Case No. 81018 C/W 81172

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUTH L. COHEN,

Appellant,

v.

PAUL S. PADDA and PAUL PADDA LAW, PLLC,

Respondents.

Appeal from the Eighth Judicial District Court of the State of Nevada, in and for County of Clark

APPELLANT'S OPENING BRIEF

Donald J. Campbell, Esq. (#1216)
Philip R. Erwin, Esq. (#11563)
Molly M. Higgins, Esq. (#15246)
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222

Liane K. Wakayama, Esq. (#11313)
Dale A. Hayes, Jr., Esq. (#9056)
HAYES WAKAYAMA
4735 S. Durango Drive, Ste. 105
Las Vegas, Nevada, 89147
Telephone: (702) 656-0808

Counsel for Appellant

RULE 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

RUTH L. COHEN is an individual.

MS. COHEN has been represented by attorneys from the law firms of CAMPBELL & WILLIAMS; HAYES | WAKAYAMA; and MARQUIS, AURBACH, COFFING.

Dated this 9th day of December, 2020.

CAMPBELL & WILLIAMS

By: /s/ ***Philip R. Erwin***

Donald J. Campbell, Esq. (#1216)
Philip R. Erwin, Esq. (#11563)
Molly M. Higgins, Esq. (#15246)
700 South Seventh Street
Las Vegas, Nevada 89101

Liane K. Wakayama, Esq. (#11313)
Dale A. Hayes, Jr., Esq. (#9056)
HAYES WAKAYAMA
4735 S. Durango Drive, Ste. 105
Las Vegas, Nevada, 89147

Attorneys for Appellant

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APPELLANT'S OPENING BRIEF[1]

I. JURISDICTIONAL STATEMENT

Ms. Cohen appeals from the district court's order granting the Padda Defendants' motion for summary judgment dated February 18, 2020 (the "Order"). (8 JA 1703-1712). The Order is a final, appealable order pursuant to NRAP 3A(b)(1). *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000)("[A]n order granting summary judgment, which disposes of all claims and parties before the district court, is final and appealable…"). Notice of entry of the Order was filed on February 18, 2020. (8 JA 1713-1726).

Ms. Cohen timely filed her motion for reconsideration of the Order on February 21, 2020, which tolled the deadline to appeal. (8 JA 1727-1737). *See* NRCP 59(e); *see also AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 584, 245 P.3d 1190, 1194 (2010). The district court denied Ms. Cohen's motion for reconsideration on March 31, 2020. (15 JA 3040-3045). Thereafter, Ms. Cohen timely filed her notice of appeal on April 8, 2020. (15 JA 3055-3082). This Court has appellate jurisdiction over Ms. Cohen's appeal.

[1] For ease of reference, Appellant Ruth L. Cohen will be referred to as "Ms. Cohen," and Respondents Paul S. Padda ("Mr. Padda") and Paul Padda Law, PLLC ("Padda Law") will be collectively referred to as the "Padda Defendants."

II. ROUTING STATEMENT

The Nevada Supreme Court should retain this appeal pursuant to NRAP 17(a)(4) as a case involving attorney suspension as well as NRAP 17(a)(11)-(12) as a case raising as a principle issue a question of first impression and statewide public importance.

III. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred by granting summary judgment on grounds that Ms. Cohen's suspension from the practice of law prohibited her from recovering her share of proceeds under an attorney fee-splitting contract with her former partner even though such contracts are enforceable where, as here, Ms. Cohen transferred responsibility for the cases at issue prior to suspension or disbarment in exchange for a percentage of the ultimate recovery.

