IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 81018

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, the Honorable Elizabeth Gonzalez); District Court Case No. A-19-792599-B

BRIEF OF *AMICUS CURIAE* SOUTH ASIAN BAR ASSOCIATION OF LAS VEGAS, VETERANS IN POLITICS INTERNATIONAL, INC. AND JAY BLOOM IN SUPPORT RESPONDENTS' ANSWERING BRIEF AND AFFIRMANCE OF JUDGE ELIZABETH GONZALEZ'S GRANT OF SUMMARY JUDGENT IN FAVOR OF RESPONDENTS AND DENIAL OF APPELLANT'S MOTION FOR RECONSIDERATION

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II. NEVADA RULE OF APPELLATE PROCEDURE 26.1 DISCLOSURE

The undersigned counsel of record certifies that that the following are persons and 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.

South Asian Bar Association of Las Vegas ("SABA-LV"), as *amicus curiae*, declares that it does not have a parent corporation and no publicly held company owns ten percent or more of its stock.

Veterans In Politics International, Inc. ("VIPI"), as *amicus curiae*, declares that it does not have a parent corporation and no publicly held company owns ten percent or more of its stock.

Jay Bloom, as *amicus curiae*, declares he is a natural person.

Undersigned counsel, Milan Chatterjee, Esq. is an associate of the law firm Clark Hill, PLC. His firm is in no way connected with this appeal. Instead, the undersigned is appearing in his individual capacity as counsel for SABA-LV, VIPI and Mr. Bloom.

/s/ *Milan Chatterjee*

_____

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Dated: April 30, 2021

INTEREST OF AMICUS CURIAE

The South Asian Bar Association of Las Vegas, Veterans In Politics International, Inc. and Jay Bloom (an individual) each have a commitment and involvement with civil justice issues and the regulation of the legal profession. Mr. Bloom was formerly a member of the State Bar of Nevada attorney disciplinary committee and both SABA-LV (a voluntarily bar association) and VIPI are community-based organizations dedicated to educating, informing, and advocating for the rights of their members and the community at large. As set forth in greater detail in the separately filed motion for leave to file this Brief, the amici bring a perspective that voices the concerns of their membership and advocates for the broader interests of legal consumers and the community at large.

In this appeal, Appellant Ruth L. Cohen is advocating for an exemption for suspended/disbarred lawyers otherwise subject to the fee split prohibitions of Nevada Rule of Professional Conduct 5.4. Ms. Cohen further seeks the creation of an exemption from the well-established rule that a lawyer who voluntarily abandons a client cannot recover under a contingency fee contract. Should this Court adopt Ms. Cohen's arguments, the obligations and prohibitions set forth under both the Nevada Rules of Professional Conduct and this Court's own rules governing the practice of law would be rendered meaningless and subject only to

an attorney's ability to "contract" him or herself out of the regulations that are otherwise designed to protect the public.

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ARGUMENT

I. PUBLIC POLICY OF NEVADA STRONGLY DISFAVORS PERMITTING A SUSPENDED/DISBARRED LAWYER TO COLLECT THE FULL MEASURE OF A CONTINGENCY FEE

Ms. Cohen opines in her Opening Brief that she "performed all services required of her and earned her one-third split of the unrealized proceeds from the Pending Cases at the time the parties entered into the Dissolution Agreement." COB 15.[1] She further adds that "Mr. Padda, moreover, assumed full responsibility for the Pending Cases and there is no suggestion that Ms. Cohen abandoned the clients."[2] COB 15. The Padda Parties respond by attacking Ms. Cohen's claim as lacking "evidentiary support" and only "raised for the first time on appeal." PAB 5.[3] Ms. Cohen characterizes the attack as bizarre and then cites only to the

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[1] "COB ___." refers to the referenced page(s) of Ms. Cohen's Opening Brief filed with the Court on December 9, 2020 (Case No. 81018).

