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 REPLY BRIEF

Donald J. Campbell, Esq. (#1216)
Philip R. Erwin, Esq. (#11563)
Molly M. Higgins, Esq. (#15246)
CAMPBELL & WILLIAMS
710 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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutes and Rules

Other Sources

I. INTRODUCTION[1]

Despite tipping the scale at 44 pages and more than 12,000 words, the Padda Defendants' lengthy Answering Brief ("PAB") actually confirms that the question presented here is straightforward, narrow, and premised on essentially undisputed facts. There is, for example, no dispute that the parties entered into the December 2014 Dissolution Agreement resolving Ms. Cohen's partnership interest in C&P's Pending Cases, at which time Ms. Cohen had an active license to practice law. It is likewise undisputed that Ms. Cohen did not have an active role or perform work on the Pending Cases prior to the execution of the Dissolution Agreement. Nor did the parties anticipate or expect that Ms. Cohen would perform work on the Pending Cases following the parties' execution of the Dissolution Agreement. Rather, the record is clear that Ms. Cohen's Expectancy Interest in the Pending Cases derived solely from her partnership interest in C&P. Finally, it is undisputed that Ms. Cohen did not satisfy her CLE requirements in 2016, thereafter received an administrative suspension from the practice of law pursuant to SCR 210 and 212, and did not reactivate her law license until December 2019.

The sole question presented by this appeal is whether, based on these undisputed facts, RPC 5.4(a) excuses the Padda Defendants from their contractual

[1] For ease of reference, Ms. Cohen will use the same capitalized terms from her Opening Brief.

obligation to compensate Ms. Cohen for her Expectancy Interest on grounds that doing so would constitute prohibited fee-sharing with a non-lawyer. Relying on several persuasive opinions from other jurisdictions addressing the ethical permissibility of fee-sharing with suspended or disbarred attorneys in analogous circumstances, *see* COB at 12-15, Ms. Cohen contends that RPC 5.4(a) has no application here as she had no responsibility for the Pending Cases at the time of her suspension and, thus, did not abandon the clients.[2]

Predictably, the Padda Defendants' responsive strategy is to vilify Ms. Cohen as an unethical attorney who flouted the State Bar's CLE requirements and, now, must suffer the consequences thereof—including a prohibition against getting her day in court against the Padda Defendants. But Ms. Cohen's legal authorities

---

[2] The Padda Defendants bizarrely claim that Ms. Cohen asserted for the first time on appeal that she "transferred responsibility for the cases at issue" when she entered into the Dissolution Agreement. PAB at 5. Notwithstanding that this exact language appears in the first paragraph of Ms. Cohen's motion for reconsideration, (8 JA 1728:9-16), Ms. Cohen repeatedly contended in the court below that she had completed all of her obligations (and there were none) with respect to the Pending Cases when she entered into the Dissolution Agreement. (8 JA 1729:23-1730:9; 1732:21-1733:2). Indeed, the Padda Defendants repeatedly acknowledged that "Ms. Cohen never had any 'responsibility' for the cases at issue[,]" PAB at 5, and that she "knowingly and voluntarily sold her Expectancy Interest—her only remaining tie to these clients and their matters—in September 2016[,]" *id*. at 37, which was several months before her suspension. As such, it is undisputed that Ms. Cohen had no responsibility for the Pending Cases notwithstanding the Padda Defendants' circular arguments that she somehow abandoned the clients by entering into the Dissolution Agreement in December 2014 and then becoming suspended years later. *See id*. at 37-39.

establish that the underlying reasons for disciplinary action are wholly irrelevant if the lawyer had completed his/her obligations to the clients under a fee-splitting agreement prior to the suspension or disbarment. *See Lee v. Cherry*, 812 S.W.2d 361 (Tex. Ct. App. 1991) (attorney entitled to referral fee despite suspension and subsequent resignation from practice of law in lieu of disciplinary proceedings); *West v. Jayne*, 484 N.W.2d 186 (Iowa 1992) (attorney entitled to division of fees recovered in former firm's contingency fee cases despite suspension); *Sympson v. Rogers*, 406 S.W.2d 26 (Mo. 1966) (attorney who surrendered law license in lieu of disbarment proceedings entitled to fee-split on transferred contingency fee cases); *Eichen, Levinson & Crutchlow, LLP v. Weiner*, 938 A.2d 947 (N.J. App. Div. 2008) (attorney entitled to referral fees despite suspension from practice of law). The Padda Defendants' overblown character attacks on Ms. Cohen should thus play no role in this Court's analysis of whether she is entitled to seek recovery of her Expectancy Interest in the Pending Cases.