IV. STATEMENT OF THE CASE

Ms. Cohen is an attorney who practiced law in Nevada for over 40 years. (4 JA 629:14). She was one of the first 100 women admitted to the State Bar of Nevada, the fourth woman ever hired in the Clark County District Attorney's Office, and the first female federal prosecutor appointed in the entire state. (4 JA 629:14-17). Mr. Padda is an attorney who has practiced law in Nevada for over 15 years. (1 JA 158:5-8). In 1978, Ms. Cohen began working at the U.S. Attorney's Office ("USAO"), where she worked as a federal prosecutor for 29 years in both the criminal and civil

divisions. (4 JA 629:19-21). In 2004, Mr. Padda took a position at the USAO, where he worked with Ms. Cohen for three years before Ms. Cohen retired and went into private practice. (4 JA 629:22-630:7).

On or about January 18, 2011, Mr. Padda and Ms. Cohen formed a partnership called Cohen & Padda, LLP ("C&P") to provide legal services. (8 JA 1704:11-12). Pursuant to the Partnership Agreement dated January 18, 2011, Mr. Padda and Ms. Cohen acknowledged that the duration of their partnership would be until January 14, 2014 unless dissolved by agreement of the parties (the "Partnership Agreement"). (8 JA 1704:13-15).

Sometime in 2014, Ms. Cohen began to consider semi-retirement from the practice of law. (8 JA 1704:16-17). On or about December 23, 2014, Mr. Padda and Ms. Cohen entered into an agreement, which set forth the terms by which they effectuated the dissolution of C&P (the "Dissolution Agreement"). (8 JA 1704:18-20). C&P, in turn, ceased to exist as of December 31, 2014. (8 JA 1704:20). Section 7(b) of the Dissolution Agreement provided, in pertinent part, that "[w]ith respect to contingency cases in which there is yet to be a recovery by way of settlement or judgment," Ms. Cohen "shall be entitled to a 33.333% percent share of gross attorney's fees recovered in all contingency fee cases for which [C&P] has a signed retainer agreement dated on or before December 31, 2014" (the "Expectancy Interest"). (8 JA 1704:21-25). Nothing in the Dissolution Agreement

required or anticipated that Ms. Cohen would perform work on the contingency cases that comprised of her Expectancy Interest. (8 JA 1704:25-27).

On January 2, 2015, Mr. Padda formed a new law firm, which after two separate name changes, became Padda Law. (8 JA 1705:1-2). While she continued to practice law after the dissolution of C&P working primarily on new employment law matters, Ms. Cohen transitioned to part-time work and did not come to the Padda Law office often. (8 JA 1705:3-5).

On September 12, 2016, Ms. Cohen and Mr. Padda executed a Business Expectancy Interest Resolution Agreement (the "Buyout Agreement") in which Ms. Cohen agreed to exchange her Expectancy Interest for the sum certain of $50,000. (8 JA 1705:6-8). At the time Ms. Cohen and Mr. Padda entered into the Buyout Agreement, several contingency fee cases subject to Ms. Cohen's Expectancy Interest were pending and had not reached a complete and final resolution, including, among others, *Garland v. SPB Partners, LLC et al.,* Case No. A-15-724139-C (the "Garland Case"), *Moradi v. Nevada Property 1, LLC et al.*, Case No. A-14-698824-C (the "Moradi Case"), and *Cochran v. Nevada Property 1, LLC et al.*, Case No. A-13-687601-C (the "Cochran Case") (collectively referred to as the "Pending Cases"). (8 JA 1705:11-17). It is undisputed that Ms. Cohen did not have an active role or perform work on the Pending Cases. (8 JA 1705:18-28).

On or about April 6, 2017, Ms. Cohen received notice that she had been suspended from the practice of law by the Nevada Board of Continuing Legal Education pursuant to Nevada Supreme Court Rule ("SCR") 212 for failure to complete the 2016 Continuing Legal Education ("CLE) requirements, as mandated by SCR 210. (8 JA 1706:5-8). Upon learning of her suspension, Ms. Cohen "immediately called the bar" and discovered that she would be required to pay $700.00 and complete her CLE requirements in order to be reinstated. (8 JA 1706:9-11). Ms. Cohen declined to pay the fee and her law license remained suspended until December 19, 2019 during which time the Moradi and Cochran Cases settled for significant sums. (8 JA 1706:12-21; 1706:26-1707:3; 1708:1-4).

