry forward up to twenty (20) hours of excess credit and apply the same to the
12 attorney's general educational requirement for the next two (2) calendar years.
13 Likewise, any attorney subject to these rules who completes more than two (2)
14 hours of ethics and professional conduct credit in any calendar year may carry
15 forward up to four (4) hours of excess credit and apply the same to the
16 attorney's ethics and professional conduct educational requirement for the next
17 two (2) calendar years. An attorney subject to these rules may not carry forward
18 excess credits which fulfill the one (1) credit hour required in the area of
19 substance abuse, addictive disorders and/or mental health issues that impair
20 professional competence.

...

13 In 1996, the American Bar Association (ABA) recognized the issue of
14 substance abuse as one that affected professionalism. The ABA estimates that
15 15 – 20 percent of the legal profession suffers from alcohol dependence or
16 substance abuse.¹ By comparison, the rate of alcohol dependence or substance
17 abuse in the general population is ten percent. Additionally, at least one of
18 every ten legal professionals will deal with an addictive disorder during their

19 _____
20 ¹ Sanborn, *Help for Impaired Lawyers*, ABA J., May 1996, at 107

1 professional career and another 33 percent of legal professionals will
2 experience either short-term or chronic symptoms of depression or stress.

3 During the 1980s, studies began showing a difference in mental health
4 disorders between those in the legal profession and those in other professions. A
5 study by Johns Hopkins Medical School revealed that lawyers had the highest
6 rate of clinical depression among over 100 professions surveyed. The same
7 study concluded that the legal environment is particularly conducive to stress-
8 related disorders due to the stress it produces and other factors, such as the
9 complexity and the amount of work attorneys do.²

10 Abuse, addiction and mental health disorders may affect attorney
11 productivity and performance, client communication, and lead to co-mingling
12 of client trust funds. Ultimately, these issues may also come to the attention of
13 the State Bar.

14 For example, of the disciplinary matters currently pending before the
15 Court, almost 33 percent involve underlying abuse, addiction or mental health
16 problems. The State Bar's Office of Bar Counsel estimates that 27 percent of all
17 cases decided between 2007 and 2012 involved attorneys with alcohol,
18 substance abuse, and/or mental health issues.³ Additionally, the Office of Bar
19 Counsel has seen an upward trend related to these issues and believes the
20

² Harrison Barnes, Esq., *Builders and Destroyers* (citing W.W. Eaton, J.C. Anthony, W. Mandel & R. Garrison, Occupations and the Prevalence of Major Depressive Disorder), 32 *Journal of Occupational Medicine* 1079 (1980)).

³ Based on the Office of Bar Counsel's knowledge of cases and not necessarily objective medical findings.

1 numbers to be higher given the reluctance of attorneys to admit such problems
2 and the confidential nature of the treatment and recovery process.

3 The State Bar's Clients' Security Fund ("Fund") reimburses clients who
4 have been the victim of attorney theft. The Fund estimates that \$447,378, or 26
5 percent, of all reimbursed claims in the past decade were made on behalf of
6 attorneys removed from practice due to an underlying substance use, gambling
addiction or mental health issue.

7 Furthermore, State Bar internal statistics show that attorneys are entering
8 practice with substance abuse problems that originated prior to admission. In
9 the past two years, almost 23 percent of applicants screened by the Character
and Fitness Committee disclosed a history of substance abuse.

10 The issues before the State Bar's disciplinary boards, Clients' Security
11 Fund and Character and Fitness Committee are indicative of national trends in
12 attorney regulation. For example:

13 • An ABA study estimated that 50 percent of all disciplinary problems
14 (nationally) were rooted in substance abuse problems.⁴

15 • A study conducted by the Illinois Attorney Registration and
16 Disciplinary Commission found that during the previous ten year period, 17.7
17 percent of sanctioned attorneys had impairments caused by alcohol; another 8
18 percent were related to alcohol and depression; and alcohol and other drugs
resulted in an additional 13 percent of attorney discipline.⁵

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20 ⁴ ABA Comm. on Professional Discipline, *Survey on Lawyer Discipline Systems* (1991-92).

⁵ 2007 Illinois Attorney Registration and Disciplinary Commission Annual Report.

1 • An Oregon study pertaining to the relationship between disciplinary
2 complaints, legal malpractice claims and alcoholism revealed that the annual
3 malpractice claim rate for lawyers suffering from addictive disease was 22
4 percent higher than the rates for their colleagues in recovery.⁶

5 • Studies conducted by the Louisiana and Oregon client protection
6 funds have shown that 80 percent of their cases involve chemical dependency,
7 gambling, or mental health issues.⁷

8 Issues of lawyer impairment have been a topic of concern for years. The
9 State Bar recognizes the need for intervention, evaluation and treatment of
10 lawyers who suffer from psychological disorders or impairment or a drug,
11 alcohol, gambling or other addictive or compulsive disorder. To that end, the
12 State Bar created the Lawyers Concerned for Lawyers program. Rule 106.5
13 makes available confidential support to lawyers via evaluation, treatment and
14 ongoing support. However, lack of awareness and underutilization are cited as
15 two of the top issues facing programs like Lawyers Concerned for Lawyers.⁸

16 The State Bar also recognizes that now is the time to establish programs
17 that will promote increased awareness of attorneys who may be suffering from
18 an abuse or addiction disorder. Programs are needed to educate lawyers how to
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20 ⁶ Statistics presented at ABA Standing Committee on Lawyers' Professional Liability, Spring
2002 Conference. The study reviewed malpractice claims and disciplinary complaints five
years before and after sobriety.

⁷ As reported in the American Bar Association Commission on Lawyer Assistance Programs
Highlights; Spring 2002.

⁸ American Bar Association Commission on Lawyer Assistance Programs; 2010
Comprehensive Survey of Lawyer Assistance Programs.

