

**IN THE
SUPREME COURT OF THE STATE OF NEVADA**

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Clerk of Supreme Court

CASE 70989

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

**IN RE DISCIPLINE OF
R. CHRISTOPHER READE, NV BAR NO. 006791**

**Review of the Southern Nevada Disciplinary Board's Findings of Fact,
Conclusions of Law and Recommendation**

REPLY BRIEF OF R. CHRISTOPHER READE, ESQ.

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1 **I. ARGUMENT**

2 **A. The Court Should Approve the Panel's Recommended Suspension**
3 **of Thirty (30) Months Retroactive to January 16th, 2014.**

4 The Recommendation of the Southern Nevada Disciplinary Board that
5 attorney Christopher Reade (hereinafter "Reade") be suspended from the practice
6 of law for thirty (30) months, retroactive to January 16th, 2014, is fair and
7 reasonable and should be approved by this Court. "Although the recommendations
8 of the disciplinary panel are persuasive, this court is not bound by the panel's
9 findings and recommendation, and must examine the record anew and exercise
10 independent judgment." In re Discipline of Schaefer, 117 Nev. 496, 515, 25 P.3d
11 191, 204 (2001). In reviewing the appropriate discipline, this Court should find
12 that the length of suspension was well-grounded but that the fine is a sanction
13 which not even the State Bar argued to be appropriate in this matter.
14 which not even the State Bar argued to be appropriate in this matter.

15 In its Answering Brief, the State Bar relies on two attorney disciplinary
16 cases to support its position, both of which are inapposite to the facts at bar,
17 entirely inappropriate and demonstrate a terrible misinterpretation by the Office of
18 Bar Counsel in this matter: (1) In Re Discipline of Gage, 2014 Nev. Unpub. LEXIS
19 839 (Docket No. 64988 May '28th, 2014) (unpublished disposition) and (2) In Re
20 Discipline of Whittemore, 2015 Nev. LEXIS 18 (Docket No. 66350 March 20,
21 2015) (unpublished disposition). Pursuant to NRAP 36(c)(3), "a party may cite for
22 its persuasive value, if any, an unpublished disposition issued by this court on or
23 its persuasive value, if any, an unpublished disposition issued by this court on or
24 its persuasive value, if any, an unpublished disposition issued by this court on or
25 its persuasive value, if any, an unpublished disposition issued by this court on or
26 its persuasive value, if any, an unpublished disposition issued by this court on or
27 its persuasive value, if any, an unpublished disposition issued by this court on or
28 its persuasive value, if any, an unpublished disposition issued by this court on or

1 after January 1, 2016”; both of the cases which the State Bar relies upon are not
2 within the ambit of cases appropriate for citation for persuasive value before this
3 Court. *See* SCR 123 (Repealed November 12, 2015, effective January 1, 2016).

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5 After previously agreeing to a Conditional Guilty Plea for stated discipline
6 of twenty-four months, the State Bar sought a five (5) year suspension at the
7 formal panel hearing based solely on the fact that all three attorneys pled or were
8 convicted of a felony. However, while Reade did receive a felony conviction, the
9 fact that a felony was present in each case is where the similarities start and end.
10 As discussed at the Panel Hearing, the facts, circumstances, aggravating factors
11 and mitigating factors in Gage and Whittemore are distinctly different from the
12 case in front of this Court.
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15 **i. Gage Decision**

