IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 81018 (Consolidated with Case No. 81172)

RUTH L. COHEN, AN INDIVIDUAL,

Appellant,

v.

PAUL S. PADDA, AN INDIVIDUAL; AND PAUL PADDA LAW, PLLC, A NEVADA PROFESSIONAL LIMITED LIABILITY COMPANY;

Respondents,

On appeal from the Eighth Judicial District Court, Clark County, Nevada (Dept. XI, Hon. Elizabeth Gonzalez); District Court Case No. A-19-792599-B

RESPONDENTS' ANSWERING BRIEF IN CASE NO. 81018

LEWIS ROCA ROTHGERBER CHRISTIE LLP
Daniel F. Polsenberg, Esq. (2376)
Joel D. Henriod, Esq. (8492)
Abraham G. Smith, Esq. (13250)
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, Nevada 89169
Telephone No. (702) 949-8200

DONALD L. FULLER, ATTORNEY AT LAW, LLC
Ryan A. Semerad, Esq. (14615)
242 South Grant Street
Casper, Wyoming 82601
Telephone No. (307) 265-3455

PAUL PADDA LAW, PLLC
Paul S. Padda, Esq. (10417)
4560 South Decatur Blvd., #300
Las Vegas, Nevada 89103
Telephone No. (702) 366-1888

Attorneys for Respondents

RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons or entities as 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.

Respondent Paul S. Padda is an individual;

Respondent Paul Padda Law, PLLC, is a Nevada professional limited liability company that has no parent company or entity and is not owned by any publicly held company or entity.

These parties have been represented by the following attorneys and law firms in the action below:

J. Stephen Peek of Holland & Hart LLP;

Ryan A. Semerad of Donald L. Fuller, Attorney at Law, LLC;

Joshua H. Reisman and Glenn M. Machado of Reisman Sorokac;

Tamara Beatty Peterson and Nikki L. Baker of Peterson Baker, PLLC;

/ / /

/ / /

/ / /

Daniel F. Polsenberg, Joel D. Henriod, and Abraham G. Smith of Lewis Roca Rothgerber Christie LLP.

DATED this 10th day of March 2021.

/s/ Ryan A. Semerad
Ryan A. Semerad, Esq. (14615)
DONALD L. FULLER, ATTORNEY AT LAW, LLC
242 South Grant Street
Casper, Wyoming 82601

Daniel F. Polsenberg, Esq. (2376)
Joel D. Henriod, Esq. (8492)
Abraham G. Smith, Esq. (13250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, Nevada 89169

Paul S. Padda, Esq. (10417)
PAUL PADDA LAW, PLLC
4560 South Decatur Blvd., #300
Las Vegas, Nevada 89103
Telephone No. (702) 366-1888

Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES AND RULES

OTHER SOURCES

I. RESPONDENTS' STATEMENT OF THE ISSUES

Whether the district court erred in concluding that an attorney who was suspended from the practice of law pursuant to Nevada Supreme Court Rule 212—and who knowingly and willfully elected to remain suspended as a deliberate protest of the requirements for reinstatement prescribed by Nevada Supreme Court Rule 212 and 213—is a "nonlawyer" for purposes of Nevada Rule of Professional Conduct 5.4 and accordingly may not share in any legal fees earned during that attorney's suspension from the practice of law, though she may be compensated for the reasonable value of the services she rendered prior to her suspension.

II. STATEMENT OF THE CASE

This Court's own rules and the Nevada Rules of Professional Conduct govern who can practice law in Nevada and the consequences and remedies for Nevada attorneys who become suspended from the practice of law. The plain terms of this Court's rules prescribe that an attorney who is suspended from the practice of law for failing to comply with her continuing legal education requirements is not entitled to "engage in the practice of law" until she is formally reinstated. And the plain terms of the Nevada Rules of Professional Conduct further prescribe that lawyers and law firms may not share legal fees with nonlawyers—*i.e.*, people who are not entitled to practice law. Accordingly, a suspended attorney cannot share in legal fees earned during her suspension beyond the reasonable value of the services she provided on a case or to a client prior to her suspension.

The inexorable logic of these rules dictates that the district court correctly decided that Appellant Ruth L. Cohen ("Ms. Cohen") cannot enforce any obligation to pay her a share of legal fees earned on cases resolved during her suspension from the practice of law as such an obligation became illegal as a result of her suspension. Accordingly, Ms. Cohen's claims, which aim to enforce an illegal agreement to share legal fees from cases resolved during her suspension, must fail as a matter of law.

The relevant governance of the Nevada State Bar and its members, as evidenced by the Nevada Supreme Court Rules ("SCR") and the Nevada Rules of Professional Conduct ("NRPC"), is simple and straightforward. Attorneys admitted to practice law in Nevada must continue their legal education throughout their careers or suffer consequences. *See* SCR 206, 210, 212. The rationale for Nevada's continuing legal education ("CLE") requirements is to ensure that only competent and knowledgeable attorneys serve the people of Nevada as members of the State Bar. *See* SCR 206, 210; *see also* Petition of the State Bar of Nevada (Doc. No. 19-44112) in *In the Matter of Amendment to SCR 214(d)* (ADKT No. 0549) at 1 (filed October 24, 2019). If an attorney fails to comply with her CLE requirements and does not cure any such deficiency by April 1st of the following year, her law license will be suspended indefinitely, and she will not be entitled to "engage in the practice of law in the State of Nevada" until the State of Nevada Board of Continuing Legal Education formally reinstates her license. *See* SCR 212(2), (4). A person suspended under SCR 212(4) cannot "act as an attorney." SCR 115(2)-(3). And a lawyer or law firm ***shall not share legal fees*** with any person not entitled to practice law. *See* NRPC 5.4(a).

Ms. Cohen was suspended from the practice of law pursuant to SCR 212 for failing to comply with her annual CLE requirements on April 6, 2017. For more than two years, Ms. Cohen took no steps to rectify her suspension or pursue

reinstatement. Instead, Ms. Cohen chose to "protest" the reinstatement process and required fees prescribed by SCR 212(3) and SCR 213 over what she thought were unreasonable fees.

Nevertheless, on April 9, 2019, Ms. Cohen filed the current lawsuit against Respondents Paul S. Padda, Esq. ("Mr. Padda") and Paul Padda Law, PLLC ("Padda Law") (collectively, the "Padda Parties") seeking to recover millions of dollars in legal fees supposedly earned on cases that were resolved while Ms. Cohen was suspended from the practice of law. At the time she filed her lawsuit, Ms. Cohen was still suspended from the practice of law. Throughout discovery, Ms. Cohen remained suspended from the practice of law, testifying that failing to comply with Nevada's CLE requirements "meant nothing" and "meant nothing to [Nevada's] CLE Board." *See* II JA 264 (304:9-12), 265 (309:3-20), 267 (316:2-3). Consequently, after the close of discovery, the Padda Parties moved for summary judgment, in part, on the basis that Ms. Cohen was prohibited from recovering legal fees on cases resolved during her suspension pursuant to SCR 212 and NRPC 5.4(a). The day after she was served with the Padda Parties' Motion for Summary Judgment, Ms. Cohen gave up her "protest" and sought reinstatement of her law license.

The district court saw through Ms. Cohen's gamesmanship with her law license and granted the Padda Parties' Motion for Summary Judgment on the grounds that Ms. Cohen cannot, as a matter of law, enforce any obligation to pay her

a share of legal fees earned during her suspension because such an obligation "was rendered illegal and unenforceable the moment Ms. Cohen's law license was suspended." VIII JA 1710. In so doing, the district court properly applied SCR 212 and NRPC 5.4(a) to conclude that Ms. Cohen's suspension precluded her from sharing in the fees earned on cases resolved during her suspension beyond the reasonable value of services she rendered on these cases prior to her suspension.

This appeal is an opportunity for this Court to stand up for its own rules and reject Ms. Cohen's belief that Nevada's CLE requirements are meaningless. This appeal is a chance for this Court to declare that the assurances this Court and the State Bar provide to the people of Nevada that duly admitted attorneys in their state are competent and knowledgeable through continuing their legal education, staying abreast of changing laws, and sharing important updates and practice developments with each other is not a hollow promise, but a solemn vow. In the State of Nevada, attorneys cannot flout the educational obligations of their admission to the bar *while also* reaping the pecuniary benefits of that great privilege.

