

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

IN RE: )  
DISCIPLINE OF: )  
JAMES COLIN, ESQ. )  
STATE BAR NO. 6257 )  
\_\_\_\_\_ )

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Case No. 73031

**STATE BAR OF NEVADA'S  
ANSWERING BRIEF**

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1 I.

2 **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

3 The issues presented for review are as follows:

- 4 1. Should Appellant's Opening Brief be stricken as it contains information  
5 outside of the record?
- 6 2. Should Appellant's failure to appear and make his objections at the  
7 Formal Hearing acts as a waiver to any appealable issues?
- 8 3. Was the Panel's Recommendation for Discipline the appropriate  
9 sanction to protect the public and the integrity of the bar in a  
10 disciplinary proceeding?

11 II.

12 **STATEMENT OF CASE**

13 **1. Statement of the Case**

14 As this Court may recall, this matter began when the Nevada Supreme  
15 Court referred Appellant James A. Colin ("Appellant") to the State Bar of  
16 Nevada ("State Bar") for investigation "based on the contemptuous tone and  
17 unsubstantiated allegations in the pleadings" he submitted. *See, Record On*  
18 *Appeal ("ROA")*, Volume I, Pages 00019-00020. It appears that Appellant is  
19 now coming forward to contest the discipline imposed against him after failing  
20 to appear at his own disciplinary hearing or request a continuance. He has yet

1 to take responsibility for his actions, despite the Formal Hearing Panel (“Panel”)  
2 of the Southern Nevada Disciplinary Board recommending the manner in which  
3 he should. Instead, it appears that Appellant is demanding that this Court void  
4 its prior orders and essentially dismiss any disciplinary proceedings against him.  
5 However, Appellant has had ample time and various avenues to request such  
6 relief, some of which he has already requested and has been denied. The time  
7 for such argument has clearly passed. Accordingly, no such relief should be  
8 granted in this matter as the Panel’s recommendations are all clearly supported  
9 by the record.

## 10 **2. Statement of Facts**

### 11 **A. Overview**

12 Appellant clearly had actual notice of the violations alleged against him,  
13 as well as the date and time of the disciplinary hearing where he could present a  
14 defense in this matter. In fact, the Panel found that the State Bar went well  
15 beyond the notice requirements of the Supreme Court Rules (“SCR”) and the  
16 Disciplinary Rules of Procedure (“DRPs”) to inform Respondent about the time  
17 and date of his disciplinary hearing, his knowledge of which he confirmed in a  
18 Petition to the Supreme Court filed two weeks prior to his scheduled disciplinary  
19 hearing. ROA, Vol. I, Page 00248. Now, Appellant asks this Court to not only  
20 completely disregard the appropriate standard of review by considering his

1 unsubstantiated rationale long past the appropriate time for so doing, but to also  
2 essentially vacate the suspension the Panel recommended based on Appellant's  
3 non-appearance and lack of willingness to participate in the disciplinary process  
4 and proceeding. This Court should not be so inclined.

5 **B. Procedural History**

6 On September 12, 2014, this Court filed an Order which referenced  
7 various pleadings Appellant filed on behalf of a client. ROA, Vol. I, Page  
8 00247. In that Order, this Court also referred the appellate matter to the State  
9 Bar for investigation "based on the contemptuous tone and unsubstantiated  
10 allegations in the pleadings" submitted by Respondent. *Id.* Thereafter, the State  
11 Bar filed a disciplinary Complaint regarding Appellant on April 16, 2015. *Id.* at  
12 00003-00149. After the State Bar filed a Notice of Intent to Proceed on a  
13 Default Basis on May 26, 2015, Appellant filed a Verified Answer on June 17,  
14 2015. *Id.* at 00155-00156, 00159-00169.