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17 While there are facts about the Gage case which are anecdotally known and
18 were discussed during Reade’s Panel Hearing, the actual unpublished decisions
19 cited by the State Bar offer little facts which are persuasive in this matter. The
20 only facts of record are that this Court approved on May 28th, 2014 a conditional
21 guilty plea executed by Gage under which Gage admitted to violations of RPC 5.4,
22 RPC 8.4(b) and RPC 8.4(d). The Panel found four aggravating factors (Gage's
23 dishonest or selfish motive, his pattern of misconduct, his refusal to acknowledge
24 the wrongful nature of his misconduct, and the vulnerability of his victims in
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1 aggravation) and two mitigating factors (disciplinary record and the delay in
2 disciplinary proceedings). Id. at *1-2. The suspension as approved allowed Gage's
3 suspension to terminate approximately 60 days after the decision.
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5 The panel found 4 aggravating factors and 2 mitigating factors in Gage. In
6 contrast to Gage, the State Bar agreed to two aggravating factors: (1) the offenses
7 itself and (2) the substantial experience in the practice of law and nine mitigating
8 factors: (1) the absence of dishonest motive; (2) timely good faith effort to rectify;
9 (3) full and free disclosure and cooperative attitude; (4) character and reputation;
10 (5) imposition of other penalties and sanctions (6) remorse; (7) community service;
11 (8) lack of a victim and (9) no prior disciplinary record. (Vol. I; ROA115-123; Vol.
12 II, ROA220-223). Gage actively engaged in his criminal activity, committed acts
13 for self-motivated financial profit which adversely affected and reflected on the
14 administration of justice and refused to accept responsibility for his acts or to his
15 victims. Reade did not receive any financial benefit, and the Court found no
16 victims to Reade's offense. (Vol. I; ROA115-123; Vol. II, ROA220-223). In
17 contrast to Gage, Reade has acknowledged the wrongful nature of his actions,
18 came to the State Bar and suspended himself before any criminal proceedings and
19 took all imaginable steps to mitigate any harm clients, employees and the public.
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25 This Court has already stated in a decision which is citable before this Court
26 that discipline of eighteen months may be appropriate even in light of a felony
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1 plea. *See In Re Rojas*, 2016 Nev. LEXIS 521 (Nev. Docket 69787 June 14, 2016)
2 (unpublished disposition) (18 month suspension for felony conviction with two
3 RPC violations, two aggravating factors¹ and six mitigating factors). The one
4 mitigating factor cited in *Gage* which was not discussed in the instant matter is the
5 extreme delays in bringing this matter to a conclusion, as Reade is now beyond his
6 recommended suspension without disposition and is over one (1) year after this
7 Court remanded this matter for further proceedings. SCR 102.5(2)(j). The State
8 Bar previously stipulated to a suspension of twenty-four months based upon the
9 extraordinary level of cooperation from Reade. The request and recommendation
10 of five years in light of the aggravating and mitigating factors and facts in this
11 matter frankly indicates that the State Bar has become tone deaf to the matters
12 before it. Reade respectfully request that this Court affirm the thirty (30) month
13 suspension and allowing Reade to resume the practice of law as soon as possible.
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18 **ii. Whittemore Decision**

19 The State Bar's reliance on *In Re Discipline of Whittemore*, 2015 Nev.
20 LEXIS 18 (Docket No. 66350 March 20, 2015) (unpublished disposition) is
21 likewise misapplied. Whittemore was suspended for four years from the practice
22 of law for a conviction after trial and lengthy disciplinary proceedings on three
23 felonies in the United States District Court. *Id.* at *1. The record contains no
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26 ¹ *Gage*, like *Rojas* did not include an aggravator that the acts involved illegal
27 conduct pursuant to SCR 102.5(1)(k), presumably because a violation of RPC
28 8.4(b) already includes the fact that the conduct was illegal.

1 reference to mitigating or aggravating factors beyond a footnote that Whittemore's
2 case involved an allegation under RPC 8.4. Whittlemore did not receive any
3 monetary fine. Id. at *2.

