

LAW OFFICES OF BRIAN C. PADGETT
Brian C. Padgett, ESQ.
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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE:
DISCIPLINE OF
BRIAN C. PADGETT, ESQ.
NEVADA BAR NO. 7474

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Case No. 81918

APPELLANT'S REPLY BRIEF

I. TABLE OF CONTENTS

I.	TABLE OF CONTENTS.....	2
II.	TABLE OF AUTHORITIES.....	3
III.	RESPONSE TO RESPONDENT’S FACTUAL ASSERTIONS.....	4
A.	Lack of Due Process Substantially Prejudiced Appellant.....	4-6
B.	Timely Challenge to Panel Member Ossowski	6
C.	Appellant Was Irreparably Harmed As A Result of Respondent Improperly Prosecuting Two Separate Cases In One Disciplinary Proceeding.....	7
IV.	LEGAL ARGUMENT.....	7-10
A.	The Court Should Set Aside the Respondent’s Entry of Decision Pursuant to NRCP 60(b)(1).....	7-8
B.	Analysis of <i>Yocham</i> Factors.....	8
	1. Prompt Application to Remove Judgment.....	9
	2. The Absence of An Intent to Delay the Proceedings	9
	3. Lack of Knowledge of Procedural Requirements.....	10
	4. Good Faith	10
V.	CONCLUSION.....	10, 11
	CERTIFICATE OF COMPLIANCE.....	12, 13
	CERTIFICATE OF SERVICE BY ELECTRONIC FILING.....	14

II. TABLE OF AUTHORITIES

Cases

<i>Epstein v. Epstein</i> 113 Nev. 1401, 1405, 950 P.2d 771, 772 (1997).....	9
<i>Nev. Indus. Dev., Inc. v. Benedetti</i> 103 Nev. 360, 364, 741 P.2d 802 (1987).....	7
<i>Peralta v. Heights Center, Inc.</i> 485 U.S. 80, 108 S. Ct. 896, 99 L.Ed. 2d. 75 (1988).....	15, 17
<i>Rodriguez v. Fiesta Palms, LLC</i> 134 Nev. 654, 656, 428 P.3d 255, 257 (2018).....	7
<i>Smith v. Widman Trucking & Excavating, Inc.</i> 627 F.2d 792, 795 (7th Cir.1980).....	8
<i>Stoecklein v. Johnson Elec., Inc.</i> 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).....	9
<i>Yocham v. Davis</i> 98 Nev. 484, 486-487, 653 P.2d 1215, 1216-1217 (1982).....	8

Other Authorities

NRCP 60(b).....	7-9
NRCP 60(b)(1).....	7-9
NRCP 60(c)(1).....	9

III. RESPONSE TO RESPONDENT'S FACTUAL ASSERTIONS

A. Lack of Due Process Substantially Prejudiced Appellant

For the first time in any legal pleadings, in Respondent's Opening Brief, the Respondent stated that on April 24, April 26 and April 29, 2020 Nationwide process servers were hired to serve a package of filed documents to Appellant at his residence at 1672 Liege Drive, Henderson, Nevada 89012.

Appellant never addressed this issue of service in his Opening Brief because he never received service from Nationwide nor had Respondent claimed they had personally served him by Nationwide at any previous time in this case.

The 1672 Liege Drive service address was not cited in the Respondent's Final Disclosures filed on May 12, 2020.

The 1672 Liege Drive service address was not cited in the Notice of Formal Hearing on May 21, 2020.

Appellant's 1672 Liege Drive address was also not cited in State Bar Case No. OBC19-1111 as late as July, 10, 2020 when Respondent filed a Declaration of Service According to SCR 109(1). This case is also prosecuted by ABC Gosioco.

Mr. Gosioco's original argument in Case No. OBC 19-1111 regarding the same due process issue was that he never received Appellant's mailed Notice of Change of Address at the end of February 2020. Mr. Gosioco also noted in his October 27, 2020 Amended Complaint that the first time he attempted to deliver

any documents to Appellant at the 1672 Liege Drive address was on September 25, 2020.

On page 6 of the General Allegations of his Amended Complaint in that case (listed in chronological order) Mr. Gosioco notes:

46. On or about July 13, 2020, an Entry of Default was filed.

47. A search of Respondent's public pleadings revealed a third address for Respondent (1672 Liege Drive, Henderson, NV 89012)(hereinafter "Liege address").

48. On or about September 25, 2020, the State Bar requested that Nationwide Legal attempt to personally serve Respondent at the Liege address.

See Exhibit G.

Considering these facts, Mr. Gosioco did not serve Appellant in April 2020 as stated for the very first time in his Respondent's Answering Brief.

However, in order to further confirm the fallacy of his new April 2020 service argument, Appellant asked for the guest records to be pulled from the security headquarters in his MacDonald Highlands neighborhood. The security officers log all incoming visitors for each house – including process servers – on a perpetual basis. A search of the visitor log by the lead security officer shows that

neither Nationwide process servers or Tyler Trewit entered MacDonald Highlands on April 24, April 26 or April 29, 2020. *Exhibit H*.