Whatever hay Ms. Cohen tries to make out of the way other jurisdictions govern their state bars and the practice of law within their borders has no purchase here. For it is the responsibility of *this Court* and *the Nevada State Bar* alone to oversee and govern the conduct of Nevada lawyers in accordance with the unquestionably clear terms of the relevant rules of *this jurisdiction*. This Court

should reject Ms. Cohen's request to substitute the judgment and reasoning of other jurisdictions in place of the established rules here.

Because this Court's rules and NRPC 5.4(a) do not permit a suspended attorney to share in legal fees, the district court correctly granted summary judgment against Ms. Cohen. This Court should affirm.

III. STATEMENT OF RELEVANT FACTS

Much of Ms. Cohen's short "Statement of Facts" in her opening brief is accurate as far as it goes. *See* Cohen's Opening Brief ("COB") at 6-9. However, the statement omits several key facts pertaining to the history of the contract from which Ms. Cohen claims an entitlement to a share of legal fees as well as the history of the proceedings below. Ms. Cohen also elides the complete lack of evidentiary support for her most startling factual claim, raised for the first time on appeal: that Ms. Cohen "transferred responsibility for the cases at issue" prior to her suspension from the practice of law. *See* COB at 2, 8, 10 (no citation to the record for assertion that Ms. Cohen "transferred responsibility" for these cases); *see* NRAP 28(e)(1). The reality is, as conceded throughout the proceedings below, Ms. Cohen never had any "responsibility" for the cases at issue to transfer and certainly did not transfer any such responsibility at any time. *See, e.g.,* IV JA 632-638 (describing the extent of Ms. Cohen's involvement in the relevant cases without mentioning any "transfer

of responsibility"). Accordingly, the Padda Parties chronicle the relevant facts below.

A. Facts Leading to Ms. Cohen's Lawsuit

From 2011 through 2014, Ms. Cohen practiced law in a legal partnership with Mr. Padda: Cohen & Padda LLP. *See* I JA 199 (24:13-20); *see also* II JA 284 (§ I(1)). The partnership agreement required, *inter alia*, that no partner "do any act which would make it impossible to carry on the ordinary business of the partnership," *see* II JA 290, such as becoming suspended from the practice of law or disbarred, *see* NRPC 5.4(b). Sometime in 2014, Ms. Cohen began to consider retirement. *See* I JA 61 (¶ 25).

In the fall of 2014, Ms. Cohen informed Mr. Padda of her intentions to slow down and ultimately retire. *See* II JA 206-207 (66:18-69:1). Around that time, Ms. Cohen requested that Mr. Padda agree to end their partnership because she was "interested in retiring from the burdens of the partnership." *See* II JA 209 (76:22-24); *see also* JA 302 (20:4-6) ("We had ended the partnership on January 1st of 2015 at my request."). Ms. Cohen and Mr. Padda entered into a dissolution agreement on December 23, 2014, which dissolved Cohen & Padda LLP effective December 31, 2014 (the "Dissolution Agreement"). *See* II JA 284-286.

While the Dissolution Agreement initiated the formal process of dissolving Cohen & Padda LLP, Ms. Cohen argued below that the Dissolution Agreement did

not terminate her and Mr. Padda's duties to one another as partners, "especially with respect to unfinished business." *See* IV JA 644-646. Thus, in Ms. Cohen's understanding of the Dissolution Agreement, the Dissolution Agreement did not absolve Ms. Cohen *or* Mr. Padda of the obligation to continue working on unresolved matters; rather, according to Ms. Cohen, both she and Mr. Padda were duty-bound to work together to wind up the partnership, ***especially with regards to*** completing any outstanding, unfinished business such as open and unresolved client matters. *See id.*[1] Certainly, the Dissolution Agreement does not have any term or provision that requires Mr. Padda alone to provide or pay for all of the labor required to resolve Cohen & Padda, LLP's unfinished business, including outstanding client matters. *See* II JA 284-286.

[1]To be sure, the Padda Parties took a contrary position below, which they maintain on appeal. *See* I JA 175-176, 180-182. That is, that Ms. Cohen and Mr. Padda's partnership terminated on December 31, 2014, and they no longer owed each other any further duties after that date. *See id.* Ms. Cohen's position on appeal—that neither she nor Mr. Padda owed each other any ongoing duties as to the unfinished business of Cohen & Padda, LLP, including providing legal services on unresolved matters, after executing the Dissolution Agreement—seems to concede that the Padda Parties' position below was correct and her position was incorrect. *See* COB at 3-4, 8. Meaning that the Dissolution Agreement fully terminated Ms. Cohen and Mr. Padda's duties to each other. *See id.* If this is truly Ms. Cohen's position, then surely her tort claims, which depend entirely on the existence of some duty or set of duties owed by Mr. Padda, must fail as a matter of law for the reasons described by the Padda Parties in their Motion for Summary Judgment. *See* I JA 175-183.

The Dissolution Agreement provided certain compensation terms for Ms. Cohen in exchange for the complete winding up of the partnership, including, according to Ms. Cohen's position below, completing the partnership's unfinished business. *See* II JA 285 (§ 7). In particular, the Dissolution Agreement provided Ms. Cohen with an "Expectancy Interest" in the legal fees earned in certain cases as follows: "With 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 [Cohen & Padda LLP] has a signed retainer agreement dated on or before December 31, 2014." *Id.* (§ 7(b)).

Ms. Cohen's Expectancy Interest covered the legal fees earned in three applicable cases: *Garland v. SPB Partners, LLC et al.*, Case No. A-15-724139-C (the "Garland Case"), *see* II JA 348-352; *Moradi v. Nevada Property 1, LLC et al.*, Case No. A-14-698824-C (the "Moradi Case"), *see* II JA 386-391; and *Cochran v. Nevada Property 1, LLC et al.*, Case No. A-13-687601-C (the "Cochran Case"), *see* III JA 527-538. Ms. Cohen's involvement in these cases was, by her own admission, extremely limited. *See* IV JA 632-638. Ms. Cohen has never claimed or alleged to originate, refer, or assume and later transfer responsibility for these cases to Mr. Padda, Padda Law, or some other lawyer or law firm. *See id.*; *see also* I JA 62-66. (That is, until now. *See* COB at 2, 8, 10.)

With respect to the Garland Case, Ms. Cohen admitted that she had no involvement beyond a brief conversation with Mr. Padda about the case sometime in 2014. *See* VIII JA 1705 (¶ 11(d)). With respect to the Moradi Case, Ms. Cohen admitted she "stopped having an active role" almost immediately after the initial intake meeting with the client in April 2012 and one other client meeting in 2012. *See id.* (¶ 11(a)-(c)). With respect to the Cochran Case, Ms. Cohen testified that she played a more active role in the case, including representing the clients at a mediation where she had detailed knowledge of the clients' claimed damages, but Ms. Cohen stopped actively working on the case before it was resolved. *See* II JA 260-261 (289:8-293:25). With each of these cases, Mr. Padda brought in the clients and executed the relevant client agreements. *See* II JA 348-352 (Garland); II JA 386-391 (Moradi); III JA 527-538 (Cochran). Ms. Cohen had no role in originating these clients for Mr. Padda or Cohen & Padda, LLP nor did she refer or transfer responsibility for these cases to Mr. Padda, Cohen & Padda, LLP or Padda Law. *See* II JA 348-352; II JA 386-391; III JA 527-538; *see also* IV JA 632-638, I JA 60-66.

In January 2015, following the dissolution of Cohen & Padda LLP, Mr. Padda established a new business entity to run his law practice that ultimately became known as Paul Padda Law, PLLC ("Padda Law"). *See* I JA 160 (¶ 15 & n.4). In the wake of the Dissolution Agreement, Ms. Cohen did not retire completely from the

practice of law; in fact, Padda Law hired Ms. Cohen as an independent contractor to provide legal services to clients. *See id.* (¶ 16); I JA 62 (¶ 32); II JA 318 (25:1-7).

On September 12, 2016, Ms. Cohen and Mr. Padda entered a buyout agreement concerning Ms. Cohen's Expectancy Interest (the "Buyout Agreement"). *See* II JA 333-334. Padda Law was not a party to the Buyout Agreement. *See* II JA 333-334.

