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IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of Amendments to)
Supreme Court Rule 49.1(7)(a))
regarding termination of certification)
for rural deputy district attorneys and)
rural state public defenders.)

ADKT NO.: 616

FILED

JAN 22 2024

ELIZABETH A. BROWN
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 Supreme Court Rule (“SCR”) 49.1(7)(a) regarding the termination of certification for limited practice attorneys in rural district attorney and rural state public defender offices. The proposed amendment would eliminate the two-year cap on attorneys practicing in these offices, mirroring the uncapped timeframe for those providing pro bono legal services under SCR 49.1, and is offered as one solution to the shortage of attorneys practicing in Nevada’s rural counties.

The proposed rule, as amended, is set forth in **Exhibit A**.

DISCUSSION

Nationwide, there is an ongoing crisis among those residing in rural areas who lack access to legal services. These “legal deserts” are found Nevada where rural citizens do not have access to nearby representation. For example, in Nevada’s three largest counties, the rate of attorneys per 1,000 residents is 6.26 in Carson City, 3.56 in Washoe County, and 2.73 in Clark County. In comparison, the ratio of

24-02343

1 attorneys per 1,000 residents in Elko is 1.75. In Pershing County, it is 1.21, and in
2 Lyon County it is 0.57¹.

3 The State Bar convened a task force to address the shortage of representation
4 in these legal deserts and to explore initiatives that might improve the availability
5 of civil and criminal representation in these areas. One of the most pressing issues,
6 however, is the need for attorneys to serve in rural public defender and district
7 attorney offices to ensure civil rights and criminal cases have adequate
8 representation, for both the victims and the accused.

9 Beginning in the early 1990s, the Court addressed this issue by enacting rule
10 amendments providing for limited practice admissions to address specific practice
11 needs in the state. Limited practice certification for rural district attorneys was
12 codified in 1991, citing the need for an effective method to staff offices in rural
13 counties where Nevada attorneys cannot be found to fill employment vacancies².
14 The rules were amended in 2001 to include state public defenders³.

15 Difficulty in finding attorneys to fill these roles was cited as a reason for the
16 rule amendments. The rules also implemented a two-year limitation on the
17 certification. This was intended to assist the rural district attorney and public
18 defender offices in filling employment vacancies with a qualified attorney of
19 another jurisdiction and to provide that attorney time to sit and pass the bar
20 examination.

23 ¹ Soval Solutions, *Addressing the Rural Indigent Defense Service Provider Shortage in Nevada*,
24 (February 6, 2023).

25 ² ADKT 148, March 4, 1991

³ ADKT 320, January 22, 2001; amended in 2014 to include the county equivalent public
defender.

1 Unfortunately, the need in Nevada’s rural communities has continued to go
2 unmet and shortages in the rural public defender and district attorney offices have
3 heightened to a crisis point. For example, the Humboldt County Public Defender’s
4 office is currently staffed at 50 percent. And, in 2019, the State of Nevada entered
5 a Stipulated Consent Judgment⁴ which required the State to complete a workload
6 study on indigent defense services in the rural counties and comply with its findings.
7 The study called for workload standards that increase already high caseloads.

8 Rural public defender and district attorney offices also invest time in training
9 out of state attorneys to serve. Upon sitting and passing the bar exam, however,
10 these attorneys often move to more urban areas, leaving the offices short staffed
11 once again. This chronic cycle can have significant consequences for victims and
12 the accused. In counties like Elko, where only five of the nine public defender
13 positions are filled, the Elko Public Defender’s Office must reduce the number of
14 felony cases it takes because it does not have the necessary staff. Between June 16
15 and July 31, 2023, the Elko Public Defender’s Office reassigned 91 cases; another
16 60 cases were reassigned in the month of November alone. For those accused of
17 criminal offenses, this may mean prolonged jail time pending a hearing.

