

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the matter of Amendments to SCR
210 regarding minimum continuing
legal education requirements and
making mandatory continuing legal
education in substance abuse, addictive
disorders and/or mental health issues

ADKT NO.: 0478

FILED

FEB 02 2016

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

PETITION

The Board of Governors of the State Bar of Nevada (State Bar) hereby petitions this court to amend SCR 210 regarding continuing legal education (CLE) requirements. The State Bar petitions this Court to make CLE in the area of substance abuse, addictive disorders and/or mental health issues mandatory on an annual basis.

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

DISCUSSION

In 2012, the State Bar petitioned this Court to consider amendments to SCR 210 which would make mandatory one annual CLE credit in the area of substance abuse, addictive disorders and/or mental health issues. The petition was filed under Administrative Docket (ADKT) 0478. Following a period of public comment, on January 10, 2013, the Court issued an Order making the proposed CLE mandatory once every three years¹.

In ADKT 0478, the State Bar cited the need for mandatory CLE in abuse, addiction and mental health issues including: the higher propensity for alcohol and substance abuse by legal professionals; the correlation of abuse, addiction and

¹ Pursuant to a request from the Nevada Board of Continuing Legal Education, the Court further clarified its Order on March 20, 2014.

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1 substance abuse issues to disciplinary issues and Clients' Security Fund claims;
2 and the number of attorneys entering the profession with abuse, addiction and
3 mental health issues. Included in the State Bar supplemental information to the
4 Court, was a study from the Pennsylvania State Bar which showed a steady
5 upward trend in the number of educational courses offered each year and the
6 correlative trend in access to its attorney helpline and access to self-help
7 publications.

8 Legal malpractice carriers have identified educational programs in abuse,
9 addiction and mental health as a loss prevention strategy. The Ohio Bar Liability
10 Insurance Company, owned by the Ohio State Bar Association, offers a 15 percent
11 discount to attorneys who complete CLE in ethics, professionalism and substance
12 abuse. The State Bar has received \$18,000² in donations from ALPS to support
13 staffing needs associated with the Nevada Lawyer Assistance Program and
14 assisting attorneys in conjunction with Lawyers Concerned for Lawyers. The
15 ALPS Corporation also provides a ten percent annual discount for attorneys who
16 complete three credits in ethics, professionalism and substance abuse.

17 Since ADKT 0478 went into effect, the State Bar has built upon its existing
18 educational and support platforms to increase awareness of abuse, addiction and
19 mental health issues and to provide support for those in need of help. This
20 includes:

21 - Offering more than 15 CLE programs with an abuse, addiction and/or
22 mental health component. These programs were conducted by a variety of
23 speakers and addressed topics including the neurobiology of addictive disorders,
24
25

² The State Bar received \$10,000 in 2014 and \$8,000 in 2015.

1 personal stories of attorneys in recovery, and tips for coping with stress in the
2 profession.

3 - Implementing the Nevada Lawyer Assistance Program (NLAP) that
4 provides confidential clinical resources to attorneys and access to an initial
5 evaluation at no cost. The State Bar has contracted with the Nevada Professionals
6 Assistance Program (NPAP) to carry out these clinical services and host attorney-
7 only support groups.

8 - Appointing an NLAP Coordinator, in addition to the Lawyers Concerned
9 for Lawyers Coordinator, responsible for communicating the services offered
10 through both programs and delivering related CLE programs.

11 - Disseminating information about the NLAP and LCL programs through a
12 brochure, regular advertisements in the *Nevada Lawyer* magazine, and through
13 social media.

14 Due to the confidential and voluntary nature of the Lawyers Concerned for
15 Lawyers program, it is difficult to assess how many attorneys have sought
16 assistance since the Court's Order went into effect. However, both the LCL and
17 NLAP Coordinators have shared anecdotal information about calls received from
18 attorneys in need of help – or from attorneys concerned for their colleagues –
19 directly after attending a CLE or other informational program; typically, three to
20 four calls following each presentation.

21 Additionally, NPAP provided the State Bar with statistics of its activities from
22 early 2014 thru October 2015. Dr. Peter Mansky, who heads NPAP, has
23 conducted 17 attorney evaluations and of those, seven were requested voluntarily.
24 Attorneys seeking an evaluation through this program, and who are recommended
25 for further treatment and/or monitoring, are offered the opportunity to continue

1 services through NPAP or through another provider. Currently, two attorneys have
2 formal monitoring agreements with NPAP and one attorney with a suspended
3 license continues to seek therapy for mental health issues.

4 There is little disagreement about the harmful effects of abuse, addiction and
5 mental health issues on an attorney's ability to practice law, on his or her personal
6 life, and the consequences to clients. Although the development of NLAP is still
7 in its nascent stage, combined with the current addiction CLE requirement, there
8 has been an increased awareness of the programs and services available to those
9 attorneys in need. In short, the State Bar believes the program is working.

