

1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA
3

4 LIBORIUS AGWARA

5 Petitioner,

6 vs.
7

8 STATE BAR OF NEVADA and
9 SOUTHERN NEVADA DISCIPLINARY
10 BOARD,

11 Respondents.


Electronically Filed
Jul 27 2016 01:51 p.m.
Tracie K. Lindeman
Clerk of Supreme Court
Case No. _____

12 **PETITION FOR WRIT OF MANDAMUS OR, IN THE ALTERNATIVE,**
13 **PETITION FOR WRIT OF PROHIBITION**

14 COMES NOW the Petitioner, LIBORIUS AGWARA, by and through his
15 counsel, WILLIAM B. TERRY, ESQ., of the law offices of WILLIAM B. TERRY,
16 CHARTERED and moves that this Honorable Court entertain a petition for writ of
17 mandamus or, in the alternative, writ of prohibition in the instant case.

18 This request is made and based upon subpoenas served upon Mr. Agwara by
19 the State Bar of Nevada. This petition is made and based upon the attached analysis
20 of facts, prayer for relief and points and authorities in support hereof.

21 WILLIAM B. TERRY, CHARTERED

22 
23 WILLIAM B. TERRY, ESQ.
24 Nevada Bar No. 1028
25 WILLIAM B. TERRY, CHARTERED
26 530 S. Seventh Street
27 Las Vegas, Nevada 89101
28 (702) 385-0799
Attorney for Appellant

ANALYSIS OF FACTS

On December 16, 2015, the State Bar of Nevada forwarded a Subpoena Duces Tecum to Petitioner, Liborius Agwara, allowing him a period of time to respond to said Subpoena. A copy of said Subpoena is attached hereto and incorporated herein as Exhibit "1". While the Subpoena itself is self-explanatory, it required Mr. Agwara to produce retainer agreements, documents pertaining to the settlement and/or the distribution of funds, accounting records for all deposits, withdrawals and disbursements in reference to a Nevada State Bank account and perhaps most critically, "All personal and business tax returns for each of those individuals and businesses listed on **Exhibit C** with schedules, W-2's, and 1099's to include W-2's or 1099's issued to your employees, contract personnel or other entities for the tax years 2009, 2010, 2011, 2012, 2013 and 2014..." On March 1, 2016, after getting the extension, Petitioner Agwara filed an objection to the Subpoena, a copy of which is attached hereto and incorporated by reference herein as Exhibit "2". Amongst the objections raised, Mr. Agwara included the fact that he was asserting a Fifth Amendment right against self-incrimination respect to producing or testifying about the subpoenaed documents and/or records. He further alleged that the State Bar was subpoenaing documents that were time barred and further alleged in reference to the income tax returns "...the State Bar is seeking documents (income tax returns) which are outside of its jurisdiction and have nothing to do with how Respondent practices law..." Along with the objections to the Subpoena, Agwara obtained counsel. Further objections were filed by counsel which were responded to by the State Bar. Ultimately the matter was referred to Luke Puschnig, Esq., as chair of the Southern Nevada Disciplinary Board. Without any oral argument but assuming having considered the written objections and responses, Mr. Puschnig caused to be filed on May 27, 2016 an "Order Regarding Objection to Subpoena Duces Tecum and

1 Motion to Compel Production...”, a copy of which is attached hereto and
2 incorporated by reference herein as Exhibit “3”. Again as set forth within the Order,
3 the objection was denied and the State Bar’s motion to compel was granted. Oddly
4 enough, the order thereafter indicates “This Order does not, in any manner, prevent
5 Liborius Agwara, Esq. from making similar arguments in the future if this matter
6 continues to hearing...”

7 The reason counsel suggests that this was an odd provision to add to the order
8 includes the fact that there was not at that point in time any Bar complaint filed
9 against Mr. Agwara. Additionally, as will be argued herein, it does do Mr. Agwara
10 any good to make similar arguments in the future if the items sought are delivered
11 to the State Bar including but not limited to the income tax return. A Notice of Entry
12 of Order was likewise filed on the same date being May 27, 2016. A copy of that
13 document is attached hereto and incorporated by reference herein as Exhibit “4”. By
14 the time Mr. Puschnig entered his order in reference to what is referred to herein as
15 Subpoena #1, counsel has been advised that an additional subpoena had been served
16 upon counsel and Mr. Agwara, a copy of which is attached hereto and incorporated
17 by reference herein as Exhibit “5”. This subpoena required the production of
18 documents by June 6, 2016. In order to litigate the issues pertaining to the second
19 subpoena, neither Mr. Agwara nor counsel filed a Petition for Mandamus or, in the
20 alternative, a petition for writ of prohibition because of the expected ruling by Mr.
21 Puschnig to objections to the second subpoena. As a result, of the second subpoena
22 counsel filed objections to the second subpoena duces tecum, a copy of which is
23 attached hereto and incorporated by reference herein as Exhibit “6”. The Court is
24 asked to note that oral arguments were requested on the objection to the second
25 subpoena. See Exhibit “6”. The State Bar thereafter responded to the objections to
26 the subpoena and Petitioner herein filed responsive points and authorities again
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1 objecting to the subpoena and again requesting that the subpoena be quashed.

2 On June 2, 2016, Chairman Puschnig entered an order which set a telephonic
3 hearing for July 7, 2016 at 2:00 p.m. regarding the objection to subpoena and the
4 motion to quash the subpoena. The Order likewise provided both the State Bar and
5 counsel with a telephone number and conference ID number and conference pin
6 number. A copy of this document is attached hereto and incorporated by reference
7 herein as Exhibit "7". There was therefore an expectation that there would be oral
8 arguments granted on July 7th since that is what the Chairman had ordered. Contrary
9 to this order, however, on June 29, 2016, apparently after Mr. Puschnig had
10 considered the points and authorities by both Mr. Agwara and the State Bar, an order
11 was entered denying Mr. Agwara's objections to the second subpoena duces tecum.
12 The order again included the language "This Order does not, in any manner, prevent
13 Liborius Agwara, Esq. from making similar arguments in the future if this matter
14 continues to hearing..." Counsel for Mr. Agwara thereafter forwarded an email to
15 Chairman Puschnig, which was likewise forwarded to both Janeen Isaacson and
16 Stephanie Barker with the State Bar, a copy of which is attached hereto and
17 incorporated by reference herein as Exhibit "8". In part, it referred the fact that
18 Chairman Puschnig had already denied the objections to the second subpoena duces
19 tecum. It thereafter continued "You had scheduled oral arguments on this matter for
20 July 7, 2016 at 2:00 p.m. Am I to presume that that is now vacated since you have
21 ruled without oral arguments?" The email further requested that Mr. Puschnig enter
22 a stay of his order so that Mr. Agwara could file a writ with the Nevada Supreme
23 Court. Less than fifteen minutes later, Mr. Puschnig responded as set forth in
24 Exhibit "9" in an email indicating "Oral hearing was vacated because I do not see a
25 reason for the oral hearing. The written pleadings were enough to decide the matter.
26 I am also hereby denying the Request for a Stay on my order..." A copy of that email
27

1 is attached hereto and incorporated by reference herein as Exhibit "9".

2 **ANALYSIS OF SUBPOENA #1 AND SUBPOENA #2**

3 *SUBPOENA #1*

4 The original basis of the objections to Subpoena #1 have already been outlined
5 but a review of the Subpoena itself shows clearly there is a basis to assert a Fifth
6 Amendment right, a limitation of actions right, and others to the subpoena.
7 Additionally, much of the information sought pursuant to the subpoena either can be
8 or has been obtained through Nevada State Bank through account number 2097335
9 including the fronts and backs of checks. Sought in part are "...accounting records
10 for all deposits, withdrawals and disbursements of funds...", "documents that
11 evidences the creation of an attorney client relationship or otherwise indicates a
12 request for said funds to be held in trust or escrow...", "accounting records for all
13 deposits..." Again, under paragraph 3, all personal and business and tax returns "...of
14 those individuals and businesses listed on Exhibit C with schedules, W-2's, and
15 1099's to include W-2's or 1099's issued to your employees, contract personnel or
16 other entities for the tax years 2009, 2010, 2011, 2012, 2013 and 2014..." 2009
17 through 2011 and arguably 2012 are well outside the limitation of actions rule for
18 which the State Bar could file any form of a complaint.

19 *Subpoena #2*

20 This Subpoena seeks information in reference to Wells Fargo IOLTA account
21 ending 8027 "...between December 1, 2014 and present..." Part of the sought
22 documents include settlement or distribution sheets, pre-settlement loans,
23 correspondence evidencing negotiation/settlement, check memos, wire instructions,
24 account journals, accounting database or account summaries.

1 In *Waters v. State Bar of Nevada*, 103 Nev. 694, 747 P.2d 900 (1987) Mr.
2 Waters filed an original petition for writ of mandamus to compel former counsel of
3 the State Bar to investigate two Assistant United States Attorneys. Part of the
4 finding by the Nevada Supreme Court was that the court has inherent supervisory
5 authority over the State Bar and a strong interest in assuring that all members of the
6 State Bar perform their duties properly. The court also found that when the Supreme
7 Court exercises its supervisory authority it need not confine its order to the entry
8 of a writ recognized in common law but may structure relief to the purpose at hand.

9 In a series of cases involving a petition for writ of prohibition or, in the
10 alternative, a writ of mandamus and specifically in *Whitehead v. The Nevada*
11 *Commission on Judicial Discipline*, 110 Nev. 380, 873 P.2d 946 (1994) the court
12 found that the Supreme Court had jurisdiction to entertain petitions for extraordinary
13 relief in the nature of a prohibition or mandamus. In reference to judicial discipline,
14 it is submitted that if the court has jurisdiction through either of these writs over
15 judicial discipline they likewise have jurisdiction over attorney discipline.

16 ARGUMENT

17 I. PETITIONER AGWARA HAS A FIFTH AMENDMENT RIGHT TO NOT 18 COMPLY WITH SUBPOENA #1 AND #2.

19 Based on information and belief this is a question of first impression presented
20 to this Honorable Court in reference to the assertion of a Fifth Amendment right to
21 a bar disciplinary action in Nevada. The subject matter of the dispute herein is in
22 dealing with the two subpoenas issued by the State Bar.

23 In perhaps the leading case decided by the United States Supreme Court being
24 *Spevack v. Klein*, 385 U.S. 511 (1967) someone in Mr. Agwara's position being a
25 lawyer in a disciplinary proceeding has a right to remain silent and the right to refuse
26 to give testimony in a disciplinary proceeding without suffering a disciplinary
27 sanction. It is submitted that this same right applies to the production of documents

1 as exemplified in Subpoena #1 and #2 and most particularly in reference to the
2 income tax reports of the Petitioner.