The Padda Defendants' substantive arguments are similarly groundless or otherwise off-point. Initially, Ms. Cohen did not waive the arguments in her Opening Brief simply because she presented them below in a motion seeking reconsideration of the district court's summary judgment ruling. The reconsideration motion is a proper part of the record, which Judge Gonzalez

considered on the merits. Those facts enable this Court to review Ms. Cohen's arguments without limitation.

Next, the Court is not handcuffed by the plain language of RPC 5.4(a) as the Rule is silent on the discrete fee-splitting issue presented here. The Court, thus, is free to consult other authorities that have rejected the contention that their respective state analogues to RPC 5.4 forbid fee-sharing with an attorney who had completed all obligations owed to the client before subsequently becoming suspended or disbarred. The Padda Defendants' effort to distinguish those authorities is unavailing as it requires the Court to import language and requirements that are simply nonexistent in the courts' respective holdings.

Finally, insofar as the Padda Defendants offer their own supporting legal authorities, they are inapposite and unpersuasive given the distinguishable factual settings from which they all arise. We address each point below.

II. ARGUMENT

A. Ms. Cohen Did Not Waive Her Argument That RPC 5.4(a) Is Inapplicable Here.

The Padda Defendants contend the Court cannot consider the legal authority cited by Ms. Cohen or her supporting arguments because they were raised for the first time in reconsideration briefing. *See* PAB at 32-33. The Court, though, may consider Ms. Cohen's arguments if the reconsideration briefing and order are properly part of the record, and the district court elected to entertain the motion on

its merits. *Arnold v. Kip*, 123 Nev. 410, 416-17, 168 P.3d 1050, 1054 (2007). Both elements are met here.

Ms. Cohen filed her motion for reconsideration on February 21, 2020 (8 JA 1727-1737), which tolled the deadline to appeal. *See* NRCP 59(e); *see also AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 584, 245 P.3d 1190, 1194 (2010). Following the district court's denial of her motion on March 31, 2020 (15 JA 3040-3045), Ms. Cohen timely filed her notice of appeal on April 8, 2020. (15 JA 3055-3082). Thus, the motion for reconsideration and the arguments contained therein are properly part of the record before this Court.

As for the second *Arnold* factor, the district court clearly entertained Ms. Cohen's motion for reconsideration on the merits. Ms. Cohen cited new legal authority for the proposition that the district court's order granting summary judgment was clearly erroneous under *Masonry and Title v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). (8 JA 1729 - 1733). The district court considered Ms. Cohen's supplemental legal authority, finding that the "nonbinding authorities from other jurisdictions" did not render the summary judgment order "clearly erroneous" in a manner that warrants reconsideration. (15 JA 3042:20-27). That the district court analyzed whether Ms. Cohen's submission of persuasive authority from other jurisdictions met the "clearly erroneous" standard—as opposed to disposing of the motion solely on grounds the new authorities were not raised in

the summary judgment briefing—confirms the court elected to entertain Ms. Cohen's motion on its merits.

There is more. The district court's order then devotes more than a page of analysis to Ms. Cohen's supplemental legal authorities, explaining why it believed they were distinguishable. (15 JA 3051:28-3053:8). Ultimately, the district court found that Ms. Cohen's cited legal authority concerned a different approach for addressing a suspended attorney's ability to recover fees after his/her suspension than the standard the district court relied upon when granting the Padda Defendants' motion for summary judgment. (15 JA 3052:1-20). Because the district court denied Ms. Cohen's motion for "all" the reasons set forth in the order—which necessarily included its substantive treatment of Ms. Cohen's authorities and arguments—the district court's ruling was unquestionably on the merits. (15 JA 3054:1-2). Thus, this Court may consider Ms. Cohen's arguments under *Arnold.*

B. RPC 5.4(a) Does Not Prevent Ms. Cohen From Recovering Her Expectancy Interest In The Pending Cases.

The Padda Defendants assert that the Court may not look beyond the plain language of SCR 212(4), SCR 115(2)-(3), and RPC 5.4(a) when determining whether the scope of those rules reach the factual situation presented here. PAB at 34-35. Though the Padda Defendants chastise Ms. Cohen for not "engaging" with the terms of these Rules, that criticism distorts the record.