[2] It is unclear what Ms. Cohen bases this statement upon since there is no reference to any documentary or testimonial evidence.

[3] "PAB ___." Refers to the referenced page(s) of the Padda Parties' Answering Brief filed with the Court on March 10, 2021 (Case No. 81018).

arguments and opinions of her attorney[4] in the motion for reconsideration filed in the district court below as purported "evidence" in support of her claim.[5] CRB 2.[6]

Based upon the assertion that Mr. Padda "assumed full responsibility" of all pending cases, Ms. Cohen urges the Court to follow the holding rendered in Lee v. Cherry, 812 S.W.2d 361 (Tex. Ct. App. 1991) in which an intermediary court of appeals panel in Texas held that a suspended or disbarred lawyer could collect a contingency fee despite the prohibition on fee splitting with a non-lawyer if the suspended/disbarred lawyer had completed all of his contractual duties prior to surrendering his license. Irrespective of whether Mr. Padda "assumed full responsibility" for the handling of all Pending Cases (an issue that appears strongly

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[4] While it might seem a self-evident proposition, it bears emphasizing that "[a]rguments of counsel are not evidence and do not establish facts of a case." *See* Jain v. McFarland, 109 Nev. 465, 475 (1993). For this same reason, the Court rejected Ms. Cohen's argument that attorney Micah Echols, counsel for proposed amicus Claggett & Sykes Law Firm, was subject to an alleged "conflict." By Order filed April 16, 2021 (Case No. 81018) this Court properly noted, in footnote 1 of the Order, that "[t]he objection is unsupported by an affidavit or citation to authority." *See also* Edwards v. Emperor's Garden Restaurant, 122 Nev. 317, 330 n.38 (2006) (confirming this Court does not consider unsupported arguments); Rhyne v. State of Nevada, 118 Nev. 1, 13 (2002) ("Contentions unsupported by specific arguments or authority should be summarily rejected on appeal").

[5] *See* NRAP 28(e)(2) ("[p]arties shall not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court or Court of Appeals to such briefs or memoranda for the arguments on the merits of the appeal").

[6] "CRB ___." refers to the referenced page(s) of Ms. Cohen's Reply Brief filed with the Court on April 23, 2021 (Case No. 81018).

in dispute), Ms. Cohen's arguments miss the mark because they ignore long-standing authority in Nevada governing a discharged attorney's entitlement to a fee under a contingency contract.

Notably missing from Ms. Cohen's briefing is any discussion of an ethics opinion (Formal Opinion No. 18)[7] issued by the State Bar of Nevada Committee on Ethics and Professional Responsibility on April 19, 1994 (postdating by three years the *Lee* decision from Texas which Ms. Cohen urges this Court to adopt and follow). In Formal Opinion No. 18, the State Bar was required to consider what portion of a fee, if any, could a discharged attorney collect when the discharge occurred after an initial offer of settlement had been made. The State Bar reaffirmed that "[i]n Nevada, as in the majority of jurisdictions, the [S]upreme [C]ourt has determined through case law that disputes arising out of contingent fee agreements based upon the discharge of the attorney are to be determined in quantum meruit." Id. The State Bar further opined that a contingency fee is not earned "until there has been a recovery." Id at 2.

The guidance by the Ethics Committee set forth in Formal Opinion No. 18 is sensible and grounded in common-sense. The *amici* herein, SABA-LV, VIPI and Mr. Bloom, agree with the approach urged by the Padda Parties that this Court should follow the majority of jurisdictions and recognize that, at most, "a

[7] *See* https://www.nvbar.org/wp-content/uploads/Opinion-18_10-29-94.pdf

suspended attorney is entitled to recover in *quantum meruit* the reasonable value of the services she rendered on a matter before the suspension." PAB 29. Based upon Formal Opinion No. 18, this is already the rule in place in Nevada. Ms. Cohen's reliance upon out-of-state authorities is unavailing.

