

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN C. PADGETT,
Appellant,

v.

THE STATE BAR OF NEVADA,
Respondent.

Case No. 81918

Electronically Filed
Feb 11 2021 04:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

RESPONDENT'S ANSWERING BRIEF

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JURISDICTIONAL STATEMENT

Pursuant to Supreme Court Rule (“SCR”) 105(3)(b), “a decision recommending a public reprimand, suspension or disbarment shall be automatically reviewed by the supreme court.”

ROUTING STATEMENT

This appeal is presumptively assigned to the Supreme Court pursuant to NRAP 17(a)(4) because it is an appeal from a case involving attorney admission, suspension, discipline, disability, reinstatement, or resignation.

STATEMENT OF THE ISSUES

1. Does Supreme Court Rule 109 satisfy the Constitutional requirements of Due Process where it requires personal service or certified mail to Appellant’s “current address shown in the state bar’s records” and “other last known address?”

2. May Appellant challenge a Panel member after the Panel member has considered the evidence and deliberated in a recommendation?
3. Did bias from the consideration of multiple offenses affect the factual findings in a default hearing or the Panel's recommendation?

STATEMENT OF THE CASE

This is an automatic *de novo* appeal, brought pursuant to the Supreme Court Rules and applicable interpreting case law, of the Findings of Fact, Conclusions of Law and Recommendation After Formal Hearing (hereinafter "Findings") from the duly designated Formal Hearing Panel ("Panel") of the Southern Nevada Disciplinary Board, filed on July 30, 2020, which recommended that this Court impose a five (5) year suspension on Appellant, Brian C. Padgett (hereinafter "Padgett"). Volume I ("I") Record on Appeal ("ROA") 82-91. Padgett contests the Panel's recommendation.

STATEMENT OF THE FACTS

D. OBC19-0604

On July 25, 2012, Bruce Familian (hereinafter "Mr. Familian") retained Padgett to represent DKB, LLC, in an inverse condemnation case against Clark County. Volume II ("II") ROA 106. On or about September 11, 2012, Padgett filed a Complaint initiating Case Number A-12-668136-C in the Eighth Judicial District Court. *Id.*

The case went to trial, and DKB was awarded \$116,508 by the jury. *Id.* Following trial, Padgett filed several post-judgment motions for attorney's fees and

costs of prejudgment interest on the award. *Id.* The district court issued an order granting the prejudgment interest on November 3, 2017, but the court requested additional briefing regarding fees and costs. *Id.*

Mr. Familian then retained attorneys Dan Polsenberg and Joel Henriod (hereinafter “appellate attorneys”) to file an appeal of the inverse condemnation case as Mr. Familian was not satisfied with the amount awarded by the jury. II ROA 107. On June 12, 2017, Mr. Familian’s appellate attorneys filed a Notice of Appearance. *Id.* On November 8, 2017, Clark County deposited \$151,599.83 with the District Court representing the jury verdict plus interest. *Id.*

On June 8, 2018, Padgett filed a motion asking the court to disburse the funds on deposit. *Id.* Padgett did not serve Mr. Familian’s appellate attorneys with the motion. *Id.* On June 12, 2018, the court filed an order granting Padgett’s motion. *Id.*

On June 20, 2018, Mr. Henriod discovered that Padgett’s motion and the subsequent order. *Id.* Mr. Henriod contacted Padgett’s office and expressed concern that they had withdrawn the funds without Mr. Familian’s knowledge or notification to his appellate attorneys. *Id.* Mr. Henriod believed that withdrawing the funds might jeopardize Mr. Familian’s appeal and notified Padgett that Mr. Familian did not authorize the withdrawal. *Id.*

On June 22, 2018, Mr. Familian emailed Padgett asking why the motion for disbursement was filed without his knowledge and why it had been done on shortened time. II ROA 107-108. The email requested the status of funds and an accounting explaining what happened to any funds received by Padgett. II ROA 108. Padgett replied that he did have the check in hand, but that in his opinion, retrieving the funds would not jeopardize Mr. Familian's rights on appeal. *Id.*