15 Appellant made various objections to the Panel Chairs appointed in this  
16 matter, which were heard and denied by the Chair of the Southern Nevada  
17 Disciplinary Board, Luke Puschnig. *Id.* at 00215-00216. An Initial Case  
18 Conference was held on November 21, 2016. *Id.* at 00172-00173. During the  
19 telephonic Initial Case Conference, Appellant hung up, but the Conference  
20 continued and various dates were selected as required by the DRPs, including

1 the time and date of the Formal Hearing, all of which were approved by  
2 Chairman Sheets. *Id.* at 00245. The Scheduling Order, which included the  
3 various dates referenced above, was prepared, filed on November 28, 2016, and  
4 then sent to Appellant via the email address he and the State Bar had been using  
5 to communicate, as well as the mailing address Appellant is required to maintain  
6 with the State Bar pursuant to SCR 79. *Id.* The State Bar subsequently sent a  
7 Disclosure of Documents and Witnesses, an Order Appointing Formal Hearing  
8 Panel, and a Notice of Formal Hearing to Respondent pursuant to SCR 105 to  
9 Appellant's above-referenced mailing and/or email addresses. *Id.* A final pre-  
10 hearing conference, which is required by DRP 25, was held telephonically at  
11 2:00 p.m. on March 23, 2017. *Id.* at 00246. It had been noticed in the  
12 Scheduling Order and the State Bar's reminders to Appellant, all of which  
13 provided Appellant with the telephone number and access passwords necessary  
14 to connect to the telephone conference. *Id.* Appellant did not participate in the  
15 conference. *Id.*

16 On March 21, 2017, a mere two weeks prior to his scheduled disciplinary  
17 hearing, Appellant filed his Petition for Writ of Prohibition (or Mandamus) to  
18 Forever End the Intentionally Illegal & Unconstitutional Bar Proceeding Against  
19 State Bar Member James A. Colin, Motion to Stay Illegal Proceeding of the  
20 State Bar of Nevada, and Motion to Disqualify Justice Mark Gibbons in Case

1 No. 72628. The same remains pending before this Court, yet Appellant  
2 inappropriately combines many of the same arguments in his current Opening  
3 Brief.

4 **C. The Panel's Findings and Recommendation for Discipline**

5 The Formal Hearing in this matter went forward as scheduled on April 6,  
6 2017, at the State Bar's offices in Las Vegas, Nevada. ROA, Vol. I, Page  
7 00248. Appellant was not present at the hearing, but the Panel found that the  
8 State Bar went well beyond the notice requirements of the Supreme Court Rules  
9 and Rules of Disciplinary Procedure to inform Respondent about the time and  
10 date of his disciplinary hearing. *Id.* at 00244, 00246, 00248. The Panel found  
11 that it had jurisdiction over Appellant and the subject matter of the proceedings  
12 under SCR 99 and the hearing moved forward despite Appellant's chosen  
13 absence. *Id.*

14 At the proceeding, the Panel concluded that:

- 15 • Appellant acted in a consistent and persistent course of conduct,  
16 over an extended period of time, which denigrated or attempted to  
17 denigrate both the institution of judicial administration of justice,  
18 and then devolved into an attack on those who attempted to  
19 administer justice.



- Appellant's attack on seven separate Supreme Court justices devolved into bile that has bubbled up in the context of those attacks on these justices and the Supreme Court itself.
- The general tone and tenor of Respondent's diatribes with respect to the Supreme Court are unacceptable. Attorneys must treat the institution with the respect that it deserves, even if he or she has no personal respect for the justices sitting on the court.
- Appellant's acts constitute improper conduct for an attorney who is practicing law in Nevada.

*Id.* at 00248.

Furthermore, the Panel considered the following SCR 102.5 factors:

#### **AGGRAVATION**

- Refusal to acknowledge the wrongful nature of conduct. SCR 102.5(1)(g).
- Vulnerability of victim (SCR 102.5(1)(h)).
- Substantial experience in the practice of law. SCR 102.5(1)(i).

#### **MITIGATION**

- Absence of prior disciplinary record. SCR 102.5(2)(a).