While Ms. Cohen seeks the full measure of her purported contingency fee interests on the unsubstantiated and disputed theory (*see* PAB 5) that she "transferred" all responsibility of Pending Cases to Mr. Padda, Nevada's approach, as set forth under Formal Opinion No. 18, does not support her efforts. The scenario addressed by Formal Opinion No. 18, an attorney discharged due to no fault of his or her own but still limited to only quantum meruit, is a far cry from the facts of Ms. Cohen's situation. Brazenly, Ms. Cohen seeks the full measure of her purported contingency fee notwithstanding that she was knowingly and intentionally suspended from the practice of law and thereby rendered a non-lawyer under Nevada Rule of Professional Conduct ("NRPC") 5.4 at the time the fee was earned. According to her own counsel, "Ms. Cohen declined to pay the fee and her law license remained suspended until December 19, 2019".[8]

The approach urged by Ms. Cohen in this appeal would invite gamesmanship, abuse and, frankly, chaos/disrespect into the attorney licensing

[8] COB 5. "And I don't intend to pay them $700 to get my license back . . . So, its my protest." *See* PAB 13 (*citing* III JA 565-566 (6:17-7:6).

system of Nevada. For example, any attorney facing suspension or disbarment could, prior to being suspended or disbarred (a process that does not simply happen overnight), enter into a contract with another attorney and insert language claiming that the attorney facing suspension/disbarment did all that he or she was required to do and then simply sit back and reap the financial rewards of a full contingency fee after being disbarred or suspended. This approach would perversely incentivize and encourage lawyers facing suspension/disbarment to collect as many contingency clients as possible, enter into contracts with the magical language establishing entitlement under Texas' Lee decision, and then collect potentially millions of dollars in fees while sitting at home suspended and/or banned from the practice of law. While this may seem a lucrative business model for Ms. Cohen and the limited number of attorneys in her situation, it would be injurious to the legal profession, its reputation and the public's confidence in the profession. Simply put, there is no public interest in such an absurd result.

Apart from the small set of lawyers that find themselves in Ms. Cohen's situation, how would the result urged by Ms. Cohen benefit clients or the general public at large? It simply would not. Nor would it instill public confidence in the State Bar or this Court as licensing authorities. Instead, it would invite public cynicism and criticism that lawyers create special rules for themselves that don't

seem to apply to anyone else.[9] Every lawyer in Nevada knows, or should know,[10] that sharing a fee with a "capper" for a referral is ethically prohibited under NRPC 5.4. Why? Because the plain and unambiguous language of NRPC 5.4 provides that a lawyer shall not share a fee with a non-lawyer. When she became suspended, Ms. Cohen unquestionably became a non-lawyer. It could not be any clearer.

The exception sought to be created by Ms. Cohen, exempting herself from the prohibitions of NRPC 5.4 because she claims to have a "contract" and a law degree, would defeat the purpose of the ethics rules which are intended to protect the public and maintain its confidence in our profession. Our State Bar's Ethics Committee has sagely and specifically rejected this approach by acknowledging that "[e]thics authorities have recognized that a strict application of the terms of the contingent fee, for example, a claim of one third of the settlement after the deduction of the expenses, would work an undue hardship on the client in the pursuit of subsequent legal help." Formal Opinion No. 18, p. 2.

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[9] According to a 2020 Gallup poll, 78% of respondents believe lawyers have between "very low" to merely "average" amounts of honesty and ethics. *See* https://news.gallup.com/poll/1654/honesty-ethics-professions.aspx

[10] *See* In re Discipline of Drakulich, 111 Nev. 1556 (1999) ("state bar had represented to this court that publication would 'inform other lawyers who are sharing legal fees with non-lawyers that this conduct is prohibited.'").