Padgett stated that he would send Mr. Familian a copy of his outstanding bill, which he can pay out of pocket or from the release of funds. *Id.* Mr. Familian then instructed Padgett not to withdraw the funds and requested a current bill he had not received one in over a year. *Id.* On June 29, 2018, Padgett's office emailed Mr. Familian an invoice for \$69,945.73, which purported to cover services rendered from November 2016 through May 2017. *Id.* It also indicated that Padgett had not billed Mr. Familian for any post-trial work. *Id.*

On October 16, 2018, the district court filed a decision and awarded DKB over \$400,000 in attorney's fees and costs. *Id.* That same day, Padgett filed a Notice of Attorney's Lien without a specific amount. II ROA 108-109. Padgett failed to file a motion to enforce the attorney's lien as required by NRS 18.015. II ROA 109.

On October 25, 2018, Mr. Familian, through email, told Padgett that he could take the approximately \$70,000 Mr. Familian owed from the attorney's fee award proceeds. *Id.* In addition, Mr. Familian reiterated that Padgett was not to withdraw

the funds on deposit. *Id.* Padgett had already withdrawn \$151,599.63 from the court on October 22, 2018. *Id.*

On June 19, 2019, Padgett attempted to withdraw an additional \$13,845.45 from the funds on deposit with the district court by submitting a proposed order directly to the court without notice to the other parties or Mr. Familian. *Id.* The court returned the proposed order to Padgett and provided copies to Mr. Familian's appellate attorneys. II ROA 109-110.

E. OBC19-0798

Ian Ritchie (hereinafter "Mr. Ritchie") was hired as the head of security for CWNevada (hereinafter "CWN"), a marijuana dispensary over which Padgett was the CEO from approximately 2017 to March 26, 2019. II ROA 110. Prior to Mr. Ritchie's employment at CWN, he was employed as the Director of Sales for Pro-Tect Security. *Id.* While employed with Pro-Tect Security, Mr. Ritchie signed a non-compete agreement. *Id.* Despite the non-compete, Mr. Ritchie left Pro-Tect Security and founded Round Table Security. *Id.*

In May 2015, Pro-Tect Security sued Mr. Ritchie for violating the terms of the non-compete. *Id.* Although Padgett was not counsel of record for Mr. Ritchie or Round Table Security, he advised Mr. Ritchie to accept liability for the judgment and that Padgett, himself, would pay the judgment. *Id.* Following Padgett's advice,

Mr. Ritchie agreed to settle the lawsuit. *Id.* Neither Padgett nor Mr. Ritchie satisfied the settlement agreement. *Id.*

In February 2017, Pro-Tect Security sued Mr. Ritchie for breach of contract. On March 12, 2018, Padgett appeared on behalf of Mr. Ritchie. II ROA 110-111. On June 28, 2018, the court entered summary judgment in favor of Pro-Tect Security and against Mr. Ritchie for \$129,999.92. *Id.* On July 27, 2018, Padgett filed a Notice of Appeal with the district court. II ROA 111. Padgett reiterated his promise to Mr. Ritchie that Padgett would pay Pro-Tect Security. *Id.* Ultimately, Padgett withdrew as counsel from the appeal. *Id.* Mr. Ritchie was unable to secure new counsel and the court dismissed his appeal. *Id.* When the State Bar asked Padgett about this incident, he simply responded that he is “not permitted to advance funds to a client, nor would [he] have agreed to do so in Mr. Ritchie’s case.” *Id.*

F. PROCEDURAL HISTORY

On December 23, 2019, the State Bar filed its Complaint, First Designation of Hearing Panel Members, and State Bar of Nevada’s Peremptory Challenges. I ROA 1-17. The Complaint charged Padgett with multiple violations of the Rules of Professional Conduct (“RPC”). I ROA 1-11. Pursuant to SCR 109, the State Bar mailed copies of the Complaint, First Designation of Hearing Panel Members, and State Bar of Nevada’s Peremptory Challenges through both regular and certified mail to Padgett’s current address as listed in the State Bar’s records pursuant to SCR

79, which was 611 South 6th Street, Las Vegas, Nevada 89101.¹ I ROA 16-17. On January 7, 2020, the State Bar received a return receipt confirming delivery to Padgett’s SCR 79 address. I ROA 18. Padgett failed to provide a verified response or answer or submit peremptory challenges.