First, there is no need to "engage" in a meaningless debate over the terms of SCR 212(4) and SCR 115(2)-(3) because no one disputes that Ms. Cohen did not comply with her CLE requirements in 2016 and, in turn, received an administrative suspension from the practice of law. The determinative question presented by this appeal is whether Ms. Cohen's suspension—irrespective of the underlying reason—deprives her of the Expectancy Interest under the Dissolution Agreement.[3] That is where RPC 5.4(a) comes in, and Ms. Cohen squarely addressed the (non)application of the Rule in her Opening Brief. *See* COB 11-20.

The Padda Defendants can hardly claim that Ms. Cohen failed to "engage" on RPC 5.4(a) as they felt the need to mischaracterize her position on the issue in their Answering Brief:

> 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 PAB at 35. In reality, Ms. Cohen stated that the district court's conclusion of law is "true *only as far as it goes*" and "may be a correct statement of law *when the*

[3] For the sake of clarity, the Padda Defendants also received fees prior to Ms. Cohen's suspension that were subject to Ms. Cohen's Expectancy Interest. For example, the Padda Defendants settled the Garland case on September 16, 2016 for $215,000, (3 JA 595), and Ms. Cohen discovered at least 65 other cases that settled prior to her suspension where the Padda Defendants failed to pay Ms. Cohen for her Expectancy Interest. (11 JA 2287 – 14 JA 3030).

attorney is suspended or disbarred prior to completing his or her services to the client." COB at 18 n. 2 (emphases added). Ms. Cohen went on to say that RPC 5.4(a) "does not apply at all where the fee sharing agreement was entered and the attorney's services were completed long before the suspension." *Id.*

That is the critical distinction the Padda Defendants miss (or purposefully ignore) by advancing the argument that Ms. Cohen must identify a "textual defect" in RPC 5.4(a). Ms. Cohen's position is that RPC 5.4(a) does not address a situation where, as here, Ms. Cohen entered into an enforceable fee-splitting agreement with her former partner and transferred responsibility for the Pending Cases in exchange for a percentage of the ultimate recovery prior to her suspension. Thus, nothing prevents the Court from considering analogous case law when interpreting the application of RPC 5.4(a). *See Solid v. Eighth Judicial Dist. Ct.*, 133 Nev. 118, 121, 393 P.3d 666, 671 (2017) (the Court will look "beyond the plain language of a court rule if it is ambiguous *or silent on the issue in question*") (emphasis added).

In that regard, Ms. Cohen cited multiple cases from other jurisdictions where the subject courts interpreted those states' versions of the rule embodied in RPC 5.4(a), and held the prohibition on fee-sharing with non-lawyers has no application under these circumstances. *See Lee*, 812 S.W.2d at 363 ("we decline to extend the State Bar Rule [5.04] 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"); *West*, 484 N.W.2d at 190 (holding that State Bar Rules and ethical advisory opinions prohibiting fee sharing with suspended lawyers did not invalidate fee-splitting agreement between former partners regarding firm's pending contingency fee cases); *Sympson*, 406 S.W.2d at 32 (finding attorney's agreement with another firm to receive a portion of fees on transferred contingency cases did not fall within Missouri's version of RPC 5.4(a) prohibiting fee-sharing with non-lawyers); *Eichen, Levinson & Crutchlow, LLP*, 938 A.2d at 595-96 (holding suspended attorney's referral fee agreement was not invalidated by New Jersey prohibition on fee-sharing with suspended or disbarred attorneys).[4]

In resolving this appeal, the Court need only determine whether it finds the foregoing case law persuasive or, conversely, whether it agrees with the Padda Defendants that RPC 5.4(a) can retroactively invalidate an otherwise enforceable fee-splitting agreement between attorneys even though the suspended attorney had

[4] The Padda Defendants cite *Royden v. Ardoin*, 331 S.W.2d 206, 209 (Tex. 1960) for the proposition 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." PAB at 28-29. The *Lee* court expressly observed that *Royden* and its progeny are limited to cases where an attorney was suspended or disbarred "prior to the completion of his contingent fee contract." 812 S.W.2d at 363. Again, the undisputed record in this case demonstrates that Ms. Cohen had completed all that was required of her with respect to the Pending Cases long before she was suspended from the practice of law in 2017.

no responsibility for the cases at issue at the time of suspension. Notably, the Padda Defendants have failed to cite a single case involving the non-enforceability of a fee-splitting agreement between attorneys where one attorney was subsequently suspended or disbarred after completing his/her obligations on the subject contingency cases.