Under the terms of the Buyout Agreement, Mr. Padda would pay Ms. Cohen $50,000.00 and Ms. Cohen would forfeit her Expectancy Interest. *Id.* The Buyout Agreement provided that "[Ms.] Cohen has *proposed* a complete and final resolution of any and all expectancy interests she may have or could possibly assert in exchange for receipt of $50,000.00 (US)" and that she acknowledged that <u>what</u> she was giving up could exceed $50,000.00. II JA 333 (emphasis in the original). Ms. Cohen freely, voluntarily and with sound mind executed the Agreement, *see* II JA 227, 228 334, which expressly stated that she "determined, *for her own personal reasons*, that it would be advantageous and in her best interests to forfeit those expectancy interests

which carry significant risk and uncertainty in exchange for the certainty of $50,000.00." II JA 333 (emphasis added).[2]

In total, between 2016 and 2017, Mr. Padda paid Ms. Cohen and Ms. Cohen accepted $51,500.00 pursuant to the Buyout Agreement. *See* II JA 336-344; II JA 281 (¶ 10); VIII JA 1705 (¶ 9). Ms. Cohen has not sought rescission of the Buyout Agreement nor has she refunded the payments she received pursuant to the Buyout Agreement to complete such a rescission; rather, Ms. Cohen sought damages for the supposed fraud she suffered under the Buyout Agreement while also seeking to enforce the Dissolution Agreement and recover damages pursuant to that contract. *See* I JA 66-74.[3]

---

[2]According to Ms. Cohen's counsel, Ms. Cohen—a former federal prosecutor with a full federal pension—owed the Internal Revenue Service "around $60,000" in unpaid tax liabilities at the time she signed the Buyout Agreement. IV JA 639. Ms. Cohen, however, testified that her financial situation "was just fine," II JA 223 (137:18-22), and that Mr. Padda did not use her tax situation to induce her into entering the Buyout Agreement, II JA 147 (18-25). Ms. Cohen echoed this point in her summary judgment briefing, stating that her "tax issues had nothing to do with her decision" to enter the Buyout Agreement. *See* IV JA 639 (lines 11-12). According to Ms. Cohen, she simply wanted "20,000 or 30,000" dollars so she could retire. II JA 226 (151:14-25, 152:1-3). The Buyout Agreement provided that Ms. Cohen would receive $50,000.00.

[3]The enforceability of the Buyout Agreement is not at issue in this appeal. The resolution of the limited issues on summary judgment does not preclude the district court from entering judgment against Ms. Cohen on the basis that the Buyout Agreement is enforceable.

On October 6, 2016, after a two-month settlement process, the client in the Garland Case executed a disbursement sheet authorizing the release of settlement funds in his matter. *See* II JA 356-360, 364-366; II JA 280 (¶ 7(a)); VIII JA 1706 (¶ 12). The gross attorneys' fees earned by Padda Law on the Garland Case totaled $51,600.00. *See* II JA 364.

On March 20, 2017, the Moradi Case proceeded to a jury trial, which lasted five (5) weeks. *See* II JA 280 (¶ 7(c)). Ms. Cohen had no "active role" in the Moradi Case by 2012, *see* COB at 17, and did not prepare for or participate in the trial or otherwise contribute to the prosecution of this trial. *See* VIII JA 1705 (¶ 11(a)-(c)).

On April 6, 2017, while the jury trial in the Moradi Case was ongoing, Ms. Cohen was suspended from the practice of law by the Nevada State Bar pursuant to SCR 212 for failing to comply with her CLE requirements in 2016 as mandated by SCR 210. *See* II JA 219 (117:18-22); II JA 264 (303:17-24); III JA 552-553. Ms. Cohen claimed that she contacted the Nevada State Bar and learned that she needed to complete her CLE requirements and pay a $700 fee to have her law license reinstated. *See* II JA 219 (116:8-117:12); III JA 565-566 (6:17-7:6). Ms. Cohen asked Padda Law's firm administrator if she could negotiate the reinstatement fee. *See* III JA 583.

Ms. Cohen testified under oath in the proceedings below that Nevada's CLE Board had actually "waived" her requirement to pay a reinstatement fee because she

was "so close to Dan Bogden and his wife" and that the CLE Board was indifferent to her failure to complete her CLE requirements. *See* II JA 264 (304:9-12), 265 (309:3-20), 267 (316:2-3). Ms. Cohen testified that "[m]issing a couple of CLEs meant nothing, and it meant nothing to the CLE Board." *See* II JA 267 (316:2-3). She further testified that, although she was suspended from the practice of law, she believed she could still provide legal advice to clients, consult with prospective clients, and collect legal fees from clients during her suspension. *See* II JA 265 (309:3-20).

By January 4, 2018, Ms. Cohen had grown indignant over the $700 license fee and declared, under oath, that she did not intend to pay this fee out of protest. *See* III JA 565-566 (6:17-7:6) ("And I don't intend to pay them $700 to get my license back when I'm not going to use it, so . . . . So, it's my protest."; "And when I went to turn [the CLE credits] in, they said, Well, it will cost you $700, and I said, See you. I'm just not going to do it."). In other words, Ms. Cohen "made a knowing and intentional decision to remain suspended from the practice of law." *See* VIII JA 1706 (¶ 16).

On April 27, 2017, during Ms. Cohen's suspension from the practice of law, the jury in the Moradi Case returned a verdict in favor of the plaintiff for $160.5 million in past and future loss of earnings as well as past and future pain and suffering. *See* III JA 492-495. On May 23, 2017, also during Ms. Cohen's

suspension from the practice of law, the plaintiff in the Moradi Case reached a confidential settlement agreement with the defendants where the defendants would make two equal payments, one on May 28, 2017, and one on June 3, 2017. *See* II JA 280 (¶ 7(d)).

In the spring of 2019, during Ms. Cohen's suspension from the practice of law, the plaintiffs in the Cochran Case reached a confidential settlement with the defendants. *See* II JA 280 (¶ 7(e)). The parties in the Cochran Case filed a stipulation and order to dismiss the Cochran Case on or about July 8, 2019. *See* III JA 548-550.

B. Ms. Cohen's Lawsuit

On April 9, 2019, Ms. Cohen filed a Complaint against Mr. Padda and Padda Law alleging ten (10) claims for relief all, in varying ways, seeking to obtain 33.333% of the legal fees earned on three identified cases—the Garland, Moradi, and Cochran Cases—and other unidentified cases. *See* I JA 61-62, 68-76 (¶¶ 26-33, 82-164). Ms. Cohen identified only one source of compensatory damages in the form of a 33.333% share in the "gross attorneys' fees" earned by Mr. Padda and/or Padda Law on certain cases. *See* X JA 1982.

By the close of discovery, Ms. Cohen's claimed damages broke down into three categories: legal fees from cases resolved before she was suspended (*i.e.*, the Garland Case); legal fees from cases resolved during her suspension (*i.e.*, the Moradi

and Cochran Cases); and legal fees from unspecified cases. *See* II JA 382-383. The following table summarizes the record regarding these fees and payments Ms. Cohen received:

Case	**Claimed Fees Owed**	**Date Case was Resolved**	**Payments Received**	**Payments Owed**
Garland	$17,196.67 (II JA 382)	Oct. 6, 2016 (II JA 364-366)	$51,500.00 (II JA 336-344; II JA 281 (¶ 10))	$0
Moradi	$3,062,222.33 (II JA 382-383)	May 23, 2017 (III JA 492-495, II JA 280 (¶ 7(d))	N/A – resolved during suspension	N/A
Cochran	$84,286.31 (II JA 383)	July 8, 2019 (III JA 548-550)	N/A – resolved during suspension	N/A
Other	$150,522.18 (II JA 383)	N/A – Ms. Cohen never identified cases (*see* II JA 383)	N/A – Ms. Cohen never identified cases	N/A

On December 18, 2019, the Padda Parties filed a Motion for Summary Judgment where they argued, *inter alia*, that Ms. Cohen's claims must fail for lack of damages for two reasons. *See* I JA 172-174. *First*, because NRPC 5.4(a) prohibits sharing legal fees with a nonlawyer, Ms. Cohen "is precluded from recovering a share of the legal fees from any cases that were settled or concluded after her [law] license was suspended." *See* I JA 173. *Second*, Ms. Cohen's only claim to legal

fees earned on an identified case that was resolved before her suspension concerned her claimed 33.333% share of the legal fees in the Garland Case, a share that amounted to $17,196.67. *See* I JA 174; II JA 383. Because Mr. Padda had already paid Ms. Cohen $51,500.00, Ms. Cohen had not, as a matter of law, suffered any damages from the Garland Case, regardless of the enforceability of the Buyout Agreement and its release of Ms. Cohen's expectancy interest. *See* I JA 174.