On January 7, 2020, the State Bar filed an Amended Complaint. I ROA 19-29. The State Bar mailed a copy of the Amended Complaint again through regular and certified mail to Padgett’s SCR 79 address. I ROA 30-31. The Amended Complaint directed Padgett to file a Verified Response or Answer “within twenty (20) days of service of [the Amended] Complaint.” *Id.* On January 15, 2020, the State Bar received a return receipt confirming delivery to Padgett’s SCR 79 address. I ROA 32-33.

After receiving no answer from Padgett, on January 31, 2020, the State Bar filed a Notice of Intent to Proceed on a Default Basis. I ROA 34-47. The State Bar mailed a copy of the Notice through both first-class and certified mail to Padgett’s SCR 79 address. I ROA 36. It included a copy of the Complaint and directed Padgett to submit a responsive pleading to Panel members “by February 24, 2020.” I ROA 34-47. Padgett failed to answer.

¹ SCR 79 requires that attorneys provide to the State Bar his/her permanent mailing address, permanent telephone number, and a current email address.

On March 4, 2020, the Disciplinary Board Chair filed an Order Appointing Hearing Panel Chair (hereinafter “Order”). I ROA 48-49. The State Bar mailed a copy of the Order through first-class mail to Padgett’s SCR 79 address. I ROA 49. The State Bar also emailed the Order to Padgett’s SCR 79 email address, brian@briancpadgett.com. *Id.* On March 5, 2020, the State Bar mailed and emailed a Notice of Telephonic Initial Case Conference (hereinafter “ICC Notice”) to Padgett. I ROA 50-51.

On March 18, 2020, Dana Oswalt, Esq. (hereinafter “Panel Chair”) and Assistant Bar Counsel Gerard Gosioco (hereinafter “ABC Gosioco”) appeared for the Initial Case Conference. *See* I ROA 52. Padgett failed to appear. *Id.*

On March 19, 2020, the State Bar filed a Scheduling Order in the instant matter.² I ROA 52-55. The State Bar emailed a copy of the Scheduling Order to brian@briancpadgett.com. I ROA 55. Padgett failed to comply with the Scheduling Order.

On March 24, 2020, the Panel Chair entered an Order defaulting Padgett (hereinafter “Default Order”). I ROA 56-59. The State Bar mailed and emailed a copy of the Default Order to Padgett. I ROA 59.

² Pursuant to the Scheduling Order, the State Bar filed its Initial Disclosure of Witnesses and Documents and Final Disclosure of Witnesses and Documents on March 24, 2020, and May 12, 2020, respectively. I ROA 60-66, 73-79.

On April 3, 2020, the Disciplinary Board Chair filed an Order Appointing Formal Hearing Panel. I ROA 67-69. The State Bar emailed a copy of the Order to Padgett at brian@briancpadgett.com. I ROA 69.

On April 9, 2020, the Panel Chair filed a Notice of Amended Formal Hearing Date. I ROA 70-72. The State Bar emailed a copy of the Notice to Padgett at brian@briancpadgett.com. I ROA 71. In addition, employees of Nationwide unsuccessfully attempted to serve the same on Padgett personally at his SCR 79 address. II ROA 697-701.

Due to Padgett's lack of participation in the disciplinary proceedings, the State Bar contacted Nationwide Legal Nevada, LLC (hereinafter "Nationwide"), in an attempt to serve Padgett personally with the following documents: (1) Complaint; (2) Designation of Hearing Panel Members; (3) State Bar of Nevada's Peremptory Challenges; (4) Affidavit of Mailing; (5) First Amended Complaint; (6) Notice of Intent to Proceed on a Default Basis; (7) Order Appointing Hearing Panel Chair; (8) Notice of Telephonic Initial Case Conference; (9) Scheduling Order; (10) Entry of Default; (11) Initial Disclosure of Witnesses and Documents; (12) Order Appointing Formal Hearing Panel; and (13) Notice of Amended Formal Hearing Date (collectively referred to as "Pleadings"). II ROA 697-701.