3 In *Spevack* at 516 supra, the court specifically indicated:

4 We find no room in the privilege against self-
5 incrimination for classifications of people so as to deny it
6 to some and extend it to others. Lawyers are not exempted
7 from the words "no person...shall be compelled in any
8 criminal case to be a witness against himself" and we can
9 imply no exception...

10 In considering the instant issue, this Honorable Court is respectfully reminded
11 that it was the bankruptcy judge who referred the matter to the State Bar and likewise
12 referred the matter to the United States Attorney's office. In the case of *In Re: Artis*,
13 883 A.2d 85, 103 (DC 2005) the court held that the Fifth Amendment protects
14 against any disclosures that the witness reasonably believes could be used in a
15 criminal prosecution or could lead to other evidence that might be used. This is
16 particularly relevant in the instant case since the Chairman's ruling was that Mr.
17 Agwara was not protected by the Fifth Amendment but could assert it at a later point
18 in time. Again, that would do no good if the production were required.

19 In the case of *In Re: Sheldon Oliver Zisook*, 88 Ill.2d 321, 430 N.E. 2d 1037
20 (1981), the court considered the applicability of a Fifth Amendment invocation to
21 subpoenas that had been issued to an attorney. The *Zisook* case involved the scope
22 of an attorneys Fifth Amendment privilege against incriminating himself in reference
23 to a disciplinary action. Unlike Agwara herein who practices as a sole-proprietor
24 and not under a corporation, *Zisook* had formed a professional corporation. He had
25 been served a subpoena duces tecum to testify and produce files. It was in fact a
26 third defendant in the *Zisook* case by the name Elias who was an attorney practicing
27 as a sole-practitioner. In coming to their decision, the Illinois court recognized that
28 it has long been the law that the privilege extends to private papers as well as oral
testimony. See *United States v. White*, 322 U.S. 694 (1944).

1 It is further suggested that the privilege is not limited to oral questioning and
2 that an individual may refuse to provide documents to an investigative body if the
3 act of production would be testimonial. See, for example, *In Re: Grand Jury*
4 *Subpoena dated April 18, 2003*, 383 F.3d 905 (9th Cir. 2004).

5 In *Fisher v. United States*, 425 U.S. 391, 96 S.Ct. 1569, 48 L.Ed.2d 39 (1976)
6 the court held that the act of producing evidence in response to a subpoena has both
7 communicative aspects and also denotes possession or control by the tax payer. This
8 is completely different than what the contents of the paper produced disclosed.
9 Compliance with the subpoena tacitly concedes the existence of the papers
10 demanded and their possession or control by the taxpayer. In *United States vs. Doe*,
11 465 U.S. 605, 104 S.Ct. 1237, 79 L.Ed.2d 552 (1984) it was held that business
12 records of a sole-proprietorship are no different from the individual owners personal
13 records. Additionally, if production of business records is protected by the Fifth
14 Amendment right against self-incrimination production cannot be compelled without
15 a statutory grant of immunity. It is further submitted that based upon the broad
16 language of the subpoenas herein the more likely it is that the production of the
17 documents would be testimonial in nature. It has also been held that in limited
18 circumstances the act of producing the document can be testimonial under the Fifth
19 Amendment protection against self-incrimination as when the act of producing the
20 document is evidence that the document even exists. See *Rajah v. Mukasey*, 544
21 F.3d 427, 55 A.L.R. Fed.2d 717 (2nd Cir. 2008). In the case of *Natural Gas Pipeline*
22 *Co. of America v. Energy Gathering, Inc.*, 87 F.3d 464, 149 A.L.R. Fed. (5th Cir.
23 1996) it was held that an attorney for a judgment debtor was entitled to assert the
24 Fifth Amendment privilege in refusing to release attorney billing records and that the
25 imposition of sanctions for the attorneys refusal to release those records was error.
26 There the attorney's invocation of the privilege was not frivolous and a further
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1 recognition that some of the documents demanded by the discovery orders might
2 furnish incriminating information because the attorney did not admit at any earlier
3 stage of the proceeding to guilt or to facts that were themselves incriminating.

4 The finding of the United States Supreme Court in the case of the *United*
5 *States v. John Doe*, 104 S.Ct. 1237, 465 U.S. 605 (1984) is relevant herein. In *Doe*
6 the owner of a sole-proprietorship upon whom a subpoena had been served
7 demanding production of certain business records filed a motion seeking to quash
8 the subpoenas. Ultimately the matter reached the Supreme Court which found that
9 the contents of the business records were not privileged but the act of producing the
10 records was privileged and could not be compelled without a statutory grant of use
11 immunity. Specifically, the court held that where an owner of a sole-proprietorship
12 upon whom a subpoena was served demanding production of certain business
13 records in conjunction with a federal grand jury investigation pertaining to
14 corruption did not concede that the records listed in the subpoena actually existed
15 or were in his possession so that by actually producing the records the owner would
16 tacitly admit their existence and its possession and where production of the
17 documents would relieve the government of its need for authentication the act of
18 producing the documents at issue was privileged and could not be compelled without
19 a statutory grant of use immunity.

20 Applying *Doe*, supra, to the instant case, to require the production of the
21 documents being anything sought under Subpoena #1 and #2 would make the
22 Petitioner tacitly admit to the existence of these documents and therefore relieve the
23 State Bar of any need to authenticate the documents. Consistent with *Doe* this
24 cannot be done. Again, it is the act of production that is protected by the Fifth
25 Amendment. This particularly is true since each of the documents sought would be
26 testimonial in nature.

1 Following *Doe*, supra, the 9th Circuit Court of Appeals considered a similar
2 issue in the case of *In Re: Grand Jury Subpoena dated April 18, 2003*, 383 F.3d 905
3 (9th Cir. 2004). In that case the court ultimately found that because of the breath of
4 the subpoena and the government's limited knowledge of the documents sought
5 *Doe's* production of the documents would have a testimonial aspect protected by the
6 Fifth Amendment right against self-incrimination. The subpoena in *Doe* was broad
7 as it is in the instant case and was served upon a corporation and covered a period
8 from 1998 through the date of the subpoena and requested amongst other things all
9 documents relating to contracts and communications. The subpoena commanded
10 *Doe* to appear and testify before the grand jury and to bring the documents with him.
11 *Doe* asserted a Fifth Amendment basis and refused to provide the documents and
12 was held in contempt and the matter went before the 9th Circuit Court of Appeals.
13 The court noted that *Doe's* claim of privilege was directed not necessarily to the
14 documents themselves but the act of producing the documents and the court
15 considered prior cases holding that a witnesses production of documents in response
16 to a subpoena may have incriminating testimonial aspects. These include an
17 authentication requirement. It also includes the fact that the witness is admitting that
18 the documents exist and are in his possession or control as well as being authentic.
19 The court concluded that these types of admissions implicitly communicates
20 statements of facts that may lead to incriminatory evidence.

21 The finding of the 9th Circuit Court of Appeals in *United States vs. Sideman*
22 *and Bancroft, LLP*, 704 F.3d 1197 (2013) is also applicable to the instant case.
23 There, the IRS had filed a petition for enforcement of an administrative summons for
24 a law firm to produce certain tax documents of a tax payer client. The court
25 recognized that before this could occur the government must establish, or in the
26 instant case the Bar must establish, its independent knowledge of three elements: (1)
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1 that the documents in fact exist; (2) that the documents are authentic; and (3) that the
2 respondent's possession or control of the documents is in place. The court went on
3 to hold that the authenticity prong requires the Government to establish that it could
4 independently verify that the compelled documents are in fact what they purport to
5 be. It is submitted that because the documents are testimonial in nature they cannot
6 be compelled to be produced and that this would implicitly acknowledge
7 authenticity.

8 ARGUMENT IN SUPPORTS OF SPECIFIC PRAYERS FOR RELIEF

9 I. THAT THE CHAIRMAN OF THE SOUTHERN NEVADA DISCIPLINARY
10 COMMITTEE BE DIRECTED TO MODIFY HIS ORDER DENYING THE
11 MOTION TO QUASH SUBPOENA #1 AND #2.

12 Based on the cases cited dealing with the right of an attorney to invoke his
13 Fifth Amendment rights which include his right to not deliver documentation it is
14 suggested that the ruling of the Chairman of the disciplinary committee was in error.
15 The first prayer for relief is that the Court direct pursuant to mandamus procedure
16 or due to its inherent jurisdiction that the motion to quash Subpoenas #1 and #2 be
17 granted. The Chairman issued two orders, one dated May 27, 2016 and one dated
18 June 29, 2016 in reference to Subpoena #1 and #2. Although oral argument had
19 been granted on Subpoena #1 and #2 that was revoked by the Chairman without
20 notice.

21 Rule 22 of the Disciplinary Rules of Procedure as adopted by the Board of
22 Governors July 9, 2014 provides in pertinent part as follows:

23 Rule 22.
24 Motions or stipulations, rulings to be written to be filed.
25 The hearing panel chair, if appointed, shall hear and
26 decide all motions or stipulations. All rulings issued by
27 the hearing panel chair shall be in writing and filed with
28 the appropriate disciplinary board through the office of
bar counsel.

In the instant case since no disciplinary action was pending against Mr.

1 Agwara at the time Subpoenas #1 and #2 were issued against him, the State Bar
2 referred the matter to the Chairman of the Southern Nevada Disciplinary Committee.
3 In other words, the matter had not been assigned to a specific "...panel chair..." due
4 to the fact that no complaint existed. Separate and aside from Rule 22 is at a
5 minimum instructive on what the individual ruling on motions should do. It is the
6 position of the Petitioner herein that when the rule says the ruling of the panel chair
7 shall be in writing it means that there must be some form of basis for the ruling set
8 forth within the order. There is in fact no basis for the ruling of the chair in
9 subpoena #1 or #2 but in fact it simply is a denial order. To make the matter even
10 more complex the Chairman put what can only be referred to as a caveat in there that
11 his ruling did not prohibit the Petitioner from raising his Fifth Amendment rights at
12 a later point in time. The problem with this is that if the Petitioner is directed to
13 comply with Subpoena #1 and #2 there will be no further opportunity to raise a Fifth
14 Amendment right. Authentication will be established by the mere production of the
15 record by the Petitioner. If the records do not exist, this likewise will be construed
16 against Petitioner. It is submitted that these are testimonial in nature and covered
17 under the Fifth Amendment privilege.

18 **II. TO PROHIBIT THE STATE BAR FROM ENFORCING THE ORDERS OF**
19 **THE CHAIRMAN OF THE SOUTHERN NEVADA DISCIPLINARY**
20 **COMMITTEE.**

21 The State Bar has certain avenues available to it to enforce the orders of the
22 Chairman of the Southern Nevada Disciplinary Committee. Those include a request
23 for a contempt and what other procedures the State Bar may suggest. It is requested
24 that this Honorable Court prohibit the State Bar from enforcing the orders of the
25 Chairman of the Southern Nevada Disciplinary Committee based on the arguments
26 above.
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1 III. THAT THE MOTIONS TO QUASH THE SUBPOENA BE GRANTED.