Indeed, the vast majority of the cases upon which the Padda Defendants misplace reliance do not involve fee-splitting agreements between attorneys at all, let alone circumstances such as this case where the suspended attorney completed his/her obligations prior to the imposition of discipline. *See In re Phillips*, 244 P.3d 549 (Ariz. 2010) (no fee-splitting agreement or allegation that attorney had performed his obligations prior to suspension); *Disciplinary Counsel v. McCord*, 905 N.E.2d 1182 (Ohio 2009) (same); *Office of Disciplinary Counsel v. Jackson*, 637 A.2d 615 (Pa. 1994) (same); *Stein v. Shaw*, 79 A.2d 310 (N.J. 1951) (same); *Williams v. Victim Justice, P.C.*, 198 So.3d 822 (Fla. Ct. App. 2016) (same); *Faro v. Romani*, 641 So.2d 69 (Fla. 1994) (same); *Augustun v. Linea Aerea Nacional-Chile S.A.*, 76 F.3d 658 (5th Cir. 1996) (same); *In re Emanuel*, 450 B.R. 1 (S.D.N.Y 2011) (same); *Widmer v. Widmer*, 705 S.W.2d 878 (Ark. 1986) (same); *Diaz v. Attorney General of the State of Texas*, 827 S.W.2d 19 (Tex. Ct. App. 1992) (same).

The handful of cases cited by the Padda Defendants that do involve fee-splitting agreements are plainly distinguishable. *See Idalski v. Crouse Cartage Co.*,

229 F.Supp.2d 730 (E.D. Mich. 2002) (voiding referral agreement based on fraudulent misrepresentations by disbarred attorney and declining to award *quantum meruit* for work performed); *Harris Tr. & Sav. Bank v. Chi. Coll. of Osteopathic Med.*, 452 N.E.2d 701 (Ill. Ct. App. 1983) (disbarred attorney could not obtain additional fees in excess of lump sum payment that was made upon transfer of case to another attorney prior to disbarment); *Campbell Harrison & Dagley, LLP v. Lisa Blue/Baron and Blue*, 843 F.Supp.2d 673 (N.D. Tex. 2011) (voiding fee-splitting agreement where clients did not consent but permitting law firms to recover in *quantum meruit*).[5]

Because the Padda Defendants cannot find any legal authority that actually supports the notion that RPC 5.4(a) will invalidate an otherwise enforceable fee-splitting agreement between lawyers where the suspended lawyer had performed all that was required of him/her, they resort to reading new language and requirements into Ms. Cohen's legal authority. To that end, the Padda Defendants claim Ms. Cohen's case law requires an "express, written limitation on [an attorney's] duties" in order to show that the attorney had completed the work required of him/her prior

[5] The only case cited by the Padda Defendants that comes remotely close to addressing facts similar to this matter is *Lessoff v. Berger*, 2 A.D.3d 127 (N.Y. App. Div. 2003). *See* PAB at 28. This two-paragraph memorandum decision, however, is utterly devoid of any factual background and does not clarify whether the partners entered into the fee-sharing agreement prior to the plaintiff attorney's suspension from the practice of law. *Id.*

to the imposition of discipline. *See* PAB at 39-41. But the subject decisions contain no such requirement as the courts merely assessed whether the suspended or disbarred attorney had transferred responsibility for the cases such that the attorney had no further duties to the clients. *See Lee, West, Sympson* and *Weiner*, *supra*; *cf. A.W. Wright & Assoc's, P.C. v. Glover, Anderson, Chandler & Uzick, L.L.P.*, 993 S.W.2d 466, 469-70 (Tex. Ct. App. 1999) (reversing summary judgment where referral contracts were ambiguous as to whether suspended attorney had completed his legal work for clients prior to suspension, and remanding for trier of fact to resolve the ambiguity by determining the true intent of the parties).