On April 10, 2020, and April 13, 2020, Judith Mae All (hereinafter “Ms. All”), a licensed process server employed by Nationwide, attempted unsuccessfully to serve Padgett personally with the Pleadings at his SCR 79 address. II ROA 697.

On April 15, 2020, Tyler Trewet (hereinafter “Mr. Trewet”), a licensed process server employed by Nationwide, attempted unsuccessfully to serve Padgett personally with the Pleadings at 11274 Gammila Drive, Las Vegas, Nevada 89141. II ROA 698, 700.

On April 24, 2020, April 26, 2020, and April 29, 2020, Mr. Trewet attempted unsuccessfully to serve Padgett personally with the Pleadings at 1672 Liege Drive, Henderson, Nevada 89012. II ROA 699, 701.

On May 22, 2020, the State Bar mailed to Padgett’s SCR 79 address and emailed to brian@briancpadgett.com a Notice of Formal Hearing. I ROA 80-81.

On June 8, 2020, the Hearing Panel held a formal hearing. II ROA 97-151.

On July 30, 2020, the Panel Chair filed a Findings of Fact, Conclusions of Law, and Recommendation After Formal Hearing. I ROA 82-91.

STANDARD OF REVIEW

This Court reviews the Panel’s recommendation *de novo*. SCR 105(3)(b); *In the Matter of Discipline of R. Christopher Reade, Bar No. 6791*, 133 Nev. Adv. Op. 87, NSC Docket No. 70989 (November 16, 2017). “Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel’s

findings and recommendation and must examine the record anew and exercise independent judgment.” *In re Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204, *modified by* 31 P.3d 365 (2001), *cert. denied*, 534 U.S. 1131 (2002). However, the Court uses a deferential standard of review with respect to the hearing panel’s findings of fact, SCR 105(3)(b), and will not set them aside unless they are clearly erroneous or not supported by substantial evidence. *See generally Sowers v. Forest Hills Subdivision*, 129 Nev. Adv. Op. 9, 294 P.3d 427, 432 (2013); *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009).

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

Pursuant to SCR 105(2), if an “attorney fails to plead, bar counsel shall enter a default and the charges shall be deemed admitted.” However, the attorney “may thereafter move to set aside the default with the appropriate chair to do so, if failure to file is attributable to mistake, inadvertence, surprise, or excusable neglect.”

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

proceedings is not additional punishment of the attorney, but rather to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar as a whole”).

Furthermore, the Formal Hearing Panel may only find violations of the Supreme Court Rules of Professional Conduct as charged in the Complaint. *Schaefer*, 117 Nev. at 515, 25 P.3d at 204.

SUMMARY OF THE ARGUMENT

Padgett received sufficient notice of the disciplinary proceedings, his challenge to a Panel member is untimely, and bias did not affect the factual findings because it was a default proceeding. Further, the Supreme Court Rules and ABA guidelines permit the joinder and consideration of multiple offenses. Therefore, this Court should adopt the Southern Nevada Disciplinary Board’s recommendation to suspend Padgett from the practice of law for five (5) years.

ARGUMENT

Padgett’s Opening Brief present three (3) issues for this Court’s review:

1. Whether the Respondent erred and substantially prejudiced Appellant by continuing forward with disciplinary proceedings against Appellant without providing appropriate notice or due process to Appellant.
2. Whether the Respondent erred and substantially prejudiced Appellant by failing to disclose a clear and present conflict of interest between a Hearing Panel member and Appellant.

3. Whether the Respondent violated Appellant's Equal Protection Rights and substantially prejudiced Appellant by holding only one disciplinary hearing for two distinct and separate State Bar complaints.