2 The instant request is more in line with the petition for writ of mandamus
3 because it would be directed to the Chairman of the panel, Mr. Puschnig, to quash
4 the subpoenas. That would be based upon either pronouncements by this Honorable
5 Court or further directive by this Honorable Court.

6 IV. TO PROHIBIT THE STATE BAR FROM ENFORCEMENT UNDER RULE
7 25(c) OF THE DISCIPLINARY RULES OF PROCEDURE AS ADOPTED
8 BY THE BOARD OF GOVERNORS ON JULY 9, 2014.

9 Rule 25 deals with subpoenas. In making the instant argument, this Honorable
10 Court is reminded that at the time that Subpoena #1 and #2 were issued, no
11 disciplinary procedures were pending against the Petitioner. Subsection (a) of Rule
12 25 deals with Bar counsel and attorney members of hearing panels and indicates that
13 they "...may administer oaths and affirmations and issue and compel by subpoena the
14 attendance of witnesses and the production of pertinent books, papers and
15 documents..." The State Bar issued the subpoenas prior to any disciplinary
16 proceedings. As a result, no "hearing panel" was set up. When objections were
17 raised to the subpoena the Bar referred the matter to Puschnig in his position as
18 Chairman of the Southern Nevada Disciplinary Committee.

19 Subsection (c) sets forth the procedure for failure to comply with the
20 subpoena. While it is initially suggested that this procedure would not be available
21 to the Bar since at the time of the subpoenas no disciplinary procedures were
22 pending against the Petitioner, that would not prohibit them from attempting to
23 utilize the procedures under Rule 25(c). In essence, what subsection (c) indicates is
24 that when any individual is subpoenaed to produce books, papers or documents and
25 refuses to do so "...that person shall be deemed in contempt of the disciplinary board
26 and the chair of the disciplinary board shall report the fact to a district court of the
27 county..." The provision goes on that the district court shall promptly issue a

1 attachment which directs that the attorney be brought before the court forthwith. The
2 attorney is then put in a position to either comply with the subpoena or continue to
3 resist the subpoena. As subsection (c) provides production would "...purge himself
4 or herself of the contempt..." Petitioner herein, however, does not wish to "purge"
5 the procedure due to the fact that he believes he has a legitimate Fifth Amendment
6 claim.

7 If this Honorable Court does not quash the subpoenas, it is believed that the
8 State could invoke the provisions under Rule 25.

9 V. FOR SUCH OTHER RELIEF AS THE COURT DEEMS FIT INCLUDING,
10 BUT NOT LIMITED TO, A RECOGNITION OF THE PETITIONER'S
11 RIGHT TO ASSERT THE FIFTH AMENDMENT REGARDING THE
12 SUBPOENA DUCES TECUMS OUTLINED HEREIN.

13 As this Court recognized in *Waters v. State Bar*, 103 Nev. 694, 747 P.2d 900
14 (1987) this Court has the right to hear a petition for writ of mandamus or a petition
15 for writ of prohibition or utilized its inherent supervisory authority over the State
16 Bar. Whether the Court invokes it's powers under a writ of mandamus or prohibition
17 or under its supervisory authority, the prayers for relief outlined herein are still
18 equally applicable. As an example, the Court could direct the Chairman to
19 reconsider the motions and to issue written findings of facts and conclusions of law.
20 The Court could direct that oral arguments be set before the Chairman. The Court
21 could grant the prayer for relief in part or in full as requested by the Petitioner. What
22 is most important, however, is a recognition by this Honorable Court of the
23 Petitioner's right to invoke his Fifth Amendment rights under the Constitution and
24 that those Fifth Amendment rights being testimonial in nature are equally applicable
25 to calling upon the Petitioner to answer questions or directing that the Petitioner
26 provide documents.


27 CONCLUSION

28 For the above-indicated reasons, it is respectfully requested that the Petition
for Writ of Mandamus or, in the Alternative, Writ of Prohibition be granted or

1 alternatively that the Court exercise its supervisory powers over the State Bar and
2 quash Subpoenas #1 and #2 as prayed for herein.

3 DATED this 27th day of July, 2016.

4
5 WILLIAM B. TERRY, CHARTERED

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7 
8 WILLIAM B. TERRY, ESQ.
9 Nevada Bar No. 1028
10 WILLIAM B. TERRY, CHARTERED
11 530 S. Seventh Street
12 Las Vegas, Nevada 89101
13 (702) 385-0799
14 Attorney for Appellant
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VERIFICATION


STATE OF NEVADA }
COUNTY OF CLARK } ss:

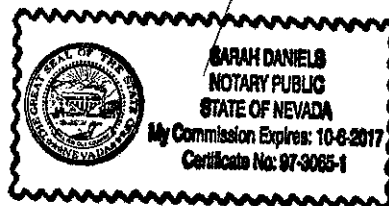
LIBORIUS AGWARA, being first duly sworn according to law, upon oath,
deposes and says:

That I am the Petitioner, LIBORIUS AGWARA, in the above-entitled action;
that I have read the foregoing Petition for Writ of Mandamus, or in the Alternative,
Writ of Prohibition, and know the contents thereof, and that same is true of my own
knowledge, except as to those matters therein alleged on information and belief, and
as to those matters, I believe them to be true.


LIBORIUS AGWARA

SUBSCRIBED AND SWORN to before
me this 26th day of July, 2016.


NOTARY PUBLIC in and for said
County and State



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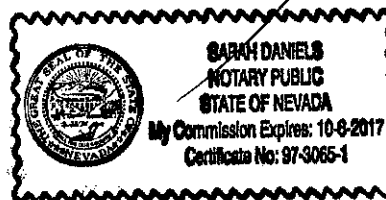
WILLIAM B. TERRY, being first duly sworn according to law, upon oath,
deposes and says:

That he is the attorney for the Petitioner, LIBORIUS AGWARA, in the above-entitled action; that affiant has read the foregoing Petition for Writ of Mandamus, or in the Alternative, Writ of Prohibition, and know the contents thereof, and that same is true of his own knowledge, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.


WILLIAM B. TERRY

SUBSCRIBED AND SWORN to before
me this 27th day of July, 2016.


NOTARY PUBLIC in and for said
County and State



1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that on this 27th of July, 2016, I served a true and
3 correct copy of the above and foregoing **PETITION FOR WRIT OF**
4 **MANDAMUS OR IN THE ALTERNATIVE WRIT OF PROHIBITION** by
5 depositing a true and correct copy in the United States mail, postage pre-paid
6 addressed as follows:

7
8 Stephanie Barker, Esq.
9 Assistant Bar Counsel
10 State Bar of Nevada
 3100 E. Charleston Boulevard, #100
 Las Vegas, Nevada 89102

11 Luke Pucshnig, Esq.
12 Southern Nevada Disciplinary Committee
 3150 Paradise Road
 Las Vegas, Nevada 89109

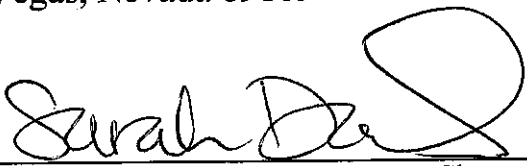
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14 
15 _____
16 An Employee of William B. Terry, Chartered

Exhibit “1”



FILED

DEC 16 2015

Case No. SG13-1818, SG14-0100, SG14-0485, SG14-1137

**STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA

[Signature]
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA,

vs.

SUBPOENA DUCES TECUM

LIBORIUS AGWARA, ESQ.

Bar No.

Respondent.

Liborius Agwara, Esq.
1058 E. Sahara Ave.
Las Vegas, NV 89102-1859

YOU ARE HEREBY directed to set aside any and all business and excuses and appear before Brian T. Kunzi, Deputy Bar Counsel for the State Bar of Nevada, at 3100 W. Charleston Boulevard, Las Vegas, Nevada, 89102, on **Monday, February 1, 2016, at 1:00 p.m.**, and produce true and correct copies of the following items.

NOTE: Your production of the requested items relieves your obligation to personally appear before Deputy Bar Counsel on the designated date and time. Any questions or documents produced can be directed to the attention of:

**Dawn Meeks
Senior Paralegal/Investigator
Office of Bar Counsel
702-317-1439
dawnm@nvbar.org**

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INSTRUCTIONS

This subpoena is a request for documents in your possession or in the possession or control of any of your attorneys, accountants, employees, agents or representatives. The term "document(s)" refers to any written, recorded or graphic representation, invoice, e-mail, and any items that have been optically scanned and/or electronically stored in any form, including but not limited to, all correspondence, telexes, written communications, notes, jottings, memoranda, telegrams, electronic wires, records, reports, computer printouts, calculations, worksheets, written agreements, account summaries, receipts, invoices, checks, check stubs, bills or other tangible item regardless of how it may be stored, produced or reproduced.

1. For each of the individuals listed on Exhibit A, attached hereto and made a part hereof, copies of the following documents:

- a. Retainer agreement or other documents that evidences the creation of the attorney/client relationship, and the terms of the representation, to include, but not limited to, the scope of services to be provided and any termination letter upon the conclusion of the services, if applicable.
- b. Documents related to the settlement or distribution of funds processed through Nevada State Bank Account Number 2097335 to include, but not limited to, medical liens, settlement agreements, pre-settlement loans, distribution/settlement sheets, correspondence evidencing negotiation/settlement of medical liens, releases or satisfactions of any legal obligations.

1 c. Accounting records for all deposits, withdrawals and disbursement of
2 funds to or from Nevada State Bank Account Number 2097335 to
3 include, but not limited to, checks (front and back), check stubs, check
4 ledger, check memos, wire instructions, account journals, account
5 records, accounting database, or account summaries.

6 2. For each of the transactions listed on **Exhibit B**, attached hereto and made a part
7 hereof, copies of the following documents:

8 a. Documents that evidences the creation of an attorney/client relationship or
9 otherwise indicates a request for said funds to be held in trust or escrow.

10 b. Accounting records for all deposits, withdrawals and disbursement of
11 funds to or from Nevada State Bank Account Number 2097335 to include,
12 but not limited to, checks (front and back), check stubs, check ledger,
13 check memos, wire instructions, account journals, account records,
14 accounting database, or account summaries.

15 3. All personal and business tax returns for each of those individuals and businesses
16 listed on **Exhibit C** with schedules, W-2's, and 1099's to include W-2's or 1099's issued to
17 your employees, contract personnel or other entities for the tax years 2009, 2010, 2011, 2012,
18 2013 and 2014.

