

STATE BAR OF NEVADA

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November 17, 2017

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Re: Supplemental Amendment to ADKT 0525

[www.nvbar.org](http://www.nvbar.org)

Dear Chief Justice Cherry:

The public hearing regarding ADKT 525 (SCR116 Reinstatement) was held on Monday, November 6, 2017. As a result of questions and comments from The Court, and at the Court's request, we have rewritten parts of our proposed changes.

The proposed changes are the result of input from the Court and concerns that the language previously proposed placed an undue burden upon the attorney to prove each and every criteria by clear and convincing evidence regardless of its applicability to the attorney's specific case. The recommendation was to add additional language from ABA Model Rule of Disciplinary Procedure 25 which provides the attorney the opportunity to demonstrate why reinstatement is still appropriate absent one or more of the criteria set forth in the provision. These is achieved with the changes reflected in the attached SCR 116 amendment proposed language to SCR 116.

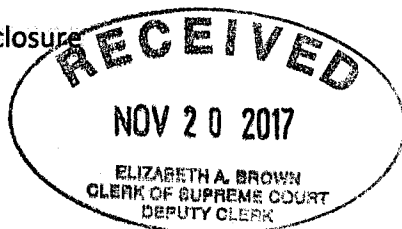
On behalf of the Board of Governors, I thank the Court for the opportunity to bring this petition forward for your consideration. I am available to provide further information to the Court as requested.

Respectfully,

Kimberly K. Farmer  
Executive Director

cc: Elizabeth A. Brown, Clerk of Court, Nevada Supreme Court

Enclosure



17-40007

## Proposed Amendment to Supreme Court Rule 116

### Rule 116. Reinstatement.

1. **Order of supreme court required.** An attorney suspended as discipline for more than 6 months may not resume practice unless reinstated by order of the supreme court.

2. **Procedure for reinstatement.** Petitions for reinstatement by a suspended attorney shall be filed with bar counsel's office, which shall promptly refer the petition to the chair of the appropriate disciplinary board. The chair shall promptly refer the petition to a hearing panel, which shall, within 60 days after referral, conduct a hearing. An attorney may be reinstated or readmitted only if the attorney demonstrates by clear and convincing evidence the follow criteria, or if not, presents good and sufficient reason why the attorney should nevertheless be reinstated or readmitted: ~~[The attorney has the burden of demonstrating by clear and convincing evidence that he or she has the moral qualifications, competency, and learning in law required for admission to practice law in this state, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest.]~~

- Full compliance with the terms and conditions of all prior disciplinary orders;
- The attorney has neither engaged in nor attempted to engage in the unauthorized practice of law during the period of suspension;
- Any physical or mental disability or infirmity existing at the time of suspension has been removed; if alcohol or other drug abuse was a causative factor in the attorney's misconduct, the attorney has pursued appropriate treatment, has abstained from the use of alcohol or other drugs for a stated period of time, generally not less than one year and is likely to continue to abstain from alcohol or other drugs;
- The attorney recognizes the wrongfulness and seriousness of the misconduct resulting in the suspension;
- The attorney has not engaged in any other professional misconduct since suspension;
- Notwithstanding the conduct for which the attorney was disciplined, the attorney has the requisite honesty and integrity to practice law; and
- The attorney has kept informed about recent developments in the law and is competent to practice.

Within 60 days after the hearing concludes, bar counsel shall file the record of the proceedings, together with the panel's findings and recommendation, with the supreme court. Receipt of the record shall be acknowledged in writing by the supreme court clerk.

The attorney or bar counsel shall have 30 days from the date the supreme court acknowledges receipt of the record within which to file an opening brief or otherwise advise the court if he or she intends to contest the hearing panel's findings and recommendations. If an opening brief is filed, briefing shall thereafter proceed in accordance with NRAP 31(a). Extensions of time to file briefs are disfavored and will only be granted upon a showing of good cause. The parties shall not be required to prepare an appendix, but rather shall cite to the record of the reinstatement proceedings. If no opening brief is filed, the matter will be submitted for decision on the record without briefing or oral argument.

**3. Bar counsel to appear.** In proceedings for reinstatement, bar counsel shall represent the state bar and submit any evidence and produce any witnesses relevant to the petition.

**4. Tender of costs in advance.** Petitions for reinstatement under this rule shall be accompanied by an advance cost deposit of \$1,000 to cover anticipated costs of the reinstatement proceeding.

**5. Decision on reinstatement; conditions.** If the attorney does not meet the burden of proof to justify reinstatement, the petition shall be dismissed by the hearing panel. If the attorney meets the burden of proof, the hearing panel's recommendation for reinstatement shall be entered. Reinstatement may be conditioned upon the attorney's payment of the costs of the proceeding, restitution to parties injured by the petitioner's misconduct, including the Client Security Fund, any further conditions deemed appropriate by the panel, and such proof of competency as may be required by the supreme court, which proof may include certification by the bar examiners of the successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment. If an attorney has been continuously suspended for 5 years or more at the time a petition for reinstatement is filed, irrespective of the term of suspension initially imposed, successful completion of the examination for admission to practice shall be a mandatory condition of reinstatement.

**6. Successive petitions.** A petition for reinstatement under this rule shall not be filed within 1 year following an adverse judgment on a petition for reinstatement filed by the same attorney, unless otherwise ordered by the court.

[Added; effective February 15, 1979; amended effective March 1, 2007.]