Appellant's Opening Brief ("AOB") 8. However, Padgett raises issues two and three for the first time on appeal. *See* NRAP 10; *see also Moore v. Cherry*, 90 Nev. 390, 396, 528 P.2d 1018, 1022 (1974) (holding that the Appellant's attempt to file a statement of the evidence could not be consulted as part of the record on appeal because there was nothing to indicate that the statement was ever submitted to the district court for settlement or approval); *Raishbrook v. Estate of Bayley*, 90 Nev. 415, 416, 528 P.2d 1331 (1974) ("[w]hen evidence on which a district court's judgment rests is not properly included in the record on appeal, it is assumed that the record supports the lower court's findings.").

IV. SUPREME COURT RULE 109 PROVIDES SUFFICIENT NOTICE TO SATISFY CONSTITUTIONAL DUE PROCESS REQUIREMENTS

In his Opening Brief, Padgett alleges that "Respondent erred when it continued forward with proceedings against Appellant without providing appropriate due process to Appellant." AOB 13. Although Padgett correctly states that Nevada courts have a history of protecting due process rights, Padgett's argument lacks merit. *Id.*; *see In re Schaeffer*, 25 P.3d 191, 204, *mod.* 31 P.2d 365 (Nev. 2000) (citing *State Bar of Nevada v. Claiborne*, 104 Nev. 115, 756 P.2d 464 (1988) (noting that due process requirements must be met in bar proceedings)).

In the context of administrative pleadings, the Nevada Supreme Court held that due process requirements of notice are satisfied where the parties are sufficiently apprised of the nature of the proceedings so that there is no unfair surprise and that the opportunity to prepare a defense is what defines due process. *See Dutchess Bus. Servs. v. Nev. State Bd. of Pharm.*, 124 Nev. 701, 712, 191 P.3d 1159, 1167 (2008).

SCR 109 states:

1. Complaint. Service of a complaint under these rules shall be made by personal service by any person authorized in the manner prescribed by Nevada Rule of Civil Procedure 4(c), or by registered or certified mail at the current address shown in the state bar's records or other last known address.
2. Other papers. Service of other papers or notices required by these rules shall be made in accordance with Nevada Rule of Civil Procedure 5, unless otherwise provided by these rules.

Nevada Rule of Civil Procedure ("NRC" 5(a)(2) states:

- (2) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

SCR 105(2) states:

In the event the attorney fails to plead, bar counsel shall enter a default and the charges shall be deemed admitted; provided, however, that an attorney who fails to respond within the time provided may thereafter move to set aside the default with the appropriate chair to do so, if failure to file is attributable to mistake, inadvertence, surprise, or excusable neglect.

Here, the State Bar served Padgett with the initial and amended complaints pursuant to SCR 109 through “registered or certified mail at the current address shown in the state bar’s records or other last known address.” Padgett failed to appear, so the State Bar was not required to serve Padgett with further pleadings or other papers. Nevertheless, the State Bar made multiple attempts through various means to ensure that Padgett knew about the disciplinary proceedings.

The State Bar mailed a copy of the State Bar’s Complaint, First Designation of Hearing Panel Members, and Peremptory Challenges to Padgett’s SCR 79 address via regular and certified mail. I ROA 16-17. On January 7, 2020, the State Bar received a return receipt confirming delivery to Padgett’s SCR 79 address. I ROA 18.

The State Bar mailed a copy of the First Amended Complaint to Padgett’s SCR 79 address via regular and certified mail. I ROA 30-31. On January 15, 2020, the State Bar received a return receipt confirming delivery to Padgett’s SCR 79 address. I ROA 32-33.

The State Bar mailed a Notice of Intent to Proceed on a Default Basis to Padgett’s SCR 79 address via first-class and certified mail on January 31, 2020. I ROA 36.

The State Bar emailed the Order Appointing Hearing Panel Chair to Padgett at brian@briancpadgett.com and mailed the same to Padgett's SCR 79 address via first-class mail. I ROA 49.

Similarly, the State Bar mailed and emailed the Notice of Telephonic Initial Case Conference to Padgett. I ROA 51.

The State Bar emailed the Scheduling Order to Padgett at brian@briancpadgett.com. I ROA 55.

The State Bar emailed the Entry of Default to Padgett at brian@briancpadgett.com and mailed the same to Padgett's SCR 79 address. I ROA 59.