Despite Appellant giving proper notice of his Change of Address, no documents in this case were ever sent to 1672 Liege Drive and Appellant had no notice of this case proceeding forward after Appellant requested a stay of proceedings and therefore - no due process. Therefore, the Respondent's Entry of Decision is void and must be set aside.

B. Timely Challenge to Panel Member Ossowski

Appellant's challenge to Panel Member Ossowski was not untimely because Appellant was never given notice of Mr. Ossowski's appointment and so did not have an opportunity to object. Further, neither Mr. Ossowski nor Respondent disclosed Mr. Ossowski's occupation or employer during the course of the case and its proceedings. Considering that the Panel knew Appellant is one of the few practicing eminent domain attorneys in Nevada, the failure to disclose Mr. Ossowski's background with NDOT is tantamount to concealment. Therefore, Appellant has not waived his challenge according to SCR 105(2)(a) and the Respondent's Entry of Decision is void and must be set aside.

**C. Appellant Was Irreparably Harmed As A Result of Respondent
Improperly Prosecuting Two Separate Cases In One Disciplinary
Proceeding**

A review of SCR 102.5(d) shows that “multiple offenses” may be considered in one disciplinary hearing. However, the Rule does not contemplate hearing “multiple cases” in the same disciplinary hearing because the prejudice that would inure to a defendant is incalculable and irreparable. Therefore, the Respondent’s Entry of Decision is void and must be set aside because they heard separate cases OBC19-0604 and OBC19-0798 jointly in the same disciplinary hearing.

IV. LEGAL ARGUMENT

**A. The Court Should Set Aside the Respondent’s Entry of Decision
Pursuant to NRCP 60(b)(1)**

"The salutary purpose of Rule 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party." *See Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 656, 428 P.3d 255,257 (2018), quoting *Nev. Indus. Dev., Inc. v. Benedetti*, 103 Nev. 360, 364, 741 P.2d 802 (1987). NRCP 60(b) provides the Court with the tool to relieve Appellant from the Hearing Panel’s Entry of Decision:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect;

See NRCP 60(b)(1).

"Once a proper showing of mistake, inadvertence, surprise or excusable neglect has been made by the movant . . . Rule 60(b) is to be liberally interpreted in favor of setting aside judgments." *Id.*, citing *Smith v. Widman Trucking & Excavating, Inc.*, 627 F.2d 792, 795 (7th Cir.1980).

Considering the failure of Respondent's Answering Brief to evidence proper service of the disciplinary proceedings on Appellant it is clear that the Appellant was unable to respond and participate in these matters through no fault of his own. Therefore, the Court should set aside the Respondent's Entry of Decision pursuant to NRCP 60(b)(1) and allow the Appellant to fully participate and defend himself in two separate disciplinary matter involving the two separate cases.

B. Analysis of Yocham Factors

The threshold inquiry for this Court to determine whether relief under NRCP 60(b)(1) is appropriate is to analyze the *Yocham* Factors: "(1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith." *Id.* at 657, 428 P.3d at 257, quoting *Yocham v. Davis*, 98 Nev. 484, 486-487, 653P.2d 1215, 1216-1217

(1982), overruled for other reasons; *Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 772 (1997) (tender of a meritorious defense to claim for relief was no longer required to support a NRCP 60(b)(1) motion). "[W]hen evaluating an NRCP 60(b)(1) motion, the district court must consider the state's underlying basic policy of deciding cases on the merits whenever possible." *Id.*, quoting *Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 307 (1993).

1. Prompt application to remove judgment.

Appellant moved quickly moved to gain relief from the Hearing Panel's Entry of Decision and filed within the mandatory time requirements set forth in NRCP 60(c)(1), which mandates motions filed pursuant to NRCP 60(b) "must be made within a reasonable time - and ... (3) no more than six (6) months after the date of the proceeding or the date of service of written notice of entry of judgment or order, whichever date is later. *Id.*

2. The absence of an intent to delay the proceedings.

Appellant is not trying to delay the proceedings and only wishes to have a fair opportunity to be heard on the merits.

3. Lack of knowledge of procedural requirements.

This requirement is not applicable under the specific circumstances under which the Plaintiffs brought this Motion.

4. Good Faith.

This Appeal is brought before the Court in good faith and for justifiable cause.

V. CONCLUSION

The Respondent's Notice of Entry of Decision is void and must be set aside as Appellant was given no notice of the Respondent's disciplinary proceedings moving forward and was given no opportunity to defend himself in violation of his Due Process rights.

The Respondent also failed to disclose a fatal conflict of interest between a Hearing Panel member and Appellant which substantially prejudiced the Appellant.