*Id.* at 00250.

1 Based on the above, the Panel found that and that Appellant violated three  
2 Rules of Professional Conduct (“RPC”): RPC 3.5(d) (Impartiality and Decorum  
3 of the Tribunal: Engaging in conduct intended to disrupt a tribunal), RPC 8.2(a)  
4 (Judicial and Legal Officials: Making a statement that the lawyer knows to be  
5 false or with a reckless disregard as to its truth or falsity concerning the  
6 qualifications or integrity of a judge), and RPC 8.4(d) (Misconduct: Engaging in  
7 conduct that is prejudicial to the administration of justice). *Id.* at 00250-00251.

8 As such, the Panel made the following recommendations for discipline:

- 9 • Appellant be suspended from the practice of law for a term of one  
10 year.
- 11 • Appellant be required to take and successfully pass the Multistate  
12 Professional Responsibility Exam (“MPRE”) as a condition  
13 precedent to any filing of a Petition or request for reinstatement to  
14 the practice of law; and
- 15 • Appellant be required to pay costs of his disciplinary hearing in the  
16 amount of \$2,500, plus the costs of court reporting and transcripts,  
17 and any associated hard costs pursuant to SCR 120 (Costs). Such  
18 payment would be made within thirty days of receiving a Bill of  
19 Costs from the State Bar, and the payment also would be a  
20

1 condition precedent to any filing of a Petition or request for  
2 reinstatement to the practice of law.

3 *Id.* at 00251.

4 The Findings of Fact, Conclusions of Law, and Recommendation  
5 memorializing the same were filed on May 4, 2017. *Id.* at 00244-00251.  
6 Thereafter, Appellant filed his Opening Brief on June 23, 2017.

### 7 **III.**

#### 8 **STANDARD OF REVIEW**

9 This Court has held, in regard to a disciplinary hearing conducted pursuant  
10 to SCR 105, that “[a]lthough the recommendations of the disciplinary panel are  
11 persuasive, this court is not bound by the panel’s findings and recommendation,  
12 and must examine the record anew and exercise independent judgment.” *In re*  
13 *Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204, *modified by* 31 P.3d 365 (2001),  
14 *cert. denied*, 534 U.S. 1131 (2002). However, this Court has also set forth that  
15 they will use a deferential standard of review with respect to the hearing panel’s  
16 findings of fact, SCR 105(3)(b), will not set them aside unless they are clearly  
17 erroneous or not supported by substantial evidence, *See generally, Sowers v.*  
18 *Forest Hills Subdivision*, 129 Nev., Adv. Op. 9, 294 P. 3d 427, 432 (2013);  
19 *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

1       The State Bar is required to establish allegations of professional  
2 misconduct by clear and convincing evidence. *See*, SCR 105; *see also*, *Schaefer*,  
3 117 Nev. at 515, 25 P.3d at 204. This Court has described clear and convincing  
4 evidence as “evidence which need not possess such a degree of force as to be  
5 irresistible, but there must be evidence of tangible facts from which a legitimate  
6 inference...may be drawn.” *Id.*

7       The purpose of attorney discipline is not to punish the attorney, but to  
8 protect the public and the integrity of the bar. *See*, *State Bar of Nevada v.*  
9 *Claiborne*, 104 Nev. 115, 129, 756 P.2d 464, 473 (1988) (“paramount objective  
10 of bar disciplinary proceedings is not additional punishment of the attorney, but  
11 rather to protect the public from persons unfit to serve as attorneys and to  
12 maintain public confidence in the bar as a whole”). Furthermore, the Formal  
13 Hearing Panel may only find violations of the Supreme Court Rules of  
14 Professional Conduct as charged in the Complaint. *Schaefer*, 117 Nev. at 515, 25  
15 P.3d at 204.