The State Bar emailed the Order Appointing Formal Hearing Panel to Padgett at brian@briancpadgett.com. I ROA 69.

The State Bar emailed the Notice of Amended Formal Hearing Date to Padgett at brian@briancpadgett.com. I ROA 71. In addition, employees of Nationwide unsuccessfully attempted to serve the same on Padgett personally at his SCR 79 address. II ROA 697-701.

Furthermore, the Panel appropriately deemed all charges admitted pursuant to SCR 105(2). Padgett failed to "thereafter move to set aside the default with the appropriate chair to do so." SCR 105(2). He also failed to establish any "mistake, inadvertence, surprise, or excusable neglect" to set aside the default. *Id.*

Padgett inappropriately attached an Affidavit of Connie Patrice Little (hereinafter “Ms. Little”), his secretary, which is a document not contained in the record pursuant to SCR 105(3)(b).

Nevertheless, if Ms. Little “mailed a notice of change of [Padgett’s] address to the Nevada State Bar” on February 28, 2020, then it would not excuse Padgett’s failure to respond. AOB 35-36; *see* NRAP 10. The State Bar had already served Padgett with both the initial and amended complaints before February 28, 2020. I ROA 16-17, 30-31. The State Bar had already served Padgett with a Notice of Intent to Seek a Default Judgment by February 28, 2020. I ROA 36. Padgett had a second 20-day period to respond. I ROA 34-35. It expired February 24, 2020 – two days before Ms. Little alleges that she notified the State Bar of a change of address.

Furthermore, after February 28, 2020, the State Bar mailed pleadings and attempted to serve Padgett personally at the 1672 Liege Drive, Henderson, NV 89012 address.

The State Bar, through Nationwide Legal, attempted to serve Padgett personally with all pleadings³ at three different addresses: (1) Padgett’s SCR 79

³ Employees of Nationwide attempted to serve Padgett personally with the following pleadings: (1) Complaint; (2) Designation of Hearing Panel Members; (3) State Bar of Nevada’s Peremptory Challenges; (4) Affidavit of Mailing; (5) First Amended Complaint; (6) Notice of Intent to Proceed on a Default Basis; (7) Order Appointing Hearing Panel Chair; (8) Notice of Telephonic Initial Case Conference; (9) Scheduling Order; (10) Entry of Default; (11) Initial Disclosure of Witnesses and Documents; (12) Order Appointing Formal Hearing Panel; and (13) Notice of Amended Formal Hearing Date (collectively referred to as “Pleadings”). II ROA 697-701.

address; (2) 11274 Gammila Drive, Las Vegas, Nevada 89141; and (3) 1672 Liege Drive, Henderson, Nevada 89012. II ROA 697-701.

On April 10, 2020, and April 13, 2020, Ms. All, a licensed process server employed by Nationwide, attempted to serve Padgett personally with the Pleadings at his SCR 79 address, but to no avail. II ROA 697.

On April 15, 2020, Mr. Trewet, a licensed process server employed by Nationwide, attempted to serve Padgett personally with the Pleadings at 11274 Gammila Drive, Las Vegas, Nevada 89141, but to no avail. II ROA 698, 700.

On April 24, 2020, April 26, 2020, and April 29, 2020, Mr. Trewet attempted to serve Padgett personally with the Pleadings at 1672 Liege Drive, Henderson, Nevada 89012, but to no avail. II ROA 699, 701. Mr. Trewet noted that security confirmed that Padgett was the current resident at 1672 Liege Drive, Henderson, Nevada 89012 on April 26, 2020. *Id.* Mr. Trewet also noted that although there was a BMW 328i (NV license plates 713L51) in the driveway, no one answered the door. *Id.*

Padgett received ample opportunity to answer and defend the allegations throughout the disciplinary process. The State Bar served Padgett pursuant to SCR 109. This process honors Padgett's constitutional rights to due process. The State Bar then sent notice to Padgett through various methods at various locations. Padgett's claims of unfair surprise ring hollow. He received ample notice of the

disciplinary proceedings; he chose not to participate. Therefore, this Court should adopt the Panel's findings and recommendation.