1 detect an issue, refer impaired lawyers for assistance and protect clients and the
2 public who could be at risk because of the actions of impaired attorneys.

3 Five states⁹ have specific substance abuse requirements as part of their
4 CLE rules and at least three other states¹⁰ make substance abuse a component of
5 mandatory CLE requirements.

6 The State Bar of Iowa ("Iowa Bar") is one jurisdiction that has taken
7 recent action. In 2012, the Iowa Bar amended its applicable continuing legal
8 education rule to specifically incorporate education designed to help attorneys
9 detect, prevent or respond to substance abuse or mental illness that impairs
10 professional competence as part of its definition of legal ethics. The Iowa Bar
11 cited the fact that as many as one-third of the published disciplinary opinions
12 issued by the Iowa Supreme Court have specifically mentioned substance abuse
13 or mental health issues on the part of the respondent. Furthermore, staff
14 members of the Iowa Bar's Attorney Disciplinary Board and the Grievance
15 Commission estimated that the majority of "founded" disciplinary matters in
16 Iowa involve lawyers with a substance abuse issue, a mental health issue or
17 both.¹¹

18 To address the issue of abuse, addiction and mental health among
19 attorneys, the State Bar proposes an amendment to Rule 210, which would
20 mandate that one (1) of the twelve (12) required CLE credit hours each year

⁹ California, Florida, North Carolina, Ohio and West Virginia.

¹⁰ Arizona, Illinois and Iowa.

¹¹ Amendments to Division III of the Iowa Court Rules, February 2012, Summary of Amendments.

1 must be in the area of substance abuse, addictive disorders and/or mental health
2 issues that impair professional competence. Courses or activities designed to
3 meet the requirements of this Rule must meet the requirements set forth in the
4 Regulations of the Nevada Board of Continuing Legal Education and:

5 • May or may not be a component of an approved educational activity
6 that deals with another topic;

7 • May provide education to attorneys through the telling of personal
8 experiences related to abuse, addiction and/or mental health issues;

9 • May focus on the recognition of the signs and symptoms of abuse,
10 addiction and/or mental health disorders and how to prevent or respond to an
11 attorney in need of help; and/or

12 • May be presented from an attorney perspective and/or a health care
13 provider perspective.

14 The proposed amendment does not impose additional hours on the
15 existing twelve (12) hours required each year. Additionally, although attorneys
16 subject to these rules may not carry forward excess credits that fulfill the one
17 (1) credit hour requirement in the area of substance abuse, addictive disorders
18 and/or mental health issues that impair professional competence, excess credit
19 hours earned in this subject area may be carried forward as excess general
20 and/or ethics CLE hours as permitted under Rule 210(b).

The State Bar has available CLE in abuse and addiction and will continue
to supply education statewide via live seminars, webinars, audio formats, and
written articles. Continuing legal education offered through county bar


1 associations and private vendors may also be used to fulfill the proposed
2 requirement.

3 **CONCLUSION**

4 Article 3 of the bylaws of the State Bar Board of Governors sets forth the
5 purpose and powers of the State Bar. Among the enumerated purposes are the
6 upholding of the honor, integrity, professionalism and dignity of the profession
7 of law and the enhancement of the professional competence and ethical conduct
8 that promotes awareness and detection of abuse, addictive disorders and mental
9 health issues is necessary to fulfill these purposes and is essential to public
10 protection. Furthermore, the proposed amendment furthers the mission of the
11 Lawyers Concerned for Lawyers program enacted under Rule 106.5.

12 RESPECTFULLY SUBMITTED this 23rd day of August, 2012.

13 STATE BAR OF NEVADA
14 BOARD OF GOVERNORS

15 
16 FRANCIS C. FLAHERTY

17 President

18 Nevada Bar No. 5303

19 600 East Charleston Boulevard
20 Las Vegas, Nevada 89104
(702) 382-2200

EXHIBIT A

Rule 210. Minimum continuing legal education requirements.

To meet the annual minimum continuing legal education requirements imposed by these rules, each attorney subject to these rules must timely: submit an annual fee, complete the requisite number of credit hours, and submit an annual compliance report.

1. *Annual Fee.* The amount of the annual fee is \$40, made payable to the Nevada Board of Continuing Legal Education, and must be postmarked on or before March 1 of the year for which the fee is required to be paid.

2. *Credit hours.*

(a) Subject to the carry forward provisions of subparagraph (b), a minimum of twelve (12) hours of accredited educational activity, as defined by the regulations adopted by the board, must be completed by December 31 of each year. Of the twelve (12) hours, at least two (2) shall be exclusively in the area of ethics and professional conduct and one (1) shall be exclusively in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence.

(b) Any attorney subject to these rules who completes more than twelve (12) hours of accredited educational activity in any calendar year may carry forward up to twenty (20) hours of excess credit and apply the same to the attorney's general educational requirement for the next two (2) calendar years. Likewise, any attorney subject to these rules who completes more than two (2) hours of ethics and professional conduct credit in any calendar year may carry forward up to four (4) hours of excess credit and apply the same to the attorney's ethics and professional conduct educational requirement for the next two (2) calendar years. An attorney subject to these rules may not carry forward excess credits which fulfill the one (1) credit hour required in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence.

3. *Annual compliance report.* A properly completed and verified written compliance report must be submitted to the board, and must be postmarked on or before March 1 each year. The report must be submitted on a form to be provided by the board. The board shall, no later than six (6) weeks prior to the due date, send a compliance report form to each attorney subject to these rules. The report shall include the attorney's mailing address and shall state the attorney's compliance with the credit hour requirements during the preceding

1 calendar year. It shall not be a defense to noncompliance that the attorney did
2 not receive the compliance report form.

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