On February 27, 2019, Ms. Cohen, through counsel, sent a letter to Mr. Padda demanding payment of certain attorneys' fees owed to her pursuant to her Expectancy Interest under the Dissolution Agreement. (8 JA 1706:22-25). Specifically, Ms. Cohen contended that the Padda Defendants induced her to enter the Buyout Agreement through fraudulent acts, misrepresentations and/or omissions such that the Buyout Agreement should be rescinded. (8 JA 1707:17-19). Ms. Cohen, in turn, demanded payment of 33.333% of the gross attorneys' fees earned in the Pending Cases pursuant to the Expectancy Interest set forth in the Dissolution Agreement. (8 JA 1707:19-21).

After Mr. Padda refused to compensate Ms. Cohen for her Expectancy Interest in the Pending Cases, Ms. Cohen commenced the instant action against the Padda Defendants on April 9, 2019 advancing causes of action for, *inter alia*, fraud, breach of fiduciary duty and breach of contract. (8 JA 1707:4-16). Ms. Cohen sought to recover $3,314,227.49 in damages, which represented the amount of her Expectancy Interest in the Pending Cases. (8 JA 1707:22-23).

On February 18, 2020, the district court granted the Padda Defendants' motion for summary judgment on the narrow basis that Ms. Cohen's suspension from the practice of law rendered her a "non-lawyer" subject to the prohibition on fee sharing under NRPC 5.4(a). (8 JA 1709:8-22; 1710:9-11; 1711:10-14). The district court, in turn, dismissed Ms. Cohen's claims on grounds she is prohibited from pursuing her Expectancy Interest in the Pending Cases that settled while Ms. Cohen was suspended from the practice of law. (8 JA 1710:12-28).

V. STATEMENT OF FACTS

1. On April 9, 2019, Ms. Cohen filed her complaint against the Padda Defendants asserting the following causes of action: (1) First Claim for Relief for breach of contract—Partnership Dissolution Agreement (against Mr. Padda); (2) Second Claim for Relief for breach of the implied covenant of good faith and fair dealing (against Mr. Padda); (3) Third Claim for Relief for tortious breach of the implied covenant of good faith and fair dealing (against Mr. Padda); (4) Fourth

Claim for Relief for breach of fiduciary duty (against Mr. Padda); (5) Fifth Claim for Relief for fraud in the inducement (against Mr. Padda and Padda Law); (6) Sixth Claim for Relief for fraudulent concealment (against Mr. Padda and Padda Law); (7) Seventh Claim for Relief for fraudulent or intentional misrepresentation (against Mr. Padda and Padda Law); (8) Eighth Claim for Relief for unjust enrichment (against Padda Law or, in the alternative, against Mr. Padda); (9) Ninth Claim for Relief for elder abuse under NRS 41.1395 (against Mr. Padda); and (10) Tenth Claim for Relief for declaratory relief (against Mr. Padda and Padda Law). (8 JA 1707:4-16).

2. On December 18, 2019, the Padda Defendants filed their motion for summary judgment arguing, *inter alia*, that NRPC 5.4(a) barred Ms. Cohen from recovering her share of legal fees from cases that settled or concluded while her law license was suspended. (1 JA 154; 173:3-174:11).

3. Ms. Cohen opposed the Padda Defendants' motion for summary judgment on January 10, 2020. (4 JA 628-659). With respect to the Padda Defendants' argument concerning the effect of her suspension from the practice of law, Ms. Cohen contended that a prior, temporary suspension did not absolve the Padda Defendants of their contractual obligations. (4 JA 647:18-25; 648:6-649:9).

4. The Padda Defendants filed their reply in support of motion for summary judgment on January 24, 2020. (8 JA 1654-1684).