V. PADGETT'S CHALLENGE TO A PANEL MEMBER IS UNTIMELY

In his Opening Brief, Padgett claims that the laymember on the Hearing Panel, Peter Ossowski (hereinafter "Mr. Ossowski"), had a conflict of interest because he worked for the Nevada Department of Transportation ("NDOT"), and Padgett had represented clients in lawsuits against NDOT. AOB 18-20. However, Padgett's challenge to Mr. Ossowski is untimely.

SCR 105(2)(a) states, in pertinent part:

Challenges to any member for cause under Rule 103(7) shall be made as soon as possible after receiving either actual or constructive notice of the grounds for disqualification, and shall be made by motion to the chair in accordance with these rules. In no event will a motion seeking the disqualification of a member be timely if the member has already heard, considered or ruled upon any contested matter, except as to grounds based on fraud or like illegal conduct of which the challenging party had no notice until after the contested matter was considered. Any challenge that is not raised in a timely manner shall be deemed waived.

Here, Padgett challenges Mr. Ossowski for the first time on appeal. Mr. Ossowski has already heard, considered, and ruled upon the matter. Padgett has not asserted fraud or like illegal conduct. Padgett's challenge is untimely.

Even if Padgett’s challenge were timely, it would be tenuous. Padgett states that “NDOT and their employees have every reason to make sure Appellant’s ability to practice law and defend landowners is hindered,” because he “has made his career defending landowners in trial against NDOT when they take private property for public works projects like Project Neon.” AOB 18-19.

Padgett incorrectly alleges that the State Bar asked Mr. Ossowski to serve on the Panel based on his employer. AOB 19. Disciplinary Rule of Procedure (“DRP”) 5 states, in pertinent part, that “[t]he selection of the remaining Hearing Panel Members will be assigned on a *random basis*, based on their availability for the hearing date.” (emphasis added). The State Bar did not select Mr. Ossowski to serve on the Panel, but rather, he was selected randomly.

Thus, Padgett’s challenge is untimely. Therefore, this Court should deem Padgett’s challenge waived pursuant to SCR 105(2)(a).

VI. BIAS DID NOT ACCRUE IN A DEFAULT HEARING OR FROM THE JOINDER OF THE OFFENSES

In his Opening Brief, Padgett alleges that “[i]t would be impossible for bias not to accrue against Appellant from one case into the next with the same Hearing Panel and result in a greater penalty than might otherwise accrue, if any.” AOB 20-21. However, Padgett’s claim of bias fails for several reasons.

First, Padgett failed to raise this issue before the hearing panel. The Court “has discretion to consider issues raised for the first time on appeal that involve

recurring questions of law” or other exceptional issues. *Quisano v. State*, 2016 Nev. App. 11, 12, 368 P.3d 415, 421, 132 Nev. Adv. Rep. 9. Padgett’s claims of bias from joinder in a disciplinary matter fails to meet this high hurdle.

Second, Padgett failed to answer the allegations. The Panel deemed all charges admitted pursuant to SCR 105(2). Panel bias could not affect the Panel’s actual factual findings because the Panel accepted all allegations as if Padgett had admitted them.

Finally, SCR 102.5(d) allows the panel to consider “multiple offenses” in a disciplinary hearing. Panels weigh each charge separately and “[t]he ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations.” Annotated Standards for Imposing Lawyer Sanctions 2nd Ed. xx (2020).

Thus, no bias affected the Panel’s findings or recommendation. Therefore, this Court should accept the Panel’s factual findings and adopt its recommendation.

CONCLUSION

Based upon the foregoing, the State Bar respectfully requests that this Court order the Southern Nevada Disciplinary Board’s recommendation to suspend Appellant from the practice of law for five (5) years, and that he be required to retake the Nevada Bar Exam, be AFFIRMED.

DATED this 11th of February, 2021.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2012 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more, contains 14,000 words and does not exceed 30 pages.
3. **Finally, I hereby certify** that I have read this appellate 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)(1), 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, 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 requirements of the Nevada Rules of Appellate Procedure.

DATED this 11th of February, 2021.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on February 11, 2021. U.S. Mail and Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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