18 For rural public defender and district attorney offices, experience matters.
19 They rely on highly skilled attorneys to handle some of its most serious matters,
20 like felony trials. The public defender offices also rely on experienced attorneys to
21 take on work assigned by the Nevada Department of Indigent Defense. By
22 eliminating the two-year cap on practice in rural public defender and district
23 attorney offices, these offices can expand their applicant pools to entice qualified
24 attorneys willing to practice in rural Nevada long term. Conversely, the two-year

25 ⁴ *Davis v. State*, Nev. First Jud. Dist. Ct., August 11, 2020.

1 limitation in place acts as a deterrent to long term employment of experienced
2 practicing attorneys who can benefit rural public defender and district attorney
3 offices with their acquired skills and knowledge.

4 Safeguards exist for attorneys authorized to practice in Nevada under a
5 limited practice certification. Prior to being certified, they undergo the same
6 safeguards as do those who sit for the bar examination, including a character and
7 fitness review. They are required to comply with annual renewal requirements such
8 as continuing legal education and they are subject to disciplinary action initiated by
9 the Office of Bar Counsel. Furthermore, they are supervised by their employers.
10 The State Bar suggests, therefore, that lifting the two-year cap on limited practice
11 certifications for attorneys employed by rural public defender and district attorney
12 offices will not result in undue risk to the public.

13

14 CONCLUSION

15 While the amendment proposed in this petition will not solve the shortage of
16 legal representation in our rural communities, it is one step forward to addressing
17 the crisis in rural Nevada and will help two public offices dedicated to providing
18 legal representation. Furthermore, safeguards are in place to protect the public.

19 The amendment also provides some consistency with other limited practice
20 certifications which mirror this proposed amendment, such as those employed by
21 an organized legal services program, those serving as in-house counsel and those
22 employed by the U.S. Attorney for the District of Nevada or for the Federal Public
23 Defender for the District of Nevada.

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RESPECTFULLY SUBMITTED this 19th day of January 2024.

STATE BAR OF NEVADA
BOARD OF GOVERNORS



JULIE CAVANAUGH-BILL, President
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1 **EXHIBIT A**

2 **Rule 49.1. Limited practice certifications for certain attorneys; temporary**
3 **certification for military spouses.**

4 1. **Eligibility.** Notwithstanding the provisions of Rule 49, an attorney
5 admitted to practice law in any other jurisdiction may apply for limited practice
6 certification if the attorney is:

7 (a) Employed by the William S. Boyd School of Law and either (i) teaches in
8 the clinical law program or (ii) provides pro bono or court-appointed assistance to
9 clients;

10 (b) Volunteering with an Emeritus Attorney Pro Bono (EAPB) program or is
11 an inactive member of the State Bar of Nevada and volunteering with an EAPB
12 program, as defined in Rule 49.2;

13 (c) Employed by or associated with an organized legal services program
14 approved by the Access to Justice Commission or its designee and funded from
15 state, federal, or recognized charitable sources that provides legal assistance to
16 indigents in civil matters;

17 (d) Employed as a deputy district attorney by a county whose population is
18 fewer than 100,000 persons;

19 (e) Employed by the State Public Defender or the county equivalent of such an
20 office to practice in a county whose population is fewer than 100,000 persons;

21 (f) Employed by the Nevada Attorney General;

22 (g) Employed by the United States Attorney for the District of Nevada or the
23 Federal Public Defender for the District of Nevada;

24 (h) Employed exclusively as in-house counsel for a single corporation
25 (including its subsidiaries and affiliates), association, partnership, or other business

1 entity situated in or qualified to do business in Nevada, whose lawful business
2 consists of activities other than the practice of law or the provision of legal
3 services; or

4 (i) A spouse of a member of the United States Uniformed Services who is
5 present in Nevada pursuant to military orders.