16       In this matter, the Panel found that the State Bar demonstrated by clear and  
17 convincing evidence that Appellant violated RPC 3.5(d) (Impartiality and  
18 Decorum of the Tribunal: Engaging in conduct intended to disrupt a tribunal),  
19 RPC 8.2(a) (Judicial and Legal Officials: Making a statement that the lawyer  
20 knows to be false or with a reckless disregard as to its truth or falsity concerning

1 the qualifications or integrity of a judge), and RPC 8.4(d) (Misconduct: Engaging  
2 in conduct that is prejudicial to the administration of justice). As such, the  
3 recommended discipline is appropriate and warranted.

#### 4 IV.

#### 5 ARGUMENT

##### 6 1. Appellant's Opening Brief should be stricken as it contains 7 information outside the record.

8 Appellant improperly attempts to supplement the record with Appellant's  
9 Opening Brief, despite his decision to not participate in his own disciplinary  
10 hearing. This Court has repeatedly stated that, "We cannot consider matters not  
11 properly appearing in the record on appeal. As this Court stated long ago in  
12 *Alderson v. Gilmore*, 13 Nev. 84, 85 (1878), [w]e have no power to look outside  
13 the record of a case. We have consistently recognized this limitation." *Carson*  
14 *Ready Mix, Inc. v. First National Bank of Nevada*, 97 Nev. 474, 476, 635 P. 2d  
15 276,277 (1981) (quotation marks and internal citations omitted). Appellant's  
16 Opening Brief contains a majority of matters outside the record and is an attempt  
17 to retry his Formal Hearing by circumventing the Nevada Supreme Court Rules  
18 regarding attorney discipline.

19 Nevada Rule of Appellate Procedure 28(e)(1) requires that, "[e]very  
20 assertion in the briefs regarding matters in the record shall be supported by a

1 reference to the page and volume, if any, of the appendix where the matter relied  
2 upon is to be found." *Id.* Appellant's Opening Brief continues his pattern of  
3 misconduct and includes an abundance of unsupported allegations regarding the  
4 events surrounding the underlying disciplinary charges as well as the disciplinary  
5 proceedings. These allegations are a not part of the Record On Appeal or cited as  
6 such, but are made in the same "contemptuous tone" as the unsubstantiated  
7 allegations Appellant made the pleadings that caused this Court to refer this  
8 matter to the State Bar in the first place. Accordingly, Appellant's untimely and  
9 unsupported arguments should be disregarded by this Court in their entirety.

10 Appellant had notice of his Formal Hearing, yet he chose not to attend.  
11 The Formal Hearing went forward as scheduled and the Panel made its  
12 recommendation as to the corresponding discipline. Now, through his appeal,  
13 Appellant is attempting to improperly enter and challenge evidence that he had  
14 every opportunity to challenge but did not. Such actions should not be permitted  
15 by this Court as allowing such would contradict the very purpose of disciplinary  
16 proceedings.

17 **2. Appellant's failure to appear and make his objections at the Formal**  
18 **Hearing acts as a waiver to any appealable issues.**

19 Furthermore, Appellant's failure to attend and object to the Formal Hearing  
20 waives any appealable issues. In *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 623

1 P.2d 981 (1981), the Nevada Supreme Court held "A point not urged in the trial  
2 court, unless it goes to the jurisdiction of the court, is deemed to have been  
3 waived and will not be considered on appeal." *Id.* at 983. Appellant had ample  
4 notice of the Formal Hearing, which went forward as scheduled without him as  
5 he chose not to participate. In fact, Appellant acknowledged the existence of the  
6 upcoming Formal Hearing on March 21, 2017, two weeks prior to his scheduled  
7 disciplinary hearing, in the documents he filed in Case No. 72628. Appellant's  
8 attempt to submit evidence and argument regarding the merits at this time is  
9 improper as the appropriate time for the same has long since passed.  
10 Accordingly, Appellant has waived any appealable issues in this matter.