19 This subpoena is issued pursuant to Supreme Court Rule (SCR) 110 in connection with
20 a **CONFIDENTIAL INVESTIGATION** undertaken pursuant to the Nevada Supreme Court
21 Rules. It shall be regarded as contempt of the Supreme Court Rules for you to in any way
22 breach the confidentiality of this investigation. It shall not be regarded as a breach of
23 confidentiality for you to consult with an attorney or answer questions asked at the above time
24
25

1 and place. For failure to provide as herein directed, you will be deemed in contempt of the
2 Southern Nevada Disciplinary Board and subject to citation from the District Court of the State
3 of Nevada in and for the County of Clark to show cause why you should not be punished for
4 such contempt as provided in SCR 110.

5 ISSUED this 16th day of December, 2015.

6 STATE BAR OF NEVADA
7 C. STANLEY HUNTERTON, BAR COUNSEL

8 Brian T. Kunz
9 Brian T. Kunz, Deputy Bar Counsel
10 Nevada Bar No. 2173
11 3100 W. Charleston Blvd., Suite 100
12 Las Vegas, Nevada 89102
13 (702) 382-2200
14
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Exhibit “2”



FILED

MAR - 1 2016

1 OBJ
 2 LIBORIUS AGWARA, ESQ.
 3 Nevada Bar No. 7576
 4 4693 E. Flamingo Rd.
 5 Las Vegas, NV 89121
 6 (702) 385-4800 Office
 7 (702) 385-4900 Facsimile
 8 Respondent

STATE BAR OF NEVADA
 BY *[Signature]*
 OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

vs.

LIBORIUS AGWARA, ESQ.

Respondent.

CASE NO: SG13-1818, SG14-0100
 SG14-0485, SG14-1137

OBJECTION TO SUBPOENA

Comes now, Respondent above-named, and hereby objects to, and contests, the
 SUBPOENA DUCES TECUM issued by the State Bar of Nevada and filed on December 17,
 2015. This Objection is made pursuant to SCR 110(4) and Rule 25(d) of the State Bar of
 Nevada Disciplinary Rules of Procedure. Respondent objects on the followings grounds:

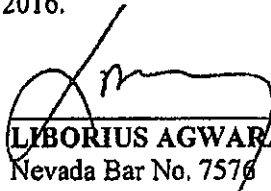
1. Respondent asserts his 5th amendment right against self-incrimination with respect to producing or testifying about the subpoenaed documents and records.
2. The subpoenaed documents are time-barred.
3. The State Bar is functioning as a conduit for other entities/persons to obtain documents that those entities are otherwise not entitled to under the law.
4. The State Bar is seeking documents (income tax returns), which are outside of its jurisdiction and which have nothing to do with how Respondent practices law.

AGWARA & ASSOCIATES
 1058 E. Sahara Ave., Suite B
 Las Vegas, NV 89104
 (702) 385-4800 Office • (702) 385-4900 Fax

AGWARA & ASSOCIATES
1058 E. Sahara Ave., Suite B
Las Vegas, NV 89104
(702) 385-4800 Office • (702) 385-4900 Fax

1 Respondent will be filing a brief in support of this Objection and will attach
2 documentary evidence demonstrating why the subpoena should be quashed or the grievance
3 placed in abeyance, pending the completion of Respondent's bankruptcy proceeding, a likely
4 ongoing investigation by the U.S. Attorney's office, and an Internal Revenue Service
5 examination.
6

7 DATED this 29th day of February 2016.

8
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10 
11 LIBORIUS AGWARA, ESQ.
12 Nevada Bar No. 7576
13 1058 E. Sahara Ave., Suite B
14 Las Vegas, NV 89104
15 (702) 385-4800 office
16 (702) 385-4900 fax
17 Respondent
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MAY 17 2016

STATE BAR OF NEVADA
BY: M. L. - [Signature]
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

In Re: LIBORIUS AGWARA, ESQ.

BAR NO. 7576

**THE STATE BAR OF NEVADA'S
RESPONSE TO OBJECTION TO
SUBPOENA DUCES TECUM
AND
MOTION TO COMPEL PRODUCTION**

TO: Luke Puschnig, Esq.
Southern Nevada Disciplinary Panel, Interim Chair
3150 Paradise Rd.
Las Vegas, NV 89109

COMES NOW the State Bar of Nevada, through Assistant Bar Counsel Stephanie A. Barker, and hereby moves the Chair of the Southern Nevada Disciplinary Panel (Panel Chair) for an order directing that LIBORIUS AGWARA (Agwara), Nevada Bar No. 7576, comply with the December 16, 2015 Subpoena Duces Tecum (SDT) lawfully issued in accordance with Supreme Court Rule (SCR) 110, and served upon Agwara on January 12, 2016, in connection with the investigation of State Bar grievances against Agwara.

1 Agwara has objected to the SDT and has thereby refused to provide the responsive
2 documents. Pursuant to SCR 110(4), the contest of a subpoena shall be heard and
3 determined by the chair of the appropriate disciplinary board. Accordingly, the attached
4 Objection by Agwara, in conjunction with this Response by the State Bar and Motion to
5 Compel Production in compliance with the SDT, is submitted for ruling by the Panel
6 Chair.

7 I.

8 BACKGROUND

9 On April 9, 2014 the State Bar opened an investigation into Agwara's trust
10 account management after having been notified of a bankruptcy proceeding in which
11 Agwara's sworn testimony revealed trust account misuse. After review of Agwara's
12 testimony, and review of trust account records subpoenaed from Nevada State Bank
13 (NSB), the State Bar sought client and accounting information from Agwara directly
14 and issued a Subpoena Duces Tecum (SDT) on December 16, 2015. **Exhibit 1.** The
15 SDT was served on Agwara on January 12, 2016. **Exhibit 2.**

16 Agwara did not provide the documents requested by the SDT and instead, on
17 March 1, 2016, an Objection to the SDT was delivered to the State Bar. **Exhibit 3.** In
18 accordance with SCR 110(4), Agwara's Objection is hereby submitted to the Panel
19 Chair, along with this Motion to Compel Agwara's production of documents in
20 compliance with the SDT, for the Panel Chair's consideration and order.

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II.

POINTS AND AUTHORITIES

A. STATEMENT OF FACTS

1. Notification to State Bar / Agwara's Personal Bankruptcy

On April 9, 2014, the State Bar received a letter from the law firm representing Agwara in his personal bankruptcy. During an April 2, 2014, bankruptcy court hearing, Agwara's attorneys were directed by the Judge to report to the State Bar that Agwara "may not maintain his trust account in accordance with Rule [SCR] 78.5 (b)." Specifically, the State Bar was advised that Agwara keeps no ledgers, vouchers or receipts related to his trust account funds. **Exhibit 4.**

The State Bar subsequently obtained a copy of the March 26, 2014, Declaration of the Bankruptcy Analyst / CPA assigned to conduct financial analysis of Agwara's NSB Trust Account. **Exhibit 5.** The Analyst confirmed that: Agwara was operating his firm as a sole proprietorship; Agwara's NSB Trust Account records did not include a ledger for the account, client ledgers reflecting the amount held in trust for the clients, receipts, copies of checks deposited into the NSB Trust Account, or documentation regarding wire transfers through account; and that during a March 6, 2014 creditors meeting, Agwara stated that he was on a cash basis and did not have a list of accounts receivable, including amounts due to him for reimbursement of expenses and attorney's fees.

1 The State Bar sought Agwara's response to the information received from the
2 bankruptcy proceeding. **Exhibit 6.** On May 6, 2014, Agwara advised the State Bar
3 that he objected to the bankruptcy review of his trust account, asserting that the
4 bankruptcy was his personal bankruptcy, and not for his business and the money
5 belonging to his clients and medical providers were not part of the bankruptcy estate.
6

7 **Exhibit 7.** Agwara stated:

8 I am not aware of a professional rule that requires me to
9 keep a ledger. I do not even know what a ledger is. The
10 fact that [the Analyst] does not like my accounting
11 method does not necessarily mean I engaged in
professional misconduct. He wanted me to do it his way.

12 In light of Agwara's refusal to provide the State Bar with a substantive response
13 to the bankruptcy court's concerns regarding his NSB Trust Account, on June 20, 2014,
14 the State Bar subpoenaed Agwara's NSB Trust Account records directly from the bank.
15 While analysis of those records was pending, on July 23, 2014, the bankruptcy court
16 issued an Order freezing Agwara's NSB Trust Account pending investigation by the
17 Bankruptcy Trustee. **Exhibit 8.**

18
19 On July 21, 2014, two days before entry of the order freezing the NSB Trust
20 Account, United States Bankruptcy Judge Bruce Beesley corresponded with the State
21 Bar advising of Agwara's mismanagement of client funds, and of commingling of
22 personal and client funds. **Exhibit 9.** Judge Beesley provided the Bar with pertinent
23 portions of the transcript of an April 2, 2014 bankruptcy hearing at which Agwara gave
24
25

1 sworn testimony regarding his NSB Trust Account. The full transcript of that hearing,
2 **Exhibit 10**, reveals in pertinent part:

3 a. Agwara described transactions linked to the client trust account that were
4 personal in nature, or otherwise unrelated to his practice of law. For example,
5 Agwara deposited \$90,000 in insurance proceeds to compensate for water
6 damage to his personal residence, and subsequently issued checks from the trust
7 account to pay for repair of the damage. (**Ex. 10**, pp. 132-133, ll. 5-2, and pp.
8 135-137, ll. 16-24.)

9
10 b. Agwara confirmed multiple wire transfers out of the trust account,
11 consisting of thousands of dollars, unrelated to his legal practice. For example,
12 \$22,319.03 (May 2013) for the purchase of real property in Atlanta Georgia (**Ex.**
13 **10**, pp. 137-138, ll. 22-8); \$17,795.61 (May 2013) for freight related to
14 furniture shipped to Nigeria and to Nevada (**Ex. 10**, pp. 145-146, ll. 21-11);
15 \$49,195 (September 2011) to purchase a BMW X6 for Agwara's cousin in
16 Nigeria (**Ex. 7**, p. 247, ll. 2-18); \$161,225 (from August 2010 to February 2012)
17 for development of Agwara's real property located in Nigeria (**Ex. 7**, p. 156, ll.
18 12-23; pp. 163-165, ll. 16-17; pp. 175-176, ll. 11-6; pp. 176-177, ll. 18-8.)