5. Following a hearing on January 27, 2020, the district court granted the Padda Defendants' motion for summary judgment and dismissed Ms. Cohen's complaint. (8 JA 1703-1712). Specifically, the district court found that a lawyer who is suspended from the practice of law pursuant to SCR 212 for failing to comply with the CLE requirements of SCR 210 is a "non-lawyer" for purposes of NRPC 5.4(a). (8 JA 1709:8-16). The district court further found NRPC 5.4(a) prohibited Ms. Cohen from recovering or sharing in attorneys' fees earned on cases that were open and unresolved during the time in which she was suspended. (8 1710:9-28). Thus, while the district court noted that all of Ms. Cohen's claims would have otherwise survived summary judgment, the district court held that it could not, "in good conscience, permit Ms. Cohen to use her remaining fraud and fiduciary duty claims, among others, to circumvent NRPC 5.4(a) by essentially enforcing a contract obligation NRPC 5.4(a) renders illegal and unenforceable." (8 JA 1711:10-22).

6. On February 21, 2020, Ms. Cohen filed her motion for reconsideration and submitted additional legal authority establishing that fee-splitting contracts involving suspended or disbarred lawyers are enforceable where, as here, the lawyer transferred responsibility for the cases at issue prior to suspension or disbarment in exchange for a percentage of the ultimate recovery. (8 JA 1727-1737).

7. The Padda Defendants filed their opposition to the motion for reconsideration on March 6, 2020, (9 JA 1738-1794), and Ms. Cohen filed her reply on March 16, 2020. (10 JA 2165-2173).

8. The district court summarily denied Ms. Cohens' motion for reconsideration on March 31, 2020. (15 JA 3040-30455). The district court determined that Ms. Cohen's submission of additional persuasive legal authority did not render the Order clearly erroneous under EDCR 2.24. (15 JA 3042:20-27). The district court found that Ms. Cohen's cited legal authority concerned a different approach for addressing a suspended attorney's ability to recovery fees after his or her suspension. (15 JA 3042:28-3043:20). Moreover, the district court found that Ms. Cohen's legal authority was inapposite as her claims in this action were not predicated upon a referral fee or origination fee agreement. (15 JA 3043:21-3044:8).

9. On April 8, 2020, Ms. Cohen filed her Notice of Appeal in the district court, and subsequently filed the same in this Court on April 16, 2020. (15 JA 3055-3082).

VI. SUMMARY OF THE ARGUMENT

The district court erred by granting the Padda Defendants' motion for summary judgment, and denying reconsideration, on grounds that Ms. Cohen's suspension from the practice of law barred her from seeking to recover the

Expectancy Interest under the Dissolution Agreement. Although this Court has yet to consider this issue, multiple courts have found that fee-splitting contracts involving suspended or disbarred lawyers are enforceable where, as here, the lawyer transferred responsibility for the cases at issue prior to suspension or disbarment in exchange for a percentage of the ultimate recovery. These same courts have consistently determined that this type of arrangement does not run afoul of the prohibition on fee-sharing with non-lawyers because the lawyer fully performed his or her obligations before the suspension or disbarment and there was no abandonment of the client. That is exactly what occurred here as Ms. Cohen had indisputably contracted to receive the Expectancy Interest and transferred all responsibility for the Pending Cases years before she was suspended from the practice of law.

VII. ARGUMENT

A. Standard Of Review.

Pursuant to NRCP 56, summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue of material fact remains and that the moving party is entitled to a judgment as a matter of law.'" *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (citing *Tucker v. Action Equip. and Scaffold Co.*, 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997)). "This court has noted that when reviewing a motion for summary

judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Id.* (citing *Lipps v. S. Nevada Paving*, 116 Nev. 497, 498, 998 P.2d 1183, 1184 (2000)). "This court reviews a district court's grant of summary judgment *de novo*, without deference to the findings of the lower court." *Id.* (citing *GES, Inc. v. Corbitt*, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001)).

B. Ms. Cohen's Temporary Suspension From The Practice Of Law Does Not Preclude Her From Pursuing Claims Against The Padda Defendants Related To Her Expectancy Interest In The Pending Cases.