As noted above, there is a better approach than what is being urged by Ms. Cohen. The State Bar has already provided guidance regarding that better approach through issuance of Formal Opinion No. 18. Allowing attorneys such as Ms. Cohen to be compensated under a quantum meruit basis up to the date of their suspension/disbarment is both fair and sensible for all parties involved. It protects the clients while at the same time compensating the attorney for the reasonable value of his or her services, assuming that they actually did something to earn a fee in the first place. It is an easy rule to understand and does not require parsing whether one attorney transferred responsibility to another attorney or whether the accepting attorney accepted full responsibility of a case. The formulations being urged by Ms. Cohen benefit no one else but herself.

Judge Gonzales properly granted summary judgment in favor of the Padda Parties and that decision should be affirmed.

II. PUBLIC POLICY STRONGLY DISFAVORS PERMITTING A NEVADA ATTORNEY THAT VOLUNTARILY ABANDONS A CLIENT TO STILL COLLECT A CONTINGENCY FEE

There is not a court or jurisdiction in the country to undersigned counsel's knowledge that has permitted an attorney who voluntarily abandons a client to collect an attorney fee under a contingency contract. Under the best of circumstances, where an attorney is discharged due to no fault of his or her own,

the approach in Nevada has been to permit the attorney to only collect under a quantum meruit theory. *See* Formal Opinion No. 18.

In this case, the Padda Parties have alleged that Ms. Cohen approached Mr. Padda in September 2016 and, quoting from the agreement executed by the parties, "proposed a complete and final resolution of any and all expectancy interests she may have or could possibly assert" in exchange for a fixed amount of money. PAB 10. In other words, Mr. Padda accepted Ms. Cohen's offer. Ms. Cohen does not dispute this (COB 4) or that the agreement she executed expressly stated that she "determined for her own personal reasons that it would be advantageous and in her best interest to forfeit her expectancy interests which carry significant risk and uncertainty . . .." PAB 10-11.

The Padda Parties further allege that Ms. Cohen knowingly and intentionally became suspended from the practice of law in April 2017 which she testified was her "protest." PAB 13. Ms. Cohen's counsel does not dispute this fact admitting that his client "declined" to pay the fees to the Nevada Board of Continuing Legal Education. COB 5.

Finally, the Padda Parties allege that Ms. Cohen failed to comply with this Court's requirement set forth under Supreme Court Rule 115 that she "notify" her clients, the attorneys for adverse parties and the trial courts presiding over the cases in which she claims an expectancy interest. PAB 27. Ms. Cohen and her

counsel also do not dispute this fact either ("no one disputes that Ms. Cohen did not comply with her CLE requirements" and therefore "there is no need to 'engage' in a meaningless debate over the terms of SCR 212(4) and SCR 115(2)-(3)"). CRB 7.

Ms. Cohen's Opening Brief proclaims "[t]here was . . . no abandonment in the case at bar"[11] including any "suggestion that Ms. Cohen abandoned the clients."[12] Neither statement is true, let alone supported by a citation to the record. The Padda Parties responded in their Answering Brief by arguing and citing to the facts set forth in the preceding three paragraphs above. PAB 37-39. In her Reply Brief filed April 23, 2021 in this case, Ms. Cohen fails to dispute any of the facts cited by the Padda Parties in support of Ms. Cohen's abandonment of the cases and clients at issue and conspicuously ignores the authorities cited by the Padda Parties which stand for the proposition that "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." PAB 38 (*citing several authorities including* Augustun v. Linea Aerea Nacional-Chile S.A., 76 F.3d 658, 662 (5th Cir. 1996).

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[11] COB 17.

[12] COB 15.