19 c. While Agwara testified that the money transferred from the trust account
20 for personal purposes had been earned by him as "fees," he could not provide any
21 detail regarding which client or case had generated the fee. For example,
22
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1 Agwara received a million dollar settlement in August 25, 2009, and a \$900,000
2 settlement in 2010, and in 2014 Agwara could not attest to whether or not his fees
3 earned on those settlements had been distributed for his personal use, in total.
4 (Ex. 10, pp. 165-167, ll. 8-2.)
5

6 d. Agwara testified that he does not implement a reliable or identifiable
7 system of accounting for his client trust account as follows:

8 (i) Between 2009 and 2014, 90-95% of Agwara's practice was personal
9 injury (Ex. 10, pp. 34-35, ll. 25-3) and as of April 2, 2014, Agwara could not
10 state how many clients were owed sums of money from Agwara's trust account.
11 (Ex. 10, pp. 42-43, ll. 21-3.)
12

13 (ii) Agwara does not keep a comprehensive ledger of his client trust
14 account, tracking client names and amounts owed, but rather keeps that
15 information as separate documents in each client file. (Ex. 10, pp. 48-49, ll. 21-
16 13.)
17

18 (iii) When Agwara earns fees from client funds that are deposited into the
19 trust account, he does not withdraw the earned fees all at the same time in order
20 to leave money in the account to run his office in the event there might not be
21 another settlement for the next two or three months – he does not move earned
22 fees into an operating account. (Ex. 10, p. 143, ll. 6-25.)
23

24 ///

1 (iv) In order to track how much trust account money was attributable to
2 earned fees, Agwara would have to go back through the account to see how much
3 money had been withdrawn either to him or to his office, or wired out of the trust
4 account on his behalf, in an effort to determine how much was left. (Ex. 10, p.
5 165, ll. 13-17.)
6

7 (v) In order to determine which case a withdrawal was attributable to,
8 Agwara would see whether there were indications on the check stubs. (Ex. 10, p.
9 167, ll. 7-11.) For personal wires for which there was no check, Agwara would
10 add them together with what he believed was money he had left in the trust
11 account, and "usually there's -- it covered everything." (Ex. 10, pp. 171-172,
12 ll. 15-172.)
13

14 (vi) "[I]f it becomes necessary to go back and say, okay, part of the 50
15 came from this client, part of the 50 came from that client, then I would do that.
16 But I usually know how much belongs to my office in the trust. Okay. So it --
17 and I never had the need to go and explain where did this one come from and
18 where did this one come from." (Ex. 10, p. 172, ll. 5-17.)
19

20 The Bankruptcy Court Order freezing the NSB Trust Account was extended by
21 the Court on October 6, 2014. **Exhibit 11.** Per the Bankruptcy Court's Orders, once
22 frozen, Agwara was required to obtain approval from the Trustee regarding the deposit
23 and distribution of all client settlement funds.
24
25

1 **2. The State Bar Investigation**

2 Having received the above-detailed information, evidence, and testimony elicited
3 in bankruptcy court regarding Agwara's handling of his Trust Account, the State Bar
4 opened an investigation. See **Exhibit 12**, Affidavit of Senior Investigative Paralegal,
5 Office of Bar Counsel. In that investigation the State Bar obtained records from Wells
6 Fargo Bank (WFB) for both an operating account and a second trust account held by
7 Agwara. The existence of this trust account was previously unknown to the State Bar as
8 it had not been disclosed by Agwara as required by SCR 78.5(5).
9

10 a. Wells Fargo Bank Operating Account (8515)

11 Review of the WFB Operating Account records establishes that commencing July
12 2014, at approximately the time when the NSB Trust Account was first frozen, Agwara
13 bypassed the frozen NSB Trust Account and began diverting client monies into the WFB
14 Operating Account. **Ex. 12, ¶ 8.** For the next approximate six months, while the NSB
15 Trust Account was frozen and being monitored by the Bankruptcy Trustee, Agwara
16 comingled and disbursed client funds, personal funds, and law practice operating funds
17 through the WFB Operating Account. **Ex. 12, ¶¶ 8-10.**
18

19 The WFB Operating Account records covered dates of service from January 2009
20 through December 15, 2015. During this period of time, the account reconciliation
21 reveals that there were thirty-four (34) occasions on which Agwara deposited into this
22 operating account, funds received on behalf of a client in the form of either a settlement
23
24
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1 check or a medical payment coverage check. **Exhibit 12-B.** The total amount of the
2 client fund checks deposited into the WFB Operating Account over approximately nine
3 months between July 14, 2014 and April 22, 2015, was \$343,876.39. **Exhibit 12-B.**
4

5 The reconciliation also shows that during this same nine-month period of time,
6 there were non-client related transactions being processed through this operating
7 account, including withdrawals for office repair and maintenance, pool service,
8 paralegal services, child support, vehicle maintenance, personal litigation expense
9 (bankruptcy and divorce), payroll, lawn maintenance at a personal residence, self-
10 storage fees, CLE fees, payroll costs, etc. **Exhibit 12-C.**
11

12 The accounting performed with regard to the WFB Operating Account illustrates
13 that Agwara comingled client, business and personal funds, and failed to properly
14 distribute all of the deposited settlement funds, utilizing a portion of these funds for his
15 business and personal needs at various times.
16

17 b. Wells Fargo Bank Trust Account (8027)

18 The WFB Trust Account was opened in December of 2014, shortly after the
19 second bankruptcy court freezing order had lifted. **Ex. 12, ¶ 11.** Examination of this
20 trust account demonstrates that although this account appears to have been primarily
21 utilized for client funds, Agwara continued to engage in accounting practices that
22 prevent reconciliation of the sums contained therein. **Ex. 12, ¶ ¶ 12 & 13.**
23

24 ///

1 More specifically the WFB Trust Account records covered dates of service from
2 December 15, 2014 (the date the trust account was opened) through December 15, 2015.
3 Pertinent sections of the State Bar reconciliation of these records are attached hereto as
4 **Exhibit 12-D** and **12-E**. The reconciliation demonstrates that client funds deposited into
5 the account are not being properly accounted for leaving client balances in the trust
6 Account because they have not been disbursed in total. **Exhibit 12-E**.

8 (i) On 2/10/15, \$10,000 was deposited from ESIS re: Sofia Contreras.
9 Between 2/23/15 and 6/30/15, only \$5,283 of that sum was withdrawn, including
10 payment to Agwara, with no payment to the client, leaving a client fund balance of
11 \$4,717 in the trust account as of 12/15/15.

13 (ii) On 2/10/15, \$14,200 was deposited from Liberty Mutual re: Alexis
14 Escobar. On 3/24/15, \$4,733 was withdrawn payable to Agwara & Associates. As of
15 12/15/15 there were no other withdrawals from the account that referenced Alexis
16 Escobar, and no withdrawal indicating that the client was paid, leaving a client fund
17 balance of \$9,467 in the trust account as of 12/15/15.

19 (iii) On 3/12/15, \$8,000 was deposited from Progressive Insurance re: Rene
20 Romero-Alfano, and on 5/6/15, \$2,005.82 was deposited from Allstate re: Rene
21 Romero-Alfano, totaling \$10,005.82. Between 4/7/15 and 4/9/15, \$8,302.82 was
22 withdrawn reference this client, including payment to Agwara, leaving a client fund
23 balance of \$1,703 in the trust account as of 12/15/15.

1 (iv) On 3/12/15 and 3/24/15, a total of \$65,000 was deposited from Fred Laya
2 Insurance and nationwide Insurance re: Jose Sanchez Martinez. Between 4/2/15 and
3 6/18/15, a total of \$67,359.19 was withdrawn with reference to this client, including
4 payment to Agwara, creating an overdraft of (\$2,359.15) with regard to this client.
5

6 (v) On 5/6/15, \$15,000 was deposited from GEICO re: Magdalena Hosseini.
7 Between 5/15/15 and 11/16/15, \$8,600 of that sum was withdrawn with reference to this
8 client, including payment to Agwara, leaving a client fund balance of \$6,400 in the trust
9 account as of 12/15/15.
10

11 (vi) On 5/6/15, \$50,000 was deposited from Farmers re: Mere Godfrey.
12 Between 5/15/15 and 6/15/15, \$48,854.75 of that sum was withdrawn with reference to
13 this client, including payment to Agwara, leaving a client fund balance of \$1,145.25 in
14 the trust account as of 12/15/15.
15

16 (vii) On 7/27/15, \$6,000 was deposited from GEICO re: George Goldwair.
17 Between 7/30/15 and 9/8/15, \$4,694 of that sum was withdrawn with reference to this
18 client, including payment to Agwara, leaving a client fund balance of \$1,306 in the trust
19 account as of 12/15/15.
20

21 (viii) On 10/1/15, \$55,000 was deposited from Frias Management, re: Markos
22 Amare. Between 10/7/15 and 10/26/15, \$33,501.50 of that sum was withdrawn with
23 reference to this client, including payment to Agwara, leaving a client fund balance of
24 \$21,498.50 in the trust account as of 12/15/15.
25

1 (ix) On 10/9/15, \$4,150 was deposited from GEICO re: Baksh Qadir. As of
2 12/15/15 no withdrawals were made from the trust account reference this client, leaving
3 a client fund balance of \$4,150 in the trust account as of 12/15/15.
4

5 **3. Subpoena Duces Teccum for Agwara's Client and Financial Records**

6 In an effort to reconcile Agwara's use of the above-described accounts to process
7 client funds, on December 17, 2016 the Office of Bar Counsel issued the now contested
8 SDT to Agwara, **Exhibit 1**, seeking:
9

10 1) client records to include, by named client, retainer agreements, termination
11 letters, documents related to the settlement or distribution of funds to include, but not be
12 limited to medical liens, settlement agreements, pre-settlement loans,
13 distribution/settlement sheets, correspondence evidencing negotiation/settlement of
14 medical liens, releases or satisfactions of any legal obligations;
15

16 2) accounting records for all deposits, withdrawals and disbursement of funds to
17 or from Nevada State Bank Account Number 2097335 to include, but not be limited to,
18 checks (front and back), check stubs, check ledger, check memos, wire instructions,
19 account journals, account records, accounting database, or account summaries; and
20

21 3) personal and business tax returns from 2009 through 2014.

22 After extension of time for Agwara's response to the SDT, on March 1, 2016,
23 Agwara served the State Bar with an Objection to the SDT, **Exhibit 2**, refusing to
24 produce the required documents, asserting that:
25

1 1. The Fifth Amendment right against self-incrimination protects Agwara with
2 respect to producing or testifying about the subpoenaed documents and records.

3 2. The subpoenaed documents are time-barred.

4 3. The State Bar is functioning as a conduit for other entities/persons to obtain
5 documents that those entities are otherwise not entitled to under the law.

6 4. The State Bar is seeking documents (income tax returns) which are outside
7 of its jurisdiction and which have nothing to do with how Agwara practices law.

8 5. The SDT should be quashed or the grievance placed in abeyance pending
9 the completion of Agwara's bankruptcy proceeding, a likely ongoing investigation by
10 the U.S. Attorney's Office, and an Internal Revenue Service Examination.

11 Agwara's Objection indicates that Agwara would be filing a brief to which
12 Agwara would attach documentary evidence in support of the objection. No brief or
13 documentary evidence in support of the Objection has been submitted to the State Bar as
14 of this date.

15
16
17
18 **B. ARGUMENT**

19 **Supreme Court Rules and Rules of Professional Conduct Require**
20 **Agwara to Comply with the Subpoena Duces Tecum**

21 SCR 110 provides that the State Bar may compel production of attorney records
22 by way of subpoena, in matters under investigation by the State Bar. Agwara's conduct
23 with regard to trust account and operating account management, and his failure to

24 ///

1 disclose client accounting information in response to a subpoena from the State Bar,
2 demonstrates attempted evasion of oversight concerning client fund management.