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5 In contrast to Whittemore, Reade was extremely remorseful about his
6 actions, met with the State Bar prior to any disciplinary proceedings, went inactive
7 and cooperated with the State Bar at every turn to take extraordinary measures to
8 protect the public, clients and employees. Reade pled guilty to a single felony
9 compared with Whittemore who never accepted responsibility and fought both his
10 criminal case and disciplinary matter before this Court. Furthermore the level of
11 prevention, public service and collateral punishment set Reade's case far apart
12 from others. Reade was overzealous, not self-motivated, by political aspirations.
13 Reade undertook plans so comprehensive that the State Bar proposed using the
14 matter to demonstrate how attorneys could mitigate in the future. (Vol II.;
15 ROA150:1-153:19). Reade's character, cooperation and lack of any prior
16 disciplinary record speak to there being no chance of recidivism. (Vol I, ROA
17 64:8-16). The State Bar's argument that Reade should be punished more, rather
18 than less, severely than Gage and Whittemore after pleading guilty to less offenses,
19 less RPC violations, undertaking more extraordinary measures to protect the public
20 and having more mitigating and less aggravating factors punishes Reade for his
21 cooperation and conciliation. The State Bar offers no argument on these points
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1 other than each attorney was convicted of a felony, which is a nonsequitur. *See*
2 State Bar of Nev. v. Claiborne, 104 Nev. 115, 210, 756 P.2d 464, 526 (1988).
3 (“[T]he question of the extent of the discipline to be imposed centers around the
4 attorney's conduct itself, not merely the fact of a conviction”). Reade worked
5 tirelessly with the State Bar to ensure that his clients and the public were not
6 further harmed. The interests of justice and the public will be served by affirming
7 the thirty (30) month suspension and allowing Reade to resume the practice of law
8 as soon as possible.
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11 **B. A FINE IS NOT APPROPRIATE.**
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13 A fine in this dispute is inappropriate. The purpose of attorney discipline is
14 not to punish an attorney but to protect the public and the integrity of the bar. State
15 Bar of Nev. v. Claiborne, 104 Nev. 115, 129, 756 P.2d 464, 473 (1988). The State
16 Bar is authorized to impose and collect fines and costs from an attorney only if he
17 is found by a hearing panel to have engaged in misconduct. See SCR 102(6); SCR
18 120(1); Burleigh v. State Bar of Nevada, 98 Nev. 140, 643 P.2d 1201 (1982). In
19 its opposition, the State Bar relies raises two arguments for its position that a fine
20 of \$25,000.00 was appropriate. The first argument is that based on this Court's
21 decision in In Re Rojas approving a Twenty-Five Thousand Dollar (\$25,000.00)
22 fine. In Re Rojas, 2016 Nev. LEXIS 521 (Nev. Docket 69787 June 14, 2016)
23 (unpublished disposition). However the State Bar fails to analyze the difference in
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1 the financial components of the respective actions. The second argument was that
2 Reade did not raise the fine issue at the formal hearing and therefore he has waived
3 this position, which would have been difficult because it would have entailed
4 Reade telepathically and prophylactically arguing against a form of discipline
5 never requested by the State Bar. Reade did not receive any financial benefit from
6 his actions and has already paid a punitive financial penalty.
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9 Rojas involved an attorney who knowingly made false statement under oath
10 to structure a short sale of his personal residence to himself, thereby eliminating a
11 substantial mortgage, and in the process, knowingly made a false statement on a
12 form within the jurisdiction of the United States Department of Housing and Urban
13 Development. Id. at *5-6. The Court found that Rojas was motivated by his
14 personal financial gain. Id. Reade did not receive any financial benefit from his
15 actions and was not motivated by financial gain. Reade was fined Forty Thousand
16 Dollars even though his offense had no victims and no financial loss, which Reade
17 paid immediately. (Vol. I, ROA97-102). Conversely in Whittemore, a case which
18 involved no financial gain for Defendant, the attorney did not receive any financial
19 benefit from making illegal political contributions and the State Bar did not
20 request, and this Court did not impose, a fine. Whittemore, cited *supra*, at *3.
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25 The State Bar never fails to explain to this Court why a fine is appropriate
26 under the facts in this matter, especially in light of the fact that the State Bar never
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1 asked for a fine in this matter. (Vol II; ROA 191:6-202:10). The Court considers
2 (1) the duty violated, (2) the lawyer's mental state, (3) the potential or actual injury
3 caused by the lawyer's misconduct, and (4) the existence of aggravating or
4 mitigating circumstances; none of the duties violated or lack of injury in Reade's
5 matter are tied in any manner to the Client Security Fund. See In re Discipline of
6 Lerner, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). Bar Counsel did not
7 request a fine because a fine in this matter does nothing to protect the public and
8 bears no relationship to the violation charged; fines punish and redistribute monies
9 to persons or entities purely for deterrent, retributive or rehabilitative purposes,
10 which is not appropriate in this matter. Financial remedies may have a place where
11 there is a restitution or assessment of costs basis; there is no such facts at bar. ABA
12 Standards for Imposing Lawyer Sanctions 2.8 (1992), reprinted in Am. Bar Ass'n,
13 *Compendium of Professional Responsibility Rules and Standards* (2015 ed.). The
14 State Bar articulates no relationship between Reade's violation of RPC 8.4(b) and
15 the fine other than punishment, which is goes to why Reade's Conditional Guilty
16 Plea contained no discussion of a fine and why the State Bar never asked for a fine
17 below. (Vol. II; ROA220:10-222:9). Requiring payment of additional fines as a
18 bar to readmission does nothing to protect the public; prove that Reade is prepared
19 to practice of law or fit to serve.
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1 The State Bar asserts that because Reade failed to argue that the fine was not
2 appropriate at the Hearing that Reade waived his right to raise this issue. The
3 argument is nonsensical because it would have required Reade to argue against a
4 sanction which the State Bar never requested during the Hearing. (Vol II; ROA
5 191:6-202:10). The State Bar merely asked for a suspension. Id. Furthermore
6 Reade discussed extensively the monetary penalties that were already imposed by
7 Federal Court on Reade, all of which were punishment. (Vol. II, ROA 205:6-25).
8 A fine was not directly addressed by any party until the Panel delivered its
9 decision. (Vol. II: ROA 221:21-222:8). The State Bar's assertion that arguments
10 not raised before the Panel are waived has interesting repercussions in light of the
11 fact that the State Bar never raised, and would therefore arguably have waived
12 under its logic, any argument for a fine in this matter. Such an argument has no
13 basis in law or fact before this Court.

