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October 24, 2018

Elizabeth A. Brown
Clerk of the Supreme Court
201 S. Carson St.
Carson City, NV 98701

FILED

OCT 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

RE: ADKT 499, Response to July 24, 2018, Amendments to Supreme Court Rule 207: Creation of the Board of Continuing Legal Education

Dear Ms. Brown,

Please accept this letter as a response from the Clark County Bar Association ("CCBA") regarding the Renewed Request for Amendment to ADKT 0499 ("Renewed Request") and the October 2, 2018 amended order scheduling a public hearing to take place on November 5, 2018, at 3:00 p.m. The CCBA Board and the CLE Committee have reviewed the proposed changes to the CLE Regulations and presents several issues and concerns for the Court's consideration.

The Renewed Request provides brief background into the changes that were implemented through a new business plan for collecting CLE fees (the "Plan"). The Plan's two goals were: (1) increased attorney compliance and (2) shifting cost to providers and away from attorneys. Renewed Request, pp. 1-2. While the "primary goal" of increased compliance was met, revenue declined significantly. Renewed Request, p. 2. The Renewed Request intimates that part of the budget shortfall is as a result of the "significant number of exemption requests" the CLE Board received a many of which were granted." *Id.* This led to the suggested changes.

CCBA was and is grateful to have been included in the definition of exempt organizations under the Plan. It is essential to CCBA that CCBA and organizations like it remain exempt organizations under the suggested revisions. As they stand at this point, however, CCBA and other organizations like it would lose that status.

Purposes of CCBA

CCBA has a long and storied history in Clark County. The CCBA provides meaningful services to members, including legal education, opportunities for collegiality and social interaction, and opportunities to perform outreach services to the community at large. The CCBA does not receive grants or any other form of outside funding. Rather, CCBA relies solely on voluntary dues membership and CLE program revenue. The CCBA also provides new attorneys the platform to engage senior attorneys and local judiciary. The CCBA is the training ground for tomorrow's state bar leaders; indeed, many of CCBA's presidents have gone on to become presidents of the State Bar of Nevada. Our organization facilitates greater professionalism and cordiality by creating social interaction between attorneys in the community who face each other in the same courthouse frequently.

RECEIVED

OCT 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
CHIEF DEPUTY CLERK

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Similar to other non-profit local bars, the CCBA is not immune to struggles. Membership is down from 1,940 in 2010 to the current membership of 1,557. The CCBA staff has been reduced from nine in 2010 to the current staff of two. Consequently, the proposed changes threaten to have a very real negative effect on the CCBA.

CCBA's CLEs

The ability to produce low-overhead CLE programming is vital to CCBA, its mission, and the legal community. The discount CCBA provides on its CLE's justifies membership dues and adds value to CCBA membership. When CCBA offers members complimentary CLE programs, such as Dennis Kennedy's yearly ethics program, it draws in new members, is considered a valuable member benefit, and provides up-to-date ethics information. CCBA's CLE programming provides infrastructure for small, specialized, educational seminars, which both improves quality of practice and encourages out-of-court socializing among attorneys who may frequently oppose one another, leading to improved collegiality.

The proposed CLE Board's funding changes would drastically affect how the CCBA operates, as well as the services it provides to the legal community and to the community at large. For the CCBA, CLE seminars are a significant member benefit but not a significant revenue generator. Although CLE is an essential education tool, the revenue generated typically covers only the cost of production and reporting. CCBA staff are responsible for producing each seminar, which includes creating marketing materials, tracking registration, bookkeeping, creating seminar handouts, physical registration, seminar monitoring, and inputting seminar attendance to the NV CLE Board. When revenues exceed costs, the modest profit goes back into the day-to-day operations of the organization. When revenues do not exceed costs, the CCBA must absorb the loss.

CCBA also makes some past seminars available online. In order to offer previously recorded seminars, there is an additional added expense of the video recording service, website maintenance, and other related costs.

Renewed Request's intent to "curtail exemptions"

The 2017 changes in the Plan sought to "shift . . . cost responsibility to providers and away from attorneys" and..." and "to replace decreased revenue with the provider fee charges" that were set forth in the Plan...." (Renewed Request, p. 2.) Presumably, the intent was to collect higher charges from for-profit providers, not non-profit or local bar providers. That is why exemptions were provided in the current Plan. However, the Renewed Request now seeks to "curtail exemptions." (Renewed Request, p. 4.) This could be catastrophic for CCBA and others similarly situated. At a minimum, if the Court proceeds with this proposal, CCBA and others like it will have no choice but to substantially increase fees for CLE programs, passing along the increased expenses to attorneys who take our seminars – precisely what the Renewed Request seeks to avoid.