The relevant facts related to the Court's analysis of whether Ms. Cohen's suspension prevents her from enforcing the Dissolution Agreement are undisputed. Ms. Cohen and Mr. Padda entered into the Dissolution Agreement on or about December 23, 2014 at which time Ms. Cohen had an active Nevada law license. (8 JA 1704:16-20; 1706:5-8). The Dissolution Agreement effectuated the dissolution of C&P as of December 31, 2014, and granted Ms. Cohen "a 33.333 percent share of gross attorney's fees recovered in all contingency fee cases for which [C&P] has a signed retainer agreement on or before December 31, 2014." (8 JA 1704:21-25). The Dissolution Agreement did not require or otherwise anticipate that Ms. Cohen would perform work on the Pending Cases that were the subject of the Dissolution Agreement. (8 JA 1704:25-27). Nor did Ms. Cohen actually perform work on the Pending Cases following the execution of the Dissolution Agreement. (8 JA

1705:11-28). Beginning on April 6, 2017, and continuing until December 19, 2019—during which time the Moradi and Cochran Cases settled—Ms. Cohen's license to practice law was suspended. (8 JA 1706:5-8; 17-21; 1706:26-1707:3).

The Texas Court of Appeals confronted a similar scenario in *Lee v. Cherry*, 812 S.W.2d 361 (Tex. Ct. App. 1991). Attorney Lee referred a personal injury matter to attorney Cherry in exchange for one-third of any legal fee earned in the case. *Id.* at 361. Approximately three years later, the Texas State Bar suspended Lee's law license and he subsequently resigned his license in lieu of disciplinary proceedings. *Id.* The personal injury matter thereafter settled for $1.6 million and Lee requested his referral fee from Cherry. *Id.* Like the Padda Defendants, however, Cherry contended that the referral agreement was unenforceable due to the prohibition on fee-sharing with non-lawyers such that Cherry was legally obligated to keep the entire fee. *Id.*

The Texas Court of Appeals soundly rejected Cherry's argument as follows:

> After careful consideration, we decline to extend the State Bar Rule forbidding payment of attorney's fees to non-lawyers to encompass fees due a former attorney who performed all that was required of him prior to his resignation or disbarment under a client-approved referral fee contract. To do otherwise, under the facts of this case where *no* issue of abandonment exists, would not further the rationale behind Rule 5.04. Such an interpretation would undermine the rule's integrity by artificially expanding it simply to inflict additional economic punishment on appellant.

Id. at 363 ("We have found no cases which have disallowed attorney's fees where the disbarred or resigned attorney had completed all of his contractual duties prior

to surrendering his license.") (emphasis in original); *see also A.M. Wright & Assocs., P.C. v. Glover, Anderson, Chandler & Uzick, L.L.P.*, 993 S.W.3d 466, 468-70 (Tex. Ct. App. 1999) (following *Lee* and remanding for further proceedings to determine whether referral contract provision addressing "day to day handling" of cases contemplated the future performance of legal services by suspended lawyer).

The Iowa Supreme Court reached the same result in *West v. Jayne*, 484 N.W. 2d 186 (Iowa 1992). Attorneys Jayne and West practiced law in the same firm and allocated the fees collected on contingency cases based on which attorney originated the case. *Id.* at 187-88. West was suspended from the practice of law and the firm broke up with Jayne taking more than 60 pending contingency fee cases. *Id.* Jayne refused to divide the fees recovered from the contingency cases on grounds that West was prohibited from earning fees or deriving income from the practice of law during his suspension. *Id.* at 190. The Iowa Supreme Court held that West's suspension did not annul the contract because "West had performed his services under the contract at the time he turned the cases over to Jayne." *Id.* at 191. The Iowa Supreme Court further opined that "Jayne's contention that West can recover only on the reasonable value of his services performed, or on a quantum meruit basis, has no merit." *Id.*

In holding that West's suspension did not render the fee-splitting agreement unenforceable, the Iowa Supreme Court relied heavily on the Missouri Supreme