The day after she received the Padda Parties' Motion for Summary Judgment which outlined how her suspension from the practice of law precluded recovery of legal fees as damages, Ms. Cohen gave up her nearly three-year "protest" of this Court's and the Nevada State Bar's law license reinstatement fee prescribed by SCR 212, *see* III JA 565-566, and have her law license reinstated. *See* IV JA 860-863. To this end, Ms. Cohen argued in her Opposition to the Padda Parties' Motion for Summary Judgment that her reinstatement of her law license on December 19, 2019, alone allows her to recover legal fees supposedly earned while she was suspended from the practice of law (*i.e.*, while she was a nonlawyer). *See* IV JA 647-648.

Beyond suggesting that her belated reinstatement resolved the matter, Ms. Cohen made only one argument citing a single legal authority, *Shimrak v. Garcia-Mendoza*, 112 Nev. 246, 912 P.2d 822 (1996), in her Opposition to the Padda Parties' Motion for Summary Judgment regarding the legal consequences of her suspension from the practice of law. *See id.* at 647-648. Citing *Shimrak*, Ms. Cohen contended

that the district court should look past her suspension and its consequences to allow Ms. Cohen to enforce the Dissolution Agreement because any other conclusion would endanger the public by allowing "lawyers to enter into such contracts [with nonlawyers] and then get out of them by invoking [the fee-splitting rule]." *See id.* (quoting *Shimrak*, 112 Nev. at 252, 912 P.2d at 826). Ms. Cohen did not address or reconcile how the Dissolution Agreement was rendered illegal and unenforceable through her own failure to comply with the obligations of her law license. *See id.* at 647-648.

Ms. Cohen made no other argument regarding her ability to recover legal fees in her Opposition to the Motion for Summary Judgment. *See generally* IV JA 628-659. Further, Ms. Cohen, through counsel, cited no other case or legal authority to support her position on her ability to recover legal fees earned while she was a nonlawyer during the hearing on the Padda Parties' Motion for Summary Judgment. *See* VIII JA 1692-1695.

As to the unspecified cases outside of Moradi, Cochran, and Garland, Ms. Cohen did not transcend the pleadings with admissible evidence to even identify these cases nor did she show how she was entitled to fees on these unspecified cases. *See* IV JA 628-659; *see also Cuzze v. Univ. & Cmty. College Sys.*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007) ("[I]n order to defeat summary judgment, the

nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact.").

In their reply, the Padda Parties itemized the many flaws in Ms. Cohen's arguments. *See* VIII JA 1658-68. Primarily, the Padda Parties pointed out that none of Ms. Cohen's arguments undermine or transcend the basic terms of NRPC 5.4(a). *See id.* at 1662-66. They also rebutted Ms. Cohen's assertion that her belated reinstatement resolved the illegality of the Dissolution Agreement by pointing out that "Ms. Cohen does not, because she cannot, cite to any rule, document or case that establishes that the reinstatement of her law license on December 19, 2019, somehow retroactively cures her failure to be a licensed attorney at the time Mr. Moradi's case or the Cochrans' case settled, or at any other time between April 6, 2017, and December 19, 2019." *See id.* at 1660. The Padda Parties even pointed at that the "Reinstatement Notice" Ms. Cohen provided in her opposition "simply states that Ms. Cohen '***may be transferred*** to the active practice of law.' It does not state that the reinstatement is retroactive . . . ." *Id.* at 1661. Further, the Padda Parties cited caselaw broadly rejecting the retroactivity of reinstatement of a law license. *See id.* (citing *Robnett v. Kirklin Law Firm*, 178 S.W.3d 45, 51 (Tex. App. 2005); *The Fla. Bar v. Bratton*, 413 So.2d 754, 755 (Fla. 1982)).

On February 18, 2020, the district court granted the Padda Parties' Motion for Summary Judgment and entered judgment in the Padda Parties' favor. *See* VIII JA

1711-1712. In its decision, the district court reasoned that a "lawyer who is suspended from the practice of law pursuant to SCR 212 for failing to comply with the CLE requirements required by SCR 210 is a 'nonlawyer' for purposes of NRPC 5.4(a)." *Id.* at 1709. Accordingly, "NRPC 5.4(a) prohibits suspended lawyers from recovering or sharing in attorneys' fees earned on cases that were open and unresolved at the time the lawyers were suspended." *Id.*

The district court left open the possibility of a suspended lawyer recovering the reasonable value of any work performed prior to her suspension as well as, perhaps, avoiding NRPC 5.4(a)'s fee-sharing bar altogether if her noncompliance was "inadvertent, accidental, or the product of the lawyer's reasonable mistake or misunderstanding." *Id.* "However, a lawyer who becomes suspended under this rule and knowingly or intentionally refuses to remedy his or her deficiencies or deliberately protests the fees associated with remedying his or her deficiencies cannot avoid the consequences of his or her suspension." *Id.* at 1709-1710. The district court determined that Ms. Cohen could not avoid the consequences of her knowing and intentional refusal to reinstate her law license and so she could not recover any legal fees earned on cases that were open and unresolved at the time of her suspension, including the Moradi and Cochran Cases. *Id.* at 1710. The district court also determined that Ms. Cohen did not suffer any damages related to her 33.333% share of the gross attorneys' fees earned in the Garland Case, which was

resolved before Ms. Cohen had been suspended, because the Padda Parties had paid Ms. Cohen $51,500.00 pursuant to the Buyout Agreement and Ms. Cohen's 33.333% share amounted to only $17,196.67, a sum less than the payments she had received. *Id.* at 1711.[4]

C. Relevant Post-Judgment Chronology

After the district court granted summary judgment in favor of the Padda Parties, Ms. Cohen filed a motion for reconsideration. *See* VIII JA 1727-1737. In that motion, Ms. Cohen argued that the district court had erred in granting summary judgment because Ms. Cohen failed to present certain non-binding legal authorities to the district court in opposition to the Padda Parties' Motion for Summary Judgment. *See id.* at 1728. "The district court summarily denied Ms. Cohen's motion for reconsideration," COB at 9, because "[a] party's failure to cite or present certain nonbinding authorities from other jurisdictions to this Court in the original hearing on a motion does not render the Court's decision on that motion 'clearly erroneous.'" *See* XV JA 3042. Alternatively, the district court remarked that even

[4]Ms. Cohen does not make any arguments regarding the district court's conclusion regarding the fees from the Garland Case. *See generally* COB. Accordingly, Ms. Cohen has waived any such argument and this Court may affirm that part of the district court's order without more. *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that issues not raised in an opening brief are deemed waived).

if it were to consider the new authorities Ms. Cohen cited, those authorities were inapposite to the factual situation before the court. *See id.* at 3042-3044.

This appeal followed.

IV. SUMMARY OF THE ARGUMENT

Ms. Cohen failed to comply with the requirements of her law license and, as a result, became suspended from the practice of law and subject to the consequences of suspension from April 6, 2017, until December 19, 2019. This Court's rules instruct that an attorney suspended for failing to comply with her CLE obligations is not entitled to engage in the practice of law until she is formally reinstated. *See* SCR 212(4). Accordingly, during Ms. Cohen's suspension, she was prohibited by the rules of this Court from participating in any act constituting the practicing of law, including advising or representing clients on their specific legal matters and, of course, sharing in legal fees earned on matters resolved during her suspension. *See* NRPC 5.4(a). For this reason, the district court correctly decided that Ms. Cohen cannot enforce an obligation to have Mr. Padda or Padda Law pay her a share of legal fees earned on client matters resolved while she was suspended from the practice of law and this Court should affirm.

Ms. Cohen's arguments in support of reversal fail for procedural and substantive reasons. First, Ms. Cohen raised virtually all of her legal arguments in this appeal for the first time in her motion for reconsideration, which the district

court "summarily denied." *See* COB 9. Thus, Ms. Cohen waived her arguments, and they should not be considered here. Second, even if this Court chooses to consider Ms. Cohen's arguments on appeal, Ms. Cohen has provided no reason for this Court to look beyond the plain text of the relevant rules and only misapplies non-binding authorities in factually distinguishable scenarios.

V. ARGUMENT

A. Standard of Review

This Court reviews a district court's grant of summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment was appropriate if the pleadings and other evidence on file, viewed in a light most favorable to the non-moving party, demonstrated that the moving party was entitled to judgment as a matter of law and that no genuine issue of material fact remained in dispute. *Id.*

This Court reviews questions of law de novo. *Saylor v. Arcotta*, 126 Nev. 92, 95, 225 P.3d 1276, 1278 (2010). This Court also reviews de novo a district court's legal conclusions regarding court rules. *See Casey v. Wells Fargo Bank, N.A.*, 128 Nev. 713, 715, 290 P.3d 265, 267 (2012).