3 SCR 78.5(1)(b) requires that:

4 [E]very lawyer . . . shall maintain and preserve . . . records
5 of the accounts including checkbooks, cancelled checks,
6 check stubs, vouchers, ledgers, journals, closing
7 statements, accountings or other statements of
8 disbursements rendered to clients or other parties with
9 regard to trust funds or similar equivalent records clearly
10 and expressly reflecting the date, amount, source, and
11 explanation for all receipts, withdrawals, deliveries and
12 disbursements of the funds. . .

13 Agwara's accounting systems, based upon his sworn testimony in the bankruptcy
14 proceeding, do not comply with SCR 78.5(1)(b).

15 RPC 1.15 requires that Agwara safe-keep client funds as follows:

16 **Rule 1.15. Safekeeping Property.**

17 (a) A lawyer *shall* hold funds or other property of
18 clients or third persons that is in a lawyer's possession in
19 connection with a representation *separate from the*
20 *lawyer's own property*. All funds received or held for the
21 benefit of clients by a lawyer or firm, including advances
22 for costs and expenses, shall be deposited in one or more
23 identifiable bank accounts designated as a trust account
24 maintained in the state where the lawyer's office is
25 situated, or elsewhere with the consent of the client or
third person. Other property in which clients or third
persons hold an interest shall be identified as such and
appropriately safeguarded. Complete records of such
account funds and other property shall be kept by the
lawyer and shall be preserved for a period of seven years
after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a
client trust account for the sole purpose of paying bank

1 service charges on that account, but only in an amount
2 necessary for that purpose.

3 (c) A lawyer shall deposit into a client trust account
4 legal fees and expenses that have been paid in advance, to
5 be withdrawn by the lawyer only as fees are earned or
6 expenses incurred.

7 (d) Upon receiving funds or other property in which a
8 client or third person has an interest, a lawyer shall
9 promptly notify the client or third person. Except as stated
10 in this Rule or otherwise permitted by law or by agreement
11 with the client, a lawyer shall promptly deliver to the
12 client or third person any funds or other property that the
13 client or third person is entitled to receive and, upon
14 request by the client or third person, shall promptly render
15 a full accounting regarding such property.

16 (e) When in the course of representation a lawyer is in
17 possession of funds or other property in which two or
18 more persons (one of whom may be the lawyer) claim
19 interests, the property shall be kept separate by the lawyer
20 until the dispute is resolved. The lawyer shall promptly
21 distribute all portions of the funds or other property as to
22 which the interests are not in dispute.

23 Agwara's accounting practices do not comply with RPC 1.15, demonstrate a
24 pattern of comingling client funds with Agwara's personal and law practice operating
25 funds, and evidence a failure to promptly distribute funds to third-party claimants, to his
clients, or to himself.

RPC 8.1(b) requires Agwara to comply with requests from the State Bar in its
investigation of complaints regarding violations of rules of professional conduct as
follow:

///

///

1 **Rule 8.1. Bar Admission and Disciplinary Matters.**

2 ... [A] a lawyer ... in connection with a disciplinary
3 matter, shall not:

4 (a) ...

5 (b) Fail to disclose a fact necessary to correct a
6 misapprehension known by the person to have arisen in
7 the matter, or *knowingly fail to respond to a lawful*
8 *demand for information* from ... disciplinary authority,
9 except that this Rule does not require disclosure of
10 information otherwise protected by Rule 1.6.

11 RPC 8.1(b) compels an attorney to cooperate with a State Bar investigation of
12 alleged violations of the Rules of Professional Conduct. Agwara has refused to respond
13 to the State Bar's lawful demand for information regarding his client funds in violation
14 of Agwara's RPC 8.1(b) obligations, and has failed to raise a credible objection to the
15 same. Addressing Agwara's specific objections serially:

16 1. **The Fifth Amendment does not protect an attorney from production of**
17 **documents in a State Bar investigation of attorney conduct.**

18 In the case of *Spevack v. Klien*, 385 U.S. 511 (1967), the Supreme Court of the
19 United States reversed the disbarment of an attorney which was issued for the attorney's
20 failure to testify at his hearing and to respond to a Subpoena Duces Tecum. The Court
21 determined with respect to his *testimony*, the attorney was entitled to assert the Fifth
22 Amendment. However, with regard to the refusal to respond to the Subpoena Duces
23 Tecum, the Supreme Court only noted that the attorney should have been given an
24 opportunity to show that the requested documents were outside the scope of the required
25 records rule and were private papers with no "public aspects". *Id. at 519.*

1 In Nevada, there are several rules requiring attorneys to comply with lawful
2 records requests from the State Bar including SCR 78.5, RPC 1.15 and RPC 8.1, as set
3 forth hereinabove. A subpoena issued pursuant to SCR 110 is a lawful request, and
4 these rules require Nevada attorneys to cooperate with the State Bar and provide records
5 necessary to, and relevant to a State Bar investigation of the handling of client funds,
6 including the attorney's earned fees. Accordingly, Agwara's blanket assertion of the
7 Fifth Amendment privilege does not shelter him from response to the State Bar's
8 demand for records regarding the handling and disposition of client funds in trust and
9 operating accounts, and other financial records pursuant SCR 78.5, RPC 1.15 and RPC
10 8.1(b).
11

12
13 2. The records sought by the SDT span a time frame relevant to the
14 investigation opened by the State Bar in April 2014.

15 On April 9, 2014, the subject investigation was opened when the State Bar
16 received a letter from Agwara's bankruptcy attorney advising that the bankruptcy court
17 had directed him to notify the State Bar that Agwara "may not maintain his trust account
18 in accordance with Rule [SCR] 78.5 (b)." Transcripts of hearings in bankruptcy court
19 revealed that dating as far back as 2010, Agwara failed to keep ledgers of his Trust
20 Account activity and instead could only attempt to track his withdrawal of earned fees
21 and client payments by cross-reference to client files. (Ex. 7, pp.165-167.) The State
22 Bar's SDT seeks production of client records and accounting records regarding those
23 transactions, in part based on Agwara's testimony that review of those records is
24
25

1 necessary in order to track deposits and disbursement of client funds for periods of time
2 relevant to this investigation.

3 SCR 106(2) addresses time limitations regarding disciplinary proceedings as
4 follows:
5

6 **Rule 106. Privilege and limitation.**

7 ...
8 2. **Limitation.** Disciplinary proceedings shall not be
9 commenced against an attorney for alleged misconduct occurring
10 more than 4 years prior to the receipt of that grievance or filing of
11 the complaint by bar counsel. In the event of fraud or
12 concealment, the 4 year period begins on the date the fraud or
13 concealment was discovered by the grievant ...

14 Because the State Bar has been advised that Agwara keeps no ledgers, vouchers or
15 receipts related to his trust account funds, the request for records that may extend greater
16 than four years prior to the date the State Bar received a report of Agwara's trust account
17 mis-use, is not unreasonable. Only by looking to prior year records will the investigation
18 be able to adequately determine if receipt and disbursement of client funds can be
19 accounted for on the dates those funds were processed, or whether income is being
20 concealed within the trust account via Agwara's failure to properly distribute and
21 account for fees earned by and owed to him in that regard.

22 3. **The State Bar's investigation of potential violations of the Rules of**
23 **Professional Conduct, is confidential pursuant to SCR 121.**

24 The Supreme Court has outlined the confidentiality of a State Bar misconduct
25 investigation as follows:

1 **Rule 121. Confidentiality.**

2 1. **Generally.** All proceedings involving allegations
3 of misconduct by an attorney shall be kept confidential until
4 the filing of a formal complaint. All participants in a
5 proceeding, including anyone connected with it, shall
6 conduct themselves so as to maintain the confidentiality of
7 the proceeding until a formal complaint is filed.

8 2. **When no formal complaint filed.** In the event no
9 formal complaint is filed, the disciplinary proceeding shall
10 become public upon its conclusion, whether by dismissal or
11 otherwise.

12 ...
13 11. **What becomes public.** Once a matter has
14 become public pursuant to this rule, all records of the lawyer
15 discipline agency shall become public except bar counsel's
16 work product and the panel's deliberations.

17 12. **Proceedings before the supreme court.** Unless
18 these rules specifically provide that a matter in the supreme
19 court is confidential, all filed documents and arguments in
20 lawyer discipline proceedings in the supreme court shall be
21 public, unless for good cause shown, the supreme court
22 enters an order sealing all or part of the record in the court.

23 ...
24 15. **Statements by the State Bar of Nevada.**
25 Notwithstanding Rule 121(1), the state bar may disseminate
the procedural status and the general nature of a grievance or
complaint upon request.

 16. **Exclusions.** These rules shall not prohibit any
complainant, the accused attorney, or any witnesses from
discussing publicly the existence of the proceedings under
these rules or the underlying facts related thereto. However,
disclosures made under this subsection, in whatever form or
by whatever means, outside the disciplinary process shall
not be covered by the civil immunity afforded in Rule
106(1).

 Agwara broadly asserts that the State Bar has misused its subpoena authority at
the behest of or for the benefit of "other entities/persons." Agwara has provided no

1 explanation, and has not alleged any event or circumstance on which this assertion is
2 based. Therefore, this office is unable to substantively respond to this portion of
3 Agwara's "objection." Nonetheless, the Office of Bar Counsel advises that there is no
4 purpose for the subject SDT other than investigation of the extent of Agwara's misuse of
5 his trust account, as testified to by Agwara himself.

7 4. The State Bar's request for tax returns is within its jurisdiction as
8 relevant to investigation of violations of the Rules of Professional
9 Conduct.

10 Agwara's sworn testimony at a hearing before the Honorable Judge Beesly in
11 bankruptcy court, revealed that Agwara has utilized his trust account as a holding
12 account to retain earned fees. More specifically, rather than withdraw earned fees as
13 earned income, Agwara instead withdrew money from the trust account to directly pay
14 personal expenses. This failure to account for, withdraw, and potentially declare as
15 income the fees earned from his legal work is a violation of RPC 1.15 (Safekeeping
16 Property) and RPC 8.4 (Misconduct). Before charging these professional conduct
17 violations it is reasonable and necessary for the State Bar to seek documentation of the
18 accuracy, or inaccuracy, of Agwara's sworn testimony in the bankruptcy proceeding.
19

20
21 5. The pendency of a bankruptcy proceeding, investigation by the United
22 States Attorney's Office, or an Internal Revenue Service Examination
is not a reason to stay Agwara's subpoena response.