11 **3. The Panel's Recommendation for Discipline was the appropriate**  
12 **sanction to protect the public and the integrity of the bar in a**  
**disciplinary proceeding.**

13 The purpose of attorney discipline is not to punish the attorney, but to  
14 protect the public and the integrity of the bar. *See, State Bar of Nevada v.*  
15 *Claiborne*, 104 Nev. 115, 129, 756 P.2d 464, 473 (1988).

16 Here, the Panel found that the duties violated included RPC 3.5(d)  
17 (Impartiality and Decorum of the Tribunal: Engaging in conduct intended to  
18 disrupt a tribunal), RPC 8.2(a) (Judicial and Legal Officials: Making a statement  
19 that the lawyer knows to be false or with a reckless disregard as to its truth or  
20 falsity concerning the qualifications or integrity of a judge), and RPC 8.4(d)

1 (Misconduct: Engaging in conduct that is prejudicial to the administration of  
2 justice). *See*, ROA, Vol. I, Page 00249. The Panel found that such violations  
3 warranted a one-year suspension and retaking the MPRE, among other things.  
4 *Id.* at 00251. The Panel's recommendation to impose the suspension and  
5 accompanying conditions was appropriate and warranted to protect the public and  
6 the integrity of the bar.

7 **V.**

8 **CONCLUSION**

9 Appellant failed to participate in the disciplinary process, including the  
10 Formal Hearing after being served the Notice and accompanying documents.  
11 The Panel unanimously recommended that Appellant be suspended for a period  
12 of one year; that Appellant retake and pass the MPRE as a condition precedent to  
13 any filing of a Petition or request for reinstatement to the practice of law; and that  
14 Appellant pay \$2,500 in disciplinary costs, plus the costs of court reporting

15 ///

16 ///

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1 and any hard costs pursuant to SCR 120 (Costs) within thirty days of receiving a  
2 Bill of Costs from the State Bar, and such payment would be a condition  
3 precedent to any filing of a Petition or request for reinstatement to the practice of  
4 law. The State Bar submits that the Panel's recommendation is appropriate.

5 DATED this 27<sup>th</sup> day of July, 2017.

6 STATE BAR OF NEVADA  
7 C. Stanley Hunterton, Bar Counsel

8 By: 

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1 **VI.**

2 **CERTIFICATE OF COMPLIANCE**

3 1. I hereby certify that this brief complies with the formatting  
4 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5),  
5 and the type style requirements of NRAP 32(a)(6) because this brief has been  
6 prepared in a proportionally spaced typeface using Word 2010 in Times New  
Roman 14 point font size.

7 2. I further certify that this brief complies with the page or type volume  
8 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted  
9 by NRAP 32(a)(7), it is proportionately spaced, has a typeface of 14 points or  
more and contains 3,141 words.

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1           3.     Finally, I hereby certify that I have read the foregoing Answering  
2 Brief of the State Bar of Nevada, and to the best of my knowledge, information  
3 and belief, this brief is not frivolous or interposed for any improper purpose. I  
4 further certify this brief complies with all applicable Nevada Rules of Appellate  
5 Procedure, including the requirement of NRAP 28(e), which requires every  
6 assertion in the brief regarding matters in the record to be supported by  
7 appropriate references to the record on appeal. I understand that I may be subject  
8 to sanctions in the event that the accompanying brief is not in conformity with the  
9 requirements of the Nevada Rules of Appellate Procedure.

10                   DATED this 27<sup>th</sup> day of July, 2017.

11                   STATE BAR OF NEVADA  
12                   C. Stanley Hunterton, Bar Counsel

13                   By: \_\_\_\_\_

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VII.

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that a true and correct copy of the foregoing **STATE BAR OF NEVADA'S ANSWERING BRIEF** was served on the following parties by placing a copy, postage fully prepaid for regular mail, and deposited in the United States mail at Las Vegas, Nevada, addressed to::

James A Colin, Esq.  
2560 S. Maryland Parkway, #175  
Las Vegas, NV 89109

Dated this 27<sup>th</sup> day of July, 2017.

  
An employee of the State Bar of Nevada