The denial of a motion for reconsideration is not independently appealable. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010). The denial of a motion for reconsideration is only reviewable for an

abuse of discretion on an appeal from an underlying judgment where the district court considered the motion for reconsideration on the merits. *See id.*

B. Ms. Cohen's suspension from the practice of law prohibited her from engaging in the practice of law, which includes sharing in legal fees earned on matters resolved during her suspension.

Ms. Cohen's knowing and voluntary suspension from the practice of law and her deliberate protest of this Court's requirements for reinstatement prohibited her from engaging the practice of law during her suspension. In Nevada, only lawyers—persons permitted to engage in the practice of law—may share in legal fees. Accordingly, Ms. Cohen's suspension rendered her a "nonlawyer" and prohibited any lawyer from sharing with Ms. Cohen and Ms. Cohen from sharing in any legal fees earned during her suspension. Thus, because Ms. Cohen identified only legal fees as her damages and because Ms. Cohen cannot recover or share in legal fees earned on cases resolved during her suspension, the Padda Parties were and are entitled to judgment as a matter of law.

"[W]hether a case be one in contract or in tort, the injured party bears the burden of proving that he or she has been damaged." *Chicago Title Agency v. Schwartz*, 109 Nev. 415, 418, 851 P.2d 419, 421 (1993); *Cent. Bit Supply, Inc. v. Waldrop Drilling & Pump, Inc.*, 102 Nev. 139, 142, 717 P.2d 35, 37 (1986) ("[T]he burden of establishing damages lies on the injured party."). For a party to recover contract damages, the party must prove the relevant contractual provision is

enforceable. *See May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). A contractual provision that relies upon or requires an illegal transaction is not enforceable. *See Vincent v. Santa Cruz*, 98 Nev. 338, 341, 647 P.2d 379, 381 (1982) (citing *Martinez v. Johnson*, 61 Nev. 125, 119 P.2d 880 (1941)).

Ms. Cohen's damages in this case stem entirely from the Expectancy Interest provision in the Dissolution Agreement. *See* COB at 6 ("Ms. Cohen sought to recover $3,315,227.49 in damages, which represented the amount of her Expectancy Interest in the Pending Cases." (citing VIII JA 1707:22-23)). Ms. Cohen admitted that she was not seeking "quantum meruit damages" for services she rendered on any cases. *See* VIII JA 1708. Thus, Ms. Cohen's claims turn entirely on the legality and enforceability of her Expectancy Interest—that is, Ms. Cohen's ability to share in legal fees earned on matters resolved while she was suspended from the practice of law.

Rule 5.4(a) of the Nevada Rules of Professional Conduct expressly states "[a] lawyer or law firm shall not share legal fees with a nonlawyer . . . ." Accordingly, NRPC 5.4(a) makes unenforceable, except in certain limited circumstances (none of

which are present here),[5] contracts that require a lawyer or law firm to share legal fees with a nonlawyer.

This Court's rules provide that all active attorneys in Nevada must satisfy certain minimum continuing legal education requirements on an annual basis, including the completion of accredited educational activities and paying an annual fee. *See* SCR 210(1)-(5). The purpose of this Court's continuing legal education requirements for nonexempt attorneys is to ensure the state bar and the public are served by only knowledgeable and competent attorneys. *See* SCR 206; NRPC 1.1 ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation

---

[5]These exceptions are:

"(1) An agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) A lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement;

(4) A lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter; and

(5) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation that fairly represents the services rendered by the deceased lawyer."

See NRPC 5.4(a)(1)-(5).

reasonably necessary for the representation."). In fact, this Court recently amended SCR 214(1)(d) to remove the exemption from the CLE requirements for active members of the State Bar of Nevada who have attained the age of 70, in part, because the State Bar of Nevada argued that "[c]ontinuing legal education is a mechanism for maintaining the knowledge necessary to practice to the best of one's ability" and "[t]he practice of law is continually evolving and a lawyer's responsibility to maintain competency through training continues past the age of 70." *See* Petition of the State Bar of Nevada (Doc. No. 19-44112) in *In the Matter of Amendment to SCR 214(d)* (ADKT No. 0549) at 4-5. More recently, this Court rejected a proposal to offer new law school graduates a "diploma privilege" in lieu of passing the bar exam due to health risks posed by the COVID-19 pandemic because this alternative gateway to the practice of law "fails to adequately protect the public against practitioners who have not established minimal competence." *See Order Approving Modified July 2020 Nevada Bar Examination*, ADKT 0558 (filed May 20, 2020) at 2.

If an attorney fails to complete her required educational credit hours under SCR 210(2) by December 31 of a given year and does not cure this deficiency on or before April 1, the attorney "will be administratively CLE suspended." *See* SCR 212(2). "In the event that the attorney is administratively CLE suspended for noncompliance with these rules, the attorney is not entitled to engage in the practice

of law in the State of Nevada until such time as the attorney is reinstated under Rule 213." *See* SCR 212(4).

An administratively CLE suspended attorney must comply with SCR 115. *See* SCR 212(4); SCR 115(1). SCR 115 requires the suspended attorney to notify all their clients as well as any attorneys for adverse parties and any court or other presiding body in any ongoing legal proceeding of her suspension from the practice of law and her "consequent inability to act as an attorney." *See* SCR 115(2)-(3).

In Nevada, a lawyer is, at a minimum, a person with the ability to act as an attorney and engage in the practice of law in this state as formally recognized by the possession of an active law license and current membership in the state bar. *See In re Lerner*, 124 Nev. 1232, 1237–42, 197 P.3d 1067, 1071–75 (2008); *see also* SCR 77 ("No person may practice law as an officer of the courts in this state who is not an active member of the state bar . . . ."). An administratively CLE suspended attorney does not have an active law license nor active membership in the state bar and, accordingly, cannot practice law or act as an attorney. *See* SCR 212(4); SCR 115(2)-(3). Thus, the plain language of SCR 212 and SCR 115 instructs that a person under an administrative CLE suspension is a nonlawyer. Accordingly, pursuant to NRPC 5.4(a), an administratively CLE suspended attorney cannot share in legal fees earned on matters resolved during her suspension.

Many other jurisdictions have acknowledged that the interplay between their suspension rules and their equivalent rules of professional conduct mandates that a suspended attorney is a nonlawyer with whom legal fees may not be shared. *See, e.g., Lessoff v. Berger*, 2 A.D.3d 127, 767 N.Y.S.2d 605, (Mem)-606 (2003) ("The law does not permit a suspended attorney to share in fees earned during the period of his suspension."); *In re Phillips*, 226 Ariz. 112, 121, 244 P.3d 549, 558 (2010) (suspended lawyer is equivalent of nonlawyer for purposes of RPC 5.4(a)); *Disciplinary Counsel v. McCord*, 121 Ohio St 3d 497, 905 N.E.2d 1182, 1189 (2009) (ethical violation for suspended lawyer to receive attorney's fee); *Office of Disciplinary Counsel v. Jackson*, 536 Pa. 26, 637 A.2d 615, 620 (1994) (noting a suspended attorney is a "'non-lawyer' within the meaning of the rules"); *Idalski v. Crouse Cartage Co.*, 229 F. Supp. 2d 730, 740 (E.D. Mich. 2002) (under the Michigan Rules of Professional Conduct, "[a]n attorney whose license is revoked or suspended . . . may not share in any legal fees for legal services performed by another attorney during the period of disqualification from the practice of law.").[6] Even the

[6]*See also Harris Tr. & Sav. Bank v. Chi. Coll. of Osteopathic Med.,* 452 N.E.2d 701, 704–05 (Ill. Ct. App. 1983); *Stein v. Shaw*, 79 A.2d 310, 311–12 (N.J. 1951); *Williams v. Victim Justice, P.C.*, 198 So.3d 822, 824–25 (Fla. Ct. App. 2016); *Faro v. Romani*, 641 So.2d 69, 71 (Fla. 1994); *Widmer v. Widmer*, 705 S.W.2d 878, 879 (Ark. 1986) (holding that since lawyer "was in fact suspended from practice for a period in 1984 and 1985, he is not entitled to collect for his services during that time.").

jurisdictions that Ms. Cohen asks this Court to follow have established as the general rule that an attorney who is suspended prior to the resolution of a particular matter is not entitled to share in the fees earned on that matter. *See Royden v. Ardoin*, 331 S.W.2d 206, 209 (Tex. 1960); *Cruse v. O'Quinn*, 273 S.W.3d 766, 773 (Tex. Ct. App. 2008) (following *Royden*).