23 Per the Supreme Court Rules, processing of a grievance or State Bar complaint
24 shall not be deferred due to pending civil or criminal proceedings. SCR 108 provides:
25

Rule 108. Matters involving related pending civil or criminal litigation. Before or after a grievance file has been opened, processing of a grievance or complaint shall not be deferred or abated because of substantial similarity to the material allegations of pending criminal or civil litigation, unless authorized, for good cause, by a three-member screening panel appointed pursuant to Rule 105(1).

The existence of bankruptcy proceedings, or criminal or civil investigations by either the United States Attorney's Office or the Internal Revenue Service, are not a basis for Agwara to refuse to comply with the State Bar subpoena for documents relevant to its investigation, pursuant to Nevada Supreme Court Rule.

III.

CONCLUSION

Agwara has testified to misuse of his client trust account. "[T]he paramount objective of bar disciplinary proceedings is . . . to protect the public[.]" *State Bar of Nevada v. Claiborne*, 104 Nev. 115, 129, 756 P.2d 464, 473 (1988). See also *In the Matter of Cochrane*, 92 Nev. 253, 255, 549 P.2d 328, 329 (1976). Agwara's engagement in comingled accounting practices, and continued disregard for the risk presented thereby, demonstrates a complete and total disregard for protecting the interests of his clients. The records sought by the State Bar's SDT are necessary to a complete evaluation of injury and potential injury created by Agwara's imprecise and risky accounting practices.

///

1 The Office of Bar Counsel therefore seeks a ruling denying Agwara's objection to
2 the SDT, and an order compelling his response through provision of the subpoenaed
3 documents, forthwith.

4 DATED this ^{July}17 day of May, 2016.

6 STATE BAR OF NEVADA
7 C. STANLEY HUNTERTON

8 

9 Stephanie A. Barker, Assistant Bar Counsel

10 Nevada Bar No. 3176

11 3100 W. Charleston Blvd., Ste. 100

12 Las Vegas, NV 89102

13 Phone: 702-382-2200

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William B. Terry, Esq.
530 S. Seventh St.
Las Vegas, NV 89101
Attorney for Agwara

Das me

Employee of the State Bar of Nevada

EXHIBIT LIST

- Exhibit 1 – Subpoena Duces Tecum to Agwara dated December 16, 2015
- Exhibit 2 – Affidavit of Service filed January 19, 2016
- Exhibit 3 – Agwara's Objection to Subpoena Duces Tecum dated March 1, 2016
- Exhibit 4 – April 9, 2014, Correspondence to the State Bar from the Schwartz Law Firm
- Exhibit 5 – March 24, 2014, Declaration of Bankruptcy Analyst/CPA, D.A. Clarke Finneran
- Exhibit 6 – April 17, 2014, Correspondence from the Office of Bar Counsel to Respondent
- Exhibit 7 – May 6, 2014, correspondence from Respondent to the Office of Bar Counsel
- Exhibit 8 – Order Approving Stipulation To Freeze IOLTA Bank Account Pending Investigation by Trustee, USBC Docket 236, July 23, 2014
- Exhibit 9 – July 21, 2014, correspondence from United States Bankruptcy Court Judge Bruce Beesley to the State Bar
- Exhibit 10 – Transcript of April 2, 2014, United States Bankruptcy Court Motion Hearing
- Exhibit 11 – Order Approving Second Stipulation To Freeze IOLTA Bank Account Pending Investigation by Trustee, USBC Docket 285, October 6, 2014
- Exhibit 12 – Affidavit of Dawn Meeks, State Bar of Nevada Senior Paralegal Investigator, May 6, 2016

Exhibit “3”

Case No: SG13-1818c SG14-0100, SG14-0485, SG14-1137



FILED

MAY 27 2016

STATE BAR OF NEVADA
BY: [Signature]
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

LIBORIUS AGWARA, ESQ.,
NV BAR No. 7576

Respondent.

**ORDER REGARDING OBJECTION TO
SUBPOENA DUCES TECUM AND
MOTION TO COMPEL PRODUCTION**

IT IS HEREBY ORDERED that the Objection to Subpoena Duces Tecum is hereby denied and the State Bar's Motion to Compel production is hereby granted.

This Order does not, in any manner, prevent Liborius Agwara, Esq. from making similar arguments in the future if this matter continues to hearing.

DATED this 29th day of May, 2016.

By: [Signature]

Luke Puschnig, Esq.
Nevada Bar No. 3792
Chair of Southern Nevada Disciplinary Board

Exhibit “4”



FILED

MAY 27 2016

Case No. SG13-1818, SG14-0100,
SG14-0485, SG14-1137

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA,

vs.

LIBORIUS AGWARA, ESQ.
Bar No.

Respondent.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an ORDER REGARDING OBJECTION TO
SUBPOENA DUCES TECUM AND MOTION TO COMPEL PRODUCTION in the above-
referenced matter was entered on May 27, 2016. A true and correct copy is attached
hereto as EXHIBIT 1.

DATED this 27th day of May 2016.

STATE BAR OF NEVADA
C. STANLEY HUNTERTON

Stephanie A. Barker
STEPHANIE A. BARKER, ESQ.

Assistant Bar Counsel
3100 W. Charleston Boulevard
Las Vegas, Nevada 89102
(702) 382-2200
Attorney for Complainant

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER RE: ORDER REGARDING OBJECTION TO SUBPOENA DUCES TECUM AND MOTION TO COMPEL PRODUCTION** was deposited in the United States Mail at Las Vegas, Nevada, postage fully pre-paid thereon for first-class regular mail, addressed to:

Liborius I. Agwara, Esq.
c/o William B. Terry, Esq.
530 South Seventh Street
Las Vegas, NV 89101-6011

and via email to:

1. Luke Puschnig, Esq. (SNDB Chair): lpuschnig@lvcva.com
2. William B. Terry, Esq.: info@williamterrylaw.com

DATED this 27th day of May, 2016.

By: 

Dawn Meeks, an employee of
the State Bar of Nevada.

EXHIBIT 1

Case No: SG13-1818c SG14-0100, SG14-0485, SG14-1137



FILED

MAY 27 2016

STATE BAR OF NEVADA
BY: *[Signature]*
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

LIBORIUS AGWARA, ESQ.,
NV BAR No. 7576

Respondent.

**ORDER REGARDING OBJECTION TO
SUBPOENA DUCES TECUM AND
MOTION TO COMPEL PRODUCTION**

IT IS HEREBY ORDERED that the Objection to Subpoena Duces Tecum is hereby denied and the State Bar's Motion to Compel production is hereby granted.

This Order does not, in any manner, prevent Liborius Agwara, Esq. from making similar arguments in the future if this matter continues to hearing.

DATED this *29th* day of May, 2016.

By: *[Signature]*

Luke Puschnig, Esq.
Nevada Bar No. 3792
Chair of Southern Nevada Disciplinary Board

Exhibit “5”

Case No. SG13-1818, SG14-0100, SG14-0485, SG14-1137

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

vs.

LIBORIUS AGWARA, ESQ.

Bar No.

Respondent.

SECOND
SUBPOENA DUCES TECUM



FILED

MAY 17 2016

STATE BAR OF NEVADA

BY: *[Signature]*
OFFICE OF BAR COUNSEL

Liborius I. Agwara, Esq.
c/o William Terry, Esq.
530 S. Seventh Street
Las Vegas, Nevada 89101

YOU ARE HEREBY directed to set aside any and all business and excuses and appear before Stephanie A. Barker, Assistant Bar Counsel for the State Bar of Nevada, at 3100 W. Charleston Boulevard, Las Vegas, Nevada, 89102, on **Monday, June 6, 2016, by 4:00 p.m.**, and produce true and correct copies of the following items.

NOTE: *Your production of the requested items relieves your obligation to personally appear before Assistant Bar Counsel on the designated date and time. Any questions or documents produced can be directed to the attention of:*

Dawn Meeks
Senior Paralegal/Investigator
Office of Bar Counsel
702-317-1439
dawnm@nvbar.org

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1. During the time period between December 1, 2014 and present, deposits were made into and withdrawals taken from Wells Fargo Bank IOLTA Account ending 8027. In connection with these transactions, provide copies of the following documents:

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1 c. Accounting records for all deposits, withdrawals and disbursement of
2 funds to or from Wells Fargo Bank IOLTA Account ending 8027 to
3 include, but not limited to, checks (front and back), check stubs, check
4 ledger, check memos, wire instructions, account journals, account
5 records, accounting database, or account summaries.

6 2. For the time period between July 1, 2014 and present, deposits were made into Wells
7 Fargo Bank business account ending 8515 that were relating to settlements, medical payment
8 coverage, or retainers. In connection with these transactions, provide copies of the following
9 documents:

10 a. Retainer agreement or other documents that evidences the creation of the
11 attorney/client relationship, and the terms of the representation, to include, but
12 not limited to, the scope of services to be provided and any termination letter
13 upon the conclusion of the services, if applicable.

14 b. Documents related to the settlement or distribution of funds processed through
15 Wells Fargo Bank business account ending 8515 to include, but not limited to,
16 medical liens, settlement agreements, pre-settlement loans,
17 distribution/settlement sheets, correspondence evidencing
18 negotiation/settlement of medical liens, releases or satisfactions of any legal
19 obligations.

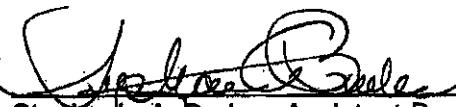
20 c. Accounting records for all deposits, withdrawals and disbursement of funds to or
21 from Wells Fargo Bank IOLTA Account ending 8027 to include, but not limited
22 to, checks (front and back), check stubs, check ledger, check memos, wire
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1 instructions, account journals, account records, accounting database, or account
2 summaries.

3 This subpoena is issued pursuant to Supreme Court Rule (SCR) 110 in connection with
4 a **CONFIDENTIAL INVESTIGATION** undertaken pursuant to the Nevada Supreme Court
5 Rules. It shall be regarded as contempt of the Supreme Court Rules for you to in any way
6 breach the confidentiality of this investigation. It shall not be regarded as a breach of
7 confidentiality for you to consult with an attorney or answer questions asked at the above time
8 and place. For failure to provide as herein directed, you will be deemed in contempt of the
9 Southern Nevada Disciplinary Board and subject to citation from the District Court of the State
10 of Nevada in and for the County of Clark to show cause why you should not be punished for
11 such contempt as provided in SCR 110.

12 ISSUED this 16th day of May, 2016.

13 STATE BAR OF NEVADA
14 C. STANLEY HUNTERTON, BAR COUNSEL

15 

16 Stephanie A. Barker, Assistant Bar Counsel
17 Nevada Bar No. 3176
18 3100 W. Charleston Blvd., Suite 100
19 Las Vegas, Nevada 89102
20 (702) 382-2200
21
22
23
24
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Exhibit “6”



FILED

Case No.: SG13-1818, SG14-0100, SG14-0485, SG14-1137

JUN - 1 2016

STATE BAR OF NEVADA
BY: *[Signature]*
OFFICE OF BAR COUNSEL
STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

In Re: LIBORIUS AGWARA, ESQ.