10 Furthermore, a yearly requirement, similar to the annual ethics CLE
11 requirement, will not necessarily result in a lack of fresh and innovative
12 approaches to address the issue. Examples of programming topics include:

- 13 - Insight into national trends in opioid addiction;
- 14 - Exploring alternatives to 12-step addiction recovery;
- 15 - Sharing of personal stories from attorneys in recovery and, alternatively,
16 from those affected by an attorney's addiction;
- 17 - Legal ethics and the interplay with addictive disorders; and
- 18 - How to "Break Good" and preserve attorney professionalism.

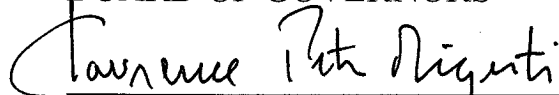
19 The proposed amendment does not seek to increase the number of credits an
20 attorney must earn each year. Moreover, although there is no carry forward
21 provision for excess abuse, addiction and mental health credits, an attorney who
22 receives more than one credit in this topic may apply the excess credit(s) to his or
23 her annual general and ethics requirements.

1 CONCLUSION

2 The State Bar's Board of Governors is responsible for upholding the honor,
3 integrity, professionalism and dignity of the profession of law and the
4 enhancement of the professional competence and ethical conduct of members of
5 the bar. To that end, mandatory education in abuse, addiction and mental health
6 issues is necessary to fulfill these purposes and is essential to public protection.
7 The State Bar also recognizes the importance of education as a key factor in
8 attorneys seeking help – or recognizing when a peer may be in need of assistance.
9 Therefore, the State Bar respectfully requests the Court to amend its prior Order to
10 make mandatory one CLE credit in substance abuse, addictive disorders, and/or
11 mental health issues annually.

12
13 Respectfully submitted this 21 day of January 2016.

14 STATE BAR OF NEVADA
15 BOARD OF GOVERNORS

16 

17 LAURENCE P. DIGESTI, President

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24
25

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 (c), 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~~[-At least] and one (1) [hour every three (3) years]~~ shall be exclusively in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence. ~~[In a year in which the attorney is subject to the requirement in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence, the attorney shall complete at least nine (9) hours of general continuing legal education, at least two (2) hours exclusively in the area of ethics and professional conduct, and at least one (1) hour exclusively in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence; in the remaining two years of the three-year cycle, the attorney shall complete at least ten (10) hours of general continuing legal education and at least two (2) hours exclusively in the area of ethics and professional conduct. Credit hours in the area of ethics and professional conduct, and credit hours in the area of substance abuse, addictive disorders and/or mental health issues that impair professional competence, shall be tracked separately from general educational credit hours.]~~

—(b) The three-year cycle for completion of the requirement regarding substance abuse, addictive disorders and/or mental health issues that impair professional competence shall be determined as follows:

—(1) Attorneys subject to these rules must complete the requirement within the same calendar year that this amendment becomes effective; except that attorneys who completed the requirement in the calendar year preceding this amendment shall receive credit as though they completed it within the same calendar year that this amendment becomes effective.]

1 (2) Attorneys entitled to an exemption pursuant to Rule 214(1)(a) must
2 complete the requirement within the same calendar year in which they are first
3 subject to continuing legal education requirements.

4 (3) Attorneys who, for reasons other than an exemption pursuant to Rule
5 214(1)(a), become subject to these rules subsequent to or in the same calendar year
6 that this amendment becomes effective, must complete the requirement within the
7 same calendar year in which they become subject to these rules.

8 (c) Any attorney subject to these rules who completes more than twelve (12)
9 hours of accredited educational activity in any calendar year may carry forward up
10 to twenty (20) hours of excess credit and apply the same to the attorney's general
11 educational requirement for the next two (2) calendar years. Likewise, any attorney
12 subject to these rules who completes more than two (2) hours of ethics and
13 professional conduct credit in any calendar year may carry forward up to four (4)
14 hours of excess credit and apply the same to the attorney's ethics and professional
15 conduct educational requirement for the next two (2) calendar years.

16 (d) Any attorney subject to these rules who completes more than one (1) hour
17 in the area of substance abuse, addictive disorders and/or mental health issues that
18 impair professional competence [~~in a three-year cycle~~] may not carry forward the
19 excess credit hours to the next [~~three-year cycle~~] calendar year, but may have the
20 excess hour(s) credited toward the attorney's ethics and professional conduct
21 requirement, subject to the carry forward provisions set forth in subparagraph (c)
22 above. Excess hour(s) in the area of ethics and professional conduct may be
23 credited toward the attorney's general educational requirement, subject to the carry
24 forward provisions set forth in subparagraph (c) above.

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