To be sure, most of these jurisdictions recognize that a suspended attorney is entitled to recover in *quantum meruit* the reasonable value of the services she rendered on a matter *before* her suspension. *See Lessoff*, 2 A.D.3d at 127, 767 N.Y.S.2d at 605; *cf. Lagrone v. Aramark Corp.*, No.2:10-cv-472-JRG, 2012 U.S. Dist. LEXIS 24703, at *2-*4 (E.D. Tex. Feb. 24, 2012) (noting that, under Texas law, where attorney is disbarred or suspended before claims were resolved, he has effectively voluntarily abandoned the client and cannot recover any contingency fee or quantum meruit for services rendered (citing *Royden*, 331 S.W.2d at 206)). "*Quantum meruit* is an equitable doctrine generally applied to prevent unjust enrichment. The term literally means 'as much as he has deserved.'" *Idalski*, 229 F. Supp. 2d at 740 (quoting *Reisenfeld & Co. v. Network Group, Inc.*, 277 F.3d 856, 862 n.1 (6th Cir. 2002)).

Applying these legal principles to the facts here, Ms. Cohen became administratively CLE suspended on April 6, 2017, *see* COB at 5; II JA 219 (117:18-22); II JA 264 (303:17-24); III JA 552-553, and remained suspended until December

19, 2019, *see* COB at 5; IV JA 860-863. Consequently, under SCR 212(4) and SCR 115, Ms. Cohen was barred from practicing law and acting as an attorney during this period of time. During her suspension, the Padda Parties resolved the Moradi Case and the Cochran Case and earned legal fees on those cases. *See* III JA 492-495, II JA 280 (¶ 7(d)); III JA 548-550. Therefore, pursuant to NRPC 5.4(a), Ms. Cohen could not and cannot share in the legal fees earned on any cases resolved from April 6, 2017, until December 19, 2019, including the Moradi Case and the Cochran Case. Accordingly, to the extent the Dissolution Agreement requires the Padda Parties to share a portion of the "gross attorney's fees" earned on any case resolved between April 6, 2017, and December 19, 2019, including the Moradi Case or the Cochran Case, with Ms. Cohen, that agreement is unlawful and unenforceable. *See Vincent*, 98 Nev. at 341, 647 P.2d at 381.

While Ms. Cohen would still be entitled to recover the reasonable value of the services she rendered *prior to* her suspension on the Moradi Case, the Cochran Case, or any other matter resolved during her suspension, *see Lessoff*, 2 A.D.3d at 127, 767 N.Y.S.2d at 605, Ms. Cohen conceded below that she was not seeking a recovery in *quantum meruit*, VIII JA 1708, and that she provided little to no services on these matters, *id.* at 1707-1708. Thus, Ms. Cohen has no actionable claim for the recovery of any legal fees on the Moradi, Cochran, or any other case resolved during her suspension. *See* NRPC 5.4(a); SCR 212(4).

Ms. Cohen complains on appeal that the district court's plain application of NRPC 5.4(a) due to her "temporary suspension" was unduly punitive and unjust. *See* COB at 15. This Court should be mindful that this result was a product of Ms. Cohen's own making. It was Ms. Cohen alone who neglected her CLE obligations and who chose to do nothing to remedy these deficiencies. It was Ms. Cohen's own actions and failures to act that caused her to be suspended and remain suspended for nearly three years. And it was Ms. Cohen who thumbed her nose at this Court's rules and her duty to comply with this Court's CLE requirements. Ms. Cohen may believe that "[m]issing a couple of CLEs meant nothing," *see* II JA 267 (316:2-3), and that "protesting" the reinstatement fees codified by this Court's rules is a reasonable thing to do, *see* III JA 565-566 (6:17-7:6), but this Court's rules and the Nevada Rules of Professional Conduct plainly demand that these actions have real consequences. *See* SCR 212(4); SCR 115(2)-(3); NRPC 5.4(a). The only injustice would be to reward Ms. Cohen's obstinate refusal to follow this Court's rules with a personalized exemption from those very same rules.

Because Ms. Cohen is legally and ethically prohibited from sharing in any legal fees earned during her suspension from the practice of law, the Dissolution Agreement is not enforceable insofar as it requires the Padda Parties to share legal fees earned between April 6, 2017, and December 19, 2019, with Ms. Cohen. And Ms. Cohen has no other damages under the Dissolution Agreement. Accordingly,

because Ms. Cohen has no enforceable claim and has suffered no damages under the Dissolution Agreement, the district court correctly granted summary judgment in favor of the Padda Parties. Thus, this Court should affirm.

C. This Court should not consider the arguments Ms. Cohen raised for the first time in her motion for reconsideration because the district court did not elect to entertain them on the merits.

Because Ms. Cohen only raised the legal arguments she makes on appeal for the first time in her post-judgment motion for reconsideration and because the district court "summarily denied" that motion, *see* COB at 9, this Court should not consider Ms. Cohen's arguments on the merits. Accordingly, this Court should affirm the district court's order granting the Padda Parties' Motion for Summary Judgment.

This Court lacks jurisdiction over an order denying a motion for reconsideration. *See Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054 (2007) ("[A]n order denying reconsideration is not appealable."). This Court may only ever consider arguments raised for the first time in a motion for reconsideration where the order and the motion are properly part of the record on appeal from a final judgment *and* where the district court in its discretion elected to entertain the motion on its merits. *See id.*

Here, the district court summarily denied Ms. Cohen's motion for reconsideration because Ms. Cohen only presented "[p]oints or contentions not

raised in the original hearing" as grounds for rehearing and these unraised points did not render the district court's order granting summary judgment clearly erroneous. *See* XV JA 3042 (quoting *Achrem v. Expressway Plaza Ltd.*, 112 Nev. 737, 742, 917 P.3d 447, 450 (1996)); *see also Masonry & Tile v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). While the district court dismissed Ms. Cohen's new arguments as inapplicable, the district court's decision did not depend upon this commentary such that it can be said the district court "elected to entertain the motion [as a whole] on the merits." *See Arnold*, 123 Nev. at 417, 168 P.3d at 1054.

On appeal, Ms. Cohen has completely abandoned the arguments she made at the summary judgment stage, *see* IV JA 647-648, and only repeats the arguments she raised for the first time in her motion for reconsideration. *Compare* VIII JA 1727-1737, *with* COB 9-20. Because Ms. Cohen's only arguments on appeal were never presented to the district court at the summary judgment stage and because the district court did not elect to entertain these arguments on their merits at the motion for reconsideration stage, this Court should not weigh the merits of these points for the first time on appeal and may affirm the district court's order on this basis alone. *See Arnold*, 123 Nev. at 417, 168 P.3d at 1054; *Old Aztec Mine v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

D. Ms. Cohen's reliance on out-of-state authorities is misplaced as those authorities conflict with the plain language of SCR 212(4), SCR 115(2)-(3), and NRPC 5.4(a), and are inapposite to the facts before this Court.

Even if this Court decides to consider Ms. Cohen's appellate arguments on the merits, Ms. Cohen's arguments rely entirely only non-binding authorities that deviate from the plain language of this Court's rules and the Nevada Rules of Professional Conduct and have no application to the facts here. Thus, if this Court elects to consider Ms. Cohen's arguments, this Court should still affirm the judgment of the district court.

First and foremost, Ms. Cohen's position demands that this Court look beyond the plain terms of SCR 212(4), SCR 115(2)-(3), and NRPC 5.4(a) in order to adopt a doctrine that permits some suspended or disbarred attorneys to recover legal fees earned on matters resolved during the attorney's suspension or disbarment. *See* COB at 12-15. But this Court "only looks beyond the plain language of a court rule if it is ambiguous or silent on the issue in question." *Solid v. Eighth Judicial Dist. Court*, 133 Nev. 118, 121, 393 P.3d 666, 671 (2017) (citing *In re Estate of Black*, 132 Nev. 73, 76, 367 P.3d 416, 418 (2016)). This "plain language" test applies equally to the rules of professional conduct. *See DiMartino v. Eighth Judicial Dist. Court*, 119 Nev. 119, 121, 66 P.3d 945, 946 (2003).

Ms. Cohen does not even engage with the terms of SCR 212(4), SCR 115(2)-(3), or NRPC 5.4(a), let alone argue that these rules are in any way ambiguous or

silent on the issue in question. *See* COB at v (does not include SCR 212 or SCR 115), 9-20. For this reason alone, this Court's analysis need go no further. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (appellate court may decline to consider any issues that are not supported by relevant authorities or cogent arguments).