6 2. **Requirements.** An attorney applying for certification under this rule
7 must:

8 (a) Have been admitted to practice law in another U.S. state, territory, or the
9 District of Columbia;

10 (b) Not have been denied admission to the practice of law in Nevada;

11 (c) Demonstrate the qualifications for admission set forth in Rule 51(1)(a)-(j)
12 and comply with the fingerprinting requirements pursuant to Rule 53, unless
13 applying for certification as a volunteer with an EAPB program under Rule
14 49.1(b);

15 (d) Establish that the applicant is not currently subject to attorney discipline or
16 the subject of a pending disciplinary matter in any jurisdiction;

17 (e) Have taken the Multistate Professional Responsibility Exam and obtained a
18 scaled score of at least 85.00 on the exam within the three years preceding the
19 filing of an application under this rule, except for those applying for certification
20 under Rule 49.1(a), (b), or (c); and

21 (f) Reside, or intend within the next six months to reside, within the State of
22 Nevada, except for those applying for certification under Rule 49.1(1)(d) or (e).

23 3. **Application.** Application for certification to practice law in this state
24 under the provisions of this rule shall be filed with the admissions director of the
25 state bar and accompanied by:

1 (a) An affidavit from the attorney's immediate supervisor, unless applying for
2 certification as a military spouse attorney under Rule 49.1(i), or as a volunteer
3 attorney under Rule 49.1(1)(b), attesting that:

4 (1) The attorney is a full-time employee;

5 (2) The nature of the employment conforms to the requirements of this
6 rule; and

7 (3) The affiant will notify the State Bar of Nevada within fifteen (15) days
8 after the applicant ceases to be so employed.

9 (b) A certificate of good standing for each jurisdiction in which the attorney is
10 admitted indicating that the attorney has been admitted to practice law and is a
11 member in good standing in that jurisdiction.

12 (c) A non-refundable application fee, equivalent to the fee charged pursuant to
13 Rule 54(2), unless applying for certification under Rule 49.1(1)(a), (b), or (c). For
14 those admitted under Rule 49.1(1)(d), (e), (f), or (g), the application fee will be
15 applied to the first bar examination for which the attorney sits.

16 (d) Applications for certification to practice law in this state pursuant to Rule
17 49.1(1)(b) shall be filed on a form provided by the State Bar of Nevada and shall
18 include an EAPB Provider Declaration that the attorney is volunteering with that
19 EAPB program.

20 **4. Limited practice.** Attorneys certified under Rule 49.1(1)(a)-(g) or (i)
21 may practice before all courts of this state subject to the conditions of this rule and
22 to such further conditions as the court may hereafter direct. All attorneys certified
23 under Rule 49.1(1)(a)-(i) shall be permitted to perform pro bono services through
24 an EAPB program, as defined by Rule 49.2.

25

1 (a) An attorney certified under Rule 49.1(1)(a) shall perform no legal services
2 within the State of Nevada except for under the auspices of the clinical law
3 program of the William S. Boyd School of Law, or pro bono or court-appointed
4 assistance, and for such purposes only.

5 (b) An attorney certified under Rule 49.1(1)(b) or (c) shall perform no legal
6 services within the State of Nevada except for clients aided under the auspices of
7 the organized legal services program by which the attorney is employed or with
8 which he or she is associated and for such purposes only.

9 (c) An attorney certified under Rule 49.1(1)(d), (e), or (f) shall perform no
10 legal services within the State of Nevada except for the State or for the county
11 employing the attorney and under the supervision of an attorney in the employer's
12 office who is an active resident member of the State Bar of Nevada. An attorney
13 certified under Rule 49.1(1)(d), (e), or (f) shall additionally be permitted to provide
14 pro bono legal services through an EAPB program, as defined by Rule 49.2.

15 (d) An attorney certified under Rule 49.1(1)(g) shall perform no legal services
16 within the State of Nevada except for the federal agency employing the attorney, or
17 pro bono services through an EAPB program, as defined by Rule 49.2.