14 Imposing additional financial penalties after almost three years outside of
15 the profession and without income is contrary to Nevada rules for attorney
16 discipline and is punitive and excessive. See Claiborne, cited *supra*, at 226
17 (fairness, justice and equity demand consideration of *inter alia* financial costs
18 which attorney endured as a result of the federal proceedings). The Bar, Reade
19 and/or the public are not served in any capacity by imposing upon Reade a fine for
20 purely punitive purposes and as a bar to reentry. This Court should set aside the

1 fine in this matter and order that Reade's suspension has been completed, by which
2 Reade can immediately petition for reinstatement.

3 **II. CONCLUSION/RELIEF SOUGHT**

4 This Court has the prudential power to protect the public and the integrity of
5 the bar to assess Reade's fitness to serve as an officer of the court and to resume
6 the practice of this profession in the public interest and trust. The Panel heard
7 testimony from several witnesses and Reade, reviewed the evidence, the
8 extraordinary measures, public service, previous character and good faith exhibited
9 by Reade and well as the terms of suspension which Reade discussed with Bar
10 Counsel before undertaking his prophylactic measures. The Panel found that
11 Reade is ready to return to the practice of law and that the suspension should be
12 found to not to beyond July 16th, 2016, a date which passed over three (3) months
13 ago. This Court is aware that the delays in this matter will render the Panel's
14 recommended thirty month suspension entirely academic because every day which
15 passes in administration of this matter makes the end of Reade's suspension further
16 in the rearview mirror. Neither the public, the Bar nor the interests of justice are
17 served by lengthening the already delayed return of Reade to the practice of law.

18 The Panel's proposed fine serves no remedial purpose other than a purely
19 retributive sanction, which is the very definition of punishment. The purpose of
20 attorney discipline is not to punish an attorney but to protect the public and the
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1 integrity of the Bar; the fine in question fails to serve any purpose in protecting the
2 public or the Bar or addressing financial loss tied to Reade's offense. This is not a
3 matter in which a financial assessment serves any purpose or is appropriate,
4 especially in light of the huge financial repercussions which Reade has already
5 suffered. For these reasons, this Court should set aside the recommendation for a
6 fine and should allow Reade to undertake immediately reinstatement. Reade
7 would finally request that this Court immediately certify this matter as submitted
8 for decision to expedite resolution in this matter.
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11 DATED this day of 24th day of October, 2016.

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NRAP 28.2 CERTIFICATE OF COMPLIANCE

1
2 1. I hereby certify that the foregoing Reply Brief (the “Brief”) complies with
3 the formatting requirements of NRAP 32(a)(4), the typeface requirements of
4 NRAP (a)(5), and the type style requirements of NRAP 32(a)(6) because the
5 Brief has been prepared in a proportionally spaced typeface using Microsoft
6 Word 2010 in 14-point Times New Roman font.
7

8
9 2. I further certify that the Brief complies with the type-volume limitations of
10 NRAP 32(a)(7)(A)(ii) because, excluding the parts of the Brief exempted by
11 NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points, and
12 contains 2,627 words.
13

14 3. Finally, I hereby certify that I have read the Brief, and to the best of my
15 knowledge, information and belief, it is not frivolous or interposed for any
16 improper purpose. I further certify that the Brief complies with all applicable
17 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which
18 requires every assertion in the Brief regarding matters in the record to be
19 supported by a reference to the page and volume number, if any, of the transcript
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1 or appendix where the matter relied on is to be found. I understand that I may be
2 subject to sanctions in the event that the Brief is not in conformity with the
3 requirements of the Nevada Rules of Appellate Procedure.
4

5 DATED this 24TH day of October, 2016.

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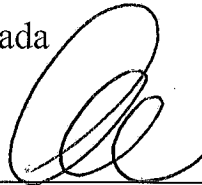
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CERTIFICATE OF SERVICE

I certify that on this 24TH day of October, 2016 that I served the Reply Brief upon all counsel for record by serving it via Electronic Service through the Clerk's Office of the Nevada Supreme Court to the following addresses:

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