Ms. Cohen even concedes that the district court's conclusion of law "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" is "true" and "may be a correct statement of law." *See* COB at 18 n.2. Nevertheless, despite a complete lack of textual or other support, Ms. Cohen "submits" that "NRPC 5.4(b) [sic] does not apply at all where the fee sharing agreement was entered and the attorney's services were completed long before the suspension." *See id.* But, because Ms. Cohen has failed to identify any textual defect in the applicable rules, this Court cannot look beyond the plain language of those rules and must apply those rules as written without Ms. Cohen's requested appendage. *See Solid*, 133 Nev. at 121, 393 P.3d at 671. And it is too late for Ms. Cohen to raise any textual defects with SCR 212(4), SCR 115(2)-(3), or NRPC 5.4(a) to permit this Court to consider her extra-textual interpretation of these rules. *See Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3; *see also Khoury v. Seastrand*, 132

Nev. 520, 530 n.2, 377 P.3d 81, 88 n.2 (2016) (concluding that an issue raised for the first time in a reply brief was waived).

Second, even if Ms. Cohen had provided this Court with sufficient textual defects for each of the relevant rules such that this Court had to look beyond the text to address the issue before it, Ms. Cohen only furnishes this Court with out-of-state caselaw that has no application to the facts here. This Court should not contort itself into adopting the self-serving reading Ms. Cohen gives these cases.

In her Opening Brief, Ms. Cohen asks this Court to adopt an exception to the legal doctrine established in several jurisdictions that consider an attorney's disbarment or suspension to constitute the attorney's "voluntary abandonment" of her client (hereinafter, the "Texas Rule"). *See* COB at 12-15. Under the Texas Rule, in general,

> [w]here the attorney, prior to the completion of his contingent fee contract is disbarred or suspended, he is not entitled to collect either on the contract or quantum meruit for the services, if any, that have been rendered. *His disbarment or suspension is considered tantamount to and to have the same effect as a voluntary abandonment*, for the attorney by knowingly and willfully practicing such a course of conduct that would lead to the termination of his right to practice renders it impossible to complete the work that he engaged to perform.

Lee v. Cherry, 812 S.W.2d 361, 363 (Tex. Ct. App. 1991) (quoting *Royden*, 331 S.W.2d at 209). There is, however, an exception to this general rule that provides: "an attorney may share in contingency fees with a suspended or disbarred attorney, when (1) the fee-sharing agreement was made before suspension/disbarment, and

(2) the suspended/disbarred attorney fully performed the work required of him or her [under the agreement] before the suspension/disbarment occurred." *See Cruse*, 273 S.W.3d at 772 (citing *Lee*, 812 S.W.2d at 363–64).

So, under the Texas Rule, Ms. Cohen would generally not be entitled to any share of fees—in *quantum meruit* or otherwise—because her suspension from the practice of law would constitute her voluntary abandonment of the clients. *See Royden*, 331 S.W.2d at 209; *Cruse*, 273 S.W.3d at 773. Beyond her suspension, Ms. Cohen also voluntarily took several other actions to abandon the relevant clients here—Mr. Moradi and the Cochrans. First, Ms. Cohen stopped working on Mr. Moradi's matter in 2012, COB at 17, and did not work on the Cochrans' matter after she sold her Expectancy Interest in September 2016, *see* I JA 169. Second, Ms. Cohen knowingly and voluntarily sold her Expectancy Interest—her only remaining tie to these clients and their matters—in September 2016. *See* II JA 227–28, 333–34. Third, Ms. Cohen took none of the steps required to remedy her CLE deficiency and formally seek reinstatement of her law license while these clients' matters were active and ongoing.

In her Opening Brief, Ms. Cohen posits that "there was . . . no abandonment in the case at bar." COB at 17. To support her position, Ms. Cohen argues that she only had a limited role in the relevant matters, and she had completed her services to those clients well before she entered the Dissolution Agreement in December

2014. *See id.* However, under the relevant caselaw, an attorney abandons the client if she is suspended before the matter is resolved and remains suspended through resolution. *See Royden*, 331 S.W.2d at 209. Ms. Cohen's signature on the Dissolution Agreement, a contract designed to wind up her partnership with Mr. Padda, did not absolve her of any duties she owed to her clients with active, pending matters. *See Crockett & Brown, P.A. v. Courson*, 849 S.W.2d 938, 944 (Ark. 1993) (Dudley, J., concurring in part and dissenting in part) ("[A] client employs the attorney to perform the entire contract, and when the entire contract is not performed, the attorney forfeits the stipulated compensation.").

And no court has permitted an attorney to recover her full share of a contingency fee where the attorney has abandoned the client due to no fault of the client before the client's matter was resolved. *See Augustun v. Linea Aerea Nacional-Chile S.A.*, 76 F.3d 658, 662 (5th Cir. 1996) ("[w]hen an attorney, 'without just cause, abandons his client before the proceeding for which he was retained has been conducted to its termination, or if such attorney commits a material breach of his contract of employment, he thereby forfeits all right to compensation.'" (quoting *Royden*, 331 S.W.2d at 209)); *see also Beaumont v. J.H. Hamlen & Son*, 81 S.W.2d 24, 25 (Ark. 1935); *Heller v. Emmanuel (In re Emanuel)*, 450 B.R. 1, 6–7 (S.D.N.Y. 2011) (a disbarred attorney may recover on a *quantum meruit* basis on the "qualitative value of the services rendered"); *Diaz v. Attorney General of the State*

of Texas, 827 S.W.2d 19, 22–23 (Tex. Ct. App. 1992) (an attorney who abandons a contract to represent a client prior to completion of the matter forfeits his right to compensation); *Campbell Harrison & Dagley, LLP v. Lisa Blue/Baron and Blue*, 843 F. Supp. 2d 673, 686 (N.D. Tex. 2011) (attorney who abandons his client forfeits contingency fee).

Just as Ms. Cohen cannot recover any fees under the general Texas Rule, she cannot recover under the exception to the Texas Rule recognized in *Lee* because, quite simply, the fee-sharing agreements that fall under the *Lee* exception are distinguishable from the Dissolution Agreement Ms. Cohen seeks to enforce. The *Lee* exception to the Texas Rule requires a two-step inquiry: (1) whether the fee-sharing agreement was in place before the attorney was suspended or disbarred; and (2) whether the suspended or disbarred attorney completed all the work required by the fee-sharing agreement before she was suspended or disbarred. In the cases Ms. Cohen cites, the second factor—whether the "work required" under the fee-sharing agreement was completed before the suspension or disbarment—was easily resolved because the contracts at issue in those cases expressly required discrete acts to be completed in exchange for a share of fees.

In *Lee*, the fee-sharing agreement was a referral contract and all the suspended attorney needed to do to earn his share of the fee was refer the cases and transfer his "power of attorney" over those cases. *See Lee*, 812 S.W.2d at 364 ("Appellant

contracted to receive a one-third of the contingent fee earned by Cherry in exchange for the consideration of appellant's power of attorney.").

In *West v. Jayne*, the fee-sharing agreement instructed that the suspended attorney was entitled to his share of the fees after "securing the client" and turning "the client's work over to another member of the association." *See* 484 N.W.2d 186, 190 (Iowa 1992).

In *Sympson v. Rogers*, the fee-sharing agreement expressly stated that, in light of an attorney's imminent surrender of his law license, the attorney would refer five (5) pending cases to two lawyers who would complete the cases and the two lawyers would pay the attorney 50% of the legal fees recovered as compensation "already earned" on these cases for work rendered prior to the surrender of his license. 406 S.W.2d 26, 27–32 (Mo. 1966).

The fee-sharing agreement in *A.W. Wright & Assocs., P.C. v. Glover, Anderson, Chandler & Uzick, LLP* required that the disbarred attorney refer and transfer responsibility for cases to another law firm in exchange for a share of the legal fees. 993 S.W.2d 466, 467–468 (Tex. Ct. App. 1999). Notably, because the contract at issue included a sentence that the disbarred attorney may handle "day to day" matters on referred cases, the court could not definitively conclude that the disbarred attorney had, in fact, completed the "work required" under the contract before his disbarment. *See id.* at 470–71.

Eichen, Levinson & Crutchlow, LLP v. Weiner, is inapplicable here because it turned on the interpretation of Rule 1:20 of the Rules Governing the Courts of the State of New Jersey, which has no Nevada analogue. *See* 938 A.2d 947, 948–51 (N.J. App. Div. 2008); *see also* IX JA 1751-52. Nevertheless, the fee-sharing agreement in *Eichen*, once more, only required the suspended attorney to have referred and transferred responsibility for certain cases to another law firm to earn his share of legal fees. *See* 938 A.2d at 948–49.