Court's decision in *Sympson v. Rogers*, 406 S.W. 2d 26 (Mo. 1966). In *Sympson*, a lawyer facing disbarment proceedings decided to surrender his law license and approached another firm about taking over five pending contingency cases. *Id.* at 27-28. With knowledge that the lawyer would soon lose his law license, the firm accepted responsibility for the five contingency fee cases and agreed to pay the lawyer one-half of any fees recovered. *Id.* As in *West*, the Missouri Supreme Court determined that the disbarred lawyer had earned his portion of the fee on the contingency fee cases at the time he entered into the fee-splitting agreement. *Id.* at 27-29. The Missouri Supreme Court further held that the contract did not violate the rule against fee-splitting with non-lawyers because the parties entered into the contract while the disbarred attorney was still licensed to practice law. *Id.* at 29.

The Appellate Division of the New Jersey Superior Court is in accord. In *Eichen, Levinson & Crutchlow, LLP v. Weiner*, the New Jersey court considered whether a trustee appointed to oversee a suspended lawyer's practice could recover referral fees on 78 contingency fee cases that resolved during the period of suspension. 938 A.2d 947, 948-50 (N.J. App. Div. 2008). The New Jersey court expressly rejected the defendant's "contention that payment of a referral fee to the trustee runs afoul of the prohibition on sharing legal fees that are due after the date of [suspension]." *Id.* at 951. Instead, the New Jersey court determined that the suspended lawyer's "interest in the referral fee from the [defendant] vested in accordance with the terms of the

referral agreement the moment the referral agreement was executed[,] which was long before [the plaintiff] was first suspended." *Id.*

The same analysis applies here. The Padda Defendants acknowledged that "the Dissolution Agreement was not illegal or unenforceable at the time it was signed" because Ms. Cohen "was a properly licensed attorney." (8 JA 1665:18-20). Ms. Cohen's entitlement to fees was derived from her interest in the Pending Cases as a partner of C&P rather than the expectation that she would continue to perform work on the Pending Cases. (8 JA 1704:18-27). Thus, Ms. Cohen had performed all services required of her and earned her one-third split of the unrealized proceeds from the Pending Cases at the time the parties entered into the Dissolution Agreement. Mr. Padda, moreover, assumed full responsibility for the Pending Cases and there is no suggestion that Ms. Cohen abandoned the clients. The district court's invocation of NRPC 5.4 to dismiss Ms. Cohen's claims due to her temporary suspension only serves to "visit additional, retroactive punishment" on Ms. Cohen and would "result in unjust enrichment" to the Padda Defendants. *Lee*, 812 S.W.2d at 364. That cannot be the law.

C. The Purported "Split of Authority" Cited By The District Court And The Padda Defendants Is Inapplicable.

The district court declined to rely on the foregoing case law because it found that different jurisdictions follow one of two approaches when determining whether a suspended attorney may recover or share in fees. (15 JA 3042:28-

3043:20). In that regard, the district court adopted the argument advanced by the Padda Defendants that Ms. Cohen's authorities addressed the more stringent and punitive approach taken by some courts whereas the district court had applied the other more lenient approach. (15 JA 3042:28-3043:20). According to the Padda Defendants' authorities, these two approaches may be summarized as follows:

> Two principal lines of authority have emerged in other jurisdictions concerning an attorney's right to compensation after he has been suspended or disbarred ***before completion of his services for the client***. Under one view . . . the fact that an attorney was suspended or disbarred is regarded as the equivalent of unjustified voluntary abandonment of the client and precludes recovery for legal work performed prior to the disciplinary action.
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> A second line of authority does not bar recovery per se, but rather allows a disbarred or suspended attorney to recover the reasonable value of services rendered prior to the discipline in certain situations.