Finally, Respondent also held only one disciplinary hearing for two separate Complaints filed against the Appellant which had different facts and different Complainants in violation of Appellant's Equal Protection rights and SCR 102.5(d). Therefore, based upon the foregoing, the Respondent's Entry of Decision must be set aside and the Appellant must be allowed new hearings for

each case number so that he may defend himself from those Complaints filed against him.

DATED this 15th Day of March 2021.

LAW OFFICES OF BRIAN C. PADGETT

A handwritten signature in black ink, appearing to be 'B. Padgett', written over a horizontal line.

BRIAN C. PADGETT
Nevada State Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012
Appellant

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 in 14 point font and Time New Roman.
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 proportionally spaced, has a typeface of 14 points or more and contains 2030 words.
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.

4. 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 15th day of March, 2021.

LAW OFFICES OF BRIAN C. PADGETT

A handwritten signature in black ink, appearing to read 'B. Padgett', is written over a horizontal line.

BRIAN C. PADGETT
Nevada State Bar No. 7474
1672 Liege Drive
Henderson, Nevada 89012
Appellant

CERTIFICATE OF SERVICE BY ELECTRONIC FILING

I hereby certify that I am an employee of the LAW OFFICES OF BRIAN C. PADGETT, and that on the 15th day of March, 2021, I did serve by way of electronic filing, a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF** on the following:

Gerard Gosioco, Esq.
State Bar of Nevada
3100 W. Charleston Blvd., Ste. 100
Las Vegas, Nevada 89102


An employee of
The Law Offices of Brian C. Padgett

EXHIBIT G



FILED

OCT 27 2020

STATE BAR OF NEVADA
BY [Signature]
OFFICE OF BAR COUNSEL

STATE BAR OF NEVADA
NORTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,)
)
Complainant,)
vs.)
BRIAN C. PADGETT, ESQ.,)
Nevada Bar No. 7474,)
Respondent.)

AMENDED COMPLAINT

TO: BRIAN C. PADGETT, Esq.
1672 Liege Drive
Henderson, NV 89012

PLEASE TAKE NOTICE that pursuant to Nevada Supreme Court Rule ("SCR") 105(2) a **VERIFIED RESPONSE OR ANSWER** to this Complaint **must be filed** with the Office of Bar Counsel, State Bar of Nevada, 9456 Double R Blvd., Suite B, Reno, Nevada, 89521, **within twenty (20) days of service of this Complaint**. The procedure regarding service is addressed in SCR 109.

GENERAL ALLEGATIONS

1. Complainant, State Bar of Nevada (hereinafter "State Bar") alleges that BRIAN C. PADGETT, Esq. (hereinafter "Respondent"), Nevada Bar No. 7474, is an active member of the State Bar, has been licensed to practice law in the State of Nevada since December 28, 2000, and at all times pertinent to this Complaint, had a principal place of business for the practice of law located in Clark County, Nevada.

1 45. On or about July 6, 2020, copies of the Notice sent to Respondent's alternate
2 address were returned to the State Bar's Reno office marked "Return to Sender, Unable to
3 Forward".

4 46. On or about July 13, 2020, an Entry of Default was filed.

5 47. A search of Respondent's public pleadings revealed a third address for
6 Respondent (1672 Liege Drive, Henderson, NV 89012) (hereinafter "Liege address").

7 48. On or about September 25, 2020, the State Bar requested that Nationwide
8 Legal attempt to personally serve Respondent at the Liege address.

9 49. Nationwide Legal attempted to personally serve Respondent at the Liege
10 address on or about (1) September 29, 2020, (2) October 1, 2020, and (3) October 3, 2020,
11 but to no avail.

12 50. On or about October 5, 2020, the State Bar contacted attorney Garrett Ogata
13 (hereinafter "Mr. Ogata"), Respondent's criminal defense attorney, to see whether he
14 would be willing to accept service on Respondent's behalf.

15 51. Mr. Ogata advised that he would contact Respondent.

16 52. On or about October 12, 2020, the State Bar followed up with Mr. Ogata.

17 53. Mr. Ogata advised that he sent Respondent a text informing him of the
18 Formal Hearing details and provided the State Bar's contact information.

19 54. On or about October 15, 2020, a Formal Hearing for the instant matter was
20 set to commence at 9:00am Pacific Standard Time.

21 55. On or about October 15, 2020, at approximately 8:11am Pacific Standard
22 Time, Respondent emailed Assistant Bar Counsel Gerard Gosioco (hereinafter "ABC
23 Gosioco") requesting that the Formal Hearing be continued.

24 56. Ultimately, the Formal Hearing was continued.

25

EXHIBIT H

LAW OFFICES OF BRIAN C. PADGETT
611 South Sixth Street, Las Vegas, Nevada 89101
Telephone: (702) 304-0123 — Facsimile (702) 368-0123

BILLY STEVEN HASBROUCK, JR. declares:

- I declare under penalty of perjury that the foregoing is true and correct.

BILLY STEVEN HASBROUCK, JR.