Fees proposed by suggested changes

1. Application fee for live programs

The Renewed Request proposes a fee based on the number of credit hours sought. While the CCBA does not object to for-profit providers paying such fees, there is no exemption for non-profit providers, local bars, and the like. The CCBA supports the State Bar's position that local bar associations and other not-for-profit providers be exempt from CLE applications fees. See attachment to letter dated October 22, 2018 from State Bar of Nevada President Richard J. Pocker to Chief Justice Michael Douglas, p. 3, item 3. This is essential to the CCBA's ability to continue to provide top-notch CLE programming.

Because the CCBA CLE seminar offerings tend to be more specialized areas of law, they often are attended by a small number of people (often 8-12 attendees). This means that the \$30 to \$60 fee per session is not spread widely. Because CCBA cannot always predict the number of attendees, it will have no choice but to increase the cost to attorneys in order to cover any fees charged by the CLE Board.

2. Alternative format fee

The Renewed Request proposes a fee that is essentially *six-times* the live fee for alternative format CLE offerings if the CCBA wants to make the CLE available for the time permitted. The fee is double that of a live seminar, but must be paid three different times. There is no reasoning stated for this distinction. The CCBA also supports the State Bar's position that local bar associations and other not-for-profit providers be exempt from CLE applications fees. See attachment to letter dated October 22, 2018 from State Bar of Nevada President Richard J. Pocker to Chief Justice Michael Douglas, p. 4, item 4.

A real-world example may assist in explaining the CCBA's concerns. On March 2, 2018, the CCBA held a seminar entitled *Tax & Estate Considerations in Personal Injury Settlements*. As happens with CCBA seminars, only nine attorneys attended. Having this seminar as a resource for the next three years is valuable not only to the legal community as an education resource, but financially to offset the staff time involved in producing and the video recording expenses. If the CCBA had to pay \$180 to keep it available, CCBA would have no choice but to decline to make this CLE available – and the CLE Board would not have that revenue. Thus, the consequence hurts the CCBA and provides no benefit to the CLE Board. It also hurts any attorney who would have attended the live CLE but could not, because the recording would no longer be available.

3. Comments regarding Renewed Request generally

CCBA notes that there is little to no statistical information provided by which the Nevada Supreme Court, the CCBA, or any other interested and concerned parties can truly analyze the effect of the proposed changes. For example, although the Renewed Request states that "fee exemptions have reduced anticipated revenue from the provider revenue stream," there is no statistical data to substantiate that statement. Hard data would assist everyone involved. Likewise, the Renewed Request states that "[i]t is anticipated that, ultimately, this modified fee structure will allow the CLE Board to reduce annual attorneys' dues." (Renewed Request, p. 4.) Again, no information about how the modified fee structure changes things. Finally, the Renewed Request's implication that part of the budget shortfall is as a result of the "significant number of exemption requests" the CLE Board received, many of which were granted." (Renewed Request, p. 2.) There is no information to support these statements either, nor has enough information been provided for those outside the CLE Board to provide comments or suggestions that might be acceptable to help resolve the root issues the CLE Board faces.

CCBA also notes that the benefit of reducing or eliminating the \$40 yearly fee per attorney is illusory. The fees charged to producers will be passed on to participants. The increased cost of CLE seminars to the attorney, over the course of a year, will likely equal or exceed the fee attorneys pay directly to the Nevada CLE Board.

Finally, in the past, there have been fees for "Accredited Sponsors" (sometimes waived) and "Online Sponsors." It is unclear from the Renewed Request whether those categories/fees will still be charged under the current proposal.

The CCBA appreciates that it has been able to operate as an exempt provider, under the previously amended order, since January 1, 2017. The CCBA respectfully requests that whatever is ultimately adopted allow the CCBA and other non-profit providers to maintain the exempt status it currently enjoys. The CCBA appreciates your consideration of this request.

Sincerely,



CLARK COUNTY BAR ASSOCIATION
John P. Aldrich, Esq.
President 2018