BAR NO. 7576

OBJECTION TO SUBPOENA AND MOTION TO QUASH SUBPOENA

COMES NOW the Respondent, LIBORIUS AGWARA, through his counsel, WILLIAM B. TERRY, ESQ., of the law offices of WILLIAM B. TERRY, CHARTERED and moves to quash the "Second Subpoena Duces Tecum" a copy of which is attached hereto and incorporated by reference herein as Exhibit "A" and likewise files the instant objection to said Subpoena.

This Motion is made and based upon the pleadings and papers on file herein, the attached analysis of facts and points and authorities in support hereof, and any oral arguments as may be presented at the hearing in this matter.

WILLIAM B. TERRY, CHARTERED

[Signature]
WILLIAM B. TERRY, ESQ.
Nevada Bar No. 001028
WILLIAM B. TERRY, CHARTERED
530 South Seventh Street
Las Vegas, Nevada 89101
(702) 385-0799
Attorney for Respondent

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On December 16, 2015, the State Bar issued a subpoena to Mr. Agwara, a copy of which is attached hereto and incorporated by reference herein as Exhibit “B”. Objections were filed to that subpoena and were ultimately ruled upon by the Chair. Neither the Respondent nor his counsel concur with the finding of the Chairman of the panel and intend to seek a writ of prohibition or in the alternative a writ of mandamus in reference to said subpoena. There are two sections to the subpoena. Section 1 deals with a period of time between December 1, 2014 with no ending date. In reference to a Wells Fargo Bank IOLTA account ending in 8028. Without referring to any specific case, client or transaction, the subpoena requests “retainer agreement or other documents that evidences the creation of the attorney client relationship...” It also requests documents related to the settlement or distribution of funds processed through Wells Fargo account ending in 8027. Subsection 2 of the subpoena requests documents for a period of time between July 1, 2014 and a non-ending date. It requests the same types of documents but is much broader and pertains to the Wells Fargo business account ending in 8515 as well as the Wells Fargo IOLTA account ending in 8027. Unlike Subpoena #1 there is no list of cases attached for reference. As a result, the Respondent would enter objections to the subpoena and ask that the subpoena be quashed consistent with Rule 110 of the Supreme Court Rules of the State of Nevada. Rule 110(4) provides in pertinent part as follows:

I. THE SUBPOENA IN QUESTION SHOULD BE QUASHED SINCE IT IS OVERLY BROAD.

Without referring to any cases or any individuals, the subpoena under subsections 1 and 2 request retainer agreement in the singular and documents in the plural pertaining to Wells Fargo

1 Bank IOLTA account ending in 8027 and Wells Fargo Bank business account ending 8515. The
2 State Bar has indicated in it's caption that the scope of their investigation pertains to what will be
3 referred to as four cases: SG13-1818; SG14-0100; SG14-0485; and SG14-1137. No complaint has
4 been filed against the Respondent and the scope of these case numbers and their investigations is
5 unknown. Without knowing the specific scope of these "case numbers" the Respondent is not placed
6 on notice of that which he should be prepared to defend against and in fact is limited in what he can
7 represent as far as being objections to the subpoena other than the fact that it is overly broad. An
8 additional objection is that the Bar has not shown any nexus or relevancy in reference to the
9 subpoenaed material and concerning any investigation. Any subpoena should be limited to the scope
10 of that which is being investigated and must be determined to be relevant to that investigation.

11 II. THE RESPONDENT ASSERTS HIS FIFTH AMENDMENT RIGHT AGAINST SELF-
12 INCRIMINATION WITH RESPECT TO PRODUCING ANY OF THE SUBPOENAED
DOCUMENTS AND/OR RECORDS.

13 In their definition of the term "documents" the Bar has requested any written, recorded
14 documents, any emails, any written communications, notes, jottings, memorandums, etc. The
15 subpoena does not delineate what specifically they are requesting and in fact the Bar is on a "fishing
16 expedition" in reference to the Respondent. To provide the material requested would take an
17 exorbitant amount of time because it is not limited to any specific case or individual. Additionally,
18 many of the documents which are being sought are items that deal with a potential Fifth Amendment
19 assertion. The burden should not be on the Respondent but should be on the State Bar to show both
20 the relevancy of the documents, the specific documents which are being requested and how they do
21 not affect a Fifth Amendment right. The Respondent herein asserts that Fifth Amendment right.
22 Even settlement documents or retainer agreements are subject to the Fifth Amendment. If for
23 example a retainer agreement calls for no costs to be paid but costs had been asserted, then the Bar
24 could allege both a misconduct violation and/or a safekeeping violation. As a result, the Respondent
25 goes on record in asserting his Fifth Amendment right against self-incrimination.

26 The Fifth Amendment to the United States Constitution applies in lawyer disciplinary
27 proceedings. See *Spevack v. Klein*, 385 U.S. 511 (1967). Consistent with *Spevack*, courts have been
28 in agreement that a lawyer cannot be sanctioned solely for invoking his Fifth Amendment privilege

1 against self-incrimination. While there are no specific cases in Nevada on the assertion of the Fifth
2 Amendment right by an attorney in a bar proceedings or in reference to a subpoena, *Spevack*, supra
3 is not limited to testimonial situations but is likewise applicable to documents. In the case of *In re:*
4 *Hill*, 545 A.2d 1019 (Ver. 1988) the court upheld the assertion of a Fifth Amendment privilege by
5 a convicted judge subpoenaed to testify in a judicial disciplinary proceeding against another judge
6 because the court found that she was not required to demonstrate she would be prosecuted or that
7 an answer would result in her conviction only that there was a valid risk of further prosecution.

8 III. THE SUBPOENA IS OVERLY BROAD TO SUCH A DEGREE AS TO NOT ALLOW
9 THE RESPONDENT TO ARGUE THAT THEY ARE TIME BARRED.


10 Pursuant to the instant argument, the position of the Respondent is that the subpoenas are so
11 overly broad that they prevent the Respondent from arguing that any allegations pertaining to a
12 specific client as opposed to clients in general is time barred. While both subsection 1 and
13 subsection 2 of the subpoena deal with a date starting December 1, 2014 and alternatively July 1,
14 2014, they may affect clients that existed prior to the period of time.

15 CONCLUSION

16 For the above-indicated reasons, the Respondent objects to the subpoena and moves that it
17 be quashed.

18 DATED this 1st day of June, 2016.

19 WILLIAM B. TERRY, CHARTERED

20 
21 WILLIAM B. TERRY, ESQ.
22 Nevada Bar No. 001028
23 WILLIAM B. TERRY, CHARTERED
24 530 South Seventh Street
25 Las Vegas, Nevada 89101
26 (702) 385-0799
27 Attorney for Respondent
28

RECEIPT OF COPY

RECEIPT OF COPY of the **OBJECTION TO SUBPOENA AND MOTION TO QUASH**
SUBPOENA in the above-entitled matter is hereby acknowledged this 1st day of June, 2016.

Stephanie Barker
Stephanie Barker, Assistant Bar Counsel
3100 West Charleston Boulevard
Suite 100
Las Vegas, Nevada 89102

Danille Taux for Luke Puschnig
Luke Puschnig, Esq.
3150 Paradise Road
Las Vegas, Nevada 89109

Exhibit “7”

Case No: SG13-1818c SG14-0100, SG14-0485, SG14-1137



FILED

JUN - 2 2016

STATE BAR OF NEVADA

BY: [Signature]
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA

SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

LIBORIUS AGWARA, ESQ.,

NV BAR No. 7576

Respondent.

**ORDER FOR HEARING ON
OBJECTION TO SUBPOENA AND
MOTION TO QUASH SUBPOENA**

IT IS HEREBY ORDERED that a telephonic hearing has been set for Thursday, July 7th at 2:00pm regarding the Objection to Subpoena and Motion to Quash Subpoena. The call-in number is 702-892-7625, conference ID: 8507, conference PIN #: 582207.

DATED this 1st day of June, 2016.

By: [Signature]

Luke Puschnig, Esq.

Nevada Bar No. 3792

Chair of Southern Nevada Disciplinary Board

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3 **CERTIFICATE OF SERVICE BY MAIL**

4 The undersigned hereby certifies a true and correct copy of the foregoing **ORDER FOR**
5 **HEARING ON OBJECTION TO SUBPOENA AND MOTION TO QUASH SUBPOENA** was
6 deposited via electronic mail to:

- 7 1. Paul "Luke" Puschnig, Esq. (Committee Chair): lpuschnig@lvcva.com; Dtorres@lvcva.com
8 2. William H. Terry, Esq. (Respondent's Counsel) info@williamterrylaw.com; Sarah Daniels
9 (Sarah@WilliamTerryLaw.com)
10 3. Janeen V. Isaacson, Esq. (Assistant Bar Counsel): janeeni@nvbar.org;
11 4. Stephanie Barker, Esq. (Assistant Bar Counsel): stephanieb@nvbar.org ; dawnm@nvbar.org

12 DATED this 2nd day of June, 2016.

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By: 

Jana L. Chaffee, an employee of
the State Bar of Nevada.

Exhibit “8”

Office Email

From: Office Email <Info@WilliamTerryLaw.com>
Sent: Thursday, June 30, 2016 9:29 AM
To: 'Luke Puschnig'
Cc: 'Janeen Isaacson'; 'Stephanie Barker'
Subject: Liborius Agwara

Dear Chairman Puschnig:

I received your order denying our objections to the second Subpoena Duces Tecum by way of email dated June 29, 2016 at 4:58 p.m. You had scheduled oral arguments on this matter for July 7, 2016 at 2:00 p.m. Am I to presume that that is now vacated since you have ruled without oral arguments?

I am also requesting a stay of your order on both subpoena #1 and subpoena #2 so that I can file a writ with the Nevada Supreme Court. I have to make this request even if you deny it so that I can represent in the writ that a stay has been requested but denied. I would suggest that if you deny the request for stays, your denial also set forth the reason why the previously set oral argument which was to be heard on July 7th at 2:00 p.m. was vacated.

As always, thank you for your courtesies.

William B. Terry, Esq.
530 S. Seventh Street
Las Vegas, Nevada 89101
(702) 385-0799
Info@WilliamTerryLaw.com

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Exhibit “9”

Office Email

From: Luke Puschnig <lpuschnig@lvcva.com>
Sent: Thursday, June 30, 2016 9:47 AM
To: Office Email
Cc: Janeen Isaacson; Stephanie Barker
Subject: Re: Liborius Agwara

Oral hearing was vacated because I do not see a reason for the oral hearing. The written pleadings were enough to decide the matter. I am also hereby denying the Request for a Stay on my order.

Luke PUSCHNIG

Sent from my iPad

On Jun 30, 2016, at 9:29 AM, Office Email <Info@WilliamTerryLaw.com> wrote:

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