Whether the Texas Rule and the *Lee* exception are wise or practical, they plainly contradict the plain terms of SCR 212(4) and NRPC 5.4(a). And Ms. Cohen has not furnished this Court with any reason to qualify or complicate its own clear rules here beyond citing a set of cases involving simple referral fee or origination fee split contracts wholly distinguishable from the complexities of the partnership dissolution agreement before the Court. *See* COB at 9-20; *see also* IV JA 645 ("Until the dissolved partnership is wound up, the partners continue to owe fiduciary duties to each other, especially with respect to unfinished business.").

Ms. Cohen's belief that she can shoehorn her situation into the Texas Rule to recover legal fees earned during her suspension is betrayed by the record on appeal. Ms. Cohen's claim that she "transferred responsibility for the cases at issue" prior to her suspension and Mr. Padda assumed responsibility for these cases after the Dissolution Agreement was signed, *see* COB at 9-10, 15, is a fabrication devoid of

support in the record on appeal. Ms. Cohen cites no part of the record to support her claim that she transferred responsibility for these cases to Mr. Padda because nothing in the record supports this unfounded claim.[7] *See* NRAP 28(e)(1) ("[E]very assertion in briefs regarding matters in the record shall be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found."); *see also Cuzze*, 123 Nev. at 603, 172 P.3d at 134–35 ("When an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision."). The Dissolution Agreement did not prescribe any "transfer" of responsibility from Ms. Cohen to Mr. Padda or his new law firm. *See* II JA 284-286. No other statement, written or oral, presented below as evidence shows any such "transfer" ever took place. In fact, Ms. Cohen specifically alleged and argued below that she had little to no role in the cases

[7]In fact, Ms. Cohen testified differently under oath: "Clearly, I continued working until he threw me out in 2017, so I wasn't interested in retiring from law. I was interested in retiring from the burdens of the partnership." II JA 209 (76: 20-24).

at issue[8] and never contended nor presented any evidence to suggest that she ever even had responsibility for the cases at issue, let alone that she "transferred" such responsibility for these cases to Mr. Padda. *See* II JA 348-352; II JA 386-391; III JA 527-538; *see also* IV JA 632-638, I JA 60-66.

Obviously, Ms. Cohen would like to posture that her fee-sharing agreement required the same discrete tasks as the agreements in *Lee*, *West*, and the other cases she cited and that she performed these tasks by transferring responsibility for the cases at issue to Mr. Padda. *See Lee*, 812 S.W.2d at 363; *West*, 484 N.W.2d at 190; *Sympson*, 406 S.W.2d at 27–32. Absent an express, written limitation on her duties akin to the agreements in *Lee* and *West*, Ms. Cohen cannot argue that she completed her representation before her suspension. And it is clear that the clients in the firm's cases here entered no such "discrete tasks" agreement with Ms. Cohen because the firm's representation continued through Ms. Cohen's suspension. It is also belied by Ms. Cohen's own rejection of a remedy in *quantum meruit*; if had a discrete task

[8]Other courts have questioned the wisdom of allowing an attorney who has not performed even "a modicum of work" on a matter to be entitled to recover the full fee on a contract. *See Mack v. Brazil, Adlong & Winningham, PLC*, 159 S.W.3d 291, 297 (Ark. 2004) (Corbin, J., concurring) ("This is in contrast to mechanics or materialmen, who must first supply labor, services, material, etc., before they are entitled to a lien."). Here in Nevada, our own professional rules require that a fee be "reasonable" and that a client remain fully informed of a fee to be collected by an attorney by requiring the client approve a fee split in writing. *See* NRPC 1.5. In other words, the rule exists to prohibit an attorney from collecting a windfall for doing little to no work.

to perform and had performed it, then she would not balk at the *quantum meruit* remedy. Ms. Cohen's bare desire to portray her situation as analogous to those cases does not make it so.

Because Ms. Cohen failed to identify any textual defects with SCR 212(4), SCR 115(2)-(3), or NRPC 5.4(a), this Court should not look beyond the text of those rules here. However, even if this Court overlooks Ms. Cohen's deficient arguments, Ms. Cohen has not cited any authorities that apply to her situation. And, whatever law this Court applies, the conclusion that Ms. Cohen is barred from sharing in legal fees remains. Accordingly, this Court should not reverse the well-reasoned decision of the district court by inserting inapplicable caselaw into its own clear rules.

VI. CONCLUSION

This case is simple. Ms. Cohen, an attorney with over 40 years of experience, *see* COB at 2, neglected her CLE requirements and then stubbornly protested the reinstatement process prescribed by this very Court's rules rendering her a nonlawyer as prescribed by SCR 212(4) and SCR 115(2)-(3). Because NRPC 5.4(a) plainly prohibits nonlawyers from sharing in legal fees, Ms. Cohen cannot share in any legal fees earned on matters resolved during her suspension and "consequent inability to act as an attorney." SCR 115(2)-(3).

Now that it benefits her financial self-interest, Ms. Cohen no longer thinks that failing to comply with her CLE requirements is meaningless. Nor, however,

does she think her suspension from the practice of law had or should have any real consequences for her. But the simple fact is that Ms. Cohen's disregard of this Court's rules and the consequences they mandate does not in any way undermine their plain meaning or effects.

/ / /

/ / /

/ / /

"The practice of law is a privilege and not a right." *In re Burton*, 442 B.R. 421, 467 (W.D.N.C. 2009). Ms. Cohen's suspension was not an innocent mistake; it was an intentional, willful act of protest—protest of this Court, its rules, and the principles governing the practice of law in Nevada. In this way, Ms. Cohen is only a victim of her own decisions. This Court should not look beyond the plain meaning of its own rules to carve out a special exception just for Ms. Cohen.

For all of these reasons, this Court should affirm.

DATED this 10th day of March 2021.

/s/ Ryan A. Semerad
Ryan A. Semerad, Esq. (14615)
DONALD L. FULLER, ATTORNEY AT LAW, LLC
242 South Grant Street
Casper, Wyoming 82601

Daniel F. Polsenberg, Esq. (2376)
Joel D. Henriod, Esq. (8492)
Abraham G. Smith, Esq. (13250)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, Nevada 89169

Paul S. Padda, Esq. (10417)
PAUL PADDA LAW, PLLC
4560 South Decatur Blvd., #300
Las Vegas, Nevada 89103
Telephone No. (702) 366-1888

Attorneys for Respondents

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **RESPONDENTS' ANSWERING BRIEF IN CASE NO. 81018**, 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 Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter is to be found. Moreover, while this brief exceeds the page limitation prescribed by NRAP 32(a)(7)(A)(i), it complies with the type-volume limitation provided in NRAP 32(a)(7)(A)(ii) as it contains **12,366 words**, or no more than 14,000 words.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 10th day of March 2021.

/s/ Ryan A. Semerad
Ryan A. Semerad, Esq. (14615)
DONALD L. FULLER, ATTORNEY AT LAW, LLC
242 South Grant Street
Casper, Wyoming 82601

Attorney for Respondents

VERIFICATION

I, Ryan A. Semerad, declare:

1. I am an attorney with Donald L. Fuller, Attorney at Law, LLC, counsel of record for Cross-Appellants Paul S. Padda and Paul Padda Law, PLLC. My Nevada Bar License is No. 14615.

2. I verify that I have read the foregoing **RESPONDENTS' ANSWERING BRIEF IN CASE NO. 81018;** that the same is true to my own knowledge, except for matters therein stated on information and belief, and as to those matters, I believe them to be true.

3. I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of March 2021, in Fremont County, Wyoming.

/s/ Ryan A. Semerad
Ryan A. Semerad, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Donald L. Fuller, Attorney at Law, LLC, and that on this 10th day of March 2021, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **RESPONDENTS' ANSWERING BRIEF IN CASE NO. 81018** properly addressed to the following:

Liane K. Wakayama, Esq.
Dale A. Hayes, Jr., Esq.
Dale A. Hayes, Esq.
HAYES WAKAYAMA
4735 S. Durango Dr., Ste. 105
Las Vegas, NV 89147

Donald J. Campbell, Esq.
Samuel R. Mirkovich, Esq.
Philip R. Erwin, Esq.
CAMPBELL & WILLIAMS
700 South Seventh Street
Las Vegas, NV 89101

Attorneys for Appellant Ruth L. Cohen

/s/ Ryan A. Semerad
An Employee of Donald L. Fuller, Attorney at Law, LLC