Based upon Formal Opinion No. 18, if the best a lawyer discharged by a client due to no fault of the lawyer can receive is quantum meruit, how can a lawyer that discharges herself, in the process abandoning her clients, recover her full contingency fee? There can be no reasonable dispute that Ms. Cohen abandoned her clients when she offered Mr. Padda a proposal and executed a Buyout Agreement in September 2016 under the terms of which she would completely forfeit her expectancy interests. There can be no reasonable dispute that Ms. Cohen abandoned her clients when she knowingly and intentionally became suspended from the practice of law in protest of State Bar licensing fees. And, there can be no reasonable dispute that Ms. Cohen abandoned her clients when she failed to meet her obligations under Supreme Court Rule 115 by failing to inform and/or hiding from clients, the trial courts and opposing counsel her suspension. All of these choices by Ms. Cohen were clear and unequivocal acts of abandonment. To look past these facts is to simply ignore reality. In the face of this, there are no legitimate policy reasons to permit Ms. Cohen to realize any recovery, let alone a recovery under quantum meruit principles.[13] It should be self-evident that an attorney who knowingly and intentionally abandons a client due to no fault of the client should not be permitted to profit from that abandonment.

[13] See authorities cited at PAB 38-39.

While Ms. Cohen made a series of decisions she now clearly regrets, including seller's remorse over the proposal she offered Mr. Padda, her arguments, and positions, if accepted by this Court, would be injurious to the public interest in ensuring the protection of clients. It would also send the wrong message to attorneys who provide competent and diligent representation to clients and who earn their fees properly. It is understandable that Ms. Cohen would like a financial windfall in this case. However, the positions she is urging benefit only herself and, if adopted, would damage the profession, her former clients, and the legal consumers (as well as general public) of Nevada. To be an attorney has to mean something. It is indeed a privilege and not a right. To this end, it is interesting and noteworthy that neither in her Opening Brief or the Reply does Ms. Cohen address how her positions benefit any of her former clients. This self-centered approach in which she urges the Court to craft a special exception for her should be summarily rejected.

Judge Gonzalez properly granted summary judgment in favor of the Padda Parties and that decision should be affirmed.

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CONCLUSION

For the reasons set forth above, amici submit this brief in support of Respondents' Answering Brief and for affirmance of Judge Gonzalez's decisions below pertaining to both summary judgment and the motion for reconsideration. With respect to the motion for reconsideration, which is the entire basis for this appeal, there was certainly no "abuse of discretion" given that Ms. Cohen is urging the adoption of a decision from a middle court of appeals in Texas that stands in direct contradiction to our own State Bar's Formal Opinion No. 18.

Respectfully submitted,

/s/ *Milan Chatterjee*

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Dated: April 30, 2021

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Amicus Curiae Brief complies with the formatting, typeface and style requirements of NRAP 32.

2. I further certify that this Amicus Curiae Brief complies with the page or type-volume limitations of NRAP 29 and 32 because it is proportionally spaced, has a typeface of 14 points or more and contains 3,386 words which is less than the 7,000 word limit.

3. Finally, I hereby certify that I have read the Amicus Curiae 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 and volume number, if any, or 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 requirements of the Nevada Rules of Appellate Procedure.

/s/ *Milan Chatterjee*

MILAN CHATTERJEE, ESQ.

Counsel for Amici Curiae SABA-LV, VIPI and Jay Bloom

Dated: April 30, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this day, April 30, 2021, the foregoing **BRIEF OF *AMICUS CURIAE* SOUTH ASIAN BAR ASSOCIATION OF LAS VEGAS, VETERANS IN POLITICS INTERNATIONAL, INC. AND JAY BLOOM IN SUPPORT RESPONDENTS' ANSWERING BRIEF AND AFFIRMANCE OF JUDGE ELIZABETH GONZALEZ'S GRANT OF SUMMARY JUDGENT IN FAVOR OF RESPONDENTS AND DENIAL OF APPELLANT'S MOTION FOR RECONSIDERATION** was filed with the Supreme Court of Nevada through its electronic filing system. Service of the foregoing document shall be made in accordance with the Master Service List upon all registered parties and/or participants and their counsel.

/s/ *Milan Chatterjee*

Milan Chatterjee, Esq.