Here, the district court expressly found that the Dissolution Agreement did not require or otherwise anticipate that Ms. Cohen would perform any further work on the Pending Cases. (8 JA 1704:25-27). It is also undisputed that Ms. Cohen did not have an active role or perform work on the Pending Cases following the execution of the Dissolution Agreement. (8 JA 1705:11-28). Indeed, the Padda Defendants have consistently maintained that Ms. Cohen did not perform work on the Pending Cases both here and in the district court to avoid any suggestion that Ms. Cohen would be entitled to *quantum meruit*. *See, e.g.,* PAB at 5-6; 8-9.[6]

[6] The Padda Defendants also argue that courts are hesitant to allow an attorney who has not performed even a "modicum of work" on a matter to recover the full fee on a contract. *See* PAB at 43 n. 8 (citing *Mack v. Brazil, Adlong & Winningham, PLC*, 159 S.W.3d 291, 297 (Ark. 2004)). As Ms. Cohen pointed out in her Opening Brief,

The record is clear that Ms. Cohen completed all work expected of her and transferred responsibility for the Pending Cases when she entered into the Dissolution Agreement in December 2014, more than two years before she was administratively suspended from the practice of law.[7] These undisputed facts align Ms. Cohen's case with the facts and principles of those authorities holding that analogues to RPC 5.4(a) do not prohibit fee-sharing with an attorney who performed all required client obligations before becoming suspended or disbarred. Applying

---

however, multiple courts have recognized that attorneys in the same firm—such as Ms. Cohen and Mr. Padda—can agree to split fees without regard to the value of the services rendered or the responsibility assumed. *See* COB at 19 (citing *Norton v. Frickey, P.C. v. James B. Turner, P.C.*, 94 P.3d 1266, 1267-70 (Colo. Ct. App. 2004) (listing several cases)).

[7] The Padda Defendants claim that Ms. Cohen's contention that she transferred any responsibility for the Pending Cases at the time of the Dissolution Agreement constitutes an admission that Ms. Cohen and Mr. Padda no longer owed each other fiduciary duties as partners. This is incorrect. The Pending Cases constituted unfinished business of C&P irrespective of which partner worked on the matters and any income derived therefrom was partnership property. *See* NRS 87.300 ("On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed."); *accord Rosenfeld, Meyer & Susman v. Cohen*, 194 Cal. Rptr. 180, 189-190 (Cal. Ct. App. 1983); *Hillman on Lawyer Mobility* § 4.3.3 (3rd ed. 2017) ("*Hillman*"). Many courts have specifically found that contingency fee cases pending at the time of dissolution continue to be partnership business, and any fees from those cases are assets of the partnership. *See, e.g., Lafond v. Sweeney*, 343 P.3d 939, 951 (Colo. 2015); *Ellerby v. Spiezer*, 485 N.E.2d 413, 417 (Ill. Ct. App. 1985); *Huber v Etkin*, 58 A.3d 772, 780-82 (Pa. 2012) (listing cases); *see also Hillman* § 4.10.2.2. As such, the Padda Defendants' suggestion that Ms. Cohen somehow conceded that her underlying tort claims lack merit is inaccurate.

the teaching of those cases here, the Padda Defendants should not be permitted to avoid their contractual obligations and obtain a windfall simply because Ms. Cohen did not complete her CLE requirements years after entering the Dissolution Agreement. *See Nevada Equities v. Willard Pease Drilling Co.*, 84 Nev. 300, 303, 440 P.2d 122, 123 (1968) (this Court "shall not condone a forfeiture [based on a technical failure to comply with a licensing scheme] in the absence of any ascertainable public policy requiring [it] to do so") (citing *Latipac, Inc. v. Superior Court*, 411 P.2d 564 (Cal. 1966)).

III. CONCLUSION

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

DATED this 23rd day of April, 2021

CAMPBELL & WILLIAMS

By: /s/ ***Philip R. Erwin***
Donald J. Campbell, Esq. (#1216)
Philip R. Erwin, Esq. (#11563)
Molly M. Higgins, Esq. (#15246)

Liane K. Wakayama, Esq. (#11313)
Dale A. Hayes, Jr., Esq. (#9056)
HAYES WAKAYAMA

Attorneys for Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Reply 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 3,444 words.

DATED this 23rd day of April, 2021

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 23rd day of April 2021, I caused true and correct copies of the foregoing Appellants' Reply Brief to be delivered to the following counsel and parties:

VIA ELECTRONIC SERVICE:

Ryan A. Semerad, Esq.
Donald L. Fuller, Attorney at Law, LLC
242 South Grant Street
Casper, Wyoming, 82601
Las Vegas, Nevada 89134

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

Paul S. Padda, Esq.
Paul Padda Law, PLLC
4560 South Decatur Blvd., #300
Las Vegas, Nevada 89103

Attorneys for Respondents

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