Kourouvacilis v. Am. Fed. of State, Cty. and Mun. Employees, 841 N.E.2d 1273, 1279-80 (Mass. Ct. App. 2006) (emphasis added); *see also Pollock v. Wetterau Food Dist. Group*, 11 S.W.3d 754, 772-73 (Mo. Ct. App. 1999) (same). The district court followed the second line of authorities but, in reality, neither approach addresses the situation presented here.

The key distinction between the Padda Defendants' authorities and those cited by Ms. Cohen is found in the language emphasized above. The Padda Defendants' supporting case law—both in the summary judgment briefing and in opposing reconsideration—addressed situations in which the attorney was seeking

to recover fees where he or she had been suspended or disbarred prior to the completion of their services for the client. In those cases, the respective courts view the suspension or disbarment as the equivalent of abandoning the client such that they must determine whether the attorney is entitled to no fees at all or whether he or she is limited to recovery in quantum meruit for the reasonable values of the services rendered prior to suspension/disbarment. There was, however, no abandonment in the case at bar.

Here, the Order makes clear that Ms. Cohen had a very limited initial role in the Pending Cases that comprised her Expectancy Interest under the Dissolution Agreement, and had no active role therein by 2012 (Moradi) and 2014 (Garland), well before the Dissolution Agreement was signed in December 2014 and even longer before Ms. Cohen's suspension in April 2017. (8 JA 1704:18-20; 1705:18-28; 1706:5-8). Recognizing this limited role, the district court correctly found that "[n]othing in the Dissolution Agreement required or anticipated that Ms. Cohen would perform work on the contingency cases that comprised [ ] her Expectancy Interest." (8 JA 1704:25-27).

Ms. Cohen, thus, had completed her services in the Pending Cases at the time of entering the Dissolution Agreement when she was still an active, licensed attorney. This undisputed factual finding takes Ms. Cohen out of the client-abandonment line of cases, and puts her squarely into the distinct line of cases cited

in Section VII.B, *supra*, that allow a suspended attorney to recover fees pursuant to a fee-sharing agreement that existed prior to suspension, and where the subject attorney had performed all work required of her prior to the suspension.[2]

D. Ms. Cohen's Right to Recovery Does Not Turn On The Label Affixed to the Fee-Sharing Agreement at Issue.

The district court also distinguished the case law submitted by Ms. Cohen based on purported differences between the type of fee-sharing arrangements at issue. (15 JA 3043:21-3044:8). Specifically, the district court found that Ms. Cohen's authorities allowed recovery based on completed referral fee or origination agreements between counsel whereas Ms. Cohen seeks to recover based on the parties' Dissolution Agreement. (15 JA 3043:21-3044:8). The difference, as stated by the Padda Defendants when advancing this argument in the court below, is that Ms. Cohen "did not receive her Expectancy Interest as a result of her performing any value-creating acts that were definitively completed prior to

[2] Insofar as the Order states that "NRPC 5.4(a) prohibits suspended lawyers from recovering or sharing in attorney's fees earned on cases that were open and unresolved at the time the lawyers were suspended," (8 JA 1709:17-19), this conclusion of law is true only as far as it goes. While it may be a correct statement of the law when the attorney is suspended or disbarred prior to completing his or her services to the client, Ms. Cohen submits NRPC 5.4(b) does not apply at all where the fee sharing agreement was entered and the attorney's services were completed long before the suspension.

her suspension such as referring any of the cases subject to her Expectancy Interest." (9 JA 1748:21-24). This argument fails for multiple reasons.

First, the attorneys' right to recover in Ms. Cohen's cases did not turn on whether they had performed "value-creating acts" prior to their suspension. Rather, to the extent the attorneys were required to perform any services to the client, those services must have been completed prior to the suspension in order to permit recovery. That requirement was satisfied here.

Second, multiple courts have recognized that attorneys within the same firm—which Ms. Cohen and Mr. Padda were at the time of the dissolution Agreement—can agree to split fees without regard to the value of the services rendered or the responsibility assumed. *See Norton Frickey, P.C. v. James B. Turner, P.C.*, 94 P.3d 1266, 1267-70 (Colo. Ct. App. 2004) (listing several cases); *see also* NRPC 1.5(e) (rule requiring client consent to division of fees applies only to lawyers "who are not in the same firm" and, in any event, contains no proportionality requirement). The suggestion, then, that Ms. Cohen was required to perform "value-creating acts" to obtain her Expectancy Interest is directly contradicted by the Dissolution Agreement, the Order, and the law.