18 (e) An attorney certified under Rule 49.1(1)(h) may not:

19 (1) Appear as counsel of record for the employer in Nevada in any court;
20 before any administrative or political agency unless authorized by law; or in any
21 arbitration, mediation, or alternative dispute resolution proceeding that is court
22 ordered or annexed or authorized by law or administrative rule;

23 (2) Render legal advice or services to the public or to anyone other than
24 the attorney's employer, other employees, or the employer's subsidiaries and
25

1 affiliates, except when providing pro bono services through an EAPB program, as
2 defined by Rule 49.2; or

3 (3) Hold himself or herself out to the public as an attorney authorized or
4 engaged in offering legal services to the public in Nevada.

5 (f) Excepting those certified to practice under Rule 49.1(1)(a), (b), and (i),
6 attorneys certified to practice under this rule shall not accept any compensation for
7 such services except such salary as may be paid by the employer. All pleadings
8 signed by an attorney certified to practice under this rule, except those certified to
9 practice under Rule 49.1(1)(h), shall bear the name and address of the employer, or
10 if teaching in a clinical law program at the William S. Boyd School of Law, the
11 name of the clinical law program.

12 **5. Discipline; bar membership; continuing legal education.** An attorney
13 certified to practice under this rule does not qualify for active membership in the
14 State Bar of Nevada, but shall be subject to the jurisdiction of the court and
15 disciplinary boards of this state with respect to the laws of this state governing the
16 conduct of attorneys to the same extent as members of the State Bar of Nevada.
17 Pending final disposition of any disciplinary matter, the court or the state bar may
18 suspend any right to practice that is granted under this rule, without notice or
19 hearing. During the time any attorney is certified under this rule, the attorney shall
20 comply with the same requirements for continuing legal education as may be
21 prescribed for active members of the State Bar of Nevada.

22 **6. Temporary certification.** The state bar, pending its review of an
23 application for limited practice certification, may temporarily certify an attorney to
24 practice under this rule, except for those applying for certification under Rule
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1 49.1(i). Temporary certification shall in no event remain in effect longer than one
2 year.

3 **7. Termination of certification.** Certification to practice under this rule
4 shall terminate whenever the attorney ceases to be employed by the employer for
5 which this certification was granted, or associated with an EAPB program. The
6 employer or EAPB program shall notify the state bar in writing within fifteen (15)
7 days of when the attorney's employment ceases or association with an EAPB
8 program ends.

9 (a) In no event shall certification for those admitted under 49.1(1)~~[(d), (e), or]~~
10 (f) remain in effect longer than two years.

11 (b) For those attorneys certified as a spouse of a member of the United States
12 Uniformed Services present in Nevada pursuant to military orders, certification
13 shall remain in effect no longer than four years. Additionally, certification to
14 practice under this rule shall terminate by any of the following events:

15 (1) The servicemember separates or retires from the United States
16 Uniformed Services;

17 (2) The military spouse attorney is no longer married to the
18 servicemember;

19 (3) The servicemember is permanently transferred outside Nevada
20 pursuant to military orders, except if the service member has been assigned to an
21 unaccompanied or remote assignment with no dependents authorized, but only
22 until such time as the servicemember is assigned to a location with dependents
23 authorized;

24 (4) The military spouse attorney is admitted to the general practice of law
25 under any other rule; or

1 (5) The military spouse attorney fails to meet annual licensing
2 requirements for an active member of the state bar.

3 **8. Certification fees.** Certification fees cover the calendar year and shall be
4 due and payable by those attorneys certified under Rule 49.1(1)(a) and (d)-(i) at the
5 time of certification. No part of the certification fee shall be apportioned to
6 fractional parts of the year and no part of the certification fee shall be rebated. The
7 annual certification fee is equivalent to the annual membership dues paid by active
8 members of the State Bar of Nevada of comparable longevity.

9 **9. Renewal of certification.** An attorney certified by the State Bar of
10 Nevada to practice under this rule who otherwise remains eligible to practice must
11 annually renew the certification in accordance with Rule 49.4.

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