Third, denying Ms. Cohen the opportunity to recover fees based on the label affixed to the parties' fee-sharing arrangement would be the epitome of elevating form over substance, which is something this Court has repeatedly eschewed. *Cf.*

Perry v. Terrible Herbst, Inc., 132 Nev. 767, 770, 383 P.3d 257, 260 (2016) ("The nature of the claim, not its label, determines what statute of limitations applies."); *Bally's Grand Hotel & Casino v. Reeves*, 112 Nev. 1487, 1488, 929 P.2d 936, 937 (1996) ("This court has consistently looked past labels in interpreting NRAP 3A(b)(1)[.]"). Regardless of its title, the Dissolution Agreement established a fee sharing arrangement between Ms. Cohen and the Padda Defendants; the parties entered the agreement prior to Ms. Cohen's suspension; and Ms. Cohen had performed all services required of her the day the agreement was signed—more than two years before her suspension for failure to satisfy CLE requirements. Under these undisputed facts, Ms. Cohen should have been permitted to proceed to trial.

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VIII. CONCLUSION

Based on the foregoing, Ms. Cohen respectfully requests that the Court reverse the district court's Order granting summary judgment in favor of the Padda Defendants and remand this matter for further proceedings on Ms. Cohen's claims against the Padda Defendants.

DATED this 9th day of December, 2020

CAMPBELL & WILLIAMS

By: /s/ ***Philip R. Erwin***
Donald J. Campbell, Esq. (#1216)
Philip R. Erwin, Esq. (#11563)
Molly M. Higgins, Esq. (#15246)
700 South Seventh Street
Las Vegas, Nevada 89101

Liane K. Wakayama, Esq. (#11313)
Dale A. Hayes, Jr., Esq. (#9056)
HAYES WAKAYAMA
4735 S. Durango Drive, Ste. 105
Las Vegas, Nevada, 89147

Attorneys for Appellant

VERIFICATION

I, Philip R. Erwin, declare as follows:

1. I am one of the attorneys for Ruth L. Cohen.

2. I verify that I have read and compared the foregoing APPELLANT'S OPENING BRIEF and that the same is true to my own knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

3. I, as legal counsel, am verifying the Opening Brief because the questions presented are legal issues, which are matters for legal counsel.

4. I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 9th day of December, 2020

/s/ ***Philip R. Erwin***
Philip R. Erwin, Esq. (#11563)

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Opening Brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the Nevada Rules of Appellate Procedure.

I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) as this brief was prepared in a proportionally spaced typeface using Times New Roman 14 pt font. I also certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) as it contains 4,795 words.

DATED this 9th day of December, 2020

CAMPBELL & WILLIAMS

By: /s/ ***Philip R. Erwin***
PHILIP R. ERWIN, ESQ., (#11563)

Counsel for Appellant

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that, in accordance therewith and on this 9th day of December 2020, I caused true and correct copies of the foregoing Appellants' Opening Brief to be delivered to the following counsel and parties:

VIA ELECTRONIC SERVICE:

J. Stephen Peek, Esq.
Ryan A. Semerad, Esq.
Holland & Hart LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

Daniel Polsenberg, Esq.
Joel D. Henriod, Esq.
Lewis Roca Rothgerber Christie
3993 Howard Hughes Pkwy, Ste. 600
Las Vegas, Nevada 89169

Tamara Beatty Peterson, Esq.
Nikki L. Baker, Esq.
Peterson Baker, PLLC
701 South Seventh Street
Las Vegas, Nevada 89101

Attorneys for Respondents

/s/ ***John Y. Chong***
An employee of Campbell & Williams